M G ARTHUR & ASSOCIATES
Accounting • Taxation • Business Services

About Tax

A FRIENDLY TAX NEWSLETTER FROM MANU GUPTA

VOLUME 13, 2013

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Practice News

June 2013 at M G Arthur and Associates is going to be '**Tax Planning Month**'

We welcome our clients to meet up for a comprehensive tax planning discussion, to save taxes for 2013 and set the ball rolling for 2014

For further information please write to amsha@mgarthur.com.au

NEWS POINT

DIRECTORS BEWARE ! Pack Your Bags and Run!

The common understanding is that if you run your business through a company (or company as trustee of your business trust), your personal assets are safe from action of creditors, including the Tax Office. This is called *'The Corporate Veil'* under Corporations Law. If you have given any personal guarantees though, (e.g. to bank, supplier, land lord) your assets would be at risk.

While the Corporations Law does put a director in the firing line if he or she does not perform their duty as a director under the law. Common duties being;

- duty to act in good faith and with care and diligence
- duty to not to make improper use of information or position
- duty to prevent insolvent trading
- duty to avoid conflict of interest.
- duty to maintain company records and accounts and other compliance requirements

Alongside above, the Taxation Law further provides that the Tax Office could make the directors personally liable under what is called *'Director Penalty Notice'* (DPN) regime. Up until 30th June 2012, a director could be made personally liable for his company's inability to pay the PAYG withholdings (wages withheld from employees). Directors then had following choices, to prevent personal liability, within 21 days from the date of notice;

1. pay the amount, or
2. enter into a payment arrangement with the Tax Office, or
3. declare the company insolvent and appoint a liquidator.

Following numerous cases where the directors simply transferred assets (at below market value) and then liquidated their company to avoid personal liability and started new companies (famously known as Phoenix Companies), the government last year made the DPN regime much more stringent. *The following changes, in effect from 30th June 2012, could now add to your personal liability as a director* ;

1. **company debts due for unpaid super in addition to unpaid PAYG Withholding**
2. **if the debt is unreported to ATO for more than 3 months from due date, you are still liability even if the company is liquidated**
3. **you may be liable even if you've recently become a director or resign from directorship.**

This adds to the growing risks a director takes, just by being a director of a company!

TIP! This of course also means that honest directors could be caught and become liable for the debts simply by honest omissions and errors. Common example is when the ATO re-assesses the requirement for PAYG withholding or super on contractors deemed as employees. It is critical that, as a director of a company, you continuously assess your company's or trust's requirements and obligations towards PAYG and Superannuation and ensure they are reported on time, even if unpaid, to ensure you have options available to avoid personal liability. Contact us at the earliest if you have any concerns.

Everything is on the table (You go hungry though!)

With recent acknowledgement of the present government that the budget is deep in the red, budget surplus is now an unrealistic prediction and 'everything is back on the table!'. This could however mean that, ironically, you could go hungry, with *Increased Taxes and Reduced Social Assistance!*

Behold for more taxes to be unraveled in the budget next week. Some possible increases may include;

- Increase Medicare levy by 0.5%
- Reduce pre-tax contribution to super
- Increase tax on superfund income for 'super rich'
- Cut exempt fringe benefits and offsets
- Expand Capital Gains Tax
- Cut R&D and other small business concessions.

TIP! This re-iterates an ever increasing need for you to plan your taxes well in advance. Once you cross 30th June, it is too late already! Six weeks to make a difference to your 2013 taxes. Contact us for a comprehensive tax planning discussion.

Does Your Company Meet ASIC's Requirements of a Registered Office?

A company's registered office is the physical address at which official documents and communications may be sent to, and served on, the company.

The registered office of a company must be open:

- for such hours (being not fewer than 3) between 9 am and 5 pm on each business day; or
- each business day from at least 10 am to 12 noon and from at least 2 pm to 4 pm;

The name of the company must be displayed at the registered office. Additionally, public documents relevant to the company, including corporate register should be available at the registered office for inspection.

A representative of the company must be present at all times when the office is open. It is not uncommon for accountants and solicitors to provide their office as registered office of your company. Penalties may apply if you do not comply with the above requirements.

TIP! Additionally, as a director of your company, you are responsible to update any change in records of the company, including address changes, changes to directors and shareholders etc within 28 days. ASIC applies huge penalties for late declaration.

TIP! We at M G Arthur & Associates offer a composite secretarial package to help our clients to comply with the above requirements. Feel free to contact us for further details.