



# ML | Partners Pty Ltd

## COMBINING ACCOUNTING & WEALTH MANAGEMENT

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## Practice Update

Please read this update  
and contact this office  
if you have any queries

**November - December 2015**

### **Business structures and restructures: Is your structure working against you?**

Many business owners don't realise that the business has outgrown its structure until something comes up – and this something is usually something negative.

#### **Are your assets at risk?**

Legal action by employees, customers and suppliers as well as divorce are the two primary risk issues for many business operators. If you have been operating as a sole trade or as a partner in a partnership or have simply been holding all business assets in a single entity, your structure may not provide sufficient asset protection. If any personal assets or valuable assets of the business are held in the same entity which carries on the trading operations of the business, those assets may be at risk. To protect your assets it is generally preferable to separate as many valuable assets as possible from the trading operations.

#### **Can you introduce new business partners or investors?**

If you want to provide key employees or investors with an equity interest in your business, your current business structure may not allow for this. For example, it is not generally possible to provide fixed entitlements to the profits of a business operated by a discretionary trust.

Entities such as companies and unit trusts are a much more effective vehicle to facilitate the introduction of new equity partners as they can provide a fixed interest in the income and capital gains generated by the business. New investors

can also potentially claim interest deductions on funds borrowed to invest in the company or unit trust.

#### **Reinvesting in growth**

Reinvesting profits in your business is important if you have or expect a strong growth path. Some business structures however don't readily facilitate profits being retained by the business. For example, it is generally more difficult for a trust to retain profits, as the trustee of a trust is taxed on these profits at penalty tax rates if they are not distributed to the beneficiaries of the trust each year. This is compared to private companies where profits are taxed at a maximum rate of 30% or 28.5% and can be retained in the company without the need to distribute these profits annually.

#### **Can you take money out of the business?**

When you first established your business, it's hard to know what your profits are going to be and for many, there are a few lean years of losses to get things up and running. Your personal circumstances might have changed as well – marriage, children, a spouse, etc. These changes can drive the need for change. The structure of your business has a direct impact on how money flows through it to the investors. For example, one of the benefits of a discretionary trust is that the income of the trust can be distributed to any of the beneficiaries of the trust in any proportion, and that proportion can change annually.

#### **Access to tax incentives and concessions**

Research & Development (R&D) concessions are only available to companies. If you have a significant level of R&D activity that could

potentially qualify for the tax incentives, it's worth exploring your options if you are not already in a company structure.

### **Can you exit your business?**

The business lifecycle has shortened considerably with less business owners seeking to create empires but more opportunistic business models. The wrong structure will limit your ability to sell your business interests and may have a dramatic and detrimental impact on the amount of tax you pay on the sale proceeds. It's important that you explore this issue well before you actually plan to sell or reduce your stake in the business.

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### **Reminder of small business tax cuts**

The ATO has reminded taxpayers that, from 1 July 2015, a new two-tier company tax system took effect and applies to all companies.

This system sees the whole of a company's taxable income subject to the following rates:

- ◆ 28.5% if the company's aggregated turnover is below a \$2 million threshold (i.e., a small business entity or 'SBE'); or
- ◆ 30% if the company's aggregated turnover is equal to or above a \$2 million threshold.

Importantly, companies don't need to do anything now – if identified as a small business, the new rate will be automatically applied to their PAYG instalments rate or on their next activity statement.

Note that a capped 5% tax discount, designed to broadly mirror the small business company tax cut, was also introduced for unincorporated small businesses from the 2016 income year. It will be delivered to individual taxpayers in receipt of small business entity income via the 'small business income tax offset'.

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### **ATO supporting small business to implement SuperStream**

As the SuperStream rollout for small businesses continues, the ATO claims that it is helping employers in select industries who need support implementing SuperStream.

Employers with 20 or more employees were expected to be using SuperStream no later than 31 October 2015. Employers with 19 or fewer employees need to be using SuperStream no later than 30 June 2016.

The ATO has also stated: *"With only two quarters*

*left until SuperStream becomes mandatory, now is a good time for employers to adopt SuperStream and familiarise themselves with it before the deadline.*

*"For some businesses, December and January are quieter periods, so now is a great opportunity to check that your SuperStream option is ready, whether that be your payroll software, your super fund's online payment system, or a clearing house, such as the ATO's Small Business Superannuation Clearing House. You can also ask your accountant or bookkeeper for help."*

Now is also the ideal time for employers to make sure they have all the information they need to use SuperStream correctly: *"Importantly, you should collect the necessary employee identification data – being your employees' TFNs and their funds' unique super identifiers (USIs) – and enter it into your system ahead of the next quarterly due date on 28 January. That way, you have time to check that things are running smoothly before the deadline.*

*"Your employees can find their fund's USI on their super statement or by calling their fund. You can also find these details using the Super Fund Lookup website – our online SuperStream checklist has the link."*

The ATO step-by-step checklist to help employers prepare can be found at [www.ato.gov.au/SuperStreamChecklist](http://www.ato.gov.au/SuperStreamChecklist).

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### **ATO reviewing taxable payments annual reports**

The ATO has advised that it is contacting businesses in the building and construction industry about information provided on their *Taxable payments annual report*, where the businesses have:

- provided a report with missing or invalid ABNs;
- included amounts paid for GST when the contractor isn't registered for GST;
- not lodged a report; or advised the ATO they are not required to report, when the ATO's records indicate they should.

The ATO will explain what their review has found and suggest ways to make it easier to complete accurate reports in the future, such as using the ABN Lookup tool or ATO app to check a contractor's ABN or if they are registered for GST.

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## Guidance regarding the payment of death benefits

*The Superannuation Complaints Tribunal, which can resolve disputes between large superannuation funds and their members, recently provided some guidance regarding the payment of death benefits from superannuation funds, possibly because the largest category of complaints the Tribunal determined at review last year (44.8%) was death complaints.*

*This guidance is reproduced below.*

"There are some common misconceptions about superannuation death benefits that can result in unexpected outcomes for the beneficiaries of a death benefit, and may result in a complaint being made to the Tribunal.

The most common misconception, arguably, relates to the purpose of superannuation.

Broadly speaking, the purpose of superannuation is to provide income in retirement to members and their dependants; it does not form part of a person's estate.

Accordingly, a superannuation death benefit should be paid to dependants and those who had a legal or moral right to look to the deceased member for financial support had they not died.

The ability of a superannuation fund to pay a death benefit directly to a dependant rather than to the estate has a number of advantages.

Firstly, it ensures that the benefit is paid directly for the benefit of the dependants and is not available to creditors who would be paid first from the assets of the estate.

Secondly, it can usually reach the beneficiaries quicker than if a grant of probate or letters of administration has to be obtained and the estate called in and distributed.

Thirdly, as a general rule, superannuation death benefits are protected from bankruptcy.

Therefore, even if the deceased member was bankrupt, or if the estate is insolvent, funds can be paid direct to the dependants to replace the income stream that may be lost as a consequence of the death.

However, if you would like to ensure that your superannuation is distributed a certain way then it is important to find out if your superannuation fund has the option for a binding nomination and if so, ensure you meet the requirements, including renewing your binding nomination every three years."

*Note: The requirements for making a binding death benefit nomination for an SMSF are normally found in the trust deed of the fund, and may allow the nomination to be 'non-lapsing'.*

## ATO's Visa Data Matching Program

The Department of Immigration and Border Protection will provide the ATO with the following details of visa holders, their sponsors and migration agents for the 2013/14 to 2016/17 financial years:

- Address and contact history for visa applicants and sponsors;
- All visa grants, and visa grant status by point in time;
- All migration agents, and their address and contact history;
- Sponsor details (subclass 457 visa);
- Education providers (educational institution where the student visa holder intends to undertake their study);
- Visa subclass code and descriptor; and
- All international travel movements undertaken by visa holders (arrivals and departures).

It is estimated that records relating to approximately 1,000,000 individuals will be provided.

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## Immediate deductibility of capital start-up expenses

From 1 July this year, new provisions apply to allow certain small businesses, or an entity that is not in business, to immediately claim some start-up costs, including business costs associated with raising capital.

### Claimable business-related start-up costs

Expenses can be fully deductible in the year in which they are incurred if the expenditure relates to a small business that is proposed to be carried on and is either:

- ◆ incurred in obtaining advice or services relating to the proposed structure or the proposed operation of the business (e.g., advice from an accountant or lawyer); or
- ◆ a payment to an Australian government agency of a fee, tax or charge incurred in relation to setting up the business or establishing its operating structure (e.g., the ASIC fee for registering a company).

It does not include the cost of acquiring assets that may be used by the business.

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## **Data matching program – on eBay online sales**

The ATO has announced that it will acquire online selling data relating to between 15,000 and 25,000 individuals who sold goods and services of \$10,000 or more on eBay between 1 July 2014 to 30 June 2015.

Data will be sought from eBay Australia and New Zealand Pty Ltd, a subsidiary of eBay International AG which owns and operates [www.ebay.com.au](http://www.ebay.com.au).

The data requested will include information that enables the ATO to match online selling accounts to a taxpayer, including name, address and contact information, as well as information on the number and value of transactions processed for each online selling account.

These records will be electronically matched with certain sections of ATO data holdings to identify non-compliance with registration, lodgment, reporting and payment obligations under taxation laws.

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## **ATO and United States IRS share bank information**

The ATO has announced that it has undertaken its first ever automatic sharing of bank information with the United States (US) Internal Revenue Service (IRS).

Details of over 30,000 financial accounts worth over \$5 billion are being provided to the US.

The information provided on US citizens and tax residents with Australian bank accounts is the first step in transparency measures being implemented globally by Governments and tax administrations.

Beginning in 2017, close to 100 countries will be sharing non-resident data under the OECD Common Reporting Standard.

In return, the ATO will receive data from the IRS about Australians with financial accounts in the US, and will use that data to detect cases of undeclared offshore income and tax evasion.

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## **Small Business Protections from unfair contract terms**

There are laws protecting consumers from unfair terms in 'standard form contracts' where the person has little or no opportunity to negotiate with the business concerned.

Businesses use standard form contracts to more efficiently deal with their customers. However, because the business is often in a somewhat superior bargaining position, there are laws in

place to protect consumers from **unfair terms** in a standard form consumer contract.

The government has announced it will extend consumer unfair contract term protections to small businesses as well.

The changes will cover standard form contracts where at least one of the parties employs less than 20 people, and where the upfront price of the contract does not exceed \$300,000 or \$1 million for contracts longer than 12 months.

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## **ATO moves on cafés & restaurants**

The ATO has advised that it will be visiting restaurants, cafés and take-aways in Box Hill (Melbourne) over the coming months as part of its ongoing Australia-wide program involving the café and restaurant industry.

Assistant Commissioner Michael Hardy said similar visits in Sydney and Adelaide with over 500 cafés had been well-received, with businesses keen to meet with the ATO to better understand their obligations, as well as learn about available help and support.

*"Where taxpayers are unwilling to work with us or continue to cause us concern, we will undertake further investigation. In Sydney, for example, we have now moved to auditing businesses that did not want to work with us."*

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## **The ATO and its regulation of SMSFs**

*In a recent speech, Kasey Macfarlane, Assistant Commissioner, SMSF Segment, Superannuation, discussed the issues facing SMSFs and their aging trustees. The following is an excerpt from her speech.*

### **Planning ahead – cognitive decline**

*"I'd like to touch on the increasingly important topic of cognitive decline. Dementia is on the rise and currently affects one in ten people over 65, and three in ten over 85."*

*"Even mild dementia will affect a person's ability to make financial decisions. SMSF numbers continue to grow, and . . . require a high level of financial decision making."*

*"While many trustees remain perfectly capable of effectively managing their financial affairs well past retirement age, there is a risk that some with diminished capacity to effectively manage their fund may nevertheless continue to do so."*

*"As my colleague Matthew Bambrick said back in March, 'These issues are a time bomb waiting to go off if not addressed now'."*

*"It's essential to ensure that all trustees are*

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*genuinely involved in managing SMSF funds, to agree in advance about decision points and exit decisions, to have a will, and appoint an enduring guardian and power of attorney."*

If you would like to discuss this important issue further, please contact our office.

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### Farewell Corinna

It is with regret that we farewell Corinna Power who has been an important part of the ML Partners team since August 2014. Corinna has worked full-time as one of the smiling faces greeting clients, answering phones, and performing administrative duties in the Home Hill Office. Corinna has understandably decided to spend more time with her young family and will commence work with the Burdekin Shire Council as a part-time employee in 2016. Although she will be missed by MLP staff & clients, we wish Corinna every success in the future.



Peter, John and Staff would like to wish you and your family a Merry Christmas and a Happy and Prosperous New Year.

We look forward to working with you all again in 2016 and hope that the New Year brings rain to those who need it!



ML Partners offices will be closed from 3pm Wednesday 23<sup>rd</sup> December, 2015 and will re-open for business Monday 4<sup>th</sup> January, 2016.

*"Maybe Christmas, he thought, doesn't come from a store.*

*Maybe Christmas . . . perhaps . . . means a little bit more!*

*- Dr Seuss*



Please Note: Many of the comments in this publication are general in nature and anyone intending to apply the information to practical circumstances should seek professional advice to independently verify their interpretation and the information's applicability to their particular circumstances.