

BUSINESS AND TAX NEWS

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Why sole company directors and shareholders need a Will



EVANS EDWARDS
CHARTERED ACCOUNTANTS

Dying intestate (without a Will) can pose many complications for the ordinary person. But when a sole director and shareholder of a company dies without a Will it can have an even more devastating impact.

Upon the death of a sole director and shareholder of a company without a Will, there is no person properly authorised to immediately run the company, leaving many stakeholders scrambling for answers.

The risks are higher for sole directors and shareholders as there are no surviving directors to manage the company and appoint a new director.

Generally, a near relative or other person of the deceased will apply for Letters of Administration to manage the estate; however, this process can be lengthy. If no one applies for Letters of Administration, a creditor of the deceased can apply – this can result in the winding up of the company. Alternatively, the Public Trustee may step in and administer the estate, but this process is also long.

The company may not be able to operate during the period where there is no director. Most banks and other financial institutions are unwilling to accept instructions for a company's trading account if there is not an authorised person to do so. Furthermore, major stakeholders such as employees and suppliers may not be able to get paid during this time.

To avoid the pitfalls associated with intestacy, it is important that sole directors and shareholders of a company consider creating a valid Will and make provision for who is the beneficiary or beneficiaries of their shares.

How we can help.

We provide tailored advice and assistance to a broad range of businesses, business owners and individuals through:

- Providing opportunities through Business Improvement Strategies
- Looking after all of your Taxation Advice, Planning and Compliance needs
- Giving Peace of Mind through effective Business Structures and Succession Planning
- Tailoring advice on Self-Managed Superannuation Funds
- Minimising Risk through Auditing and Assurance

Give us a call today to see how our team can best help you.



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Excess annual leave – is it time for a holiday?

During its recent review of all Modern Awards, the Fair Work Commission added or varied some annual leave terms in most Modern Awards. Although the majority of the changes took effect in July last year with one change starting in July this year, for those businesses with employees continuing to accumulate excess leave, it's a topic worth revisiting.

These changes applied to most workplaces covered by Modern Awards, but depending on your particular type of business, you would need to check your applicable Award and Agreement to see how the following changes may impact you.

For those employers who have employees with excess annual leave balances of at least 8 weeks (or 10 weeks for shiftworkers), who have genuinely tried to reach agreement with the staff member to reduce their excess annual leave, employers may now be able to direct the employee in writing to take a period or periods of leave. There are rules around how long the period of leave needs to be and also ensuring that the employee has enough leave remaining so be sure to check what applies to you.

It's good to be aware that employees directed to take annual leave though, can still put in a leave request if they would prefer to take their leave at a different time. Under the Fair Work Act an employer cannot **unreasonably** refuse this request. If this requested leave is approved and would reduce their accrued balance to below six weeks, the employer's original written direction would no longer apply.

The changes that came into effect in many Modern Awards from 29 July **this** year, will enable employees who have had an excessive balance for more than six months, and who have

genuinely tried to reach agreement with their employer on reducing it, to make a written leave request to take it. The employer will have to grant the request providing certain conditions are met.

As well as the above changes, most Modern Awards now allow employees to cash out up to two weeks annual leave in any 12 month period, provided that they will still be left with a balance of at least four weeks. Both the employer and employee must agree in writing to each cashing out.

Employees are now also able to take annual leave in advance of accruing it, so long as both the employer and employee have signed a written agreement with specific details around the amount of leave being taken and at what date the leave will start. The employer will need to ensure they keep a record, particularly if the employee leaves before they have accrued sufficient leave to cover.

From an administrative perspective, some Awards have also had a new clause added to allow employers who pay their employees via electronic transfer to continue to pay using their usual pay cycle during periods of leave instead of having to pay annual leave before it starts, which may assist businesses to better manage their cashflow.

It's best to check your relevant Award or Agreement as well as the information on the Fair Work website to see whether these changes may apply to your particular business.

There are a number of templates available on the Fair Work website that may also assist to help ensure that you comply if you are impacted.



Claiming the small business income tax offset

Your business may be entitled to the small business income tax offset. The tax offset allows certain businesses to reduce their taxable income by up to \$1,000.

This offset is available from the 2015-16 income year onwards. Small businesses with an aggregated turnover less than \$5 million can access the concession from the 2016-17 income year.

When you lodge your tax return, the ATO will calculate your offset based on your total net small business income.

Small business owners can claim the offset if they carry on a small business as a sole trader or they receive a share of net small business income from a small business:

- partnership, in which they are a partner
- trust, in which they are a beneficiary.

Only net small business income is eligible for the offset, not passive income such as rental income, interest and dividends received.

The offset is 8 per cent for the 2016-17 income year onwards, (5 per cent for the 2015-16 income year). The offset will increase to 10 per cent in 2024-25, 13 percent in 2025-26 and 16 per cent in 2026-27. Call our team to find out more.

LET US HELP YOU **ACHIEVE YOUR GOALS** GIVE US A CALL.