

## Kennedy & Co Seminars

Kennedy & Co is continuing its complimentary seminars in 2005.

### Property & Tax

This seminar will consider:

- What are the taxation issues relating to the purchase and renting of residential property?
- What is negative gearing?
- Possible structures regarding the purchase of property

**When:** Wednesday 30 March 2005

**Time:** 6pm - 7:30pm

### Salary Sacrifice

This seminar will consider:

- Benefits of salary sacrificing
- Implications for employers

**When:** Tuesday 12 April 2005

**Time:** 6pm - 7:30pm

### Shares & Tax


This seminar will consider:

- Tax relating to dividends
- Capital gains and losses
- Structures regarding the purchase of property

**When:** Wednesday 25 May 2005

**Time:** 6pm - 7:30pm

The seminars have proven to be a good opportunity to ask questions of your accountants relating to the topic.

Numbers are limited so please ring Kerrie Kelly to book your place on 8373 5588. 

## Forensic Studies

Paul Jørgensen and Blake Williams successfully completed a Graduate Certificate in Forensic Studies (Accounting) recently through Monash University.

Developed by Monash University Law's International Institute of Forensic Studies, the Institute of Chartered Accountants in Australia and the Australian Advocacy Institute, this post graduate course is the first of its kind in Australia and is particularly relevant for accountants who are involved in litigation and are required to give expert evidence and interact with the legal profession. The teaching team was lead by Professor The Hon. George Hampel QC who is a former Justice of the Supreme Court of Victoria.


The course specifically addressed:

- The role of the Expert Witness in the Adversary System;
- Pre-trial Preparation and Analysis;
- Assessment of Damages; and

- The Expert Witness in the Court Room.

The last unit included a 2 day mock trial, complete with a conference with a legal team, conference of experts, examination in chief, cross examination and Judges - but regrettably no judgement!

Both Paul and Blake enjoyed the structured framework the course provided to further explore some of the theoretical and practical issues surrounding the role of the expert and our interaction with the legal profession. It was also a useful opportunity to step back and review how the value of our contribution to litigious matters may be maximised.

Whilst Paul has given expert evidence in court numerous times, Blake found the mock trial format extremely useful to experience "*being in the box*" and focussing on the delivery and communication issues surrounding the provision of evidence. 

## Newsflash

### DEBIT LOAN ACCOUNTS

The ATO has previously announced that pre-December 1997 private company debit loans are likely to be deemed to be forgiven debts and therefore treated as a dividend under Division 7A.

This is an issue for directors and shareholders who have borrowed money from their private company where the loan terms have not been varied for six years or more.

The ATO has announced that it will provide a one-off opportunity to avoid the immediate triggering of Division 7A, provided action is taken before 30 June 2005.

Some available options are:

1. Repay the loan by 30 June 2005.
2. Put the loan on a commercial footing by 30 June 2005 by entering into a written agreement under which the loan meets the requirements of an excluded loan. 

### Inside this edition:

#### Page 2

- Choice of Fund
- Land Tax Relief
- Team Member Profile

#### Page 3

- Insolvency
- Access to Super
- Superannuation in Excess
- Congratulations

#### Page 4

- Concept Surrounding Discount Rates - Part 2
- ATO Business Portal

# KENNEDY & Co

Chartered Accountants

## Choice of Fund

From 1 July 2005, most employees will have the right to choose the superannuation fund that will be the destination for compulsory superannuation contributions made by their employers. Key issues to note are:


- Employers must provide all existing employees with a standard choice form before 29 July, giving them the option to select a new fund or continue to have contributions put into their existing fund.
- The form must also identify a default fund, not the Superannuation Holding Accounts Reserve, which will be automatically selected if no response is made by the employee.
- It will be possible to change funds once every twelve months, or more regularly if employer gives consent.
- The new legislation will apply to Federal awards, but not to State

awards or workplace and enterprise bargaining agreements.

- It will be the responsibility of the employer to keep records for five years indicating that they have met their obligations, or otherwise attract the SGC.

Some implications of this change are:

- The increased flexibility may see a rise in the number of SMSFs, which have previously been mainly for business owners and the self-employed.
- Larger fund managers showing some initiative to avoid having their investors taking control of their own money.
- The Government has pledged to support a consumer information centre for those affected by the new legislation.

For further information please contact Lan Nguyen of this office. 


## Land Tax Relief

Recently the Government of South Australia announced a range of land tax relief measures. They consist of:

- New land tax scales for half of the 2004/05 year which result in ex-gratia rebates for the 2004/05 land tax assessments;
- New land tax scales for the 2005/06 and subsequent years;
- The land tax free threshold has increased to \$100,000 (previously \$50,000);
- Land tax relief for properties in which incoming producing

activities are conducted and it is a principal place of residence. This includes Bed & Breakfast businesses and similar enterprises for 2005/06 and subsequent years;

- Caravan Parks & Residential Parks to be exempt in 2005/06 year and later years; and
- Primary production land within defined rural areas will receive wider exemption eligibility criteria.

For more details on these changes please visit the Revenue SA website, or contact our office. 


## Staff Profile



Blake Williams joined Kennedy & Co at the beginning of 2003 having returned from an extended trip backpacking throughout SE Asia, India and Nepal, working for the Discovery Channel in London and spending 6 months in a VW Camper Van driving throughout Europe.

Blake works mainly in the area of **Litigation Support and Forensic Accounting**, with extensive involvement in valuations and quantification of loss in commercial litigation, Family Court matters, personal injury, breach of contract and professional negligence. In 2004 Blake completed a Post Graduate Certificate in Forensic Accounting and is a member of the Institute of Chartered Accountant Forensic Accountants Special Interest group.

Blake also works in the area of **Corporate Finance**, involved in financial modelling, valuations, due diligence, the capital raising process and deal structuring. He is currently involved in several projects involving fund raising through Offer Information Statements and Information Memorandums, and helps facilitate projects through liaison with legal and other corporate advisory teams.

Blake enjoys playing with his beautiful ten month old son Finn, and is also undertaking an extensive renovation project, as he fancies himself as a "bit of a handy man". 

### *"IT'S NOT CRIMINAL FOR ROBBER TO CLAIM GUN AS EXPENSE"*

(A Dutch court has allowed a bank robber to claim the cost of the pistol as a business expense) SMH [p 3], Thur 27.1.2005

# KENNEDY & Co

Chartered Accountants


## Access to Super

There have been recent advertisements which offer people the option to withdraw their superannuation from their fund before retirement age.

Such advertisements allege that applicants can gain access to their superannuation in order to pay off their credit cards, purchase a new car or property, or even to take a holiday.

These practices are illegal and heavy penalties and prosecution may arise if one of these schemes is undertaken. There are limited circumstances under which superannuation can be accessed prior to retirement and typically these are due to severe financial hardship or on compassionate grounds.


The ATO has released warnings against entering into any such schemes offered as SMSF or DIY funds, which propose that superannuation money can be withdrawn prior to retirement.

For further information, please contact our office. 

## Congratulations



We congratulate Paul Jørgensen who has recently been appointed a Registered Company Auditor under the Corporations Act.

Please contact Paul should you require assistance in this area. 

## Insolvency

Insolvency is rarely a satisfying thought for any business and more often than not, parties come away from the proceedings with less than they would have liked.


Successful management and financial control of a business may be considered the best way to avoid insolvency. Some of the factors underlining this general principle are:

- The debt-to-equity ratio refers to how an entity's assets are financed and is a key indicator of the financial stability of a business. An escalating level of debt can lead to insolvency. What is deemed an acceptable ratio of debt-to-equity differs from business to business, but with the threat of insolvency, it should rarely be ignored;
- Adequate cash flow is crucial to avoiding insolvency, but the focus of many businesses on accrual accounting can lead to this factor being overlooked. A business may maintain profitability while being forced into a position of insolvency if it does not have the cash to pay

its debts as they fall due. Careful preparation of regular cash budgets is just one way to avert such a problem; and

- The need to constantly adapt and improve a business is evident in most of today's marketplaces, with increasing levels of competition and developing technologies. A business that is initially successful need not remain so if it fails to evolve. Out-of-date traditions undermine the profitability of a business and leaves competitors with the opportunity to gain a distinct advantage. Innovation is necessary for the growth of any business and in a worst case scenario, liquidation may be the consequence of failure.

The issues discussed above are not exhaustive, but cover some of the key concerns that may lead to insolvency if not addressed.

Kennedy & Co has demonstrated experience in all areas of insolvency and company reconstruction. For further information, please contact Dom Cosentino of this office. 


## Superannuation in excess

A recent ruling by the AAT has indicated that payments of superannuation made in excess of an employed spouse's work value may not be considered as tax avoidance under Part IVA of the *Income Tax Assessment Act 1936*.

The application of the ruling will be reviewed on a case-by-case basis, and based on the following:

- The employment arrangement is realistic in terms of the work done and salary received;
- The payments must be a genuine contribution to future super benefits and not simply a short

term deposit that is subsequently withdrawn; and

- The amount must be no greater than the maximum age-based contribution limit of the taxpayer. 

### Jargon Box

AAT	Administrative Appeals Tribunal
ATO	Australian Taxation Office
CAPM	Capital Assets Pricing Model
DGR	Deductible Gift Recipient
DIY	Do It Yourself
SGC	Superannuation Guarantee Charge
SMSF	Self Managed Super Funds

## Concept Surrounding Discount Rates - Part 2

In our last newsletter, we addressed some of the general concepts surrounding discount rates including their use, the concept of present value and the application of discount rates to future cash flows. **This raises the question – how is the discount rate determined?**

The discount rate to apply to future cash flows is commonly selected using both judgement and aids such as the Capital Assets Pricing Model (CAPM).

The discount rate must reflect the risks associated with the asset or future cash flows. Most cash flows will have a risk profile which exceeds the **Risk Free Rate of Return**. The risk free rate is generally accepted as the 10 year government bond rate. Any risk associated with the future cash flow which exceeds the risk free rate of return is generally referred to as the **Risk Premium**.

The unknown risk premium and therefore unknown discount rate is fundamentally a matter of judgement. There is a body of theory, including the CAPM which can be used to support that judgement. However the application of formulas derived from CAPM theory could obscure the reality that **there is no "correct" discount rate**.

CAPM provides a formula for calculating a required rate of return, based on the theory that a prudent investor will price assets so that the expected return is equal to:

- The risk free rate of return; plus
- A premium for risk.

Assessment of risk requires an analysis of the two risk types inherent in any investment, namely:

- Risk which is random and affects only the specific business; and

- Risk which affects the value of all equity investments in a particular country or industry.

In relation to listed shares, the measure of sensitivity of the return of an investment to general market movement (its overall relative "riskiness") is known as its **beta**. The beta of a share is a measure of the share's marginal contribution to the risk of the whole market, the All Ordinaries. Treasury bills, being the closest available approximation of a risk free investment, have a beta of zero. The All Ords has a beta of one. A stock may have a beta that is more or less risky than the general level of market risk.


Under the CAPM, the first step in selecting an appropriate discount rate is the calculation of the **cost of equity** or expected return (Re):

$$Re = \text{Risk Free Rate} + \text{Beta} \times (\text{Expected Market Return} - \text{Risk Free Rate})$$

Expected Market Return less Risk Free Rate is referred to as the market risk premium, being the additional return over and above the risk free rate which is required to compensate for the risk associated with the investment.


The inherent limitations of CAPM includes the use of estimations for relevant variables such as risk premium and beta, the use of historical data as a proxy for expectation and parameters such as debt/equity ratios and risk premiums that are based on subjective judgements.

In the next Newsletter we will address some of the factors which affect the selection of appropriate beta's, particularly with private businesses.

Kennedy & Co have considerable expertise in the areas of Valuation, Forensic Accounting, Litigation Support and Corporate Finance. For further information, please contact Paul Jørgensen or Blake Williams of this office. 

## ATO Business Portal

The ATO has a gateway to online services. The Business Portal is a secure website accessed through [www.ato.gov.au](http://www.ato.gov.au) that allows business operators to keep in touch with their tax obligations. The portal allows you to access lodgement dates, activity statements and account balances for outstanding funds.

To find out more on how to obtain the software or register for the Business Portal please visit the ATO website or call Robert Spiby of our office for assistance. 

### Kennedy & Co Contact Details

Address: 140 Greenhill Road  
Unley SA 5061

Phone: +61 8 8373 5588

Fax: +61 8 8373 5933

Email: [kennedy@kennedy.com.au](mailto:kennedy@kennedy.com.au)

Website: [www.kennedy.com.au](http://www.kennedy.com.au)

Please note – this newsletter is for the general information and exclusive benefit of clients and associates of Kennedy & Co. It contains brief comments not intended to be the basis for decision making nor to be taken as a substitute for specific advice. Please contact this firm to discuss any matters that may be relevant to your individual situation.

Copyright © KENNEDY & CO

March 2005. All rights reserved. E&OE