Business structure – is your current structure still the best?

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Astute Business Owners recognise the importance of using a tailored and appropriate business structure to operate their business and hold assets. The best structure may involve having multiple entities and can help protect wealth that has been created over many years of hard work. A tailored structure can also assist in avoiding excessive exposure to taxation.

Over the life-cycle of a business, circumstances can change meaning that an existing business structure may become out-dated. Modifications may be necessary, for example, where there is a change in partnership, acquisition or disposal of an asset, a litigation event arises, as part of succession planning or as a result of changes in taxation laws.

Over the last few years, private business in Australia have been subject to many changes in taxation laws. Of significance is the reduction in the company tax rate to 25% for the 2022 tax year for group's turning over less than $50m. Taxation laws associated with loan accounts (Division 7A) have also been subject to changes in interpretation by the Australian Taxation Office and, in addition, Federal Treasury has issued a consultation paper on further proposed changes.

Such changes in taxation laws leads to the necessity to review business structures for appropriateness. Where a change in business structure is required, the Tax Act has a number of mechanisms that allow changes without triggering Capital Gains Tax. In fact, the Federal Government and Treasury provided the Board of Taxation with a mandate to review various re-structure mechanisms which resulted in the Board issuing a consultation paper in December 2020. Whilst the review is yet to result in new legislation, the current mechanisms available in the Tax Act are still available for business to access.

It is also noted that for sale of business transactions, there are Small Business Concessions available. These concessions may have temporary wider application as a result of the Pandemic. This is because the availability of the concessions is contingent on either a net asset threshold test ($6m) or revenue threshold test ($2m turnover). The Pandemic may have caused some businesses to have a reduction in net assets and/or revenue resulting in the availability of the concessions for a short period of time.

The concessions, where available, not only can assist a business owner minimise a Capital Gains Tax liability but can also provide an additional mechanism to boost superannuation and protect assets.
Given the Board of Taxation's review of corporate rollovers, Federal Treasury's consultation paper on Division 7A and the potential effect of the pandemic on asset values and revenue, now is the time for business owners to review their business structure. An appropriate structure can protect assets and minimise taxation exposure. Whilst the Pandemic is a major historical event, one astute business owner recently said.....never waste a good crisis!

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