



## **NEWSLETTER**

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NEWSLETTER



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This newsletter is written to assist in recognising issues and implementing strategies to maximise profits, wealth and minimise taxes payable and the burden of administration of your affairs.

Equities, properties, taxes, superannuation, dividends and salaries all need to be considered as they are all an integral part of your Family's Wealth Creation Strategy. If the strategy is to work, all of the elements must be considered and kept in balance.

We seek to explain why and how we do what we do to achieve this so that the Family knowledge of your Family Business and Corporate Strategy is understood.

Planning should be an essential part of your Family's Strategic Wealth Creation Plan. We invite you to visit us at [www.goodco.com.au](http://www.goodco.com.au). For additional copies of this Newsletter please contact our office on +612 9232 1588 or send an email to [Contact@goodco.com.au](mailto:Contact@goodco.com.au).

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## **NOW IS THE TIME TO STRATEGICALLY TAKE STOCK OF YOUR FINANCIAL POSITION – The Tax and Superannuation Laws are all about to change and it is going to affect you.**

Whether you are an advocate of superannuation or not, the Government is serious about changing the tax system and it is acknowledged by both sides of politics that the compulsory superannuation which was designed to remove people from the social services and the pension system has not worked for the people for whom it was primarily designed.

From a lower income earner point of view retirees seem to withdraw their tax free benefits on retirement and (over simplistically):

- pay off their homes, buy themselves a new car, have the holiday they've always wanted;
- give the kids a bit of money; and
- ten to fifteen years later are on a government pension and / or in an aged care home not receiving benefits which they would have hoped that they could have afforded.

From a well-to-do point of view, it has been deemed by many to be the best tax minimisation scheme available allowing wealthy taxpayers:

- to roll over their pre 1985 tax free superannuation;
- to annually contribute their compulsory superannuation from their salaries and top this tax deductible contribution up to an amount to the maximum deductible amount allowable and receive a tax deduction for that further contribution;
- to contribute amounts of up to one million dollars (previously) and currently contribute \$150,000 a year to a maximum of \$450,000 over any three years tax free;
- to have a self-managed superannuation fund earning income and deriving capital gains tax is free;
- deriving a pension or annuity from that fund which is tax free in their hands;
- as a result many people have on advice from others **ALL or MOST** of their life savings and investments in self-managed superannuation funds; and
- to have **all or most of their eggs in one basket.**

***Question. If you are over or approaching 50 and have all or most of your savings and investments in superannuation can you afford to live on a pension / annuity if the Government converts superannuation to a pension / annuity scheme in the May 2016 budget?***

This is particularly applicable to people who are approaching transition to retirement ages or are in retirement (pension mode) now. These people are more than likely paying either little or no tax personally on other income earned outside their superannuation fund or can access their superannuation savings with little or no tax consequences.

## *Strategies for your Wealth Creation and Financial Protection.*

We strongly suggest that you approach your financial advisers and pose the following questions:

- 1 ***“If the government was to convert part or all of my superannuation to an annuity (pension for life) at say 10% or less of the Member’s balance in the fund, what pension would I receive per year for the rest of my life?”; and***
- 2 ***“If the government was to remove “transitions to retirement payments” from superannuation funds and convert all payments to members as annuities / pensions and concurrently tax all annuity / pension payments from all sources above, say, \$80,000 a year as ordinary income what effect would that have on my current and future payments from my superannuation fund under the above scenario?”***

If the answer is you cannot afford to live on that annuity / pension **or** that you don’t have funds outside of your superannuation which can supplement your income and are not accessible whenever you want them (when the roof falls in or the kids need some financial support with their children’s school fees etc.) **then maybe you should seriously** consider withdrawing some of your superannuation before the contemplated changes are put in place.

You could consider putting it into your own name, joint names with your spouse / partner or a tax effective structure outside of superannuation which can if set up properly be as tax effective as superannuation. This would allow you access to your wealth and resources through all of your retirement.

If the changes being discussed are put into place and superannuation is **“locked in”** will you have access to capital outside your superannuation to continue to provide you with a lifestyle you are currently living?

## **RECORDS AND RECORD MAINTENANCE - The Murphy Scenario**

We all keep records and more of us are moving to the paperless record keeping every day.

The Corporations and Taxation Law have different requirements but simply put you or your entities are required to keep books and records in a form and content that can be audited for up to five years after the records are adopted (Financial Statements) or lodged with the Australian Taxation Office.

Many clients don’t adopt or lodge their records for up to eleven months after the end of the financial year so in those circumstances you are required to keep the records for six years *from the date of the Financial Reports*.

It is not ‘black and white’ as many would suggest. ***Companies change share registries, individuals change their accountants and bookkeepers and both accountants and bookkeepers change their computer systems to keep abreast of the latest technology. Back up technologies alter and / or your ‘cloud’ may be absorbed into another.***

Check whether your accountant or bookkeeper (particularly where it is done off site), are maintaining your records for the required time and if those records will be recoverable when you need them as you may be setting yourself up for a disaster.

***Strategies for your Wealth Creation and Financial Protection.***

We strongly recommend that you check your engagement letters with your accountants and bookkeepers and see if they provide you with any undertaking of any sort that they will on request provide to you the records required by any authority (particularly the Australian Taxation Office) up to the prescribed time so that you will be able to answer any reasonable question raised by that or any other authority.

***Otherwise, to protect you and your Family you should write to both your accountant and bookkeepers and get them to confirm in writing their policy on record retention.***

By way of example the Australian Taxation Office is as we understand commencing looking at audits covering the last three years ended 30 June 2014. Are you confident you can have produced for you, and / or your entities the books and records required to answer a question from the Australian Taxation Office on an issue in the return for the year ended 30 June 2011 (five Financial Years ago) as to how a capital gains calculation was performed and how that outcome was derived within the tax return you signed as "True and Correct"?

If you personally cannot this answer, are you sure your accountant has the working papers and have you asked how long they keep them for? Most have record kept electronically and we have found most accounting firms and bookkeepers have difficulty (and some downright refuse) to produce old working papers because technology updates often mean historical records are not currently accessible as they are maintained on old IT platforms no longer used by the firms. The common response is that "we gave the working papers to the client at the time" which in most cases is not the case.

***Unfortunately the requirement to maintain the record is totally yours and the liabilities to prove the claim is "True and Correct" can be very expensive if those records cannot be produced.***

## **HECS-HELP LOAN**

University students who opt to pay their fees upfront, either in full or in sums of \$500 or more, have one year left to take advantage of the ten per cent discount.

Those who opted instead to defer their fees and sign up to a HECS-HELP loan can also avail themselves for the next twelve months of the five per cent "bonus" which applies when they make voluntary repayments of \$500 or more. This reduces their remaining debt by five per cent of the repayment amount.

## **TAX RATES FOR COMPANIES AND INDIVIDUALS FOR THE YEAR ENDED 30 JUNE 2016**

### ***Companies***

Tax rates for the 2016 are as follows:

***For large companies*** **30.0%**

***For small companies*** **28.5%**

To be a small company you must have a turnover of less than \$2.0 million.

*Strategies for your Wealth Creation and Financial Protection.*

**Individuals**

Currently the rates of tax for the year ended 30 June 2016 are as follows:

Taxable income \$	Tax on taxable income \$	Average rate of tax on taxable income	Percentage on excess of taxable income
18,200	Nil	Nil%	19%
37,000	3,572	9.65%	32.5%
80,000	17,547	21.93%	37%
180,000	54,547	30.30%	45%

A **2% Medicare levy** needs to be applied to the amounts calculated above, and for those taxpayers earning in excess of \$180,000 a **further 2% budget repair levy must be added**.

Exemptions to the Medicare levy that apply to taxpayers below a particular threshold are usually announced in the May Budget. Further levies are applicable to taxpayers who do not have private patient hospital insurance.

**GRANNY FLATS**

Are you aware that building a Granny Flat within your domestic property can give rise to you losing your Capital Gains Tax exemption on your domestic residence when it is sold?

And if you DO HAVE a Granny Flat, it is highly recommended to have a detailed Property register for the whole property – or, oh boy, it is going to be expensive.

**DIVIDENDS PAID TO SHAREHOLDERS FROM SMALL COMPANIES**

Small Companies can, if they choose to do so, effectively pay dividends at the small business company tax rate of 28.5% or at the 30% franking rate - for **as long as the company has franking credits available** in its franking account.

This will be particularly important to small businesses operated as companies, where the principal's and other family members remuneration and return on investment comprises a mixture of salary and dividends, and where the dividend is paid directly to the principal or their family as shareholders or via a Trust.

Given time this will clearly affect small companies and particularly retirees because the illusion is taxpayers would save 1.5% from the reduction in business tax. However, business companies who pay dividends (with 28.5% franking credits) will see individual shareholders personally paying for the so called small business discount of 1.5%.

Companies that inadvertently pay franking credits in excess of their franking account balance will be required to annually pay a franking deficits tax by 31 July of that year to make up for the shortfall of franking credits distributed to shareholders as part of the dividends paid in the year.

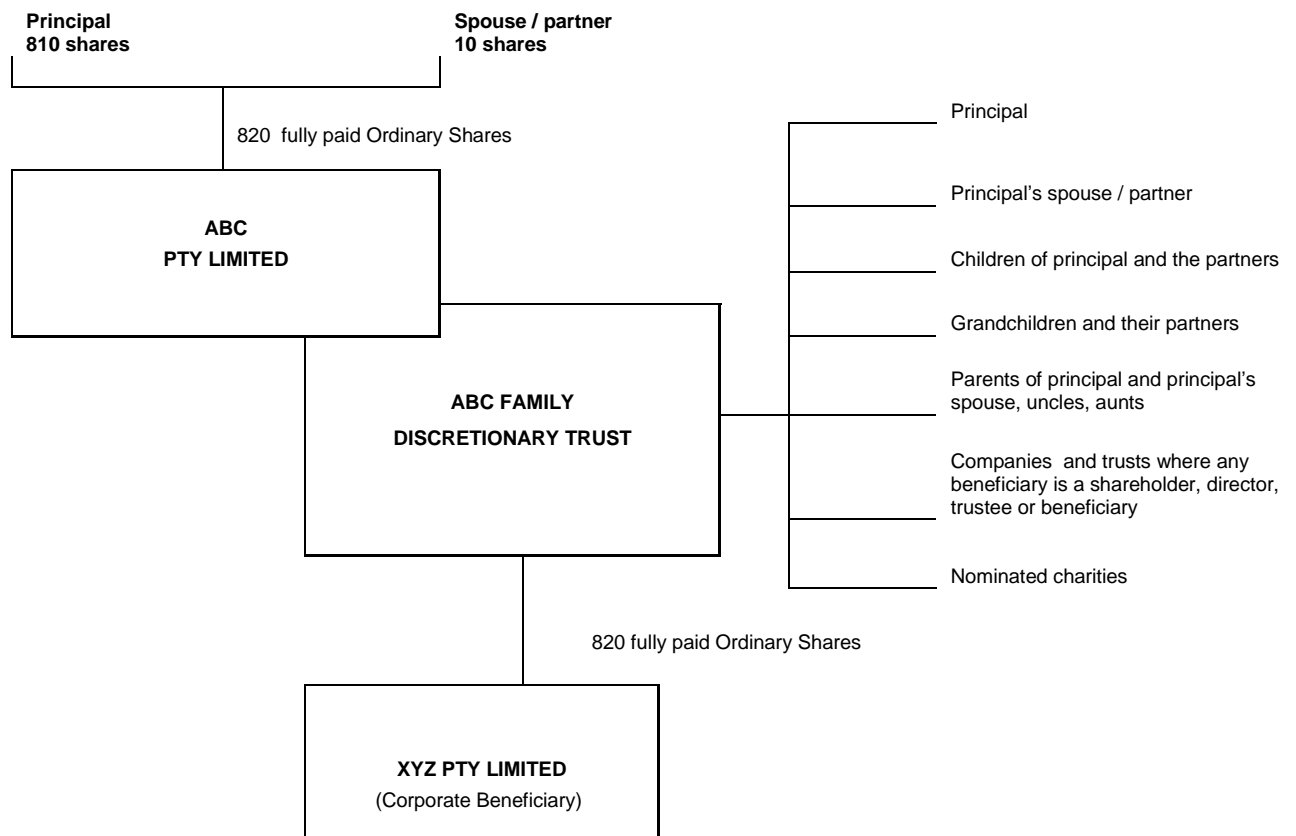
## **FAMILY v PERSONAL INVESTMENTS**

Investment by families in the main are conducted in the names of:

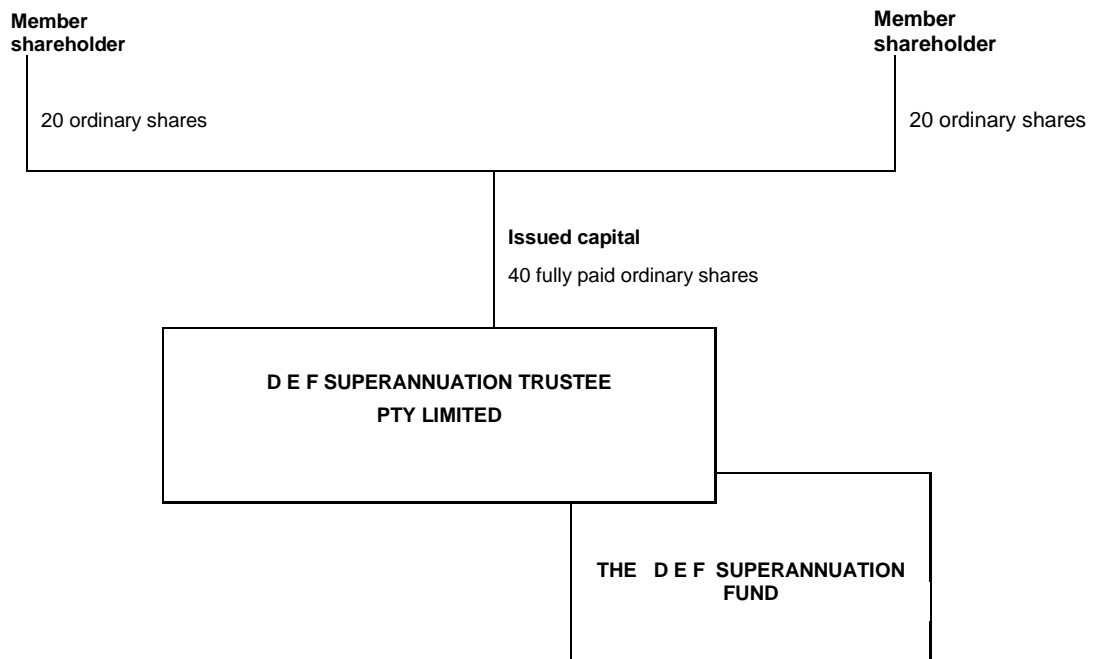
- the primary income earner;
- the non-working or low income spouse / partner;
- a partnership (joint holding) of the principal and their spouse / partner;
- A company owned by the principal or their spouse / partner or both principal with spouse / partner;
- A family trust whose trustee is hopefully a non-operating Corporate Trustee or less preferably either the principal and / or their spouse / partner; or
- A superannuation fund whose trustee is hopefully a non-operating Corporate Trustee or less preferably the principals, members, shareholders and / or directors as required by the Superannuation Regulations.

## **CORPORATE STRUCTURES**

### **Family investments held by a Trust**



**Family investments held by a Superannuation Fund**



**THE INVESTORS**

**The primary income earner**

This person is usually:

- earning salaries and wages greater than \$80,000 per year;
- their tax rate on all other income is greater than 30%;
- is paying substantial PAYG instalments quarterly;
- likely to have large borrowings which are negatively geared capital asset such as a rental property;
- the joint ownership of the domestic residence; and
- is eligible to derive a 50 % discount on all realised capital gains on investments held for a period greater than 12 months.

**The non-working or low income partner**

This person is usually:

- not earning salaries and wages greater than \$37,000 per year where the tax rate is greater than 30%;
- paying tax on all other income at a rate lower than 30%;
- not the owner of any capital assets other than equity in the domestic residence; and
- eligible to derive a 50 % discount on all realised capital gains on investments held for a period greater than 12 months but rarely owns any because it is not tax effective at that level of income.



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**A partnership (joint holding) of the principal and their partner**

This structure:

- is usually used on a very informal basis between spouse and business partners;
- the partners rarely lodge a partnership tax return;
- the partners rarely produce Financial Reports and declare the income for tax purposes 50 / 50 in their personal income tax returns;
- the partners jointly earn something in the order or less than \$160,000 per year; and
- the partners are entitled to claim their share of the 50% discount on all realised capital gains so long as one of them is not a company.

All earned income, losses derived, realised capital gains and realised capital losses:

- must be shared equally;
- there is no discretion as to who gets what; and
- losses are on a 50 / 50 basis irrespective of the other income earned by the individual partners.

**A company such as XYZ Pty Limited (which is not a Corporate Trustee) is usually owned by the principal or their spouse / partner or both principal with spouse / partner or a Trust**

This structure:

- limits the tax to a flat 30% on all income with no tax free thresholds below \$18,200;
- does not allow for income earned between \$18,200 and \$37,000 to be taxed at 19%;
- is not eligible for discounted realised capital gains and the shareholders end up paying tax on all realised capital gains at the rate of 46.5% when that gain is finally paid to the shareholder as a dividend;
- is very inflexible as all dividends paid by it must be paid in proportion of shares owned irrespective of whether one shareholder has a higher or lower income than the other;
- requires all personal exertion remuneration to be paid by way of salaries and wages and to which compulsory superannuation is attached; and
- can involve fringe benefits and all its related administration.

## **FAMILY INVESTMENTS HELD BY A TRUST**

**A family trust whose trustee is the principal, the principal and their partner or (hopefully) a Corporate Trustee.**

This structure should look like the diagram on page 7 and comprises:

**ABC Pty Limited** is the Corporate Trustee of the Trust: and

- it does not trade in its own right, is indemnified for all of its costs by the Trust and carries a right of indemnity which reflects all the liabilities of the Trust.
- all assets are in its name but are in fact the property of the Discretionary Trust.

**The ABC Family Discretionary Trust.** A Trust is not a legal entity (which is why it has to have a Trustee such as ABC Pty Limited) and the Trustee is the legal owner of all the investments on behalf of **all the beneficiaries of the Trust collectively.**

**The Settlor** is the person that establishes the Trust for the benefit of the Beneficiaries and can themselves never benefit from the Trust or be a Beneficiary. The absolute power of the Trust is controlled by a person nominated in the deed when it is settled and they are **The Appointor.**

**The Appointor** can if they desire direct the Trustee on any and all matters. In reality what the Appointor wants to control is usually set out in the Trust Deed so that the Trustee is clear as to what has to be approved and what independent decisions they can make.

The Appointor can, without notice to the Trustee remove the Trustee and has to approve in writing at least:

- any changes to the Trust Deed;
- any addition, deletion or exclusion of beneficiaries;
- any changes to the operational powers of the Trustee under “powers of the Trustees”

The Appointor is the power base of the Trust and cannot normally be removed without the intervention of the Courts.

**The Beneficiaries** are usually described in groups rather than by name (such as the principal and their spouse or partner, the children of the principal etc.) and the Beneficiaries have very limited rights as the Trustee has total day to day control of the Trust.

**The Beneficiary has:**

- no claim to any particulars of any investment;
- no rights to tell the Trustee what to do;
- no right to demand an annual distribution;
- no right to obtain copies of the investment policy, financial statements or financial reports; and
- no rights to demand any form of advance against future income that the Trustee may in their absolute discretion make in the future.

## *Strategies for your Wealth Creation and Financial Protection.*

### **However:**

- can demand payment of previous distributions made, once notified by the Trustee that the distribution has occurred; and
- must be supplied with a distribution statement in writing in a reasonable time after the Trust's Financial Reports have been adopted by the Trustee.

**The management of the Trust** is conducted by the Trustee ABC Pty Limited and must operate within the rules which are set out in the Deed.

The Trust owns all the investments (held in the name of the Trustee) and owns and controls the subsidiary company (XYZ Pty Limited) to which all excess income is normally paid.

This is done to limit the maximum tax payable by the family on all other income to a maximum of 30%.

If other income is fully franked dividends then if that income is distributed to XYZ Pty Limited no tax is payable in the Company's hands because those dividends come with 30% franking credits.

The Trust therefore controls the Family Wealth and all of the Operating Company's and Trusts without that wealth being accessible to creditors of the individual family members - unless so decreed at their absolute discretion by the Directors of the Corporate Trustee.

The Trust is also where all the Family surplus cash reserves should be maintained. This would obviously exclude cash held in domestic bank accounts for the family members for their personal and domestic use.

### **XYZ Pty Limited**

XYZ should be a wholly owned Subsidiary of the Trust which was set up for the purpose of receiving all surplus distributions from the Trust and limiting the tax payable on all surplus funds distributed to it to a maximum of 30%. For advantages and disadvantages of this structure please refer to page 8.

## **FAMILY INVESTMENTS HELD BY A SUPERANNUATION FUND**

This structure should also look like the diagram on page 8 and comprises.

**D E F Pty Limited** is the Corporate Trustee of the Superannuation Fund:

- Like ABC Pty Limited, it does not trade in its own right, is indemnified for all of its costs by the Superannuation Fund and carries a right of indemnity which reflect all the liabilities of the Trust;
- All assets are in its name, but are in fact the property of the Superannuation Fund and held on behalf of all Members; and
- The shareholders and directors of D E F Pty Limited are usually the members of The Superannuation Fund.

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**The D E F Superannuation Fund** is not a legal entity (which is why it has to have a Trustee such as D E F Pty Limited) and the Trustee is in fact the legal owner of all the investments on behalf of all the members.

Its operation is very similar to that of the ABC Family Discretionary Trust, except that the benefits are specific to the Members, and those benefits are absolute. There is no discretion in the Superannuation Fund as to the allocation or distribution of profit, and the Fund must be audited by a registered Superannuation Auditor.