Welcome to our latest e-newsletter.
In this issue we hand the reins over to our friends Donna and Rod at Piper Alderman Lawyers. They discuss the benefits of a testamentary trust, and why having one is a must for anyone who wants to make sure their beneficiaries are looked after in the best way possible. We also look at the expansion of the Tax Office's third party reporting measures, and the Government response to the Murray Inquiry and its implications for small-medium businesses.

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Protecting your legacy - Testamentary Trusts

In the current economic climate, business owners can be forgiven for concentrating on the day to day operation of their businesses while neglecting to consider how their business and personal wealth should and can be transferred to the next generation in the event of their death or incapacity. It is important in busy times to not only focus on your business activities but to also think about your own personal succession planning.

As the value of your individual personal assets increases it is important to ensure that adequate strategies are considered and implemented to provide you and your family with certainty and to protect the personal wealth that you have accumulated during your lifetime.

In the legal and accounting industry, this is commonly referred to as **estate planning**. Estate planning involves the arranging of assets and circumstances to ensure that an individual during his or her lifetime, and his or her beneficiaries on death, derive maximum use and enjoyment from assets with minimum costs, tax, duties and disputes. Good estate planning involves more than just a will. It encompasses tax and asset protection issues and how best to avoid costly disputes, particularly for those operating family businesses or having more complex family arrangements.

Testamentary trusts are increasingly recommended when considering estate planning issues to protect the transfer of an inheritance to the next generation and minimise the taxation impact upon beneficiaries which may not be available in a “standard” will.

A testamentary trust is a trust that is established in your will and only comes into operation upon your death. In effect, your personal assets are transferred into a testamentary trust for your beneficiaries rather than being distributed to them personally. These sorts of trusts are useful to protect inherited assets and provide potentially significant tax effective income splitting options for the beneficiaries of your will.

For example:

1. There are income taxation advantages to your beneficiaries who may already be in high marginal tax brackets as testamentary trusts allow the income earned from the trust assets to be split or divided between a range of recipients (such as children, grandchildren and in some cases their spouses). This provides a significant reduction in the amount of tax that would otherwise be payable particularly when beneficiaries are under the age of 18 years as they are treated as adults for tax purposes. There can also be capital gains tax advantages to your beneficiaries.

2. Assets transferred under testamentary trusts can be quarantined against claims by creditors and bankruptcy as legal ownership is held by the trustee of the testamentary trust and not the beneficiaries.

3. Testamentary trusts can provide asset protection for beneficiaries who are self-employed, are professionals or are in business and who may be at risk of legal liabilities. Generally, these beneficiaries prefer that their inheritance is held in a trust environment rather than receiving it in their personal name.

4. Testamentary trusts can also provide some level of protection of assets from disputes arising from family breakdowns including financial property settlements between spouses and spouses of children. However, to ensure greater certainty it is recommended that consideration is given to not only the appropriateness of trustees but also the number of trustees appointed to control the testamentary trust.

5. There are also advantages where a beneficiary is disabled, a spendthrift, vulnerable or suffering from an addiction.

6. Testamentary trusts are flexible and provide the trustees and beneficiaries greater choice and discretion to deal with the income and capital of the trust in whole or in part. They assist in the preservation of the capital for the benefit of future generations which is not usually the case with a stock standard will. Testamentary trusts are designed to last for decades as they can provide for future generations, however, the trust terms can allow your beneficiaries to vest (or end) their trust at any time providing them with some flexibility in managing their inheritance.

Establishing a testamentary trust does add a certain level of complexity to your will and it is important to note that there will be annual costs in maintaining the trust for the beneficiaries in the future such as preparing annual tax returns. However, the overall advantages of testamentary trusts to your beneficiaries are likely to significantly outweigh any of those ongoing costs. Each testamentary trust is different and is tailored to suit each individual's particular circumstances, personal and business interests, the circumstances of their beneficiaries and their estate planning wishes.

If you are considering establishing testamentary trusts in your will it is recommended that you obtain expert advice with respect to your specific circumstances from an adviser who is experienced in drafting, constructing and managing testamentary trusts.

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'Big Brother' is watching closer than ever

The Tax Office continues to increase its compliance activity every year. Although Budget cuts have been a pretty familiar story recently, it's difficult to remember a year where there hasn't been an increase in audit funding announced. One increasingly expanding component of that activity is third party reporting, and the Government has recently implemented a couple of measures to further enlarge its scope.

The verbosely named *Tax and Superannuation Laws Amendment (2015 Measures No 5) Bill 2015* was recently introduced into Parliament. It makes amendments in a number of areas that were announced in this year's Federal Budget, and includes additional measures for third party reporting.

It will require a range of third parties to report information that could reasonably be expected to have tax consequences to the Tax Office. These include Government agencies reporting on grants and the transfer of real estate, listed companies and unit trusts reporting on transactions relating to their shares and units, and

Federal Government accepts most recommendations of Murray Inquiry

The Federal Government recently released its response to the Murray Financial System Inquiry, accepting most of its recommendations.

We featured some of the implications of the Inquiry's initial report in a previous issue. We noted there too that the Murray Inquiry was the most recent instalment in a periodic set of reviews into Australia's financial system.

The Campbell Report released in 1981 led to the floating of the Australian Dollar and the deregulation of the financial sector, while the Wallis Inquiry in 1997 resulted in the establishment of APRA (the Australian Prudential Regulation Authority) and ASIC (the Australian Securities and Investments Commission).

The implications of the Murray Inquiry for Australian small and medium businesses are relatively few. The Government has agreed to allow the ACCC to regulate excessive credit card surcharges, to ensure that they don't exceed the reasonable cost of providing credit card facilities. This is great news for consumers and small businesses who often pay expenses using credit cards.

administrators of certain payment systems disclosing their electronic business transactions.

In a more concentrated measure, the ATO has also launched a data matching program looking at online sellers, in particular those using eBay. It will acquire data from eBay on the transactions of between 15,000 and 25,000 sellers and match that against its own records and information disclosed by those sellers in their income tax returns.

These measures are in addition to a range of already existing reporting requirements. An obvious one, by way of example, is the way in which the ATO matches the interest recorded in a tax return against what is reported by the banks. They highlight again the need for good record-keeping and accurate reporting. Increasingly, there is nowhere to hide for those who don't give an accurate account of their income and expenses in their income tax return.

Record-keeping is particularly important. Once the ATO makes an amended assessment, the onus is on the taxpayer to prove that it is incorrect. There have been numerous recent cases that demonstrate that even where a taxpayer may have a reasonable explanation for discrepancies, the Commissioner's assessment of the amount of tax owing will stand in the absence of any hard evidence to the contrary. Further, in many cases there are often extremely harsh penalties payable on top of the additional tax assessed - sometimes in excess of 50% of the outstanding tax

The Government has also agreed to develop a regulatory framework for so-called 'crowd-sourced' equity funding, which will allow businesses to pursue alternative sources of credit beyond the traditional lenders.

Protection from unfair contract terms will also be extended from consumers only to include small businesses. In essence, this protection allows clauses in contracts (or even the entire contract itself) to be struck down where they are considered to be unfair. This may occur where there is a significant imbalance of power between the signatories, or where a clause is considered unnecessary. An example might be where one party has the right to terminate the contract while the other does not.

The Government's response seems to have been silent on the Inquiry's suggestion that dividend imputation may no longer be appropriate in Australia.

In addition, the Government has rejected the Inquiry's recommendation that borrowings in Self-Managed Super Funds (SMSFs) be axed. This is welcome news for small-medium business owners. While there is certainly a risk from more speculative investors (and the Government has said it will continue to monitor these), borrowing in order to buy property is a legitimate and low-risk tool for people in business to structure their affairs better and protect their assets.

Aside from this, most of the other recommendations relate to the financial sector as a whole. The recent increase in home mortgage rates, for example, has been (at least in part) spurred by the Government's call for banks to reduce mortgage risk exposure.

amount.

We encourage you to remember that it's not just about reporting accurately, but also making sure you have the records to back it up.

The recommendations of this review are much less about radical reform and more about ongoing refinement and improvement. With a new leader the Government seems more willing to work with cross-benchers on achieving their goals, and so it is likely now that many of these measures will find their way into legislation.
