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Superannuation

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Family Law - Superannuation Changes

In December 2002, new family law and superannuation legislation came into effect, which allows superannuation interests to be split between separating couples as part of their property settlement.

Splitting Superannuation

Until now, superannuation assets were not 'splittable' in the event of a marriage breakdown. Allowing superannuation assets to be split will give greater flexibility to the property settlement process and potentially help reduce the expenses arising from the sale of large assets.

- In the event of the breakdown of your marriage either you or your spouse can request information from the trustees about your superannuation account. Certain conditions must however be met before the requested information can be disclosed. The trustee can be disclosed. The trustees must not disclose to the other party to the marriage that such a request has been made.
- A split may only be effected by formal agreement between you and your spouse or by court order resulting from Family court proceedings to which both you and your spouse are a party. This means that your account cannot be split without your knowledge. In addition, the trustees must, within a certain period, notify both you and your spouse that it has been served with such an agreement or court order.

Company Directors - Limit Your Liability

Personal guarantees

It is common for directors to provide personal guarantees, such as for company credit cards, car leases or trade supplier arrangements.

There may be potential to negotiate a cap or time limit on the extent of liability.

Number of directorships

Many businesses have only one key person but still have two or more directors, as was required under the old Corporation law. The additional directors may not be necessary, and relieving them of directorships may remove further exposure from the requirement for personal guarantees and other directorship-related liabilities.

However, someone who holds themselves out to be a director or informally acts in the position of a director can be liable as a director. This can extend to people whose instructions or wishes the appointed directors are accustomed to following.

Ownership of assets

If a director does not have a significant level of assets in his/her own name at all relevant times (including well after any judgment has been made against the company), then the company liquidator may be less inclined to pursue them to recover assets from the company creditors.

Avoid insolvent trading

Failure to prevent a debt being incurred while the company is insolvent may give rise to a director being personally liable to the company or the creditor.

Be aware of director duties

Directors have numerous responsibilities under common law and various statutes. Being aware of these duties, attempting to perform them adequately and ensuring the company meets its tax, trade practices and other obligations can reduce personal liability risk.

Consider loans and other personal transactions with the company

A liquidator can void certain transactions with a company by a director or related entity of the company (including director's relatives) - generally where they are favorable to the director or related entity.

Of course, a loan owed by an individual to a company will generally be a company asset available to a liquidator.

GST and the Disposal of Capital Assets

The Australian Taxation Office has issued a document reinforcing the requirement to account for the disposal of capital assets. The document explains:

- When it is not necessary to account for GST on the disposal of a capital asset;
- When to apply a decreasing adjustment to the GST payable on the disposal of a capital asset; and

- How much GST is accounted for on the disposal of property.

It is not necessary to account for GST on the disposal of a capital asset where:

- The asset is not a business asset;
- The asset is part of a business sold as a going concern;
- The asset is residential premises, except for new residential premises; or
- The asset is farmland on which a farming business has been carried on for at least the five years before disposal, and the purchaser intends that the land will continue to be used for a farming business.

Where a capital asset was acquired for making financial supplies, acquired partly for a private purpose or subsequently used for private purposes, the GST payable on the disposal of the asset may be reduced by a decreasing adjustment. The adjustment does not reduce the amount of GST accounted for on disposal of the asset, but reduces the amount of GST payable to the ATO.

Small Changes make the Difference

If you are going to make your business more profitable, you must have a strong understanding of the impact that small changes can have on the business.

Company A has 50 enquiries per day, with a conversion rate of 50%, so they deal with 25 customers each day.

The average unit price of the goods is \$40, and on average, each customer buys 2 units. The average individual sale is \$80. The total daily sales are \$2000.

What happens if we make the following changes?

- Increase conversions to 60%
- Increase price by 10%
- Increase units purchased by 10%

Now Company A has 30 customers per day, average price of \$44 and an average quantity purchased is 2.2. The average individual sale is now \$96.80.

Total daily sales have increased to \$2,904...an increase of 42.5%.

If the business operates 5 days per week, over a 12-month period, this results in increased sales of \$235,040, from \$520,000 to \$755,040.

If the business had an original gross profit margin of 40% the increase in price would lift the gross profit to 45.5%. The overall result is an additional \$135,200 added to the bottom line.

Increases to conversion rate, price and quantities purchased become three strategies for growth. How can you increase our conversion rate? How can you increase the average quantity purchased? What small changes can you make that will have a massive impact?

Should you decrease price to stimulate sales?

The impact of a price *decrease* on your level of sales and profitability can have a greater impact than you may think.

If the business above were to reduce its price by 10% (given a gross profit margin of 40%), the number of units sold would have to increase by 33% to ensure that the same level of profitability is maintained.

Are you prepared to increase your volume by 33% just to make sure that you don't lose any money?

On the other hand, if the business increases its prices by 10%, sales volume would have to drop by 20% before the profitability is adversely affected.

If we assume that the number of customers and quantities sold remain the same, we can see the impact that a price decrease and increase has on the overall profitability of the business:

	Now	Price ↓ 10%	Price ↑ 10%
Sales	520,000	468,000	572,000
COGS	312,000	312,000	312,000
Gross Profit	208,000	156,000	260,000
Overhead costs	150,000	150,000	150,000
Net Profit	58,000 11.1%	6,000 2.1%	110,000 19.2%

Which is better, a price decrease or a price increase? What strategies are you going to implement to increase the prices in your business?

Taxation of Discretionary Trusts

Discretionary trusts are here to stay – at least that is the effect of a December 2002 report issued by the Australian Board of Taxation. Basically, the Board recommended the Government retain the current “flow through” treatment for taxation of the income of Australian trusts whilst exploring possible legislative changes to remedy deficiencies, rather than implementing a complete overhaul of the current tax system applicable to the income or gains of trustees and beneficiaries.

The Board of Taxation report was prepared in the context of the Government’s withdrawal of the Exposure Draft of the New Business Tax System (Entity Taxation) Bill 2000. This Exposure Draft contained a proposed new entity regime for taxing non-fixed trusts like companies.

In withdrawing the Exposure Draft, the Treasurer indicated that the Government had received a great number of submissions, which raised technical problems, particularly in relation to:

- Distinguishing the source of different distributions;
- Valuation issues; and
- Compliance issues.

Board’s recommendations

In its report to the Government, the Board of Taxation stated that any proposal for fundamental change to the tax treatment of trusts must be justified by compelling policy arguments before it could be supported.

The Board’s view is that the efficiency and equity of the tax system would not necessarily be improved by aligning the tax treatments of trusts and companies. Structural differences would remain in the taxation of entity income, and in the taxation of income earned through an entity and income earned directly.

1. The Board made four recommendations:
2. The Government should retain the current flow-through treatment of distributions of non-assessable amounts by discretionary trusts.
3. In light of the implementation of trust integrity measures over several years, concern about the use of trusts for tax planning does not, of itself, warrant fundamental change to the tax treatment of discretionary trusts.
4. The Government should consider options for amending the income tax law to improve the effectiveness and fairness of provisions intended to prevent individuals who are trust beneficiaries with high marginal tax rates accessing, without further tax liability, funds that have been taxed only at the company tax rate.
5. The Commissioner of Taxation should clarify and publish his views

about the deductibility of interest on borrowings used to finance non-assessable distributions to beneficiaries of discretionary trusts. (The Treasurer stated that the Government has requested clarification and will, if ATO Rulings are unable to deal with the matter, consider a legislative solution.)

Superannuation

“Excessive” Superannuation benefit

What is an excessive benefit? The tax regime gives significant tax concessions to savers making provision for their retirement. However, there are limits imposed (called Reasonable Benefit Limits or RBL’s) on the amounts of money that can access these tax benefits without penalty. Amounts saved in excess of these amounts are known as “excessive” benefits and are subject to tax penalties when the benefit is taken. There are two RBL’s, the Lump Sum RBL which is applied to benefits taken in cash or as Allocated Pensions, and the Pension RBL which is applied when more than half the total benefit is taken as a “complying” pension. The Lump Sum RBL is currently about \$562,000 and Pension RBL is double that.

Generally there is an advantage in taking the superannuation benefit as some sort of Pension because this avoids up-front tax and income from Superannuation Pensions enjoy significant tax concessions.

Options available when you are in excess of the RBL

You can take the excess benefit as cash but it will be taxed at 48.5% - far better to avoid that tax and invest the tax saved for the future.

You can take the whole of your benefit (including the excess) as an Allocated Pension, but this is often inferior to the third option which is to establish two separate Allocated Pensions, the second

of which is composed entirely of excess and which therefore is not entitled to any tax concessions on the Pension drawn. However, the fact that there are two pensions allows flexibility in the way that they are drawn and so can reduce income tax further.

Finally, you will probably be better off to access the larger Pension RBL of \$1,124,384 by combining an allocated pension with a Complying Pension for 50% or more of your benefits. This strategy eliminates the “excess” RBL

problem (providing your accumulation is not in excess of the Pension RBL).

From an estate planning viewpoint, any “excess” amounts remaining after you or your spouse’s death, is taxed at 48.5% before it goes to your estate, so avoidance of an excessive amount by the use of complying pensions is always attractive, even without the tax benefits on the income stream.

These strategies are most effective within a Self Managed Super Fund

where you have more control over your investments and costs should be lower. With a commercial complying annuity, remaining benefits are generally lost if the pensioner and their spouse die prematurely, in the case of an SMSF any unused capital flows to the fund reserves. SMSF’s also offer specific advantages for individuals who have benefits apparently in excess of the Pension RBL.

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