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Tax Effectiveness: Taxation and the Legal Practice

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LEGAL PRACTICE MANAGEMENT WORKSHOP 18 - 20 JUNE 2024

Outline

- Key factors to consider when choosing a structure
- Types of Entities and Structures
 - Sole trader
 - Partnership
 - Company
- Division 152 – Small Business CGT Concessions
- Superannuation
- Taxation implications with respect to specific transactions
- GST and the legal practice
- Professional indemnity insurance and general avoidance rules

Key factors to consider when choosing a structure

1. Asset protection
2. Income tax minimisation
3. Capital gains tax (CGT) minimisation
4. Ease of administration/Tax compliance costs
5. Admission of equity participants
6. Extent to which the identified structure tests the grey area between 'legitimate' tax planning and tax avoidance under Part IVA
7. Control
8. Succession planning
9. Minimisation of other taxes and costs
10. Personal circumstances

Types of Entities and Structures

Basic Structures

- Companies
- Trusts – discretionary (family) trust, unit trust, hybrid trust
- Partnerships
- Individuals (sole trader)
- Superannuation funds

Complex Structures

- Complex structures are combinations of the basic structures
- Professional firm plus a service trust
- Partnership of discretionary trusts
- Unit trust owned by discretionary trusts
- Company with discretionary trusts as shareholders

Sole Trader

- No legal distinction between the owner and the business.
- Pay the same tax as individual taxpayers at personal income tax rates.
- Responsible for their own super arrangements.
- Unlimited liability.
- Full access to CGT concessions are obtained.
- Easiest structure to dismantle in ceasing business.

Partnership

- Definition of partnership under tax law v general law
- Commitment of assets to a partnership
- How are Partnership Profits Taxed?
- Taxation of Capital Gains
- Salaries to partners
- Profit Retention
- Partnership tax losses available to partners in year losses incurred
- Limited opportunity for income splitting
- Treatment of Goodwill
- Death of Partner/Dissolution of Partnership
- Combinations Involving Partnerships

Company

- Combinations involving companies
- Rollover of existing business assets into the company
- Personal service income rules
- Treatment of business goodwill and other capital assets
- Ownership of shares in practice company
- Asset protection
- Superannuation
- Fringe benefits
- Company losses
- Succession planning

Division 152: Small business CGT concessions

Basic conditions

- Maximum net asset value test OR small business entity test; and
- Active asset test.

Four separate CGT concessions:

- The 15-year exemption (in Subdivision 152-B);
- The 50% reduction (in Subdivision 152-C);
- The retirement exemption (in Subdivision 152-D); and
- The replacement asset rollover (in Subdivision 152-E).

Superannuation

Superannuation savings are taxed at two points

- Upon contribution to the superannuation fund; and
- Investment earnings within the superannuation fund will be taxed at the rate of 15%.

Significant incentives for taxpayers to contribute to their 'retirement' savings.

Taxation implications with respect to specific transactions

- Payments to Related Parties
- Insurance
- Obtaining Premises
- Leasing of business premises
- Home office expenditure
- Financing the legal practice

GST and the legal practice

- Accurate categorisation of services
- Claiming input tax credits

Questions?





Thank you

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