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# Let's chat

State Taxes (QLD Focus) Refresher – August 2024

With:

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*Information provided is general in nature; precise application depends on specific circumstances*



# Overview

- General refresher on State taxes (with a QLD focus)
- Not 101 but not advanced – a reminder of issues to watch out for (but not all issues)
- Intentional lack of legislation quoted in detail
- Payroll tax (not Australia largely uniform except for WA)
- Land tax (QLD focus)
- Stamp duty (QLD focus)

# Payroll tax – Employee v contractor



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- Contractor payments fall under separate rules (discussed below)
- Classification based on totality of relationship/legal documentation, not mere label
- Comprehensive written contracts will hold weight unless legal basis to look beyond terms of the written agreement (i.e. sham arrangements)
- Agreement called independent contractor arrangement but reflective of employee relationship will need to fall under employee rules
- Read the contract
  - If there is no contract, then what?
  - Health professionals?
- *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* [2022] HCA 1 and *ZG Operations Australia Pty Ltd v Jamsek* [2022] HCA 2 – employment law case
- Last payroll tax case on point - *Universal Supermodels Pty Ltd v Commissioner of State Revenue* [2019] QSC 257

# Payroll tax – classification of payment



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- Whether payments are wages, director fees, third-party fees, dividends 'etc' – i.e. not appropriate identification and naming
- Substance over form taken
- Note:
  - Wages include 'an amount paid or payable by a company by way of remuneration to or in relation to a director of that company' - Payroll Tax Act 1971 (QLD), definition of "wages" in Dictionary in the Schedule
  - Anti-avoidance provisions - Payroll Tax Act 1971 (QLD), s 51
- *Novus Capital Ltd v Chief Commissioner of State Revenue* [2018] NSWCATAD 72
- *B & B Stevenson Pty Ltd v Chief Commissioner of State Revenue* [2018] NSWCATAD 103

# Payroll tax – classification of payment



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- Note Employee Share Scheme treatment in payroll tax different realm from income tax rules
- Important understood what payments are for. E.g. in context of health professionals:
  - ‘Contractor payment’
  - ‘Return of money to Doctor’



# Payroll tax – contractors

- Contractor payments are not exempt from payroll tax
- Differs from wages in that exemptions may be available:
  - 180-day/90-day exclusion
  - 2 or more person exclusion
  - Genuine contractor exclusion...etc
- Various payroll tax rulings
- Important to identify if a contractor or employment relationship exists
- Need to substantiate evidence if claiming any exemptions
- Note contractor provisions worded to capture someone providing services for the benefit of another person's business – the wording is broad (as health professionals have recently noted)



# Payroll tax – grouping

- Grouping payments under a single payroll tax threshold
- **All group members jointly and severally liable for payroll tax debt.**
- Groupable via:
  - Related bodies corporate
  - Common control (even indirectly)
  - Common employees
- Two groups can also be combined into a larger group



# Payroll tax – grouping

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# Payroll tax – grouping

- Discretionary trusts can easily bring other entities into the group:
  - Payroll tax provision stating **any** potential beneficiary is deemed to hold a controlling interest in the discretionary trust
  - Consider most discretionary trusts that allow any trust/company to benefit
  - Consider the grouping provisions allow any individual to control the discretionary trust
  - Do other family members run businesses?
  - *Smeaton Grange Holdings Pty Ltd v Chief Commissioner of State Revenue* [2016] NSWSC 1594
- Common employees is another sleeper but can be ignored if the businesses are truly separate:
  - Different if the common employee is the receptionist



# Payroll tax – grouping

- Intra-group transactions can be double-counted
- Even entities that are ‘passive’ can be grouped – and this is relevant as each entity is jointly and severally liable for the debt



# Payroll tax – grouping

- Possible to degroup via an exclusion order
- Requires submission to explain why the entities should not be grouped
- Need to show a lack of connection in the businesses but note:
  - Case of hotel entities linked due to loans between them and a common accountant
  - Case of bars and clubs linked due to the ordering of stock jointly in order to receive a lower fee
  - Case of tyre retail stores linked due to occasional specials that applied between the group (despite different persons controlling different stores) as well as a general branding
- Possible to degroup with a common controller, but it's up to the submission



# Payroll tax – employment agency

- Note the employment agency contract provisions:
  - ‘a contract, whether formal or informal and whether express or implied, under which a person ( an “employment agent” ) procures the services of another person (a “service provider”) for a client of the employment agent.’
- Could also apply to labour entity arrangements between related parties



# Land tax – advisor beware

- Stay on top of land tax rules if advising
- *Land Tax Act 2010* (Qld), s22A – inserted on short notice in 2016/2017 due to a prevalence of trust splitting to structure land tax
- Will the 4 co-owner limit change?
- Using a single trustee company?
- Have you considered whether Part 8 – Avoidance schemes apply?
  - This part applies if—
    - a person (the avoider) has obtained, or would apart from this part obtain, a land tax benefit from a scheme started to be carried out after the commencement of this part; and
    - taking into account the matters mentioned in section 68, it is reasonable to conclude that a person, whether alone or with others, who entered into or carried out the scheme did so for the sole or dominant purpose of enabling the person or another person to obtain a land tax benefit from the scheme



# Land tax – home exemption

- Home in a discretionary trust?
  - Check the eligibility requirements as:
    - Trust resolutions may be required
    - Trust distributions may affect eligibility
  - Meaning of ‘beneficiary’ for purposes the land tax not the same as generally understood
- Structure of ownership of home?
  - Individual name
  - Discretionary trust
  - Both? (99% Husband and Wife and 1% Discretionary Trust)
- Undertaking business activities from the home?
  - Apportionment?



# Land tax – monitor for clients

- Foreign surcharges
  - Citizenship
  - PR status
  - Sometimes just confusion
  - Change in meaning of absentee for purposes of surcharge a few years ago
  - Discretionary trusts – harder for QRO to identify but want to carry risk?
    - Applies even to residential or commercial land (stamp duty surcharge only applies to residential land)
- Assessments often go back 4/5 years and then are given as a single lump sum to pay
- Catch it early and address it to reduce the stress



# Stamp duty – business transfers

- Always need to stamp over QLD businesses
  - Exceptions apply if only certain assets being transferred and they are not aggregated with other transfers
  - Where dutiable value nominal, nil duty stamp can be obtained\*
- Small business restructure rollover
  - Motor vehicle duty exemption





# Stamp duty – unit transfers

- If the unit trust holds dutiable property, then **any** unit transfer is dutiable
  - Unit trust undertaking property development and wants to obtain additional investors
  - Unit trust that operates a business and wants to have changes to the ownership structure
- Includes indirect interest in other trusts and partnerships
- Only includes indirect interest in a company if the company is a landholder
- The stamp duty outweigh any CGT discounts?



# Stamp duty – landholder duty

- Shares in company usually not dutiable unless the company holds property valued over \$2million
- Share transfers in such company that enables a person (and their related entities) to gain a 50% or greater interest, or to increase their majority interest will be dutiable
- Whether a company holds property depend on if the entity is a subsidiary to the company
- Trusts can be a subsidiary to the company
- A discretionary trust will be a subsidiary to the company if the discretionary can potentially distribute to the company
- Care and thought should be taken when undertaking share transfers and it is known that there is property valued over \$2million in the group



# Stamp duty – trust changes

- Corporate trustee duty – applies for corporate trustee of discretionary trust that owns dutiable property
  - Family exemption may apply
- Changes to taker-in-default
  - Family exemption may apply
- Changes to legal owner
  - Change of trustee may apply but cannot be in conjunction with other changes that may be dutiable

# A lack of comments on partnerships



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- Don't really deal with partnerships much ̄\\_(\ツ)\\_/̄
- That said:
  - Treated similarly from a stamp duty perspective (i.e. if partners come and go)
  - Have the maximum 4 co-owner limit regarding land ownership
  - Care should be taken as if 5 or more partners owning land, then care needs to be taken to ensure foreign surcharge does not result in the entire group being levied

# Contact details

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