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PLANNING POINT

TWO CERTAINTIES IN LIFE – DEATH & TAXES

Wise men say there are only two certainties in life – Death and Taxes. It is strange how these two events come together to create havoc in life and after life. For some, death comes with a fortunate warning, giving them the opportunity to set their affairs right before their final journey. For others this would happen without warning. It is only wise if we can learn from the experience of others and prepare for this eventuality.

Christmas break brought to me the loss and sadness of a close family friend and client. This article is a tribute to him for his foresightedness and courage in preparing his financial affairs and family members for his final day with destiny.

Some lessons to learn;

- I. **Will** – After death our assets move to our estate. To distribute it to our beneficiaries, most often, a probate from the courts is required. Without a properly executed Will this could be a far more costly and complicated affair. A properly executed and currently enforceable Will would help the survivors manage the estate far more efficiently and effectively. **An area to discuss with your legal adviser.**
- II. **Insurance** – Life insurance payouts are generally tax free. If the payout goes to ‘non tax-dependents’ through a superfund account, it could be taxed in their hands. But then premiums could be tax deductible in your super fund. **With various options to consider, an aspect to discuss with your insurance adviser.**
- III. **Superfund Benefits** – Super fund balance does not form part of your Estate or Will. The trustee of your super fund can thus, theoretically speaking, pay your super fund balance to any beneficiary he thinks fit. Things to consider;
 - a. Do you have a **binding death benefit nomination**, an authority which ensures who gets the money? Should you pay your death benefit to your estate or to one of your beneficiaries directly?
 - b. Is your **SMSF locked up with non-cash assets** like properties? In absence of alternative strategies death could trigger forced sale of such assets and create Capital Gains Tax issues.
 - c. Does your superfund pay **‘death benefit anti-detriment additional payment’**? This could increase your existing balance by a substantial amount, giving your superfund additional tax benefits.
 - d. Is your **superfund benefit payout taxed**? This depends on your age, age of beneficiary, whether your beneficiary is a tax-dependent (usual your spouse and children below 25 years of age) and whether it is paid out as lump sum or pension. Re-investment strategies and other tax planning could ensure the benefits are paid out with minimum tax.

TIP!

While we cannot change destiny, we can surely do our bit to make it easier and perhaps financially better for our survivors. For strategies to work out maximum anti-detriment additional payment options, re-investment strategies, strategies to cash up assets tax-free and other options please feel free to contact us.

NEWS POINT

ASIC – THE SILENT KILLER!

Similar to Australian Taxation Office's role with regards to the Taxation Law, Australian Securities Investment Commission (ASIC) is entrusted with the task of regulating and enforcing the Corporations Law. Over the years, while ATO has earned a reputation of being fair and considerate particularly for small businesses, ASIC, perhaps under their role of safeguarding the integrity of Corporations Law, have had to toe a much more stringent line.

Setting up a Pty Ltd company while gives the owners a certain level of protection, requires the directors to uphold the law and perform their duties with diligence and care. These include updating any changes to ownership, addresses, officer details etc., with ASIC on time and paying the annual ASIC fee of \$212 on time. Any delays can cost the company heavy penalties. Whether you are a director of a multi-million dollar operation or a small backyard company, you would be held equally responsible.

So how do they affect Small Businesses? Please take a note of the following;

- A delay of up to 28 days in paying ASIC dues or updating information would cost the company \$65 in penalty. Another 28 days and this could rise to \$270.
- While ASIC has a well structured procedure for request for waiver of penalties, waivers are granted in 'exceptional circumstances' where you need to prove that it was ASIC's fault. A fault or oversight by your accountant or ASIC's registered agent is still your fault!

TIP!

Alongside lodging changes and paying fees on time, Corporations Law also requires that the registered office of your company should be open to authorities at certain times every week. It is unlikely that your home address as the registered address would comply with this requirement. For a nominal fee per year we as your accountants can provide you with a registered office service and other ASIC services and help your company stay compliant.

- As per some of their communications, ASIC's fee and penalty waiver provisions seem to be limited because of 'Financial Management & Accountability Act'. One might argue that this sounds like using a Penalty Regime to generate finance rather than to educate the taxpayer. Unfortunately ASIC has to live by these rules.
- In a culture where most government services seem to be spoon fed and setting up a company is literally a child's play, it is but obvious, though unfortunate, that a large number of those who set up a Pty Ltd company fail to understand the real depth of this business structure and the responsibilities that come with it. As a result, there are hundreds of new companies set up each week, hundreds go dormant each week and ASIC is left to manage the mess.
- Perhaps as a management tool, ASIC has a policy of voluntarily de-registering a company if its dues remain unpaid for more than 12 months. Combine this with an oblivious company director who has forgotten to update change of address and has not received the notice and you can end up with a healthy running business which was 'legally dead' days, weeks or even months ago. What's unfortunate is that ASIC doesn't seem to consider it 'a duty of care' to try and access other addresses that might be available for the company with the Tax Office or other government agencies before they take such a strong step!

TIP!

Our efforts to raise their attention toward such an inflexible and to some extent inconsiderate policy regime have not heeded much response. So if you have Pty Ltd companies whether as a business entity or a trustee of a family trust or super fund – cough it up and make sure you lodge all changes and pay their dues on time. Failing this, you may end up with a rude shock that your business entity is 'No More'! It could cost you tens of thousands of dollars and visits to the Supreme Court to bring such a company back to life.