

HUDSON HENNING & GOODMAN NEWSLETTER

COMPANIES, TRUSTS & TAX CHANGES

In this month's newsletter, we look at some of the significant changes which are occurring in relation to taxation and the use of various entities for both acquiring assets, and owning and running businesses. Over the last twelve months the Federal Government has announced substantial changes to the taxation laws, particularly the changes introduced with effect from September and December 1999. We have not yet begun to feel the effects of those changes and we therefore encourage clients, and those who read this newsletter, to review their business structures, the assets which they are presently holding, and how the acquire assets in the future.

Only a year or so ago, we would normally have recommended a Trust as the most effective means of acquiring assets, where protection of those assets was a priority. However, the changes to the tax laws, including introduction of Entity Taxation, and the changes to the Capital Gains Tax provisions, have made it much more difficult to advise clients, in general terms. It is therefore more important than ever that clients obtain legal advice before acquiring assets, or deciding on the most appropriate entity for them to use.

It is also important to look at the active business assets test and to look at the opportunities to roll a capital gain on the sale of business assets into either a superannuation fund, or into the acquisition active business asset.

With an increasing number of Australians becoming self employed and purchasing franchise businesses, forward planning is more important than ever. It is so much simpler to obtain advice, and then decide on the appropriate structure before acquiring the asset, than it is to find yourself in a situation where it is important to move the asset to one entity to another, after it has been acquired.

The changes in the tax laws have opened up new opportunities for Trusts. However, many of these Trusts will be much more specific, than the previous general family trusts, or discretionary trusts.

It is important to review the financial statements for any companies or trusts with which you are involved, to look at issues such as loan accounts, and provisions for the "acquisition" of the interests and any "partners". There is nothing worse than finding that a "partner" has decided to sell out of a business, or an asset, in a situation where you can be forced to find a substantial amount of money, on reasonably short notice.

One of this situations which most people fail to take into account, is what will occur if a "partner" dies, or becomes totally or permanently incapacitated. You can suddenly find yourself dealing with the executor of the late partner's estate in a situation where

**DIRECTORS &
NOTARIES PUBLIC**
S. E. Creek
M. H. Thornhill

ASSOCIATE DIRECTOR
J. M. Bon

COUNSEL
H. J. Nichols
G. Dean
W. McDonald
L. Caré
L. Adamson

SENIOR ASSOCIATES
M. W. Wallis
N. B. Dimmock

ASSOCIATES
S. Bailey
K. Parker

SOLICITORS
S. Smith
K. Spector
E. Wong
S. Coyle
S. Wright

CONSULTANTS
R. V. Wheatley
E. J. Wheatley
D. J. Stewart



WA Solicitors Pty Ltd trading as
HHG Legal Group,
Hudson Henning & Goodman
and Whistlers Legal
ACH 122 853 507
ABN 54 122 853 507

www.hhg.com.au
reception@hhg.com.au

the executor may be entitled to demand repayment in full of any loan account, and to force a sale of assets.

We therefore recommend that before you enter into any form of a business relationship with another person, that you sit down and enter into a clear agreement as to the terms which will apply in the event that either of you wishes to "sell out". You may even include a provision that the "partner" dies, then his or her share is payable to his or her estate over a number of years, free of interest. However, this can only be done while you are both alive, and in agreement.

An increasing number of Australians hold a large percentage of the wealth in their superannuation fund. It is therefore important to look at potential use of a self managed superannuation fund, as to what is to happen to this, in the event that one of the "partners" dies or is incapacitated. It is possible to put in place appropriate insurance, and what are commonly called "buy/sell agreements" to protect all parties involved in this situation.

As it is possible to customise a company or a trust, and as we are entering a period when the government will look to collect more and more revenue from Capital Gains Tax, and associated taxes, we strongly urge all Australians to seek professional advice as to their business and estate planning.

This is general information only and does not constitute specific legal advice. If you would like further information in relation to Companies, Trusts and Tax Changes, or any other matters, or if we can assist you, please email us at reception@hhg.com.au

Murray Thornhill, Director
Matthew Wallis, Senior Associate
Janene Bon, Commercial & Wills
Paul Greer, Commercial

Email: murray@hhg.com.au
Email: matthew@hhg.com.au
Email: Janene@hhg.com.au
Email: paul@hhg.com.au

Albany Ph: 08 9841 2322
Perth Ph: 08 9322 1966
Website: <http://www.hhg.com.au>