



The Square Orange

December 2005
January 2006

Merry Christmas, Happy New Year, Thank You

Our Vision Statement is all about our clients.

We are nothing without our clients and we exist for our clients.

Hence, at this time of the year, without being politically correct or incorrect, we believe it is right to thank all our loyal clients and to wish everyone a Merry Christmas and a Happy New Year.

Thank you for your support throughout the year.

During the year, Natasha Balchand who left in September 2004 to go to Melbourne returned to us in September 2005; and Sharon Curson left us in October this year to sojourn to New South Wales. Who knows, she

may be back with us yet.

We have since been joined by two new Accountants, Elaine Hon and Celeste Chong, and



Teik, Amanda, Natasha & Sharon



we hope you will have the opportunity to meet with them soon.

In 2006 we shall be joined by our own support staff as we build to serve you better in the

future.

As an indication of the loyalty of our clients, and we hope, an expression of the way we serve our clients to deserve this loyalty, we thought we'd share a few facts with you:-

- We have never advertised, all our clients came to us from referrals and personal contact;
- Nearly 62% of our clients have been with us for over 10 years
- Nearly 12% of our clients have been with us over 20 years.

We look forward to sharing many more Christmases and New Years with you all.

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Office closed over Christmas/New Year

♦ *The OTS Management office will be closed over the Christmas and New Year periods.*

♦ *We will be closed from Monday 26th December to re-open on Monday 9th January 2006*

OTS Management moving? Not really!

Actually, our office address is indeed changing.

Since our inception we have operated from the former offices of King Oh & Partners in Suites 8 and 7 of 88 Walters Drive. Recently, although our staff have been lo-

cated in Suite 7, we have continued to share the old reception in Suite 8.

As of January we shall be operating directly from Suite 7 with our own reception area.

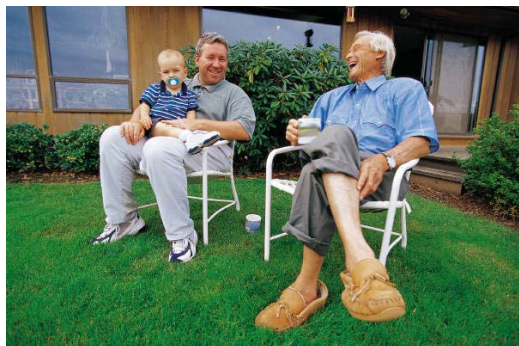
So, when we re-open our office after New Year's please come to Suite 7.

For visitors to our offices in December, we apologise for the inconvenience during renovation-work.

Our full address and contact details are on the top of page 4 of The Square Orange.

Maximum deductible super for related employee not tax avoidance - official!

The Tax Office has recently released a tax determination indicating that general anti-avoidance rules (Part IVA) will generally not apply to a situation where a taxpayer pays excessive superannuation contributions for a



Making maximum superannuation contributions should be considered as a useful tax and retirement planning tool

related employee.

The deductibility of superannuation contributions for employees is covered by specific provisions and is subject to age-based limits.

Unlike excessive remunera-

tion payments to shareholders and associates, there are no specific rules which require that superannuation contributions are reasonable in amount having regard to the value of the services rendered.

The current age-based limits per income year are as follows:

under 35	—	\$14,603;
35 to 49	—	\$40,560;
and		
50+	—	\$100,587.

Tax Diary - January and February

15 January - Lodgement of income tax returns for all entities other than individuals (unless required earlier) which are taxable large/medium business taxpayers per last year lodged.

15 January - Lodgement of income

tax return of company that is head of a consolidated group which has a member that is deemed a large/medium taxpayer and the 2005 tax return is taxable.

28 February - Lodge and pay quarterly Activity Statement for the

quarter to 31 December by paper and secure electronic lodgement.

28 February - Lodgement of 2005 income tax returns for taxable new registrants being companies, superannuation funds and trusts.

CGT from Trusts clarified

The rules concerning the tax treatment of trust income have not been updated since CGT was introduced in 1985 and, therefore, there has been significant confusion.

The Tax Office has recently issued a replacement practice statement that describes how net capital gains derived by a resident trust estate will be taxed.

The practice statement explains the following approaches that may be used in certain circumstances:

Proportionate approach: Requires that a beneficiary be assessed on trust capital gains in proportion to their share of the trust income.

Capital beneficiary approach: Broadly, allows the capital gain to be assessable to a beneficiary who

has the entitlement to the capital gain.

"If a party does not prepare their tax return in accordance with an agreement the Tax Office will ignore the agreement in assessing the capital gain"

To use this approach the capital beneficiary must agree in writing that the approach be used and they must prepare their tax return in a way that corresponds to the agreement. The agreement must generally be made within two months after the end of the income year, or such further time as the Commis-

sioner allows. The trustee resolution allocating the capital gain must also be made by the time the agreement is made.

Trustee approach: If the capital gain is not included in the share of the net income of a beneficiary, the trustee will be assessed on the capital gain.

This approach can only be used if beneficiaries and the trustee have agreed in writing to use it. Any agreement must be made within two months after the end of the relevant income year.

If a party does not prepare their income tax return in accordance with an agreement, the Tax Office will ignore the agreement in assessing the capital gain.

Cloning trusts for asset protection - CGT consequences

In practice, trusts are generally cloned or split for asset protection and family succession planning purposes. For family succession planning.

Cloning involves establishing a new trust that is almost identical to the original and transferring one or more assets from the original trust to the new trust.

Conversely, 'splitting' a trust does not involve the creation of a new trust, but the appointment of a new trustee in respect of some of the original trust's assets. Both may result in amendments to the original trust's deed, and a potential resettlement of the trust leading to a capital gains tax disposal.

However, an exemption is available where an asset is transferred and the beneficiaries and terms of both the transfer trust and the recipient trust are the same.

It may be possible, therefore, to avoid CGT on the transfer of an as-

set between two related trusts, provided the trusts are almost identical.

The Tax Office has recently released a draft tax ruling which explains what is required in order for the 'beneficiaries and terms' of two trusts to be considered the same so as to be exempt from CGT.

CGT exemption may be available when transferring assets in family succession planning

Broadly, the following features **must** be the same for the two trusts at the time of transfer:

- the beneficiaries must be the same;
- the beneficiaries must benefit in the same way;
- both trusts must have the same vesting date;
- both trusts must be governed by the same state laws; and

-the terms of the trusts must be the same.

The features of the two trusts that **do not** need to be the same include:

- the trustee;
- the names of the trusts;
- the commencement dates of the trusts;
- the settlor; and
- the trust property.

If the trusts have an appointor or guardian, the Tax Office takes the view that the identity of those parties must be the same for both trusts. Consistency is also required in relation to family trust elections.

CAUTION: Taxpayers need to consider the application of other taxes such as stamp duty when transferring assets between trusts. A detailed review of the relevant deeds will also be required to ensure that the CGT exemption is available.

Business offshore or onshore?

In a recent interpretative decision, the Tax Office has indicated its view that a home office maintained by an Australian employee of a New Zealand company would amount to an Australian permanent establishment. This would mean that the New Zealand company would be subject to Australian tax.

Foreign tax authorities may draw similar conclusions in relation to Australian taxpayers with a presence offshore.

In the case under review, the taxpayer was a New Zealand resident company that was not a resident of Australia for tax purposes. The company sold goods in Australia through two employees who operated from rooms in

their respective residences. The company did not rent or own any business premises in Australia of its own.

Under Australian tax law, the assessable income of a non-resident taxpayer includes all income directly or indirectly from Australian sources during the income year, and this includes income from the sale of goods.

Under the Australia–New Zealand Double Tax Agreement, the business profits of a New Zealand enterprise



shall only be taxable in New Zealand unless the enterprise carries on a business in Australia through a permanent establishment.

Based on a US court decision, the Tax Office held that a home office was a fixed place of business through which an enterprise is carried on and, as such, constituted a permanent establishment.

Consequently, the income was held to be assessable in Australia.

CAUTION: Taxpayers with even a very minor presence offshore should carefully consider any potential foreign tax liabilities and seek professional advice.



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Important: This is not advice. Clients should not act solely on the basis of the material contained in this Newsletter. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. The Bulletin is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without our prior approval.

OTS Management is a quality and value driven boutique consulting and accounting company that provides organisational development services to commercial, growth-oriented Small and Medium Enterprises who require business services, advice and coaching.

We give our clients comfort in their decision-making by providing them with our experience and independent advice that saves them time and helps them grow. Unlike other accounting services companies, our clients have significant contact with our senior people.

We meet our own high expectations in order to exceed the expectations of clients.

Our services include:

- *Change Management consulting*
- *The Zest Factor - find the zest in your organisation*
- *Strategic & Business Planning*
- *SMART Marketing workshops*
- *Team Development workshops*
- *Performance Management Systems*
- *Zest Tests - Business Diagnostics on your organisation*

The Juice

End of the year, Christmas cheer, and thoughts start to turn towards bonuses and staff rewards.

There are many ways to reward your team, and not all of them are to do with cash.

In survey after survey, the results show that employee satisfaction rates cash remuneration as only a moderate incentive.

The highest incentives are:-

- A sense of belonging;
- Working conditions; and

- Working for a purpose or a sense of achievement.

Sure, a good salary package is also important - no one in these surveys ever said they would give up their salary for "a sense of belonging".



Staff rewards not all about cash

However take heed - if all you do is pay people as well as you can but ignore the other causes of employee satisfaction, in today's employment market your skilled staff will go elsewhere.

Here are some ideas of non-cash rewards. Some of

them may involve a cost but others don't.

Will they suit your team?

- Cinema tickets
- Vouchers
- A group outing
- A healthy feedback system with good work publicly recognised
- A Christmas hamper
- Involving the team in improving physical working conditions
- A properly planned and effective training program
- Reward quality and innovation