

## Small Business Restructure Opportunity

### Overview

Recent taxation legislation has created an opportunity for small businesses to restructure their business affairs without incurring capital gains and income tax from 1 July 2016.

In essence, the legislation creates an optional roll-over where a small business transfers an active business asset to another related small business entity as part of a genuine business restructure of an ongoing business, without changing the ultimate economic ownership of that asset.

The **potential benefits** of restructuring your business affairs can be **substantial** and include **asset protection, income tax splitting, succession planning, business flexibility and a reduction in capital gains tax.**

### Rules

- The rollover applies to any individual, partnership, trust or company transferring its active assets into a different company, trust, partnership or individual but not into a Self-Managed Superannuation Fund;
- One, some or all active assets can be transferred or rolled over into one or any number of other entities which allows the owner to “cherry-pick” which assets should be held and by whom, so as to achieve the maximum benefits;
- Examples of active assets that can be rolled over without creating a tax liability include property, goodwill, licenses, trading stock, plant, equipment, machinery and vehicles;
- The transfer must be for a genuine reason such as to simplify affairs, for asset protection, if the business has outgrown its existing structure or if the initial structure was incorrect. The transfer cannot only be for tax planning, for selling the business, succession planning or extracting wealth;
- Transfer must not materially change the ultimate economic ownership or individual’s share of the ultimate economic ownership;
- The legislation that has been put into effect contains a safe harbour rule whereby the tax office will not challenge the restructure and the transfer will be treated as genuine if no change to ownership, status of asset and private use occurs within three (3) years.

### Example One

A carpenter currently operates his business as a sole trader. He has two children aged 18 and 20 with minimal income and he owns his own home and one rental property.

**Problem:** Current structure provides for minimal income splitting opportunities and exposes his personal home and rental property to risk if he is sued.

**Solution:** Form a family trust and transfer his business assets into this trust with no tax problems.

**Benefit:** Depending upon his income he could save up to \$13,800 in income tax and also reduce the chance of losing his home and rental property if the business is sued.

### **Example Two**

A professional currently operates his business as a sole trader and employs two staff. He has a spouse who works part-time earning \$10,000 and he owns his own home and the business premises.

**Problem:** Current structure provides only limited income minimising opportunities and exposes his personal home and business property to risk if he is sued.

**Solution:** Form a company and transfer his professional business into this company with no tax problems. He may retain his business premises in his own name or could consider transferring this into a Self-Managed Superannuation Fund.

**Benefit:** He can pay himself and his spouse a market salary, make superannuation contributions of up to \$35,000 each, provide both of them with company cars, pay travelling allowances and other minor benefits and leave the remaining profit in the company to pay 28.5% tax instead of the top marginal rate of 49% if applicable. He also reduces the chance of losing his home and business premises if the company is sued.

### **Indirect Problems**

When considering any business restructuring, any potential GST, stamp duty, land tax and licensing requirements need to be taken into account to ensure there are no surprises.

For further information on the above taxation changes and how they may work for your business, please call Enright Holmes Chartered Accountants today on 02 6686 4744.