



EAGAR EXTRA

October Newsletter 2009

Hello and welcome to your October newsletter. This newsletter is sent to keep you updated with news in the industry and within FWA Eagar&Co. Please forward this newsletter to your staff, colleagues and friends.

IN THE NEWS

CHARGE ON EARLY ACCESS OF SUPERANNUATION BENEFITS

9-172AD Sydney man sentenced on early access to super charges

Mr Gerard Karl Little, of Castlecrag, New South Wales, has been sentenced on Friday 11 September 2009 in the District Court of New South Wales by Judge Williams to two years imprisonment, to be released after eight months, for unlawfully allowing the early access of superannuation benefits. Mr Little's release is conditional upon entering a \$1,000 security to be of good behaviour for a period of three years.

Mr Little, 45, was convicted under sections 62 and 202 of the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) after an Australian Securities and Investments Commission (ASIC) investigation found he had failed to ensure his self-managed superannuation fund known as the Little Superannuation Fund (LSF) was maintained in accordance with the sole purpose test. Mr Little was trustee of the fund at the time of the offence.

The sole purpose test prohibits trustees maintaining self-managed super funds, for any purpose other than to provide retirement benefits for members. A trustee who maintains a self-managed super fund for other purposes contravenes the law.

The preserved superannuation benefits of 121 superannuants totalling \$3,531,056.93 were deposited by Mr Little into the bank accounts of the LSF. These funds were rolled over from 11 complying superannuation funds. Mr Little then used the LSF to obtain early access to these benefits by withdrawing and distributing the funds to the superannuants.

Mr Little retained over \$685,000 for himself by way of a commission. At the time the LSF received the superannuation benefits from the complying superannuation funds, Mr Little was aware that he had an obligation to preserve these benefits until the superannuants had satisfied a condition of release but had no intention of doing so.

This conviction follows an investigation conducted with the assistance of the Australian Taxation Office (ATO). Trustees of self managed superannuation funds and their members receive particular taxation benefits for complying with the requirements of the SIS Act. People can only access their superannuation early in very special circumstances. For further information, individuals should contact the trustee of their fund or the ATO.

The Tax Office reviews the taxation returns of superannuants who unlawfully obtain the early release of their superannuation benefits. These superannuants may be liable for unpaid tax as well as penalties.

The Commonwealth Director of Public Prosecutions prosecuted the matter.

CONTRACTORS AS EMPLOYEES FOR THE PURPOSES OF THE SGAA

Contractors as employees for the purposes of the Superannuation Guarantee (Administration) Act 1992 (SGAA)

The following case was recently decided in relation to the SGAA and addresses the issue of determining whether contractors are employees for the purposes of the SGAA. The Administrative Appeals Tribunal of Australia upheld the Commissioner of Taxation's determination that interviewers contracted by Roy Morgan Research Pty Limited were employees for the purposes of SGAA. The Tribunal also affirmed that no discretion existed under SGAA to reduce the amount of superannuation guarantee charges assessed by the Commissioner.

Roy Morgan Research Pty Ltd and Commissioner of Taxation [2009] AATA 702

BROWNE&CO TAX DIVISION

We are excited to announce that Peter Adams who has been working with Browne&Co (in association with FWA Eagar&Co) for 10 months as a Specialist Tax Consultant on a part time basis is now with us full time running the Tax Division at Browne&Co as Tax Director.

Peter has been working as a specialist tax consulting and training professional for more than 15 years. Tax is Peter's passion, and combining the day to day tax consulting projects with conducting tax training seminars for fellow professionals across Australia gives him great satisfaction.

At FWA Eagar&Co, we understand that tax is a complex and constantly evolving practice area. We view it as imperative to our client service philosophy to be at the forefront of taxation developments both in Australia and in other jurisdictions where our clients have an operational presence. To this end, the Tax Division maintains a strong and ongoing involvement in research and analysis of, and writing, presenting and commenting on, new tax legislation, rulings and court judgements.



Service offerings of our Tax Division include:

- Specialist Tax Advice and Consulting
- Tax Training
- Tax Writing.

Please visit www.browne.com.au/taxdivision.html or contact Peter on 02 9954 3409 or peter@browne.com.au for further information.

WHAT'S ON SYDNEY – OCTOBER 2009



Decanter World Wine Awards Tasting Friday 9 October 09 - Friday 23 October 09

The world's biggest wine competition is coming to Sydney this October as Glass Brasserie & Wine Bar (Address: The Hilton 488 George Street Sydney & Phone: 02 9265 6068) hosts Australia's first Decanter World Wine Awards tasting. Glass Brasserie & Wine Bar offers a chance to taste Decanter World Wine Award (DWWA) medal-winning wines.

THE TEAM at FWA EAGAR&CO

Our vision is to be the Company that people look to for financial, business and community success. We value leadership, quality, transparency, diversity and care for our clients.

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