Please find following our 2023 tax planning guide outlining year-end strategies for small business operators as well as some of the more important areas of ATO focus which should also be considered before year end.

Please feel free to contact Adcock Accounting if you would like any further information or would like to schedule a meeting to assess your tax planning opportunities.

Tax Planning Strategies for Small Business - 30 June 2023

With another financial year end fast approaching now is the time to not only consider tax planning opportunities that could result in tax savings but also ensure you are across legislative changes and reforms that could impact your business and that need to be considered as part of the tax planning process.

The tax planning considerations and opportunities available are numerous and would depend on the type of business and entity structure used. For best results, take a structured and proactive approach. Involve your accountant in the process who can help tailor the approach and put some perspective on what is important for you this year.

One of the first steps your accountant will do is estimate your taxable income for the year. Knowing your likely tax position will allow a targeted approach in constructing a plan and choosing the right strategies that can maximize benefits from the tax planning process.

Strategies Before Year End

The following are some of the more common strategies that should be considered but don't forget to also give some thought to your cash flow requirements. Most of these strategies, even though they will result in tax benefits, will impact your cash flow.

Delay the timing of assessable income – consider delaying issuing invoices to your customers until after June 30. Where appropriate to do so, dating contracts for the sale of assets after June 30 will also defer timing of the derivation of the income from the sale until the next financial year.

Prepay Expenses - if you are a small business entity (aggregated turnover less than $50m) you can prepay expenses for up to a maximum of 12 months to bring forward the deduction.

Asset acquisitions – if you need new assets consider bringing forward the acquisition before June 30 to get an immediate deduction under the temporary full expensing method which ends on June 30, 2023. The concession also applies to secondhand assets and the asset must be installed and ready for use prior to June 30.

Employee superannuation – employee superannuation outstanding at year end, even though incurred and a liability, is not a tax deduction unless it is paid before year end. Given it needs to be paid before 28th July the following month anyway, paying it before year end will bring forward the deduction. Note the payment needs to be processed by the super fund prior to June 30 so pay well before June 30 to allow for this.

Superannuation for owners – consider maximizing your own superannuation contributions. The concessional superannuation contribution cap for 2023 is $27,500.

Other Considerations

Other considerations discussed below will depend on the entity structure you use to operate your business and hold your assets but are also important from the point of view of minimizing the risk of non-compliance with newly introduced ATO measures and guidelines.

Trusts

The ATO are now taking a much more aggressive approach in targeting and assessing non-compliance, especially in relation to trusts.

Trustee Resolutions - if you use a trust in your business structure or use one to hold assets/investments you will need to have a trustee distribution resolution done before June 30. This is important to ensure beneficiaries are made presently entitled to income by way of a properly drafted resolution in accordance with the trust deed.

Not having an effective resolution done could result in the trustee being assessed on the income of the trust at the top rate of tax.

Reimbursement Agreements - there has been considerable focus from the ATO on distributions to beneficiaries who don't receive any economic benefits. Where it has also been agreed that another person will benefit from the distribution and that agreement is made with the purpose that someone will pay less or no tax as a result may well receive closer attention from the ATO.

A typical example being targeted is distributions to adult children to save tax but who don't receive any economic benefits from the distribution. Section 100A of the ITAA 1936 can apply to these "reimbursement agreements" to assess tax on these distributions at the top marginal rate.

While section 100A is an anti-avoidance provision that has in fact been around for a while, the ATO have recently released guidance on how they intend to apply the legislation both retrospectively and in future. The issue being their intentions have changed considerably and we are likely to see a lot more audit activity in this area.

As a positive the guidance and ruling released by the ATO provides some clarity on how they view the application of S100A and how they intend on assessing the risk level of taxpayer's who could be impacted the legislation.

Given this increased focus from the tax office, it is highly recommended you talk to your accountant and seek professional advice to ensure the risks of non-compliance are mitigated properly.

Companies

Loss Carry Back - the temporary loss carry back rules were legislated to provide cashflow support to companies in a tax loss position as a result of the Covid-19 pandemic. They were also introduced to encourage investment and to benefit companies finding themselves in a loss position due to applying the immediate deduction for the purchase of assets under the new measures allowing a greater deduction for the instant asset write off.

The rules allow companies that incur a taxable loss in any of the 2020, 2021, 2022 and 2023 years to be able to carry back that loss to an earlier year where the company had a tax liability. The losses can be used to offset tax liabilities incurred in previous years but cannot be carried back earlier than the 2018-19 income year. The offset cannot be claimed until the tax return for the loss year is lodged.

From a planning perspective it would be important to consider these rules if contemplating the purchase of assets before June 30 2023 that could leave the company in a loss position. Rather than having to carry forward the loss to offset future revenue the company could receive an immediate benefit upon lodgment of the company's 2023 income tax return where the company had incurred tax liabilities in any of the previous years from 2018-19 onwards.

Division 7A - companies that have made loans to associates such as directors and shareholders in the current year or in previous years need to consider the application of the Division 7A provisions before year end. Not complying with the provisions can result in the payment/loan being treated as a dividend with unintended tax consequences.

Before year end there could be a number of potential opportunities to ensure compliance with the provisions as well as reduce the impact the provisions can have in having to meet future loan repayments and the payment of interest.

Professional firm profit allocation

Another target area for the ATO is the allocation of profits within professional firms. Examples of professional firms include accounting, architecture, engineering, financial services, law, medicine and management consulting firms.

The Australian Taxation Office has been closely scrutinizing profit allocation arrangements entered into by practitioners in professional firms for many years and has recently finalized its Guideline *PCG 2021/4 Allocation of professional firm profits – ATO compliance approach*, after suspending the previous 2015 guidelines.

The ATO is concerned about arrangements involving taxpayers who redirect their income to an associated entity from a business activity, which includes their professional services, where it has the effect of significantly reducing their tax liability.

The ATO may apply the general anti-avoidance provisions to schemes or attempts to alienate amounts of income flowing from their personal exertion.

The ATO's guidelines enables an individual professional practitioner (IPP) to:

- Determine the level of risk regarding their profit allocation arrangement
- Determine the level of engagement they can expect from the ATO, and
- Decide whether to contact the ATO to discuss the arrangement or apply binding advice.

Professional practitioners that haven't already considered these guidelines would be well advised to consider them as part of their year-end tax planning.

The above discussion outlines what we believe are the more important considerations in carrying out year-end tax planning for small business operators this year. However, it would be highly recommended that you contact Adcock Accounting to provide a personalized assessment of your tax planning opportunities as well as considering your risk of non-compliance to the new ATO measures and guidelines.

This advice is general in nature and has been prepared without taking into account your particular financial circumstances, needs and objectives. Before making any decision, you should assess your own circumstances and seek professional advice from Adcock Accounting or your taxation advisor.