

Simpler Tax System for All – not necessarily so

By Albert Gigl, Managing Partner, MW Partners Chartered Accountants

The much-awaited Australian Taxation Office's "Henry Review" may have been released by the time you read this article. There is the expectation that this review will result in much simpler administration of Australia's Taxation System, including the possibility some people with relatively simple affairs may not need to lodge an income tax return.

Please excuse this writer for being skeptical, but from my experience the words "simple" and "taxation" rarely go together. Don't get me wrong, I applaud the Government for its continuing review of the taxation system, but I believe it is not possible to achieve any substantial or meaningful simplification of the taxation system where it relates to dentists as either contractors (ABN) or business owners.

Irrespective of any changes that may flow from the Henry Review, these issues still need to be considered by dentists who contract out their services using an ABN, operate a dental practice or are considering the purchase of a practice:

1. Type of Entity

A business may operate under various guises and, for dentists, it is most commonly as sole trader, company or discretionary (family) trust. The main considerations in choosing a business structure are flexibility, protection of assets and earning capacity, and tax effectiveness. You will notice that tax effectiveness is listed last as it is more important to run a practice efficiently and profitably, than to concentrate on saving every last dollar in tax.

As a general rule, the use of a discretionary trust provides the most flexibility, asset protection and tax effectiveness for the operation of a dental practice, but in many cases is not recommended because of its complexity. Frequently, first time practice owners are so overwhelmed by all the administrative requirements of running a practice that it does not make good business sense to add a further layer of complexity by operating through a trust just to, potentially, save a few tax dollars. This situation will not change under the Henry Review, as trusts will retain their complex nature.

2. Division 7A

Almost two years ago, I wrote an article for this newsletter regarding Division 7A, which relates to loans and payments made

by a company to shareholders or directors. I explained that the Tax Office would treat the loan/payment as assessable income to that person, rather than would normally be the case, where loans are considered tax-free items. At the time, the Commissioner of Taxation agreed that the laws and regulations surrounding Division 7A were so complex it was possible for people to be caught out by an "honest mistake or inadvertent omission" and, therefore, the Tax Office would allow mistakes to be rectified without penalty, provided it was done by 30 June, 2008.

Most people would think that if the laws (relating to Division 7A) were so complex that the Tax Office needed to come forward and allow people to fix accidental mistakes, then surely this is an obvious area for simplifying the laws.

So, what has happened since 30 June, 2008? The rules have been expanded and made more complex so that not only companies are affected, but trusts as well. Dentists who operate their practices by utilising **both** a company and trust structure should seek confirmation from their tax advisor that they are not affected.

3. Employment Taxes

There has been a significant increase in the level of audit/compliance activity being conducted in the area of employment taxes over the past year. Employment taxes are those which arise because a business has employees and includes Pay As You Go Withholding (PAYGW), Fringe Benefits Tax (FBT), Superannuation, Payroll Tax and Workcover.

As wages are usually one of the largest expenses of any business, the relevant revenue/government authority may become concerned when it believes a business cannot pay its employees wages and associated taxes correctly.

It is quite often the case that a routine review that uncovers an error in the payment of employment taxes by the business will result in further audit investigation of that business's financial affairs. This may also extend to taxes not related to employment, such as income tax or GST. From the point of view of the revenue authority, it considers that if a business cannot get payments correct, it may well be making mistakes



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in other tax areas? The simple message is that business operators need to take employment issues seriously (even if the practice only employs a receptionist and dental nurse) and ensure that all employment obligations are met.

Also, the Fair Work Act 2009 and National Employment Standards were introduced from 1 January 2010. These laws place further obligations on employers and it is essential that all practice owners are aware of and comply with these changes

MW Partners deals with both simple and complex tax matters for dentists on a daily basis. We pride ourselves on being able to explain taxation issues in easy to understand terms. Because no-one's financial circumstances are exactly the same, the tax laws affect everyone differently and a tailored approach is usually required to manage your tax affairs most effectively.

If you would like to discuss your financial or tax affairs and are a member of the ADAVB, your first consultation is completely free of charge. Please call **03 8825 5400** to make an appointment.



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