UBTA Bulletin
Jan/Feb 2022

Understanding the impact of your business decisions

You will learn

- A Possible Scenario in Property Development – Risks of Property Development are most easily allayed before the deal is made
- Hidden Traps with Payroll Tax
- The Monthly Accounting Cut-off and How To Bring It Forward

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A Possible Scenario in Property Development

Lincoln Thomas
Manager

Picture this

You have heard a few success stories about friends and acquaintances making nice profits in property development without too much time and effort invested. Maybe you have discussed the idea with some other family members or colleagues and have agreed to go in together and split the profit between yourselves. You look out for a commercial property opportunity, or a house on a large multiple hectare lot that you would be able to buy and then plan to subdivide in the future to retire debt. You keep your eye on the market, and an opportunity comes up that is exactly what you are after. You know you have to jump quickly to secure the property.

What do you do?

You are short on time in securing the property, so you take the money from wherever is available, putting ownership under a trust or a partnership structure as seems most logical, but not necessarily reflecting the way you have agreed to distribute profit. You register for GST as per the requirements of the law.

What could go wrong?

Without thorough preparation and planning from an accounting and legal point of view, several issues could arise.

1. Disproportionate profits & tax liabilities

The owner of the property is the one who will realise the profit. You cannot divorce the owner of the property with a potential 'developer' of the property. Getting the ownership structure wrong could cause unexpected tax outcomes for one particular party.

2. Capital vs Revenue Account

There is always the question whether the profit will be on 'Capital' or 'Revenue' account. The burden of proof is always on the taxpayer to prove this is a capital gain and not revenue.

What should have been done?

Discussing with your accountant or advisor before beginning the process (perhaps even before the land becomes available) is the first step to avoiding unplanned and suboptimal outcomes particularly relating to tax payable and ownership.

Other important aspects to be aware of are:

1. If you have set up trusts or partnerships, do you have a signed partnership agreement in place?

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A Possible Scenario in Property Development... continued

2. Creating a bank account under the name of the owner of the property and having that entity pay for the purchase is best practice.

In a recent Western Australian case, *McCarthy v FC of T, Administrative Appeals Tribunal of Australia, 28 May 2021* resulted in a loss by the taxpayer. The property owner and subdivider was a bookkeeper who undertook a property development exercise and attempted to claim the profit on capital account. Despite the taxpayer having never done property development before, the ATO won the case and the proceeds were taxed on revenue account. The ATO had done their research and learnt that the taxpayer had made enquiries with councils, banks, and real estate agents regarding subdivision prior to purchase of property, showing that the intention was to make a profit.

BEWARE: The ATO are being increasingly aggressive in considering these gains as revenue not capital for tax purposes.

To give your accountant/adviser the best chance of creating the ideal scenario, it is always easiest to offer advice before any purchases are made. Even if it is a quick decision – a phone call to your accountant could save you a big problem later down the track. Second best is discussing with your adviser AFTER you have made the purchase but BEFORE you have made the profit. Once the transaction has completed, there is not a lot that can be done to optimise the structure of the transaction.

Tax Box

Fuel Tax Credits

Fuel tax credit rates have increased from 1 February 2022 in line with fuel excise indexation (as they do every 6 months). Ensure you use the new rates to maximise your claim on your next BAS.

It may also be a good time to review your entitlements if you're not already part of the regime. For businesses managing a vehicle fleet, the Fuel Tax Credits system can enable businesses to claim full or partial credits for the fuel tax (excise or customs duty) that's included in the price of fuel. The rates are dependent on the type of equipment, fuel and usage however you can visit the ATO website or reach out to UBTA with any queries.

Increased ATO Auditing on Discretionary Trust Payments

The ATO is cracking down on tax avoidance via discretionary payments through family trusts made to other family members with the intention to minimise tax, unless there is a valid commercial reason for making the payments.

We will work through any potential impact on your discretionary trust as part of assisting you with finalising your 2022 FY Trust distribution resolutions.

For more information on s.100A reimbursement agreements and how they affect you, contact your trusted adviser at UBTA.

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Hidden Traps with Payroll Tax

Phil McNaughton
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What is Payroll Tax?
Payroll tax is a State tax on wages paid or payable by an employer to its employees (including deemed employees) when the total wage bill of an employer exceeds a threshold amount.

Since 2007, all States have harmonised their payroll tax legislation to a greater or lesser extent. The payroll tax rate and the thresholds for the FY22 financial year vary between the jurisdictions as summarised in the table below.

What is included in taxable wages?
Taxable wages are wages that are paid or payable by an employer for or in relation to services performed by an employee in the relevant State. More complex requirements will apply if wages are paid in relation to services performed by the employee in two or more States.

Wages are defined broadly as:

- Remuneration, salary, commission, bonuses, or allowances, and
- Amounts under prescribed classes of contracts to the extent to which payment is attributable to labour
- Directors' fees and remuneration
- Amounts that are deemed wages under the contractor provisions (see below).
- Fringe benefits
- Superannuation contributions.

Potential trap 1 – Contractor and deeming provisions
Broadly, the contractor provisions operate to deem an employment relationship for payroll tax purposes where there is a relevant contract with amounts paid or payable to the contractor deemed to be wages for payroll tax purposes.

A relevant contract does not include a contract of service (i.e. an employment contract), as well as certain other contracts, for example:

- Supply of services by a person who ordinarily performs services of that kind to the public generally
- Of a kind ordinarily required for less than 180 days in the financial year
- Provided for a period (or periods) in total that do not exceed 90 days in a financial year, providing certain other requirements are satisfied
- Where the contractor supplies services which are performed by 2 or more persons employed by the contractor.

Potential trap 2 – Grouping provisions
These are directed at combating a scheme by employers, being the separation of what is, in reality, one business, into several businesses so as to multiply the benefits of the payroll tax free thresholds.

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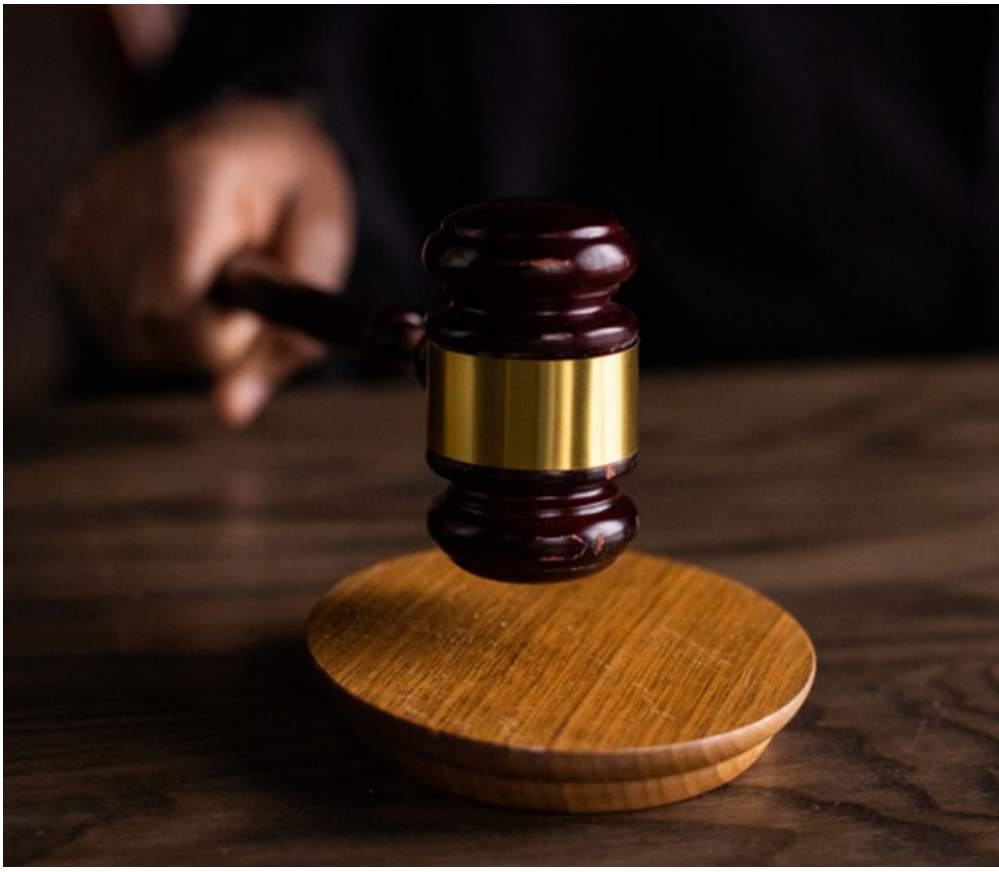

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Hidden Traps with Payroll Tax... continued

The grouping provisions do this by treating the various businesses as a single economic entity for payroll tax purposes with responsibility for lodging and paying payroll tax on behalf of the group resting with one business.

Grouping provisions cast a wide net in terms of the factual scenario in which businesses will be grouped:

- Where corporations are related. For example, if the corporation holds more than 50% of the shares in another corporation
- Where employees are shared between the businesses (e.g. bookkeepers, receptionists)
- Complex provisions also group trading trusts and other business structures.

Period of review in the event of audit by State Revenue

States will typically go back up to 5 financial years in terms of issuing reassessments of payroll tax and collecting any payroll tax liability including interest and penalties for prior years. Some States have provisions for reduction of penalties, if a voluntary disclosure is made at the commencement of the audit, or prior to any audit or review.

State	Payroll tax rate	Payroll tax annual threshold
New South Wales	4.85%	$1,200,000
Victoria	4.85% 2.02% for regional Victorian employers	$675,000
Queensland	4.75% For employers with AU taxable wages less than $6.5million	$1,300,000
South Australia	0%-4.95% scaled rate	$1,700,000
Tasmania	4%	$1,250,000 to $2,000,000
Western Australia	5.5% up to <$7.5 million wages and >$950,000	$950,000

The Monthly Accounting Cut-off and How To Bring It Forward

Lyndon James
Manager UBTA UK

Fast turnaround of monthly management accounts is something that everyone aspires to, and very few manage to achieve in a satisfactory manner. We hear all sorts of reasons:

'My suppliers haven't sent in all of their invoices yet'

'WIP takes days to calculate'

'Operations keep us waiting'

Timely management accounts are more useful to management, cost less to produce, and ultimately free up time for a forward-looking finance function.

Major corporates get this right. The average turnaround time is 5 days; a 9 day turnaround would be regarded as slow. Some exceptional companies have slimmed the whole process down to 1-2 days after month-end, and some retail companies are even running a daily P&L that is meaningful for management. So why do smaller, simpler, owner-managed business struggle to turn management accounts around in a timely way?

In our view, getting timely management accounts is a mindset issue (how much do we want to do this?) and an operational issue (what can we do to remove the bottlenecks and get a faster process?) The amount of work to be done every month is a known quantity, but often the expectations aren't.

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The Monthly Accounting Cut-off and How To Bring It Forward... continued

From our experience working with clients, we have identified three key points that are needed to get a regular flow of management information on a timely basis. Without any of these three points, it will be difficult to get results.

1. Driven from the top

The Managing Director needs to be the driving force in achieving a disciplined month-end cut-off. It's not good enough to just set a goal of 5 days and leave it to the Finance Manager. Producing good management accounts requires inputs from all areas of the business, and without the direction and priority from the top of the organisation, the requests from finance will always take a back seat for other departments. The MD also needs to set priorities and remove obstacles that are blocking the production of timely management accounts, in a way that a purely finance/sales/operations-oriented mindset will not achieve.

2. This requires everyone

It is very rare that monthly accounts do not require any input from elsewhere in the organisation. Expectations should be clearly explained by the finance manager and understood by other members of the organisation that are required to provide inputs. In addition to this, the entire finance team needs to be aligned to the month-end process, with clear rules and deadlines understood and followed. If you use an external accountant for your monthly reports, ensure they are included in the plan.

3. Systematically remove the obstacles

Hold a team workshop to map out the whole monthly reporting process and what the obstacles are for each task. Work on a plan to cut down the time and get buy in from all the necessary staff members and departments. Here are a few examples of typical obstacles to overcome:

- Late Supplier Invoices – Train your suppliers to get their invoices in within 2 days of month-end. Close the purchase ledger at the end of day two and accrue for any invoices you expect but haven't yet received.
- Start before the end of the month. Reconcile the bank weekly, or even daily. Close off sales on the last day of the month, not several days later. Post the payroll journal as soon as the wages are prepared – normally several days before month-end. Run the depreciation several days before cut-off – the depreciation of any new assets in the last day or two of the month will not be material.
- Keep on top of the daily grind and don't let the work pile up. Spread the load so that no single individual is the blockage. Having the data entry largely completed ahead of the month-end will reduce the pressure of the month-end procedures and allow a focus on tying up loose ends and checking of accuracy.
- Instil a discipline to ensure that staff expense claims are submitted by 9am on the first day of the following month.
- Hold a WIP meeting before month-end with project managers, to get on top of the expectations of each project by month-end – this will enable rapid estimation of WIP values once the purchase ledger is closed for the month.

Ultimately, a rapid month-end close is a team effort, and a company-wide discipline, that is well worth the effort. Proper planning, team engagement and process mapping will streamline the operation and make for enhanced quality and timeliness of management reporting, which will positively impact on strategic decision making.

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