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It's a new year – time to get your tax affairs in order

This may be the best time of year to take stock of your tax affairs and engage in proactive tax planning.

Many businesses wait until tax time to start thinking about their tax obligations. Usually this leaves time for little more than a short review and completion of tax returns.

However, thinking about your tax obligations now will give you the opportunity to consult with your tax adviser and engage in proactive tax planning on a wide range of issues.

What should you do?

As tax considerations extend well beyond merely compliance obligations, you should take the time to ensure that your tax affairs are structured in the manner that best suits your needs.

The right tax structure will provide the solid foundation on which you can build the rest of your business.

Here are a few tips to get you started.

1. Evaluate your business structure

The structure in which your business is set up will depend significantly on your needs.

Each possible structure offers its own advantages and disadvantages, such as:

- Running your business through a company offers asset protection and access to the corporate tax rate. However, losses are trapped inside the company and getting earnings out of the company will require you to either pay top-up tax or put the

loan on a commercial footing. Dividends and capital returns need to be paid to all shareholders equally, and any transfer of shares may attract a liability for capital gains tax. In addition, capital gains made by the company will not attract the 50% CGT discount.

- Setting your business up in a trust allows you to distribute income and capital gains to different beneficiaries in different years. However, each beneficiary will have to pay tax on his/her share of the net income of the trust at his/her marginal tax rate every year. Any losses will be trapped inside the trust.
- Running your business through a partnership will allow you to distribute income and capital gains in accordance with the partnership agreement. Losses can be passed on to individual partners who can usually offset these losses against their other taxable income. However, any changes in the composition of the partnership will usually result in inherent capital gains being realised for tax purposes. Holding assets in this structure also offers very little asset protection.
- Self-managed super funds (SMSFs) are increasingly being used as an alternate structure in which to hold passive investments. However, the activities that an SMSF can engage in are quite limited and the compliance burden associated with running an SMSF can be high.

If you think the structure in which you currently run your business may not be the best structure for you, the New Year is a good time to discuss alternative structures with your tax adviser.

Rolling your business from one structure to another will usually result in tax consequences which you may be able to defer via a rollover.

In addition, depending on your carry-forward losses and other tax attributes, it may be better for you to effect a change of structure at certain times as compared to others.

2. Consider your current and future cash and financing requirements

The New Year may be a good time for you to evaluate the suitability of your current debt/equity financing balance.

The tax consequences of debt and equity financing differ significantly, and considerations of your short to medium-term business plans should also be taken into account when evaluating your financing needs.

If you are planning an expansion or contraction of your business, this is a good time to consider the appropriateness of your financing structure.

3. Consider any elections that you may be entitled to make

There are several elections under the income tax Acts that may be available to you.

Some examples are the election to consolidate, rollover elections, elections to access certain small business concessions, and TOFA elections.

The New Year is a good time for you to consider if any of these elections may be appropriate for you.

4. Succession planning – do you anticipate any changes in control or ownership?

If your business is operated by or employs various family members, this is a good time to stop and consider issues of succession planning, such as the stake that each family member has in the business, the nature of this stake (ie equity holding or employee), and the manner in which you anticipate these interests changing in the short to medium term.

Your tax adviser can assist you in negotiating issues of succession planning, including the transfer of interests and helping you to achieve your goals in the most tax-effective manner.

ATO and government assistance for flood-affected taxpayers

The government and the ATO have implemented measures to help taxpayers in flood-affected areas to get back on their feet.

How might you be affected?

The ATO is able to assist such taxpayers in a number of ways, including by:

1. Fast-tracking refunds;
2. Giving people extra time to pay debts – without interest charges;
3. Giving more time to meet BAS and other lodgment obligations – without penalties;
4. Helping to reconstruct tax records where documents have been destroyed, and make reasonable estimates where necessary;
5. Offering visits from field officers to help reconcile lost records;

6. Helping people to claim tax hardship concessions; and
7. The ATO has also granted an automatic one-month extension for the lodgment of monthly activity statements and related payments (from the original due date of 21 January 2011 to 21 February 2011) for businesses with addresses within one of the identified flood affected postcodes.

What should you consider?

The ATO is encouraging businesses with superannuation guarantee obligations which are not able to make their contributions for the quarter to lodge a "Superannuation Guarantee Charge Statement – Quarterly (NAT 9599)" form as soon as possible because, until this statement is lodged, nominal interest (currently at the rate of 10%) will accrue on shortfall contributions.

As this interest is paid to the employee (to compensate for lost earnings), the ATO has no discretion to waive it.

Affected people can contact the ATO directly on 1800 806 218.

The government has also announced that all "bucket" donations of \$10 or less may be deducted by the donor without substantiation.

Affected taxpayers should also explore the many forms of government assistance that may be available at www.disasterassist.gov.au.

TO DO

If your business is situated in a flood-affected area, you should contact your tax agent as soon as possible to arrange the necessary deferrals.

When you are ready to tackle your tax affairs, your tax agent can help you deal with the ATO.

The flood levy – how it will affect you

The government announced recently that it would be imposing a flood levy on Australian taxpayers to help with the cost of rebuilding damaged or destroyed infrastructure in flood-affected areas in Queensland, Victoria and New South Wales.

The levy will be applied over the financial year ending 30 June 2012 and will be calculated based on your taxable income in that income year.

Taxpayers who were affected by the floods or earn less than \$50,000 will be exempt from paying the levy.

Broadly, the levy will be applied as follows:

- Taxable income greater than \$50,000 but less than \$100,000 will attract a levy of 0.5%.
- Taxable income greater than \$100,000 will attract a levy of 1%.

The following table illustrates how much flood levy you will have to pay depending on your taxable income in the 2012 income year.

Taxable income	Flood levy (\$)
\$50,000	\$0
\$100,000	\$250
\$150,000	\$750
\$200,000	\$1,250

While this levy has been announced by the government, it needs to pass both Houses of Parliament before it can be imposed.

NOTE

If you earn more than \$50,000 in the 2012 income tax year, you will need to pay the flood levy.

Online shopping and GST– what all the fuss is about

Generally, GST is levied on all goods and services consumed in Australia. This means that, while exports are generally GST-free, all goods imported into Australia are subject to GST at the rate of 10%.

As a result, businesses that import goods into Australia in the course of that business are required to remit 1/10th of the taxable value of the goods to the ATO on importation.

However where the value of such imports is AUD\$1,000 or less, no GST is required to be remitted.

The current debate about the GST threshold has received a great deal of publicity of late, and is certainly worthy of consideration if you import goods as part of your business.

Online sales

The broader issue in this debate is online sales and the shifting landscape of the retail sector.

The government has announced a Productivity Commission review into this sector, and is also hosting an online retail forum in early 2011 to “encourage and support Australian retailers to explore online options”. People interested in participating in this online forum should register their interest at onlinetail@dbcde.gov.au.

You should also explore the Small Business Online Program if your business could benefit from guidance in this area.

NOTE

The current debate on the GST threshold has highlighted the significant role that online sales are increasingly playing in the retail sector.

If you sell online or are thinking about it, you should consider seeking assistance from one of the many recently announced government programs.

More trouble for trusts – Colonial First State Investments

What’s it about?

The Federal Court recently handed down its decision in the case of *Colonial First State Investments* in relation to the interests of unit holders, and the ability of the trust to stream capital gains to different unit holders.

This case may affect taxpayers who use a trust where any beneficiaries under the trust have a “fixed” entitlement pursuant to which the trust has been streaming tax attributes (such as capital gains and franking credits).

This finding may have significant consequences for taxpayers who use trusts and have determined their tax obligations on the basis of beneficiaries’ fixed entitlements under the trust.

TO DO

Taxpayers who use “fixed” trusts should speak to their adviser about reassessing their trust deed to ensure that the entitlements of beneficiaries are not affected by the finding in this case.

ATO’s firmer action on debt

What’s it about?

The ATO has recently issued a fact sheet setting out its revised approach to debt collection titled “Firmer action approach to debt collection”.

This fact sheet sets out when the ATO will take “firmer action” to recover tax debts.

The fact sheet is part of a broader ATO push to wind back some of the concessions offered to taxpayers during the global financial crisis.

What should you do?

If you have trouble settling your tax liabilities, you should contact your tax adviser as soon as possible to discuss the issue as you may be able to avoid firmer action and negotiate a payment arrangement that you are able to comply with.

As set out in the fact sheet, firmer action involves:

- issuing a notice to a third party (for example, a bank) who owes you money or holds money on your behalf requiring them to pay all or part of that money to the ATO;
- initiating bankruptcy or wind-up proceedings, beginning with the issuing of a summons/statutory demand;
- pursuing company directors personally for the PAYG withholding component of the debt (director penalties);
- issuing a writ/warrant of execution authorising the seizure and sale of your property to pay a judgment debt plus costs;
- in rare circumstances, requiring you to pay a bond or provide security in respect of any tax-related liability that the ATO think may be at risk of not being paid.

The ATO will generally take firmer action when:

- the ATO has unsuccessfully tried to contact you multiple times;
- you repeatedly default on your payment arrangements;
- your debt is escalating and the ATO considers that there is no evidence that you will be able to meet your ongoing tax obligations;
- you have been subject to an audit where deliberate avoidance was detected and payment avoidance is continuing;
- there is evidence that liquidation is being used to avoid financial obligations, without risking assets and with the full intention of resuming business operations through a new entity (ie "phoenix" activity).

If you have been subject to firmer action of this nature, you should contact your tax adviser to resolve the situation.

If you are able, it is advisable to pay the debt in full as soon as possible.

Otherwise, the ATO will consider deferring firmer action if you make an agreed lump sum payment towards your outstanding tax debt and enter into a direct debit payment arrangement for the balance of the debt.

If you have a debt of greater than \$100,000, you will need to demonstrate that your business is viable before the ATO will defer the firmer action.

NOTE

You may be subject to firmer action from the ATO on debt collection if you have outstanding tax liabilities. If you are unable to meet your tax liabilities, you should contact your tax adviser as soon as possible.

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