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New Securities Act: What you need to know

Heard anything about the Personal Property Securities (PPS) Act and Register? Under the relatively new legislation, everyone – from small businesses and sole traders to consumers – have up to two years to register their security interests on the PPS Register that came into effect on January 30, 2012.

Personal property

Personal property is defined under the Act to include almost every form of property – **except** real estate. It also includes intangible property such as intellectual property.

Under the new Act, personal property security interests have been expanded to include certain transactions such as leases, bailments of personal property, commercial consignments and transfer of accounts.

Security interest

Under the new Act, a security interest – defined as an interest in personal property that secures payment or the performance of an obligation – also refers to the interest of an owner of goods hired or leased as well as goods consigned or goods supplied under a retention of title arrangement.

These security interests have to be registered on the PPS Register to receive protection under the PPS Act. In other words, businesses can no longer rely solely on retaining title of their goods and reclaiming them if they supply their goods to customers who become insolvent, bankrupt or sell their goods to another entity.

Parties most likely to be affected

Businesses that will be most affected include:

- businesses that obtain finance
- businesses that supply goods on credit
- businesses that supply or obtain goods under lease or license arrangements, including leases between related parties, and
- anyone who acquires personal property.

It is crucial that small businesses understand whether their transactions create security interests under the new Act because previously, small businesses often sold goods on retention of title terms and if they were not paid, they could take their goods back. Under the PPS Act however, small businesses now need to register their interest in those goods in order to fully protect those interests.

Small businesses involved in leasing goods, in particular, may find that their leases create security interests and that they need to register those security interests against their customers.

Small businesses should also conduct searches on the register to check if other parties have priority secured interests over their assets as they run the risk of another secured creditor, who has registered its security interest on the PPS Register, gaining a priority security interest over their own collateral.

Further, consumers are being urged to search the register before buying personal property – such as valuable

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About this newsletter

Welcome to CCB Accountants' client information newsletter, your monthly tax and super update, keeping you on top of the issues, news and changes you need to know. Should you require further information on any of the topics raised please contact us.

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second hand goods – to see if there is a registration against that property with a security interest attached.

An improved national framework

The new, online real-time national PPS register will replace more than 70 different Commonwealth, State and Territory acts and registers. Attorney-General Nicola Roxon said the uniformity is good news for businesses and consumers. 'The simplification of all these different registers will help make secured financing more accessible and reduce transaction costs, making lenders more willing to accept different kinds of personal property as security for loans,' Roxon says.

The framework will help protect consumers and businesses to manage credit risk, check for security interests over personal property and register security interests in personal property used to secure payment or other obligations.

The register will be supervised by the Australian Securities and Investments Commission (ASIC).

How to register

To register, visit the official website of the Personal Property Securities Register at www.ppsr.gov.au. However, you may experience some delays, or even time-outs, as there are some functionality and implementation issues still being resolved. ■

Is your business carbon tax ready?

Now that the Clean Energy Future package is a legislative reality, the time from now until July 1, 2012 is when small businesses have to come to terms with, and hopefully devise a strategy for, the impact that a carbon price may have on their operations.

One certain outcome will be a jump in energy costs, but depending on the sort of business there could also be influences due to 'supplier' businesses passing on their increased costs.

As for cost increases, the Australian Competition and Consumer Commission (ACCC) has created an enforcement and compliance unit to monitor cost increases, and has the power to fine businesses up to $1.1 million for misconduct such as price gouging. And consumer watchdog Choice says it will conduct an independent review of the increased costs of goods and services and release the results for public scrutiny.

Basic facts, and compensation for business

The carbon price:

- Starts on July 1, 2012 at $23 a tonne, rising 2.5% a year in real terms ($24.15 in year two; $25.40 in year three)
- It is anticipated that the 'tax' will apply to around 500 of Australia's biggest polluters
- From July 1, 2015, the carbon price will be set by the market.

Business compensation:

- $9.2 billion by 2014-15 in industry assistance to emissions-intensive businesses exposed to international competition

- $1.2 billion Clean Energy program for business
- Increase in the annual instant asset write-off threshold to $6,500 for small business (aggregated turnover of less than $2 million a year) from the 2012-13 income year.

But every small business will need to have a strategy to factor in the costs (direct or indirect) of the price on carbon — to either keep these to a minimum, or find at least equivalent cost savings.

Where to start

In a report released late last year titled *Managing the commercial implications of a price on carbon*, KPMG warned that Australian companies 'of all types and sizes and across all industry sectors will need to act decisively to manage the broad commercial implications of a price on carbon'.

The report goes on to state that while most smaller businesses will not face direct liabilities, they will need to factor in the effect of the carbon price that will be embedded in their supply chain, as well as the extent of their electricity usage, in order to manage changes to their business's cost base.

The financial and commercial implications will vary, but may include issues such as:

- considering the impact of a carbon price on decisions related to mergers and acquisitions
- the viability of investments which are designed to reduce carbon exposure
- monitoring the impact which the inevitable changes in technology have on the cost of business assets, and
- customer negotiations, costing and pricing strategies for products and services.

As well, attention should be given to managing financial impacts such as:

- a changing cost base
- acting on opportunities to pass through costs, and
- identifying and responding to tax implications.

Energy efficiency is the key

One strategy open to small businesses looking to improve their energy costs is the Energy Efficiency Information Grants Program, which opened for applications in early February (see www.climatechange.gov.au and under 'Tools & Resources' look for 'E' in 'A-Z of Government Initiatives').

And the Department of Resources and Energy has several energy efficiency initiatives that may be helpful for your business (see www.ret.gov.au/energy).

There is also the CitySwitch program for small businesses that lease their premises. This is a national tenant energy efficiency program run in partnership between local councils and most state governments to encourage improvements in day-to-day energy use (www.cityswitch.net.au).

Rebates and assistance grants are also provided by the federal and most state governments and territories.

Find out more at www.climatechange.gov.au and look for 'Programs and rebates' under the tab 'What the government is doing'.

The (hobby) farmer wants a deduction

Hobby farmer, part-time cocky, tree-changer — the labels vary but the phenomenon of 'urbanites' looking to embrace the rural idyll is a well-established lifestyle choice. While turning the tree-change dream into a reality can be met with varying degrees of success — and jokes about hobby farmers' skills at growing blackberries and rabbits — the proliferation of small rural land holdings has led to a growing need for information about the taxation realities of owning a small country property.

Small rural landholders may pursue lifestyle dividends rather than genuine livelihood, but the option to claim the tax concessions that are available to bone fide primary producers may still be available — should these small farm holders prove eligible.

Hobby farms can range from a modest block with a cow and a few chooks to quite substantial small working farms capable of turning over income for the owners. But owners require more than gumboots and an Akubra to be able to use their small farm as a source of tax breaks to offset against income from other sources.

In business or not

The vital question that needs to be settled is whether the small farm is indeed a 'hobby', and operates with no expectation of making a profit, or is in fact a business. If the latter, the land owner will be looking to make money from the farming operations, and needs to show they are carrying on a productive business, with sound business principles and commercial intention.

This is not to say that it is necessary to make significant profits, but to qualify as a business, certain eligibility factors need to be satisfied. The determining factors are not set out in legislation but rather are based on decisions of the courts.

The indicators drawn from case law that the Tax Office considers relevant include:

- does the activity have a significant commercial purpose or character?
- does the taxpayer have more than a mere intention to engage in business?
- is there an intention to make a profit or a genuine belief that a profit will be made?
- is there repetition and regularity in the activity (how much time is spent on it)?
- is the activity of the same kind, and carried on in a similar way, to that of the ordinary trade?
- is the activity organised in a businesslike manner?

On the first three points it could be shown, for example, that a business plan has been drawn up, or that expert advice was sought from appropriate sources, such as experienced farmers or consultants in the area of primary production the farm owner intends to pursue.

Also soil and water analysis undertaken for the purpose of determining suitability for a particular agricultural use could be used as evidence of commercial intent, as could the investigation of potential markets into which the product might be sold.

The 'prospect of profit' is something that the Tax Office considers to be a very important indicator when determining the status of a small farming concern — and whether it is just a hobby farm or a genuine primary producing business.

Non-commercial losses

Under the 'non-commercial loss' rules, the opportunity exists to deduct certain farm losses from other income in the same income year — if the business activity meets certain criteria, and the taxpayer has an adjusted taxable income of less than $250,000. There are four criteria, and at least one must be met.

The business activity must:

1. produce assessable income of at least $20,000 during the year
2. make a profit in three of the past five years
3. use land and buildings ('real' property) valued at $500,000 or more on a continuing basis, or
4. use other assets (tractor, machinery, etc) valued at $100,000 or more on a continuing basis in the business.

Note however that the non-commercial loss rules do not extend to companies or trusts, only to sole traders and individuals in partnership. Another exception that is of specific relevance is that primary production businesses can claim losses if other taxable income is under $40,000 (and in farming partnerships, this applies to each partner).

The Tax Office has a discretion to ignore a failure to satisfy any of the criteria listed above, so a small rural landholder can always apply for an exercise of the Commissioner's discretion if circumstances beyond their control unduly impact their ability to satisfy the tests in any income year. Contact our office if you believe you have a case. ■

Did you know...

Who are Australia's taxpayers? Just for a bit of fun the Tax Office's Revenue Analysis Branch decided to summarise the make-up of the population by distilling Australia's taxpayer statistics down into a representative village of 100 people.

On that basis, it found the taxpaying village is divided into 52 males and 48 females. Four declared capital gains, four salary-packaged a car, and 10 received the government's superannuation co-contribution.

People lodged their tax returns in different ways:

- 71 through a tax agent
- 19 using e-tax, and
- 10 by paper.

Tax returns came from people in all sorts of occupations:

- 24 were blue collar workers
- 38 were white collar workers
- 14 came from the service sector, and
- 24 didn't specify their occupation.

Sixty five claimed work-related expenses, and of these:

- 27 claimed under $500
- 11 claimed between $500 and $1,000, and
- 27 claimed over $1,000.

Common SMSF mistakes to watch for

The continued solid growth in self managed superannuation funds (SMSFs) indicates that plenty of Australians consider themselves at least as capable of successfully managing their retirement savings investments as the professionals (or perhaps more so).

But some in the industry are concerned that the growth in SMSF numbers is not necessarily a good thing, with reservations that many trustees/members may disregard or at least not give full attention to all the requirements and responsibilities that come with running one's own super fund.

The Tax Office stated in its SMSF compliance program for 2011-12 that it would be focusing on:

- newly registered funds, to ensure they have not been established to provide illegal early release of superannuation benefits to their members
- funds lodging their first annual return to ensure they are entitled to receive their 'notice of compliance'
- auditor contravention reports
- related-party investments, to ensure they are not contravening the prohibition of lending to members or the 5% in-house asset limit
- exempt current pension income and non-arm's length income, and
- re-reporting of contributions and compliance with excess contributions tax release authorities.

The importance of staying compliant cannot be overemphasised. For an SMSF to be found to be non-compliant will at the very least see the fund lose its concessional tax treatment, and be subject to tax at a rate of 45% on, broadly, the net value of the fund. There could also be hefty penalties and the possibility of prosecution.

While an SMSF can be a very powerful retirement savings vehicle when run correctly, and good for long-term wealth accumulation and asset protection within a tax-effective structure, there is plenty of scope to lose your footing over some of the basic (but admittedly numerous) compliance tasks. If mishandled, the potential pitfalls can easily outweigh the benefits.

Tripping up on the contributions cap

One common inadvertent mistake that SMSF professionals say is the likeliest problem a trustee will face is exceeding the annual concessional contributions cap. The caps are listed in the table below:

To June 30, 2012	
Age under 50	$25,000
50 - 74	$50,000
From July 1, 2012	
All ages	$25,000
Over 50 and fund balance less than $500,000 (to be confirmed)	$50,000

Of course this can affect everyone in superannuation, but an added complication for SMSFs is that most funds will have their administration tasks completed annually, and in arrears. Hence, members may not find out that a contribution took the member over the contributions cap until the accountant does the books for the fund, which could be months after the end of the relevant financial year.

Property pitfalls

Another SMSF pitfall to watch out for is investing in property in an inappropriate manner. One way this can happen is where an investor puts a deposit on a residential investment property, and then sets up an SMSF with the aim of owning that property through the fund. But in these circumstances, it is not the SMSF that has bought the real estate but a private person.

And once the SMSF is established, it can only acquire certain assets from related parties such as 'business real property'.

Tangles on pension tax, and exceeding limits

Ordinary income and statutory income that a complying SMSF earns from assets held to provide for super income stream benefits is exempt from income tax. This is referred to as exempt current pension income (ECPI), and the Tax

Office reports that this is an area that causes headaches for SMSFs claiming tax deductions.

It says calculation errors often occur, but also that SMSFs mistakenly deduct items such as investment expenses and management and administration expenses against ECPI. The Tax Office says that funds may need an actuarial certificate to determine the correct amount of income which will be exempt.

The Tax Office says it is important to make sure that:

- all assets are re-valued to current market value before starting to pay a pension
- if the fund has income tax losses, not capital losses, the loss amount is reduced by the net ECPI amount. Any remaining tax losses can be offset against the SMSF's assessable income
- all income earned during the financial year in the SMSF annual return is reported (although not necessarily taxed), even if the fund is in 100% pension phase
- the fund doesn't claim a deduction for expenses relating to pension assets as the income is non-assessable
- if the fund has both assessable and non-assessable income, the expenses should be apportioned.

Also on the subject of pension payments, another inadvertent mistake is not meeting pension standards when the SMSF is in pension mode – either not meeting the minimum pension, or exceeding the maximum (if applicable). The minimum drawdown limits are shown in the table below.

Investment reporting and personal use of assets

According to the Tax Office, another prevalent mistake is capital gains from a fund's investments being incorrectly classified and reported as 'other income'.

Payments from the fund ostensibly made as investments have sometimes proven to be outside the scope of the regulations – such as a loan to a relative to launch a business, or who might be in financial trouble.

In a similar vein is the act of paying expenses out of the fund that are not fund expenses. This can be as simple as using the wrong chequebook, or of course being unaware of the strict rules that apply. But these breaches may put an SMSF in danger of having penalties apply or being deemed non-compliant.

SMSFs ... an eye to the future

Before establishing an SMSF it is important to consider long-term objectives of the members and the obligations which are created. For example: acquiring your business premises in an SMSF may seem an attractive proposition, however before doing so it would be prudent to contemplate the administrative complexities, in particular when limited recourse borrowing arrangements are involved.

Another outcome could be that when people are well into retirement, they may simply become less capable of managing their financial affairs, which can have a detrimental effect on the super fund.

Also, sometimes one member of a fund is very engaged, and perhaps was the driving force in setting up the SMSF. But they may have a spouse who is more of a passive member. If the active spouse dies, the passive spouse can get thrust into the driver's seat without any preparedness to manage the fund.

A way around this potential problem is to have a clear succession plan, or at least an idea of ceding control of the fund in some way. Perhaps this could involve bringing in a child, or winding up the SMSF, but these choices very much depend on individual situations. Please contact this office if you wish to discuss your options. ■

Age	Minimum % withdrawal for 2011-12, 2012-13	Minimum % withdrawal for 2013-14 and future years
Under 65	3%	4%
65-74	3.75%	5%
75-79	4.5%	6%
80-84	5.25%	7%
85-89	6.75%	9%
90-94	8.25%	11%
95 or older	10.50%	14%

Regulatory Round-up

Proposal to cut company tax rate

720,000 small business companies are expected to benefit from the Treasury's draft legislation to cut the company tax rate from 30% to 29%. If successfully passed through Parliament, the reduced company tax rate will start from the 2013-14 financial year but small businesses with an annual turnover of $2 million or less will receive a head-start and can enjoy the 29% rate from July 1, 2012.

Compulsory compliance of FOFA delayed

The Future of Financial Advice (FOFA) reforms will commence on July 1, 2012 but will not be made mandatory until July 1, 2013 because the business and financial planning communities need more time to prepare for the changes, according to Minister for Financial Services and Superannuation Bill Shorten. The main measures tabled under the FOFA reforms include an end to financial advisers being paid upfront and trailing commissions, the introduction of rules that they should act in the 'best interests' of a client, and having to be formally re-engaged every two years. The reforms are expected to 'make sure more Australians can access affordable and better quality financial advice' as ASIC research showed only 20 to 40% of Australia's adult population use or have used a financial adviser.

Law change will retain GST refund delays

Small business owners were understandably buoyed by the news late in 2011 that the Tax Office had failed in an appeal to the High Court over goods and services tax (GST) refunds. The decision would have meant that GST refunds could not be withheld for more the 14 days, which would have brought relief for many cash-strapped businesses. However, Treasury has since announced a legislative amendment that will give the Tax Commissioner power to hold any tax refund for verification if he considers it reasonable to do so. The law change is likely to be finalised before the 2012-13 Federal Budget in May.

Strident warning to cash economy – ATO

The hospitality, building and construction industries will be targeted in the Tax Office's cash economy crackdown on businesses that they believe hide income and evade tax obligations. With coffee shops and hardware store trade account holders in particular, the Tax Office says that they can tell if proprietors are skimming cash by data matching the customers' purchases with reported income and lodged returns. Coffee shops buying more than 15 kilograms of coffee beans from suppliers and individuals as well as businesses holding a hardware store trade account with annual purchases of $10,000 or more will attract close scrutiny from the Tax Office.

Government to home in on super dodgers

Are you the owner of a cafe, a restaurant, a real estate business or a carpentry service? If so, the Tax Office has deemed your business part of high-risk industries that may fail to meet their superannuation guarantee (SG) obligations and will target 12,500 micro employers in a compliance crackdown. Of the 12,500 micro employers with a turnover of less than $2 million a year, 4,000 belong to computer system design and related services, the accommodation industry and accounting services.

New tax breaks set to benefit small businesses

The majority of small to medium enterprises (SMEs) remain unaware of the federal government's 2011 tax write-off amendment, according to research commissioned by Telstra Business and the Council of Small Business Australia (COSBOA). The tax write-off entails an instant asset write-off threshold of $6,500. Other measures implemented for the benefit of SMEs include a write-off on all other depreciating assets – except buildings – in a single depreciation pool at a rate of 30% and an immediate $5,000 write-off of the cost of any motor vehicle purchased by SMEs, the latter described by the government as a replacement for the Entrepreneurs' Tax Offset scheme. The measures take effect from July 1, 2012.

Second chance for concessional contributions cap offenders

Some 30,000 individuals are expected to benefit from a newly introduced Bill that gives them the option to have excess concessional contributions of up to $10,000 refunded and assessed at their marginal tax rate. At present, the concessional contributions caps are $25,000 for individuals under 50 years old and $50,000 for those 50 years and above. The current system dictates that individuals who exceed their respective concessional contributions cap pay 31.5% extra tax on the amount of excess payment – in addition to the 15% superannuation tax. The new Bill will apply to excess concessional contributions made in the 2011-12 year onwards. There will also be changes in the concessional contributions cap from 1 July, 2012 where it will be $25,000 for everyone with the likely exception of those 50 years and older who have less than $500,000 in their superannuation fund balance. Their concessional contributions cap will be $50,000.

Mandatory pay slips to be issued

The government has implemented a new framework for payslip reporting of superannuation benefits where employers will have to report to employees not only how much superannuation they are paying but when they will pay it into an employee's superannuation fund. The government hopes to apprehend businesses that are not paying employee entitlements in a timely manner and said the measure would benefit vulnerable employees – such as low-income, casual and part-time workers – in particular. The new system of payslip reporting applies from July 1, 2012.

Fair Work Act 'restrictive' for SMEs

The Financial Services Council (FSC) has described the government's Fair Work Act (FWA) as discriminatory to SMEs. The FSC senior policy manager Andrew Bragg said SMEs are losing out because the FWA does not provide employers the flexibility to select a default superannuation fund of their choice unless they institute an enterprise agreement at their own expense – not a feasible option for many who do not have the financial capacity to do so. Further, the FSC has revealed that many SMEs are frustrated with the poor service and inefficiency of compulsory default funds.

R&D Tax Credit application form

Small and medium enterprises (SMEs) are in the dark on the new R&D Tax Credit due to start on July 1, 2012 – despite it being legislated in September 2011 – as the government is yet to issue detailed guidelines and application forms. A spokesman has confirmed that the application form for the credit will not be available to potential claimants until May. The new credit provides a 45% refundable offset to businesses with an annual turnover under $20 million and a 40% non-refundable offset to all other eligible entities. Businesses are required to complete detailed application forms and separate their 'core' and 'supporting' R&D activities in accordance with the new rules. Registration application forms for R&D concessions for the 2011-12 income year will be available before the end of the 2011-12 year whilst the deadline for companies applying for the old R&D Tax Concession is April 30, 2012 for the standard income year ending June 30, 2011. ■

Upcoming key lodgement dates

The following deadlines are for lodgement with the Tax Office. Please make sure to get your documentation into this office in plenty of time to allow proper processing.

Date	Lodgement
21 April 2012	• Quarterly PAYG instalment activity statement – head companies of consolidated groups – quarter 3, 2011-12. • Monthly activity statement for March 2012.
28 April 2012	• Quarterly activity statement for quarter 3, 2011-12 – paper. • Quarterly instalment notice – form R, S or T – for quarter 3, 2011-12 – lodgement only required if varying the instalment amount. • Superannuation guarantee contributions for quarter 3, 2011-12 – contributions to be made to the fund by this date.
30 April 2012	• Quarterly TFN report for closely held trusts for TFNs quoted to trustees by beneficiaries in quarter 3, 2011-12. • Lost members report for the period 1 July 2011 to 31 December 2011.

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