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Last-minute tax planning for individuals

The current financial year is almost at an end, but there are still strategies you may be able to put into play to ensure you pay not one cent more tax than is necessary for your 2015-16 income year.

About this newsletter

Welcome to Ashby Madden Truman's client information newsletter, your monthly tax and super update keeping you on top of the issues, news and changes you need to know. Should you require further information on any of the topics covered, please contact us via the details below

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The best tax planning is adopted in July, not June — that is, as early as possible in any financial year, not right near the end of it. It is also wise to remember that proper tax planning is more than just finding bigger and better deductions — the best tips are those that set your tax affairs in better order not just for the current financial year but also for future income years.

Not all of the following tips will suit your circumstances, but as a list of possibilities they may get you thinking along the right track, and have you asking us the right questions. Of course check with this office if you need further information.

With an election to be held two days after the end of the financial year, the federal budget measures will of course have no chance to take effect until some time into the next income year

INVESTMENT PROPERTY EXPENSE CLAIMS

Many expenses stemming from owning a rental property are claimable, so it can be helpful to make any payments that you can before June 30 and claim these expenses in the present financial year.

If you know that your investment property needs some repairs or requires attention regarding, say, pest control or other measures, see if you can incur these costs before the financial year end.

PREPAY THE INTEREST ON INVESTMENT LOANS

In a similar vein, see if you can negotiate with your finance provider to make upfront interest repayments for certain investments, such as a margin loan on shares.

Most taxpayers can claim a deduction for up to 12 months ahead. But make sure you review how you and your lender have allocated funds secured against your property correctly, as a tax deduction is generally only allowed against the finance costs incurred for the purpose of earning assessable income from investments.

A deduction may not be available on funds you redraw from this loan that is put to other purposes.

BRING FORWARD EXPENSES

Try to bring forward any other deductions (like the interest payments mentioned above) into the 2015-16 year.

If you know that next fiscal year you will be earning less (such as going on maternity leave, going part-time etc), deductible expenses that can be brought forward into the present financial year will provide more financial benefit now than if they are left to fall into the next income year.

An exception for some lucky individuals will arise if you expect to earn more next financial year. In that case it may be to your advantage to delay any tax-deductible payments until next financial year, when the financial benefit of deductions could be greater.

Your personal circumstances will dictate whether these measures are appropriate and we can assist with this.

USE THE CGT RULES TO YOUR ADVANTAGE

If you have made and crystallised any capital gain from your investments this financial year (which will be added to your assessable income), think about selling any investments that are currently sitting on a loss before the year-end.

Doing so means the capital gains you made on your successful investments can be offset against the capital losses from the less successful ones, reducing your overall taxable income.

A similar approach could also be adopted if you have carry forward capital losses and wish to realise some gains at year end.

Keep in mind that for CGT purposes a capital gain generally occurs on the date you sign a contract, not when you settle on a property purchased. When you are making a large capital gain toward the end of an income year, such as selling an investment property, knowing which financial year the gain will be attributed to is a great tax planning advantage.

Of course, with all of the above, tread carefully and don't let mere tax drive your investment decisions – check with this office to determine whether your approach will suit your circumstances.

FINAL REMINDERS

No-one knows your affairs better than yourself, so you will recognise if any of the above tax tips applies to your circumstances. But no-one is better informed as to what is appropriate, or indeed allowable, than your tax agent (and don't forget, any fee is an allowable deduction in the year it is paid).

Every individual taxpayer is required to lodge their return before October 31, but tax agents are generally given more time to lodge, which can be a handy extension to a payment deadline.

Of course, if you're sure you are going to get a refund it's no use delaying, so in these cases it is worth getting all of your information to this office as soon as you can after July 1. ■

Top tax tips for investors

The end of the financial year is not all that far away. To help you to prepare for Tax Time, we provide our top 7 tips for your 2015-16 return. This list is not exhaustive, and we will need to review the items in light of your personal circumstances.

Tip 1: Dividend Income

We will need to see your dividend statements, which will identify the dividend payment date and the type of dividend payment for your Australian company shareholdings (that is, fully franked, partially franked or unfranked). Remember some companies pay interim and final dividends so also provide these statements to us.

Both the dividend payment and the value of the franking credit (if applicable) are included in your assessable income on a receipts basis.

Terminology on the dates may be confusing for some, but we can quickly clear this up for you. Use the payment date rather than record date to determine when you received the dividend. But we do need to determine this for you as sometimes these may straddle two different financial years.

Also franking credits are applied against your gross tax payable as a tax offset and the excess typically refundable where your tax liability is less than the total franking credits (after taking into account any other tax offsets).

Tip 2: Investment-related deductions

Don't forget to tell us about all your investment-related deductions so we can further reduce your tax bill. But remember, these are available provided the expenses are directly related to generating your investment income. Make sure you have all necessary receipts or credit card statements in order to substantiate claims, but don't hand these over to us yet — we'll ask if they're needed.

Investment-related deductions include such things as:

- interest on borrowed funds if you financed your investment

- bank charges for bank accounts where investment income is paid into and expenses are paid from
- management fees or retainers if you are using a financial planner (however, not costs in drawing up a financial plan)
- the cost of running a home office to manage your investments, and
- the cost of investment-related journals.

Further, where you have used your own car for travel related directly to your investment income, such as visiting your stockbroker or attending AGMs, you can claim a deduction for costs incurred. Note the special rules for claiming car expenses (but we can help you with all these claim details).

Tip 3: Hobby or business losses

If you have invested in a quasi-business activity (such as a hobby farm or venture), and you have generated losses this year, you cannot just deduct the loss against your other income (such as salary and wages). Unlike negative gearing on property and shares, you are required to quarantine these losses for later use unless you satisfy specific criteria.

We can apply any such losses to offset against your other income if you satisfy at least one of following four tests:

- assessable income test
- profits test
- real property test
- other assets test.

Also your "adjusted taxable income" must be less than \$250,000 otherwise these losses are quarantined. These rules are complex so contact us if you need help.

Tip 4: Depreciating assets

Immediate deductions can be claimed for depreciating assets that cost less than \$300 and are mainly used to earn your income. Otherwise, we can claim depreciation for you on the asset by using rates prescribed by the ATO. We may need to ask you about the extent of any private use.

Tip 5: Distribution statements

If you have investments in managed funds or stapled securities, we need to review each distribution statement for you as there may be dividends and franking credits, foreign income and taxes, and capital gains and losses shown.

Be aware of foreign taxes paid on offshore income, as we may be able to claim foreign income tax offsets for you (which can be claimed against your tax payable). However, unlike franking credits, if you cannot use them in the current year, you lose them.

Tip 6: Franking credit refunds

If your taxable income is less than \$18,200 this financial year and you receive franked dividends, we can still make a claim for you for the refund of those franking credits. To do this we will most likely help you fill in a *Refund of franking credits* form (this can also be done for previous years if you haven't already asked us to do so).

Tip 7: Membership subscriptions

Make sure you let us know if you want to claim a deduction for membership associated with your investments (you may, for example, be a member of the Australian Shareholders Association). Where you gain investment income, the entire amount of the subscription can be claimed as a deduction as long as the membership is relevant. Otherwise, the deduction is limited to \$42 for each membership.

By all means if you are unsure about any aspect please contact this office. ■



Hiring older workers? The Restart program explained

The Restart program is a wage subsidy paid to employers that aims to assist mature age people participate in the workplace by encouraging employers to take on workers 50 years of age or older.

The full rate of the Restart subsidy is \$10,000 (GST-inclusive), paid to the employer. Mature age job seekers employed for at least 30 hours per week will attract the full rate of the subsidy. Eligible job seekers employed between 15 to 29 hours per week will attract a pro-rata Restart subsidy.

The full rate of the subsidy is paid in four six-monthly instalments:

- \$3,000 at 6 and 12 months of employment, and
- \$2,000 at 18 and 24 months of employment.

An eligible job seeker is someone who:

- is 50 years of age or older
- has been unemployed for six months or more and has been in receipt of any of the following income support payments for six months or more:
 - Newstart Allowance; Parenting Payment; Disability Support Pension; Bereavement Allowance; Widow Allowance; Carer Payment; Special Benefit; Partner Service Pensioners; War Widows; Age Pension; Mature Age Partner Allowance; Wife Pension; Widows B Pension
- does not have any outstanding workers compensation claims against the employer, and
- is not an immediate family member of the employer.

Contact us if you would like further information. ■



SMSFs: Individual or corporate trustee?

Nearly 80% of recently established self managed superannuation funds (SMSFs) operate under an individual trustee structure rather than a corporate trustee arrangement, according to the ATO. We examine the pros and cons of each form of trustee.

BENEFITS OF CORPORATE TRUSTEE STRUCTURE

Asset ownership

Under an individual trusteeship, all SMSF assets must be in the name of all trustees.

Each time a member of a fund with an individual trusteeship dies, retires, loses capacity, leaves the fund or a new member joins the fund, trustees are required to amend the ownership of their investments by notifying all relevant share registries, banks and titles offices.

Complications may arise if your fund has numerous investments – particularly in real estate and shares – because a transfer of the new titles for all assets is likely to require a significant amount of time, effort and money. Trustees must also prepare a deed of appointment and retirement for each incoming and outgoing trustee.

Conversely, when a corporate trustee is utilised, the addition or retirement of a member of the fund requires only notification of a change of directors. The legal title of all assets remains in the company, which continues to act as trustee. All corporate trustees have to do is notify the Australian Securities and Investments Commission (ASIC) within 28 days of the change.

Number of members

According to trust law, a sole member fund, which has also a sole individual trustee, cannot exist. A sole member SMSF must have at least two individual trustees and while the second person does not have to be a member, they do have to be the member's relative and be actively involved in the trustee decisions made in relation to the fund – a disadvantage if a trustee wants full control. Further, the incoming person would be required to sign a "trustee's declaration", which is designed to make trustees fully accountable for their actions and fund compliance.

Under a corporate trustee structure, an SMSF can have an individual who is both the sole member and sole director of the trustee company.

Succession upon death

When an individual trustee leaves a fund or dies, the fund may face administrative difficulties, for example if it is reduced to a single member fund. However, a company has an infinite life span, and therefore the operation of a corporate trustee SMSF can continue even after the death of an individual SMSF member/director. Accordingly, a corporate trusteeship ensures greater flexibility for estate planning as the trusteeship does not change as a result of the death of a member.

Liability of the trustee

If an individual trustee is subject to litigation, their personal assets may be exposed if their right of indemnity against the SMSF is not sufficient to discharge the liability. On the other hand, if a corporate trustee goes into liquidation, only the company's own assets are at risk while the fund's assets are afforded greater protection against creditors.

BENEFITS OF INDIVIDUAL TRUSTEE STRUCTURE

Red tape

Individual trustees do not have to complete ASIC forms in the event of a change in the fund and membership, nor ongoing ASIC annual reviews as corporate trustees do.

A corporate trustee also has to ensure that it adheres with both the constitution of the company and the requirements of the trust deed. While individual trustees must also adhere to the requirements of their trust deed, they have fewer procedural issues to consider as there are more flexible requirements for holding trustee meetings.

Set-up costs and fees

The fund can be less costly to establish if you are an individual trustee as you don't have to set up a separate company to act as trustee. The average establishment fee for an individual trustee is significantly less than that of a special purpose SMSF trustee company.

While establishing a company will be a substantial expense at the start, it will not be a significant ongoing cost. Moreover, ASIC annual company review fees are reduced for companies that have a sole purpose to act as a trustee of a regulated superannuation fund.

Both individual and corporate trustees have to lodge an SMSF annual return and pay an annual supervisory fee to the ATO. On top of that, corporate trustees have to pay an initial ASIC registration fee and a lesser ongoing annual review fee to ASIC.

Other annual costs for both trustees include optional financial adviser and accountant fees and the obligatory auditor fee. Both trustees have to appoint an independent approved auditor to audit the fund each year.

Penalty unit regime

Under the *Superannuation Industry (Supervision) Act*, penalties are levied on the trustee, so each individual trustee can be hit as opposed to one corporate trustee. One way to reduce this risk is to ensure your SMSF does not breach regulations and remains fully compliant.

HAVING REVIEWED ALL OPTIONS, CAN I CHANGE MY CURRENT SMSF STRUCTURE?

Yes, you can. However, bear in mind that as with any change, it will be necessary to amend the trust deed, report the change to the ATO and transfer all assets into the name of the new trustee. It is crucial you remain compliant; talk to us if you require guidance. ■

SUMMARY TABLE OF PROS, CONS AND OTHER DIFFERENCES

	Corporate trustee	Individual trustee
Asset ownership	If members are appointed or cease to be members, that person has to become, or cease to be, a director of the corporate trustee. There is no need for a change in the title to all assets as it remains in the name of the corporate trustee.	If a member is appointed or ceases to be a member, they need to become, or cease to be, a trustee. This will require the title of all assets to be transferred to the new trustee.
Number of members	Sole member corporate trustee SMSFs can exist. An SMSF can have an individual who is both the sole member and the sole director – ensuring full control of the fund.	Sole trustee/member SMSFs cannot exist. A sole member SMSF must have at least two individual trustees where the second person does not have to be a member but they have to be the member's relative and be actively involved in the trustee decisions made in relation to the fund.
Succession upon death	A company has an indefinite life span. A corporate trustee structure can make control of an SMSF more certain in the event of a death/incapacity of a member.	Immediate action must be taken once a member has died to ensure the trustee/member rules are satisfied. See Asset Ownership above.
Liability of the trustee	As companies are subject to limited liability, a corporate trustee enjoys greater protection if a party sues for damages.	If an individual trustee suffers any liability, their personal assets may be exposed.
Red tape	A corporate trustee has to complete ASIC forms, ASIC reviews and adhere with both the constitution of the company and the requirements of the trust deed.	Individual trustees have to adhere to the requirements of the trust deed but do not have to complete ASIC forms in the event of a change or complete ASIC annual reviews.
Set-up costs and fees	Set-up costs for a corporate trustee are more than for an individual trustee. They also have to pay ongoing fees such as an annual review fee to ASIC.	Individual trustees can set up an SMSF at several times less the cost of a corporate trustee.
Penalty unit regime	Under superannuation law, each trustee can be fined so the sole corporate trustee can receive only one fine. There is also scope for penalties levied to be larger for an individual trustee.	Under superannuation law, individual trustees can each be fined in the event of a breach so there is potential for two or more fines.
Minor children members	Minor children members cannot be directors of a company – a requirement of a corporate trustee. However, a specific rule allows a parent or guardian of a minor child member to be a trustee-director in the minor member's place.	Minor children members (under the age of 18) can be a member of the fund if a parent or guardian acts as a trustee on the child's behalf.



Trust essentials

Trust structures and their use can often be misunderstood – we demystify some of the jargon.

WHY USE A TRUST?

Trusts are commonly used to protect assets, as property and other assets that are held by a trust have a level of protection from creditors.

A trust can also maintain an estate until a beneficiary becomes old enough to have legal possession, or isolate valuable assets from a trading company that may be more exposed to litigation, for example. In some cases, trusts can be used to legitimately reduce tax if appropriately structured.

Another spur for trust use may occur if means testing or asset testing for government benefits are likely to figure in your financial future. Trusts can help here with the re-allocation of legal ownership without completely enjoying the benefits of the asset.

The other side of asset protection is a consideration for inheritance. If a prime asset is “owned” by a trust, like for instance a house with pristine beach front, and the trust deed is specific in terms of selling and/or maintaining the beach house, future generations will be able to enjoy the asset and not have it sold off by some spendthrift relative.

HOW DO TRUSTS WORK?

The word used to name these types of arrangements – “trust” – is appropriate. A trust is a legal structure that separates control and legal ownership from beneficial ownership; so that at least one person and/or company agrees to hold and manage assets or property in a way that will benefit someone else (one or more “beneficiaries”).

A trust therefore is a formal structure for an obligation, where beneficiaries place their trust (in the sense of “confidence”) in the controller or holder of assets (called the “trustee”) to manage those assets for their eventual benefit.

There are pitfalls however, and challenges in getting the trust structure right. Asset safety and taxation can sometimes be competing interests, and trade-offs made to take advantage of a trust structure need to be considered. For instance, when selling your primary residence, one of the main requirements for this sale to be tax free is that it is held in your own personal name. This means trusts cannot generally sell a primary residence tax free.

Legal advice is typically required. Speak to us if you think that a trust is appropriate for you and we can point you in the right direction.

ELEMENTS OF A TRUST

Good advice and guidance is of course a primary essential. However the other essential elements required for a valid trust are:

- the trust deed (more below)
- the trustee
- certain beneficiaries
- the trust assets, which are clearly identifiable and capable of being “held on trust”, and
- the obligation in respect of the trust assets referred to above (as spelled out in the deed).

TRUST DEED: THE CENTRAL DOCUMENT

The trust deed establishes the trust and sets out the rules for the governance and operation of the trust, and the powers of the trustee. This will need to be drafted by a lawyer.

The key clauses of the trust deed are those dealing with:

- **The beneficiaries of the trust:** most deeds provide for:
 - primary beneficiaries - named in the trust deed
 - general beneficiaries - typically defined in terms of a class or by their relationship to the primary beneficiaries, and
 - default beneficiaries - who are entitled to the trust's income if the trustee does not make a valid distribution to the primary or general beneficiaries
- **The income of the trust:** The trust deed may define the income of the trust in various ways —for example, for some deeds this might include a clause that equates trust income to “taxable income” (as defined under tax law). In deeds where income is not defined, the income of the trust would ordinarily be according to general or trust concepts. Also, the trustee may have discretion under the trust deed to determine whether a receipt of the trust is income or capital
- **The requirements for the trustee to make a distribution of income:** The trust deed will usually specify that the trustee must resolve or take action to distribute the trust's income by a particular point in time (for example, 30 June) as required by the ATO
- **The “streaming” of income:** If the trustee wishes to distribute income in accordance with the rules, the trust deed must contain provisions that allow a beneficiary to be made specifically entitled to an amount of trust income in its character as a capital gain or a franked distribution
- **The vesting date of the trust:** This is the date that the trust comes to an end and the capital must be returned to the primary beneficiaries. By law, there is typically a statutory vesting date of 80 years.

It is important to note that if the trustee has resolved to either pay or apply an amount of trust income to or for the benefit of a beneficiary, that beneficiary will be deemed to be “presently entitled” to the amount. This may lead to a taxation liability for that beneficiary, even though no money has been handed over. Undistributed income is ordinarily taxed at the top personal tax rate.

TYPES OF TRUST

There are various forms of trusts that may be formed.

Three broad categories include:

- A **fixed trust**, where the share that beneficiaries have in assets and income (which may be proportional or absolute) are pre-determined and “fixed”, leaving no leeway for the trustee to vary the income distribution. Unit trusts are typically fixed trusts as each unit held in the trust represents an entitlement to a certain proportion of the income and capital.
- A **discretionary trust** provides the trustee with a “discretion”, as the name implies, over who receives income or capital distributions from the trust. The discretion must be exercised in accordance with the terms of the trust deed.
- A **hybrid trust** has characteristics of both fixed and discretionary trusts, and can be a unit trust with discretionary distribution options, or a discretionary trust but with certain entitlements that are fixed by the trust deed (for example, a percentage always has to go to a charity). A hybrid trust can be anything that is neither totally discretionary nor totally fixed.

FAMILY TRUSTS

A discretionary or hybrid trust can generally be a “family trust” for tax purposes if the trustee so elects, but distributions need to be restricted to members of a particular “family group” – distributions outside this group will attract tax at the highest marginal rate (including Medicare levy).

Then why elect to form a family trust? There are a number of technical reasons. Two key ones are that beneficiaries of discretionary trusts may not otherwise be able to take advantage of franking credits attached to share dividends received by the trust and passed on to the beneficiaries, and that the trust would otherwise find it a lot harder to use past year tax losses against current year income.

Speak to this office if you need guidance on whether setting up a trust is right for you and the relevant tax implications. ■