



## What's in this issue...

- **Hot Topics**
- **Important Dates to Remember**
- **What's Happening at Marsh Tincknell**

### Hot Topics!



#### **Knowing when to Change Your Business Structure**

For successful businesses, simple business structures often do not work. They leave you risk exposed, are ineffective for tax purposes, and are not efficient for succession or sale. In the early stages of business life the philosophy often is; keep it simple and low cost. This may mean trading as a sole trader, in partnership, or through a simple company structure. Where the business stays small this can be entirely appropriate and may serve you well for the lifetime of the business.

[For full article see below](#)

#### **Your SMSF and Borrowing**



Knowing what assets your Self Managed Superannuation Fund (SMSF) can own is an important part of being a Fund Trustee. You should also know what Assets your Fund can purchase from you or your related parties. New rules recently introduced may give you more scope for your SMSF to borrow funds to acquire these Assets but there are unique rules and guidelines that need to be adhered to.

As the Trustees of your SMSF, you need to ensure that all Assets held in the Fund are consistent with the Fund's investment strategy. That is, as Trustee you need to consider issues such as risk and return, diversification of the Fund's Assets, liquidity within the Fund, and of course, the ability of the Fund to discharge liabilities.

[For full article see below](#)



## Tax avoidance on Property Sales – don't risk it

Property developers who incorrectly declare Tax on the sale of Property are more likely than ever to be contacted by the Australian Taxation Office (ATO). Specific funding received in the 2010 -2011 Budget will be used to look closely at GST compliance as part of a dedicated program over the next four years. As part of this program, the ATO is increasing its use of data matching to ensure Property Developers are reporting all Tax obligations on Property sales.

[For full article see below](#)

## ATO Warns About Labour Hire Arrangements Using a Discretionary Trust



The ATO recently issued a taxpayer alert (TA 2011/2) warning people to be cautious when entering into an arrangement with a Firm that includes steps to split their income with an associate, usually their spouse, by using a Discretionary Trust.

"I'm concerned that people involved in this arrangement may be unaware of the risk that it may be ineffective under the Taxation Laws and the Superannuation Guarantee Provisions,"

Tax Commissioner Michael D'Ascenzo said.

[For full article see below](#)

## Important Dates To Remember

### 21 MARCH

February 2011 Monthly Activity Statement – due date for lodging and paying.

### 21 APRIL

Quarterly PAYG 2010 – 11 Instalment Activity Statement due for lodging and paying.

### 15 MAY

2010 Income Tax Returns.

## What's Happening at Marsh Tincknell?

### Shannon's Maternity Leave



It is with great excitement that we wish to announce Shannon has commenced her Maternity Leave on the 17<sup>th</sup> of March. The expected date of her new born arrival is around the 6<sup>th</sup> of April. We wish Shannon and her husband, Chris, all the very best for the near future. We look forward to Shannon's return early next year!

### Staff Farewells



Michelle has been an enormous help to the Superannuation Team in fulfilling the role of the Administration Assistant. This is a role that in its entirety was a new position that had never been filled on a full time basis before. We could not have done without her in the last few months of 2010 in particular in the lead up to the inaugural Virtu seminar to launch the brand.

On behalf of us all, Michelle, we wish you the very best for the future and hope you return to good health soon.

## Welcome New Team Members!



**Thomas Tuffley** began his graduate accountant career in 2009 in a mid-tier CBD accounting. It was there Thomas specialised in Business Services. After travelling abroad throughout 2010, Thomas joined the Tim Davis Team late last month.

In his spare time, Thomas enjoys playing cricket, rugby and golf and spending time with family and friends.



**Laura McAdam** has approximately 19 years experience in accounting and financial services. She has spent the majority of her time as an accountant within the public practice arena as well running her own practice. Laura then followed her passion and specialised in Self Managed Superannuation and Estate Planning. It was late last month Laura was welcomed to Super Team.

In her spare time, Laura enjoys running, cycling, camping and hiking with her family as well as spending time on the beach and enjoying good food and wine. We look forward to her worthy contributions throughout the year.



**Anita Rowden** has a strong background in administration and most recently within a recruitment firm in Bundaberg. Anita and her partner have recently relocated to Brisbane from Bundaberg. Anita joined the Marsh Tincknell Super Team earlier this month to fulfill the Administration Assistant position.

In her spare time, Anita enjoys cooking for family and friends, reading and going to the cinemas. She also enjoys travelling overseas and researching new destinations to visit.

## February's Casual Dress Day



Since 1969, Epilepsy Queensland Inc has been dedicated to improving the quality of life of people with epilepsy and their carers/families through advocacy, research, support and information. Epilepsy affects as many as 2% of Queenslanders. While in most cases it is diagnosed during the school years, epilepsy may affect anyone at anytime.

It is this charity, nominated by one of our Senior Associates, Randal King, that Marsh Tincknell raised funds for during our February Casual Dress Day.

*"Success comes when you do what you love to do, and commit to being the best on your field."*

**- The Treasury of Quotes by Brian Tracy**

## Hot Topics cont'd!

### Knowing when to Change Your Business Structure cont'd

However, if your expectations are greater than this, or if you can see that your business is likely to grow in a significant way, then you will need to change structure at some stage. Successful fast growth businesses typically operate through a mix of Company and Trust structures. These structures are not for show. They create separation, tax efficiency, help to risk manage your Business interests and allow for orderly transfer at the appropriate time.

The challenge is; when is the right time to put in place a more efficient structure? The answer is the earlier the better. Change comes with a cost. You can be exposed to Capital Gains Tax and Stamp Duty, and this can be expensive and a distraction from the main focus of your Business growth. If you have a very clear vision for your business and it is going to grow to a significant size then there is a lot of merit in putting the basic structure in place at the beginning. Equally, if your plan is to maintain a micro-business, keep it simple and don't be seduced by advice that over complicates what you need. Your structure should be appropriate and consistent with your expectations for the business – be they large or small.

If you have a clear vision at the beginning then the question of how to get your structure right can be an easier question to answer. For many Business operators though, the reality is that you are not sure. You may start off small and the Business booms with growth exceeding your expectations. Or, you may have hopes for something significant, but also know that it might not work. So, if you're in this situation, what are the signs that it is time to make the change?

The first sign should be when you can identify that there is significant value building in your Business. This might be reflected by the Assets held in the Business or the development of Goodwill or Intellectual Property. The existence of these Assets means that you should be considering risk protection and ways to protect against the unexpected. Ideally, significant capital Assets of the Business should be separated from the operating structure.

The second sign is where you can see a material increase in your tax exposure. As your Business grows, so too should your profits and your earnings from the Business. And, in some cases profits and cash will not mirror each other. Typically cash lags profits, so you might be dealing with the tax on profits that are not readily available to you in cash. Apart from the fact that you don't want to pay any more tax than necessary, the right structure can help to manage tax impacts and the timing differences between profits and cash.

Finally, if you are expecting to sell your Business or to introduce other Partners or Shareholders, then the right structure can make a huge difference. To maximise your access to Tax Concessions and in particular the CGT Small Business Concessions, you need to have your structure right in advance of any changes.

There are some ways to manage the tax costs associated with a change in structure. The first thing to do is to identify the structure that is right for your business. From there, quantify the cost of any change and the best way to put it into effect.

*If you would like to ensure that your business structure is right for you now and in the future, talk to us today.*

## **Your SMSF and Borrowing cont'd**

Here are the common questions often asked about borrowing:

### **Can I move my existing rental properties into my SMSF?**

If these are residential properties then in most cases the answer is no. Your SMSF cannot acquire property from a 'related party' unless the property is used in a Business (called Business Real Property). A related party includes you, your relatives, and in some cases your business associates. It can also include entities that are controlled by these people.

### **Can I own my Business Premises through my SMSF?**

Assuming that the purchase of a Commercial Property makes sense for the Fund, there is nothing to prevent the fund from purchasing a Commercial Property. The Fund could even acquire the existing Business real property from a member or related party! Your SMSF could then lease the property back to your Business so long as the lease is on commercial terms. This could be a great way to boost your retirement savings as the rental income is taxed at a maximum of 15%

### **Can my SMSF borrow money to buy property?**

Since September 2007, SMSFs have been able to borrow to acquire assets. It's important to recognise that as there are strict rules surrounding this, you should always seek professional advice.

Your SMSF can only borrow to acquire Assets that it would otherwise be allowed to acquire – so in some cases your SMSF could borrow to acquire the member's Business Premises. Be careful though as the SMSF cannot use the borrowings to improve the property (no extensions or renovations), so what you buy is what you're stuck with until your SMSF has paid off the loan.

### **Can my SMSF own property overseas?**

As long as holding or purchasing the Property is in line with the Fund's investment strategy, there is nothing in the Superannuation rules to prevent your SMSF from owning Property overseas. But again, beware of some of the traps.

In some cases it might be prudent for a Company or Trust to own the Property and for your SMSF to own shares in the company or Units in the Trust. This may protect the Fund from being sued by a Tenant. However, there are restrictions on the Company/Trust under the superannuation rules. For example, the Company or Trust could not borrow or lend money, or place a charge over any of the Assets. And, the Company or Trust may not be able to hold an overseas Bank Account.

You need to weigh up the benefits of using an 'interposed' Company or Trust to hold the asset with the restrictions that can be imposed. In all cases, you should make sure that you have adequate insurances in place both over the asset and also inside the SMSF.

## **Tax avoidance on Property Sales – don't risk it cont'd**

ATO Deputy Commissioner Shane Reardon said that their office is matching information provided on Business Activity Statements (BAS) and income tax returns with information from the Office of State Revenue and Land Titles Office to ensure property developers are correctly reporting GST and income tax (including capital gains tax) on property sales.

"We have found some property developers deliberately avoiding their obligations by collecting the GST from the purchaser and then failing to pass this on to the ATO either by not lodging their BAS, de-registering from the GST system or not reporting sales within their BAS. We are also looking at property developers who intentionally remain outside the GST system or claim credits during construction, but then fail to lodge their business activity statement and individual income tax return."

In a recent case, a taxpayer was identified as a developer of subdivisions and purchased rural farmland, subdividing it into residential lots for the purpose of sale. Through data matching activities the ATO identified over 100 sales made by the same taxpayer. The main issues in this case were:

- omitted GST of approximately \$1 million
- non lodgement/default assessments of \$5 million (GST)
- overstated Input Tax Credits of \$200,000.

The taxpayer had not reported the property sales and was charged the highest penalty applicable – amounting to approximately \$4.5 million.

*Every property transaction you make may have a tax consequence you need to report. If you think you have undeclared tax relating to a property sale, please contact our office.*

## **ATO Warns About Labour Hire Arrangements Using a Discretionary Trust cont'd**

"We are concerned that individuals may enter into these arrangements to reduce tax liabilities by splitting their income with an associate and that the arrangement may not satisfy the personal services income tests and that the anti-avoidance provisions could possibly apply," Mr D'Ascenzo said.

"The ATO is reviewing these arrangements and will be writing to entities facilitating them about our concerns that they may risk contravening the promoter penalty laws."

Mr D'Ascenzo also reminded firms entering into such arrangements that they may not be withholding the appropriate amount of tax and providing the correct superannuation support to the individual participants and may be liable for penalties and charges under the Taxation Administration Act 1953 and the Superannuation Guarantee (Administration) Act 1992.

The ATO has advised that voluntary disclosure of involvement in these types of arrangements should be made by 30 April 2011 and before they are contacted by the ATO, to be entitled to a reduction in any penalties that might apply if the arrangements prove to be ineffective.

*If you think you are involved in these types of arrangements, please contact our office for advice.*