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IN THIS ISSUE

TRUSTEE'S MUST RESOLVE TO DISTRIBUTE 2013 TRUST INCOME BY 30 JUNE

Amendments made to the tax law in 2011 detailing how trustees can distribute certain income, specifically franked distributions and capital gains to beneficiaries, as well as changes in ATO guidelines, now require that trustee resolutions are made by 30 June of each year.

This creates both risks and opportunities for our Trust clients. Risks in that resolutions not prepared by 30 June, or prepared without due reference to the Trust Deed, will be ineffective triggering either the default beneficiary to be assessed on trust income, or worse still the Trustee at 46.5%.

The opportunities are the ability to review the Trust's 2013 income year in real time, implement tax planning strategies and effectively draft a Trust Resolution that gives you the most tax effective outcome. If you require any assistance in drafting your 2013 Trustee Resolution please contact us.

YEAR END APPROACHES – TAX PLANNING TIPS

The end of the financial year is approaching and legitimate tax minimisation for the year can be achieved by taking certain action prior to 30 June.

In order to minimise liability to taxation for the current year, the general strategies for most taxpayers are as follows:

1. Delay the derivation of assessable income.

2. Bring forward the incurrence of deductible expenses or losses.

3. Pre-pay (up to 13 months) ***some*** of next year's expenses.

4. Shift income to a taxpayer with a lower marginal tax rate (e.g. your spouse, your kids or your private company).

5. Negative gearing strategies.

6. Make payments that receive special tax treatment e.g. certain superannuation contributions.

The Tax Breaks
The effect of the above actions is either to permanently reduce or eliminate the amount of tax payable or to delay the need to pay the tax for at least another 12 months.

In particular, you may benefit from these tax minimisation strategies, if your taxable income for the year ended 30 June 2013 will be higher than the year ended 30 June 2014. This could happen if:

- you have a 'one-off' capital gain or other irregular income amount in 2012/2013.

- you will not be working or earning as much income next year.

A reduced taxable income can also have the effect of allowing receipt of Government benefits which are means tested e.g. family allowance, child day care fee relief etc

WHAT TO CONSIDER

1. Deferring Income Derivation

a) Timing of Derivation of Income, deferring to after 30 June

b) Timing of Raising a Bill for incomplete work (Businesses)

2. Bringing Forward Deductible Expenses

a) Superannuation contributions

b) Capital gains/losses - timing of transactions.

c) Businesses should also consider:

1. Stock valuation options.

2. Writing off obsolete stock/plant.

3. Bad debt write-offs.

4. Paying the Compulsory Employee Super payment before 30 June.

5. Paying the last week/month of the year's wages/bonuses before 30 June.

6. Bringing forward repairs and maintenance before 30 June.

3. Prepayment of Expenses
In certain circumstances expenses paid for before they are due will be tax deductible when they are paid, e.g. Insurance premiums, membership of organisations, travel, advertising and interest.

Another Loss on Non-commercial Losses

In a recent case1, the Administrative Appeals Tribunal ("AAT") has upheld the Commissioner's decision to not exercise his discretion in relation to non-commercial business losses of a taxpayer's cattle and sheep farming activities for the 2010 year. This case further demonstrates the difficulties facing taxpayers in satisfying the Commissioner or AAT that a business activity that incurs losses was affected by special circumstances outside the control of the taxpayer.

The taxpayer, who was also a medical practitioner, conducted cattle breeding and sheep farming business activities. Notwithstanding the initial taxpayer's application for a private ruling and the subsequent refusal by the Commissioner to exercise the discretion to allow him to claim losses on his primary production activities, the taxpayer lodged his

[1] *Heaney and Commissioner of Taxation [2013] AATA 331 (23 May 2013)*

2010 income tax return and claimed a loss of $179,187 against his other taxable income. After the Commissioner issued a notice of assessment disallowing the loss, the taxpayer lodged an objection to the AAT.

There were 2 decisions made by the AAT that have important implications for clients. Firstly, the AAT held that for the purposes of the non-commercial loss rules, the taxpayer was carrying on two separate business activities. The AAT rejected the Commissioner's submission that the taxpayer conducted a single farming business. This means that each of the business activities must be considered separately in determining whether the Commissioner should exercise his discretion.

Next, the AAT had to determine whether the Commissioner should have exercised his discretion to accept that each of the business activities was commercial. The taxpayer contended that there were special circumstances that lead to the losses being made, namely drought, outside the control of the taxpayer that contributed to the loss. Although the AAT had in evidence drought maps and declarations from the New South Wales Department of Primary Industries, it held that the main reason for the sheep farm making a loss was the level of debt carried by the taxpayer by way of the mortgage on the farm. There was no evidence the taxpayer had the financial resources to produce a tax profit without incurring further borrowings, due to the cattle farm/breeding also being highly negatively geared.

Accordingly, the AAT held that the taxpayer had not discharged the onus of proving that each of the business activities would produce assessable income greater than deductions within a commercially viable period for the industry and, therefore, the Commissioner had correctly decided to not exercise his discretion to allow the loss to be claimed against the taxpayer's other taxable income.

This case again shows the difficulty faced by individuals whose seek to offset their business losses against their other assessable income without being able to pass the special tests, and specifically those who earn over $250,000 from other sources and seek to offset a business loss.