Messenger
Zerner
Chartered Accountants

TECHNICAL GUIDE NO 7

BUSINESS AND INVESTMENT STRUCTURES

The decision as to what structure to use for the ownership of business or investment assets is an important one that requires detailed consideration. The choice of an incorrect structure can cause business losses through law suits or unnecessary payment of income tax, capital gains tax and/or stamp duty. It is imperative when commencing or purchasing a business or investments, to consult our office for appropriate advice. However the following information is provided as a guide to the decision making process:

Types of Structures

1 Sole Proprietor/Individual.

2 Partnership of 2 or more individuals/joint name.

3 Trading or investment company.

4 Trustee company for family discretionary trust.

5 Trustee company for unit trust.

6 Superannuation fund.

7 Other more complicated structures such as a partnership of trusts, hybrid trusts, split trusts etc.

Issues to Consider

1 Limited Liability

This refers to the ability of the structure to protect any personal assets from any legal claims for professional negligence or product liability by third parties, ie the claims are limited to the extent of the structure's assets. Companies and trusts with trustee companies are the most common structures to have limited liability. Of course any trading structure should always consider taking out professional indemnity, product liability and/or public liability insurance to protect assets owned by the structure from being claimed against.

2 Minimisation of Income Tax

Certain trading and investment income is able to be distributed to various family members so as to minimise income tax. Trusts are the best structures that allow a flexible and efficient way to distribute income.

The earning and taxing of income by companies can have a short term tax advantage over other structures but in the long term, additional tax can be payable on any remaining undistributed profit before the company is wound up.

It is difficult for personal services income earned by an individual from one major source, to be distributed to other family members.

3 Minimisation of Capital Gains Tax

As from September 1999, the rules for calculating the capital gain on the sale of assets was amended to allow a 50% discount on the capital gain earned by an individual, partnership or trust. This discount does not apply to capital gains earned by companies.

4 Capital Gains Tax Small Business Concessions

A range of CGT small business concessions apply to eliminate the capital gain on the sale of "active" small business assets owned by individuals, partnerships, companies and trusts. Some basic conditions must be met to qualify. These can be harder to meet if the asset is owned by a company or trust.

5 Investment Ownership/Negative Gearing

It is important to consider the ownership of investment assets when one member of a couple earns substantially more income than the other. This is further complicated when the assets are negatively geared by a loan, where the loss can be claimed by the high income earner. The maximum use of any dividend imputation credits is also important.

6 Estate Planning

A trust or company is able to hold assets over several generations via changes in shareholders or beneficiaries, which can reduce capital gains or stamp duty implications on normal intergenerational transfers of assets.

CONCLUSION

The above issues often conflict against one another in the choice of the appropriate structure to hold an asset or conduct a business.
It is again important to state that appropriate commercial, business and tax advice should be sought before deciding on the structure as individual circumstances can influence the decision.