

Payroll Tax: Discretionary Trusts

Accountants and legal advisers need to be aware of a particular payroll tax trap when assisting clients to set up a business to be conducted by a discretionary trust.

We often encounter situations where members of a family each have their own business, but are unaware that they are grouped with each other for payroll tax purposes until they receive an OSR audit or questionnaire. This is particularly the case where one (or more) of the businesses are conducted through a discretionary trust (i.e., family trust).

The effect of being grouped is that the payroll tax exemption threshold (currently \$658K in NSW) has to be shared between the businesses. So two businesses that are individually below the threshold can have a collective liability because the combined wages are above the threshold.

Businesses are grouped where a 'person' or 'set of persons' has a controlling interest (i.e., greater than 50%) in two or more businesses. The trap for businesses conducting a discretionary trust is that each and every beneficiary (whether they receive a distribution or not) is deemed to have a controlling interest in the business operated by the trust.

Example: John Smith operates a business through the Smith Family Trust. The trust deed is a standard one and provides that his spouse, children, grandchildren, brothers, sisters, etc., are beneficiaries. Therefore, each of these beneficiaries has a 'controlling interest' in John's business. If any beneficiary has a controlling interest in their own business (e.g., sole shareholder or director of a business operated through a company) then the two businesses will be grouped. The only way out of this grouping is to seek a determination from the Commissioner to de-group the businesses, which he has power to do under the legislation, if he is satisfied that the businesses are carried on independently of each other and not connected with the carrying on of each other.

***Action point:** In preparing a trust deed, consideration may need to be given to excluding specific family members as beneficiaries if they have a controlling interest in any other business. Advisers need to carefully review situations where client families have multiple businesses.*

Complimentary Payroll Tax Presentation

ITC Group is currently offering a complimentary payroll tax presentation to local accountants' discussion groups. The presentation goes for about 45-60 minutes including questions, and covers a general overview/update of payroll tax, some of the common traps identified in OSR audits and a few tips. If you are a member of a local group looking for presenter on payroll tax, please contact Shane Peters.

Indirect Tax News

Contact Details

Indirect Tax Consulting Group

Level 9
37 Bligh Street
SYDNEY 2000
Ph: 9221 2888
Fax: 9221 7222

E-mail:
advice@itcgroup.com.au

Website:
www.itcgroup.com.au

Shane Peters
John Walden
Steve Callanan
Steve Baxter

If you have any enquiries regarding the issues raised in this newsletter, please do not hesitate to contact one of the consultants named above.

Please contact us if you would like to be removed from the newsletter mailing list

The New R&D Scheme

Prior to the calling of the recent election, the parliamentary Bills to introduce a new R&D scheme were before the Senate. The Bills lapsed with the calling of the election, but were re-introduced to the House of Representatives on 30 September 2010 with minor changes. The Government is still proposing a start date of 1 July 2010 for the new scheme, but there is substantial lobbying for a start date of 1 July 2011. It is envisaged that the lobbying will not be restricted to the start date, as many other aspects of the proposed scheme will come under scrutiny. We will keep readers informed of progress in this matter

Keeping Up With GST Changes

There have been a number of changes in the GST arena in 2010 and we take this opportunity to alert readers to some of the key changes that may affect their clients:

- Possible GST exposures for importer clients if their customs brokers have not increased the GST payable on certain importations, to reflect Australian domestic freight and handling charges.
- Reductions in GST chargeable by local providers of transport, storage and handling to importers/exporters (as a consequence of the aforementioned amendments which have transferred the GST liability for these costs to the importer on the entry of the goods).
- Reduced administration costs where documents intended to be tax invoices can be accepted as such, even where they fail to include all the prescribed information for a tax invoice.
- Reduced or transferred GST risk in respect of the termination of joint ventures and where entities depart from GST groups because of the introduction of indirect tax sharing arrangements.
- Reductions in net GST for suppliers where they make a payment to a third party relating to a supply they have previously made to a customer – e.g., manufacturer to customer rebates and various payments received by motor vehicle dealers.
- Cost reductions for certain suppliers of foreign currency exchange services who may be entitled to claim input tax credits on their business acquisitions.

Action point: Clients need to be reminded to keep focus on GST, to seek advice on major transactions and to keep abreast with compliance changes.

DISCLAIMER

This newsletter is issued as a helpful guide. It is not intended to, and does not cover all aspects of the topics discussed. Professional advice should be sought before any action upon these topics is taken.