"MADA NEWS" MARCH 2006

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INTRODUCTION

Welcome to the first MADA News for 2006. This is a bumper issue with hot topics of relevance to many of you.

We appreciate the positive feedback to our last two newsletters and hope you will be just as pleased with the content of this edition.

Ms Jo Dawson of Hillross (our recommended financial planner) and Mr Jim Doumakis of Jose & Associates (our recommended IT specialist) have also contributed to this edition of our newsletter. And we welcome Mr Li Cunxin (our recommended stockbroker) who has also contributed to our March 2006 edition. We are pleased that Jo, Jim and Li have agreed to continue to contribute on a regular basis.

If you have any comments in relation to the contents of MADA News, please do not hesitate to contact either Caroline Poon at our Elwood office on (03) 9531 6666 or Michael Waycott at our Kew office on (03) 9819 7308 or email us at caroline@madabayside.com.au; or michael@mada.com.au.

TOPICS COVERED

1. Associate GPs versus Employee GPs
2. Making the most of salary sacrifice arrangements in the public hospital system
3. FBT: Exempt accessories for laptops and notebooks
4. Super tax savings for 55+ taxpayers "Transition to Retirement pensions"
5. Victorian Land Tax & Trusts
6. Trustee/Director of a corporate trustee – are you liable?
7. Buyers Advocate Services – Experience counts
8. Who gets your superannuation when you die?
9. Agribusiness – a growth investment
10. Australian Equity Market – 2005 Review, 2006 Outlook
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Associate GPs versus Employee GPs

We have had an amazing response to this topic after covering it in our November 2005 Special Edition newsletter. Some of the responses were positive and went something like this “I was relieved after reading the article that we seem to be doing the right thing and following the steps listed in your newsletter as to how to engage non principal GPs”. Other responses were not as positive. We received many calls from nervous GPs (non MADA clients) wanting to discuss their individual circumstances.

As most of you will know the case between NSW State Revenue Office and the corporate medical practice owner is currently on Appeal. If the NSW State Revenue Office wins on Appeal then you can bet that all other State Revenue Offices around Australia will look at exactly the same arrangements between the corporate owned clinic and the GPs engaged within each clinic. The intention of course will be to ascertain whether or not the arrangement is found to be of an employer/employee or an independent Associate GP within each practice. We the scrutiny will not be isolated to corporate owned clinics but will also filter down to all private practice owners around Australia.

It is not all doom and gloom however, as practice owners can have a properly worded Associated Agreement prepared by one of Melbourne’s top law firms. We have had many consultations with this particular law firm to develop an Associate Agreement that we both feel will pass muster if scrutinised by any State Revenue Office. In addition the practice needs to ensure that a ‘Trust Bank Account’ is established to collect all non principal patient fees, deduct the management fee (say 45%) and pass on the balance to the Associate GP.

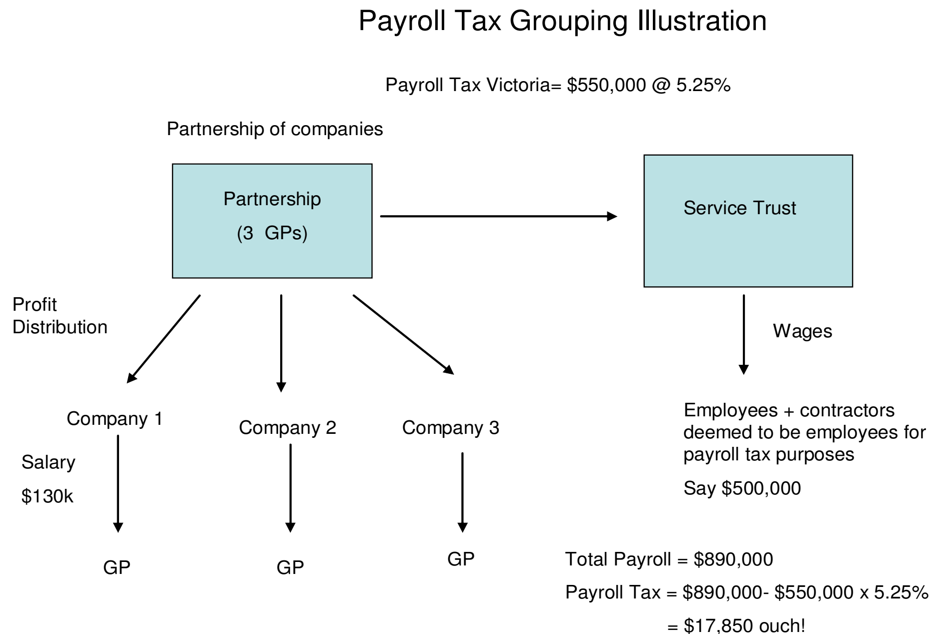
If general practice owners do not have in place a properly worded Associate Agreements and do not follow the steps internally in handling of patient fees, then the practice risks the payments to the Associate GP being classified as “wages” and counted towards total payroll of the practice. In Victoria the payroll tax threshold is 5.25% above $550,000. In addition the Tax Office may request unremitted PAYGW for back years for payments made to Associate GPs.

<u>Payroll Tax: Grouping Provisions</u>

One problem we have encountered in the past few weeks while perusing prospective new clients’ financials or practice financials for a MADA client looking to purchase equity in a practice, is the failure to take into consideration the grouping provisions for payroll tax purposes and the Revenue Ruling in relation to management fees paid between entities. It should be noted that such entities i.e. the partnership or associateship and the service entity are grouped for payroll tax purposes.

We have encountered 3 times in the last week a set of practice financials that the practice accountant in all instances had failed to take into consideration this very rule. In all situations the practice had a structure consisting of a

medical partnership made up of companies (acting as partners for the principal GPs) and the practice service entity. In all instances there was a service trust relationship with a service agreement in place between the practice partnership and the service entity meaning both entities were grouped for payroll tax purposes. Accordingly the salaries and superannuation paid to the partners from their incorporated medical practices were grouped with the total salaries and super paid from the practice service entity. An example illustration of this is shown below.



As you can see from the illustration the practice has a payroll tax liability of $17,850. This is a cost that can be legitimately minimised and our firm has developed a way to reduce a practice's payroll tax liability through the right advice on how to structure the practice, coupled with the correct flow of funds and properly worded associate agreements. This structure kills two birds with one stone as it also alleviates the need to implement the Tax Office's safe harbour bench mark rates on mark-ups on service fee payments. This structure is applicable to practices that have more principal GPs than non principals i.e. where the practice income is not business income.

Is your practice structured to legitimately minimise tax and payroll tax?

Making the most of salary sacrifice arrangements in the public hospital system

Many of our clients work in the public hospital system either exclusively or with a mix of private practice work. You should ensure that you are making the most of salary sacrifice arrangements being offered by public hospitals by

choosing benefits that are non deductible to you and thus worth twice as much to you.

An example may help. Say you have $5,000 of private school fees to pay which are non deductible for tax purposes. If you pay these fees yourself, you will have to earn approximately $10,000 in order to pay them as you lose nearly 50% of the $10,000 in tax. On the other hand, if the hospital pays this for you, it simply pays you $5,000 less i.e. it takes $5,000 off your gross salary (being earnings before tax is taken out). Therefore comparing the two alternatives for paying the non-deductible $5,000 bill, you are better off if the hospital pays the $5,000 for you.

Salary sacrifice benefits vary from hospital to hospital and generally you can only salary sacrifice up to one third of your salary up to a maximum cost benefit limit of $8,755 per annum (grossed up benefits that appear on your PAYGW payment summary are $17,000). Note that this limit applies per hospital. Many of you work for two or more different public hospitals so you can salary sacrifice $8,755 of non deductible debt per hospital. Typical non deductible benefits include paying off the mortgage on a non deductible home loan, paying your rent, private credit cards, private school fees, private health fund fees or car parking at the hospital.

If you don't have non deductible expenses or are not using all of the $8,755 limit, look at costs that are largely non-deductible such as your utility bills i.e. gas and electricity or your home telephone bill.

On top of the threshold of $8,755 available to you, there is often the opportunity to salary sacrifice a number of other benefits and still pay no fringe benefits tax:

a) minor meal entertainment benefits i.e. the salary packaging organization pays your restaurant bills via your personal credit card.

b) Laptops or personal digital assistants (one per annum). Here you get a double deduction as you can then depreciate such items in your personal income tax return.

c) Total and Permanent Disability, life and trauma insurance premiums provided you have them structured correctly.

d) Superannuation.

   Just a little trick to watch here, the maximum contribution base for 9% SGC superannuation purposes is $134,880 i.e. 9% super is capped at $12,139. If you get (say) $100,000 plus 9% super from the hospital and decide to sacrifice (say) $30,000, the hospital may have a policy not to give you the 9% SGC on that sacrificed amount i.e. $30,000 x 9%, $2,700 (as by law they are not obliged to) but this is something you will need to negotiate when you are signing your contract with the hospital.

Are you making the most out of your public hospital salary sacrifice arrangements?

FBT: Exempt accessories for laptops and notebooks

Many clients would be aware that there is an exemption for FBT purposes for laptops and notebooks provided to employees.

There is a limit of one lap-top computer per employee per year and it must only be used for business purposes if depreciation is to be claimed.

These rules apply to palm pilots, personal organizers and brief cases as well.

They do not apply to peripherals such as printers, docking stations, enlarged screens and so on.

In effect you end up getting a tax deduction of 97% on this transaction (assuming the top marginal rate plus Medicare levy 48.5%).

It should be noted that this technique only applies to employees (not associates of employees).

The ATO has now expanded on the kind of accessories covered by the exemption.

The following benefits are exempt from FBT:

- *From 1 April 2006*, personal digital assistants and portable printers designed for use with a laptop or notebook.
- Built-in internals such as modem and fax cards.
- Pre-loaded software forming part of the portable computer package.
- Separate or subsequent software purchased and used in the employee's employment.
- Items that are 'bundled' by the retailer as part of a special offer (reflected in a single invoice) such as upgraded memory, an extended warranty or a protective carry bag.

Super tax savings for 55+ taxpayers

The Tax Office has issued a media release which contains a largely unexpected bonus for taxpayers who are still working and over the age of 55.

It relates to the Government's "transition to retirement pensions" measure, which allows taxpayers to draw down from their super fund while continuing to work after they turn 55.

The media release accepts that taxpayers will be able to salary sacrifice their salary into their super fund and draw out a pension from the same fund – deferring tax and potentially delivering huge tax savings over time for those who don't need their larger than average income.

The legislation was effective 1 July last year. The media release confirms that you don't have to decrease the hours worked to be able to implement the strategy.

Example – Pension top-up required

Dr Jasmin is 56 and is on a wage of $100,000. She decides to salary sacrifice $37,000 of her salary into her superannuation fund to bring her salary income down to $63,000 so that her income is taxed at no more than 31.5% ($63,000 is the threshold before the next higher rate of 42% applies for 30 June 2006).

Tax on entry of the contribution into the super fund is 15% of $37,000 or $5,550.

However, Dr Jasmin has more commitments and requires a net after tax income of $54,000, so she needs to draw down a pension of $10,000 (and her super fund allows her to do this).

In that case, her tax payable is calculated as follows:

Tax on $73,000 (63K + 10K)	$18,960
Plus Medicare Levy	1,095
Tax & M/Levy	$20,055
Less 15% Rebate on pension	1,500
Tax Payable	$18,555
Total tax payable:	
Super fund	$5,550
Dr Jasmin's individual tax	18,555
	$24,105

Had Dr Jasmin received the full $100,000 in her own name, tax payable would have been $32,050.

By bringing the tax rate on her earnings down, Dr Jasmin has been able to leave her tax saving of $7,945 ($32,050 – $24,105) in her super fund.

Note: The following should be kept in mind:

- the above example does not take into account additional accounting costs in the super fund, etc.;

- employees are entitled to salary sacrifice the whole of their salary; however, employers are only entitled to deductions up to the age based limit. For 55+ taxpayers, the age based limit for 2005/06 is $100,587;
- the 15% superannuation pension rebate cannot reduce the Medicare levy;
- superannuation funds that commence paying pensions become exempt from tax (as the taxable income has a tax rate of 0%) on assets supporting the pension ("segregated pension assets"). However, other investment income or contributions are not exempt but taxed at 15%;
- income must be high enough for direct tax savings to occur. However, taxpayers on incomes of less than $63,000 may wish to undertake the above strategy to lock in the value of assets supporting a pension and reduce the tax in their super fund.
- The superannuation trust deed needs to be checked to determine if the deed allows the implementation of this strategy.

Please contact Caroline Poon, Chartered Accountant on 03/9531 6666 at our Elwood office if you are interested in discussing the above strategy. Caroline is an Authorised Representative of Hillross Financial Services, AFSL Licence No. 232705.

Please Note: Many of the comments in this article are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.

Victorian Land Tax & Trusts

The Victorian Government has introduced a bill containing the new provisions concerning land tax and trusts. These provisions take effect from 1 January 2006.

Essentially, land held in trusts is subject to a penalty land tax regime. The 'tax free threshold' has been reduced to $20,000 (compared with $200,000) and the tax rates have a 0.375% surcharge above the tax rates used in the ordinary tax scales. (Note this surcharge regime does not apply to land held in complying superannuation funds).

For example, a single non-trust landowner with land with a value of $540,000 will have land tax of $880 applied, whereas a single trust landowner will have $2,705 applied (with no nomination), a difference of $1,825.

The **surcharge rates** for the 2006 year are as follows.

$	**$**	**Tax Rates**
0	19,999	Nil
20,000	199,999	$75 & 0.375% of the taxable value that exceeds $20,000
200,000	539,999	$750 & 0.575% of the taxable value that exceeds $200,000

540,000	899,999	$2,705 & 0.875% of taxable value that exceeds $540,000
900,000	1,189,999	$5,855 & 1.375% of the taxable value that exceeds $900,000
1,190,000	1,619,999	$9,843 & 1.875% of the taxable value that exceeds $1,190,000
1,620,000	2,699,999	$17,905 & 1.706% of the taxable value that exceeds $1,620,000
	2,700,000+	$36,330 & 3.5% of the taxable value that exceeds $2,700,000

For comparison, the **ordinary rates** of land tax for 2006 year are as follows.

$	**$**	**Tax Rates**
0	199,999	Nil
200,000	539,999	$200 & 0.2% of the taxable value that exceeds $200,000
540,000	899,999	$880 plus 0.5% of the taxable value that exceeds $540,000
900,000	1,189,999	$2,680 & 1% of the taxable value that exceeds $900,000
1,190,000	1,619,999	$5,580 & 1.5% of the taxable value that exceeds $1,190,000
1,620,000	2,699,999	$12,030 & 2.25% of the taxable value that exceeds $1,620,000
	2,700,000+	$36,330 & 3.5% of the taxable value that exceeds $2,700,000

Given that land tax is paid annually, the changes represent a significant rise in land tax payable.

All trustees that hold land will be required to lodge a written notice with the Commissioner prior to 31 March 2006. Trustees should have received notification from the State Revenue Office Victoria at the end of January 2006 regarding this.

In addition, any person that becomes the trustee of land in Victoria (including a trustee that acquires additional land) must notify the Commissioner within one month of becoming trustee or acquiring the additional land. Any trustee that disposes of land must notify the Commissioner within one month of disposing of the land. Further, if anything occurs to a trust that causes it to change from one category to another, the Commissioner must also be notified within one month of the change.

Discretionary Trust

Prima facie, the trustee of a discretionary trust will be assessed to Land Tax under the surcharge tax rates. However, where a discretionary trust holds land that was acquired prior to 1 January 2006, the trustee has the option to nominate a beneficiary in respect of that land. A beneficiary must:

- ❖ Be a natural person;
- ❖ Be a beneficiary of the trust;
- ❖ Be aged 18 or more as at 31 December 2005, and

❖ Confirm in writing their acceptance of the nomination.

Where a valid nomination is made the trustee will be assessed to land tax under the ordinary tax scales for the pre-1 January 2006 land. However, the nominated beneficiary will also be assessed on the pre-1 January 2006 land held by the trust together with any other land owned by the beneficiary, under the ordinary tax scales. The beneficiary will have his/her liability reduced by the amount of tax assessed to the trustee. The trustee will be assessed on any post 31 December 2005 land under the new surcharge rates and will not have the option to nominate a beneficiary in respect of that land.

The beneficiary nomination must be lodged by no later than 30 June 2006. The nomination will remain in force until revoked by the beneficiary or should the beneficiary die. If the nomination is not completed by the due date, the penalty land tax regime will automatically apply.

Fixed and unit trusts

In the basic situation, the trustee of a fixed or unit trust will be assessed to Land Tax under surcharge tax rates. However there is an option to lodge written notification of beneficial interests/unit holdings in the trust (whether pre-1 January 2006 or post). Broadly the unit holders get assessed on their respective share of the trust's land at the ordinary rates, together with any other land they own with the tax payable being reduced by an amount broadly representing their proportional shares of the tax paid by the unit trust.

Principal place of residence in a Trust

A person may be the "nominated PPR beneficiary" if their home is owned by a trust. The trust will then (as in the past) be simply assessed on a single holding basis under the ordinary tax scales.

Consequences of late lodgement of beneficiary nomination forms

The beneficiary nominations above must be lodged by 30 June 2006.

If the nomination forms are not lodged on time, the trust will automatically be taxed at penalty land tax rates.

Excluded trusts

Certain classes of trusts will continue to be assessed at ordinary rates. These include:

- Charitable trusts
- Complying superannuation funds
- Trusts established by a Will

If you have any queries in relation to the above, please contact Caroline Poon (03) 9531 6666 or Michael Waycott (03) 9819 7308.

Trustee/Director of a corporate trustee
Directors of corporate trustees can breathe a sigh of relief

An amendment has been made to the Corporations Act 2001 to clarify the potential personal liability of the directors of corporate trustees, in light of the decision in *Hanel v O'Neill [2003] SASC 409*.

The Supreme Court of South Australia held in that case that directors of corporate trustees could be personally liable in any case where there are insufficient assets to discharge the liabilities of the trust.

The amendment puts directors of corporate trustees in the same position as other directors, and should improve certainty for the directors of all corporate trustees, from large superannuation trusts through to trading trusts running a small business.

However, the amendments make it clear that directors of a corporate trustee will only be personally liable when they are not entitled to be indemnified against the liability from trust assets for one the following reasons:

- A breach of trust by the corporation;
- The corporation acting outside the scope of its powers as trustee; or
- A term of the trust denying, or limiting, the corporation's right to be indemnified against the liability.

However, it is important to note that directors still have a general duty not to trade while insolvent and breaching this duty may attract civil and/or criminal penalties. However, there are defences available to a director for such a breach e.g. if the director has reasonable grounds to expect the company would remain solvent if it has incurred the debt.

Overview

As you are aware, trusts have been a widely used vehicle for carrying on a business due to their income tax and asset protection advantages.

We encourage the trustee of the trust to be a proprietary limited company. By having a company act as trustee of the trust, the controllers can take advantage of all the benefits of a corporate personality (including limited liability and perpetual succession), while retaining the flexibility of a trust structure.

However, a trust structure is not impenetrable and individuals need to be aware of the following if they plan to act as a trustee or a director of a corporate trustee:

- In what circumstances will the trustee be liable for the debts of the trust?
- In what circumstances will a director of a corporate trustee be liable for the debts of the trust?

General position – the trustee is liable for debts incurred when acting on behalf of the trust

The fundamental characteristic of a trust is that the trustee owns the property legally, but not beneficially. In other words, the trustee holds the property 'on trust' for the beneficiaries. The term 'trust' does not refer to a type of legal entity, but rather the trustee's relationship to the trust property and to the beneficiaries of the trust. Consequently, since the trust is not legal entity it, cannot enter into contracts or incur liabilities and the trustee, when acting on behalf of the trust, incurs liabilities in its own name.

In the case of a trading trust, the trustee will almost invariably be a company. The liability of the shareholders in the corporate trustee (generally the individuals who control or seek to benefit from the trust structure) is limited to their capital investment. This is often (if not always) a nominal amount (eg. $1 or $2). There is no requirement for the trustee to hold assets in its own right.

Running a business through a trust structure provides substantial scope for frustrating creditors of the business, since:

- While the trustee is liable for the debts and liabilities of the business, the business assets are held on trust and belong (beneficially at least) to the beneficiaries; and

- The trustee is often a corporate trustee with nominal capital and no assets owned in its own right. Accordingly, it does not have the ability to honour debts and liabilities incurred on behalf of the trust.

What rights do creditors have?

While a creditor has no immediate right to access trust property to satisfy liabilities incurred by the trustee, the creditor may, by virtue of its right of subrogation i.e. the right to effectively 'stand in the shoes of the trustee', be able to rely on the trustee's right to be indemnified out of the trust assets.

Trustee's right of indemnity

Trustee legislation empowers a trustee to reimbursement from trust property for expenses properly incurred in the execution of the trust or powers, and to pay such expenses out of trust property. The trust deed itself may also provide a further source of rights for recoupment and exoneration. There are also some limited circumstances when the settlor or beneficiary of the trust may be liable to indemnify the trustee.

However, the trustee is not initially bound to pay trust creditors out of its own pocket and then recoup the costs from trust property. Instead, the trustee can discharge liabilities directly out of the trust property. But there are limits on the rights of indemnity available to a trustee, namely:

- The trustee's right of indemnity are generally available only in respect of liabilities properly incurred;
- The trustee's rights of indemnity may be denied or reduced because the trustee is in default of the terms of the trust (usually evidenced in the deed establishing the trust); or
- The trustee's rights of indemnity may be denied or limited by the trust instrument.

Creditors' right of subrogation

It is the trustee that is directly liable to creditors for debts incurred while acting on behalf of the trust. However, the trustee will generally have a right to be indemnified out of the trust assets. Creditors suing for payment of a debt have, in most instances, the right of subrogation, to enforce the indemnity against the trust assets.

However, the right of subrogation is only worthwhile if there are sufficient trust assets to cover the liability.

Limiting exposure to liability – what can be done

First and foremost, it is essential for directors and trustees to carefully monitor the assets, liability and activities of the trust. However, additional measures can be taken to ensure that an individual's exposure to liability is limited. Therefore, when contracting with third parties, wherever possible, ensure:

- A provision is included in the contract that limits the trustee's liability under the contract to the amount that the trustee can be indemnified out of the trust assets. (In practice, this may be difficult to negotiate);
- The directors are covered by adequate insurance; and
- The indemnity provided in the trust documentation is not artificially limited in any way.

Buyers Advocate Services – Experience Counts

Some of our clients do not have the time or energy to source decent properties, whether they be residential, commercial or industrial. It makes sense to pay a professional to represent your interests as a buyer (rather than deal with a real estate agent whose interest is geared towards the seller, who is their client).

Buyers advocates who generally are government licensed and have had many years' experience working in the real estate profession and accordingly are property specialists, should be your first choice. We have recommended a number of our clients to Mal James, Director of James Buyer Advocates an extremely experienced Buyer Advocate based in Brighton (whose wife is incidentally a doctor!). The feedback we have received has been excellent and Mal has managed to source a number of properties for our country or interstate clients taking the worry out of them having to look at a number of open for inspections, attend auctions, etc. Look at James Buyer Advocates' website www.jpp.com.au to learn more about the firm, their services, professional qualifications and expertise in this area.

It should be noted that anyone can call themselves a buyer advocate (even if the only experience they have had is buying their own house and they have no relevant experience or qualifications!) Generally, buyers advocates (like financial planners or mortgage brokers in relation to insurance or loans) work on a commission basis and there is a good reason for this. Would you be pleased if you were charged on a time spent basis without a successful outcome i.e. the purchase of a property you want for the right price?

Experience counts…see a reputable buyers advocate and don't get taken in by the promise of no commission and fees based on a time spent basis. If you pay peanuts, you get monkeys!

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The contents of these articles are general in nature and are not advice that applies to any particular client situation. Whilst every care has been taken in preparing, specific advice should be obtained before proceeding with any suggestion or recommendation made in these articles.

Who gets your superannuation when you die?

Strict rules govern how your super is distributed when you die and it's important to follow those rules to make sure your money ends up where you intended.

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One of the most important decisions you make when you join a super fund revolves around the question of who to nominate as the beneficiaries of your super when you die.

It is a critical decision – because if you don't get it right your savings could be given to someone other than your preferred beneficiaries and more tax may need to be paid than if your affairs were efficiently planned.

When a fund member dies, subject to the trust deed, his or her superannuation may only be paid to:

- The member’s spouse (including a de facto spouse)
- The member’s children (however, if over the age of 18, tax may be payable)
- A person who was financially dependant on the deceased member at the date of death
- A person with whom the deceased member had an interdependency relationship at the date of death (including a member of a same sex couple)
- The member’s legal personal representative (estate) where it will be controlled by your will.

An interdependency relationship is defined as one where two people:

- have a close personal relationship; and
- live together; and
- One or each of them provides the other with financial support; and
- One or each of them provides the other with domestic support and personal care.

The beneficiaries you nominate when you join a fund are normally only a guide; the trustees of your fund have the ultimate discretion as to who will receive your superannuation. It is not controlled by your will. The trustees will take into consideration any nomination of beneficiaries that you have made, but are not bound by your request.

The only exception is where your super fund allows you to make a “binding death benefit nomination”. This is a nomination that the trustees are obliged to follow. You may only nominate a spouse, child, financial dependant or someone with whom you held an interdependent relationship.

If you want your superannuation to pass to someone else, such as a friend or charity, you should consider nominating your estate as the preferred beneficiary of your superannuation entitlements. You superannuation will then be distributed according to the terms of your Will – you would need to nominate such people or bodies as beneficiaries of your Will. However, remember that from a tax perspective there may be more efficient ways of distributing assets to your friends upon your death. This is where it is important to ensure that you have reviewed your estate planning wishes and make sure they are both tax and cost efficient.

Regular review

It is important to review death benefit nominations regularly and to include full details of your beneficiaries – including their relationship to you, their full name and their address.

Keeping your super fund trustee informed of any changes to your beneficiaries – or changes to their personal details – will make the task of distributing your super much less complex for all involved.

It's also worth noting that binding death benefit nominations are only valid for three years – so make sure you update your nomination regularly. To be valid, a binding death benefit nomination must be signed by you; witnessed by two persons who are not beneficiaries of the nomination; and contain a declaration signed and dated by the witnesses that the nomination was signed in their presence.

Who to leave your superannuation to (and how) can be a complex question that can involve tax, social security and other financial considerations. You are well advised to seek professional advice and make sure all your estate planning issues are addressed.

Agribusiness – a growth investment

Over the past decade agribusiness has evolved into a legitimate alternative investment – a far cry from the early days when the schemes were offered as a tax effective carrot but with little commercial merit.

As Financial Planners we receive large amounts of material from promoters of these products who believe that their products could be of benefit to our clients.

Thus we thought it opportune to include this topic in the current issue of the MADA Newsletter. The facts mentioned below may assist you in assessing the appropriateness of such products for your current circumstances.

Agribusiness can be broken down into two different streams:-

a) Horticulture investments (e.g. almonds, avocados, citrus and olives)
b) Forestry (e.g. timber).

Horticulture is an alternative investment for someone looking for an income stream in the short to medium term, for example, the investor makes payments for the first three to five years until the plants are established and then receives the proceeds from the crops, less operational costs. These income streams tend to last for a set period of time, say 20 years, and then cease.

Forestry on the other hand is a long term investment. A normal scenario is where a one off capital investment is made which can be locked up for about 10 years when a lump sum is returned.

Generally these investments are suitable for high income earners looking for an upfront tax deduction and who do not require an income stream to be generated from their investments, as in the case of dividends received from investing in shares.

There are three main risks when investing in agribusiness and these should be taken into consideration when making the decision to invest.

a) Firstly, agriculture risk. This includes pests, disease and natural disaster such as flood and fire. You need to understand how these risks are to be mitigated. For example, will the investment be fully insured for fire for its entire life? Is the pestilence strategy one that is generally acceptable for the product to be grown? If you are investing in something organic then obviously the risk of destruction from pests will be higher, but so too may be the income if the produce makes it to market.

b) Secondly, management risk. You should understand the experience of the manager of your investment and whether or not they have the funds to invest in the technology needed to make the harvest competitive in the market. If you are investing in olives, does the person managing the crop actually have experience in growing olives and the resources and technology to do it? Further, does the manager of the investment have the contract to sell the product or is your harvest going to sit there and rot.

c) Finally, financial risk. This includes the tax status of the investment. Check that the Tax Office has issued a product ruling, which will provide you with assurance that the project is a legitimate commercial enterprise and that a tax deduction is available. From an investment risk point of view, such investments can be high risk and therefore if you are a conservative investor this might not be right for you.

Remember, agribusiness is just one product that is available in which to invest, there are also many others. You must answer the question as to what is the strategy this product is going to help achieve.

One smart strategy is the use of these investments (particularly forestry investments) within a self managed superannuation fund. Contributions are made to superannuation (and a tax deduction is claimed) and these funds are invested by the self managed superannuation fund. The duration of the investment (say it is a forestry plantation that will pay a lump sum in 10 years' time) is matched to the expected retirement duration (of a person that is likely to retire in 9 years' time). Then the lump sum will be received after the client has commenced an allocated pension and therefore is taxed at 0%. This strategy achieves long term wealth accumulation, while investing tax effectively to minimize both current and future tax payable.

We often see the power of these investments diluted for a number of reasons.

When these investments are made they are subject to GST. As an example, if you are investing $26,400 you will end up with a $24,000 investment and $2,400 paid in GST. Registering for GST and claiming back the GST is one thing sometimes overlooked.

Another selling point of these investments that can often be overlooked or never implemented is the assumption that the tax refund from the investment

will be taken and invested. Most people normally invest in these products to reduce the amount of tax paid and not so they have the spare cash of the refund to reinvest.

A misconception we often see is that people think if they invest $50,000 they will pay $50,000 less tax. Wrong, it gives you a tax deduction of $50,000 meaning on the top marginal tax rate you will pay $24,250 less tax.

On a final note, we would never recommend these investments to be the sole investments in your portfolio. They have a place to play but you need to be able to accept the risks being taken and also ensure the place where they fit within your overall financial plan is understood.

We are happy to discuss specific investments with MADA clients on an individual basis.

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The information contained in these articles are of a general nature only. No account has been taken of the investment objectives, financial situation or particular needs of any person. Before making any investment decision, individuals will need to consider, with or without the assistance of a financial planner their own particular needs, objectives and circumstances to avoid the risk of making inappropriate investment decisions and a Statement of Advice should be prepared.

Australian Equity Market – 2005 Review, 2006 Outlook

The Australian market surprised with another good year in 2005, driven by strong performance from mining and energy in particular, as well as banking, other financial services and healthcare. The biggest single surprise was the resilience of corporate earnings despite what would traditionally be considered a negative environment, namely a slowing consumption and housing cycle and rising corporate costs.

Corporates maintained margins in a majority of sectors despite a less favourable domestic backdrop. This profit resilience has been a global trend, perhaps partly due to the payoff from the corporate technology investment of recent years and a relatively competitive global labour market, which has kept wage claims in check. Australia also benefited from the dominance of commodities and services over cost-pressured manufacturing in the listed market.

Additionally, strong offshore earnings contributions from a number of industrials helped the earnings cycle, as did exceptionally strong investment spending by the corporate and government sectors. While the overall picture

on corporate earnings appears to remain robust, it is cautionary that upgrades are increasingly concentrated in resources.

The *National Bank Business Survey* continues to paint a picture of a 'tiered' economy in terms of profit conditions, with resources and non-residential construction booming and financial sector conditions solid, while retail, wholesale, manufacturing and housing remain weak.

Our view is that liquidity, economic and interest rate conditions remain conducive to a further advance in the market in the near term. In this environment, we believe a key focus should be on identifying sectors with robust earnings outlooks for 2006:

- **Mining sector** - We continue to believe the mining sector will outperform, with further upgrades to forward earnings estimates likely. We believe the risks to global growth are on the upside, with China materials demand in particular re-accelerating. We believe that the secular shift in commodity demand against a backdrop of constrained supply will mean that commodity prices remain unexpectedly high for several years. While there is likely to be a degree of commodity price volatility around this trend, 2006 is shaping up as another cyclically strong year for commodities.

- **Energy** - We believe the supply/demand balance for oil remains tight due to ongoing US growth and strengthening Chinese demand. UBS sees a well-supported oil market into 2007 at least. We see upside to current oil price levels as we move into 2006.

- **Banks** - We are mildly overweight banks going into 2006 due to sustained double-digit credit growth, particularly through business lending, more-modest-than anticipated margin pressure, and strong non-interest revenue on the back of business lending trends. Valuations are, however, towards the top of historical ranges, hence our overweight is moderate rather than aggressive.

- **Healthcare** - Despite the strong rally in 2005 and P/E expansion, we expect resilient earnings growth in 2006 through to 2008 for a number of stocks in the sector.

Our overall view is that profit momentum will continue to slow but still grow in 2006. We would invest on the basis that earnings risks are rising at the margin and earnings growth is getting harder to generate. However, we believe that the structural backdrop for corporate profitability is strong and that the environment in certain sectors will remain either solid or, in some cases, extremely buoyant.

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This document has been prepared without consideration of any specific clients' investment objectives, financial situation or needs. An investment advisor should be consulted before any investment decision is made.

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IT Risk Management

IT Risk Management is more than just the latest jargon emanating from the IT sector. It is a complex issue, and this article provides an overview of its importance as a component of the operations process in a successful practice. It is particularly important with the release of the new RACGP standards (3 edition) which now has an emphasis on IT security in general practice.

Essentially, IT/IM Risk Management is the process of identifying risks/threats in the IT infrastructure of a business and implementing a strategy to eliminate/minimise the risks. Many businesses' IT infrastructure has developed on an ad hoc and needs basis. However, this exposes the business in numerous ways given that there are no consistent checks and balances in place. In particular, there are no assurances that critical business information and confidential patient information is protected. Section 4 of the Health Act (VIC), stipulates that the practice must provide "reasonable care" in relation to patient data. Whilst the term "reasonable" is contentious, what guarantee is there that the IT infrastructure of your practice fulfills the set requirements? Furthermore, extravagant expenses are often incurred when IT engineers are "investigating" somebody else's problem – how often does a hardware problem turn into a software problem and vice versa?

Enter IT/IM Risk Management. It provides a cohesive IT strategy designed to overcome the problems involved with adhoc IT implementations. It can be specifically tailored to SME/SMB operation and is therefore cost effective, easy to implement ad operate. And finally, any effective IT/IM Risk Management strategy needs to be reviewed on an on-going basis. This is the only way to ensure that potential risks and problems are eliminated and/or minimized. The ongoing strategy translates in an increase in business efficiency and productivity, cost savings and peace of mind.

The following is a sample of the areas that may be incorporated in an effective IT/IM Risk Management Strategy for your practice:

- Access Data Control (Patient Data, Accounting Data, other)
- Server Administration Control
- Anti-Virus Policy
- Email/ISP Policy
- Firewall Policy

- Intrusion Detection Policy
- Standard Operating Environment (SOE)
- Backup/Disaster Recovery/ Data Integrity and Redundancy Policy
- IT/ Site Documentation Policy
- Preventative Maintenance Policy

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