

April 2022
Communique

Welcome to our April 2022 newsletter as we move into election mode after the handing down of the Federal Budget and northern NSW and southern QLD communities continue to face flooding in their towns.

FEDERAL BUDGET 2022



Behind the billions of dollars in handouts to middle and lower income Australians, there were some smaller announcements that are worthy of a mention. Firstly, the Government announced that company searches will be free from September 2023 as a result of the modernisation of the Company Registers and in line with current practice overseas. This is great news for investors, shareholders, financial institutions and accounting professionals.

The Budget has also included a \$7m allowance for clarifying the treatment of trusts and corporate trustees under insolvency law. This has been the subject of a number of cases which have ended up in the High Court and is in need of legislative reform.

The Government announced an allowance of \$22m for reform of the unfair preference regime to limit it to claims over \$30,000 where creditors have acted honestly and at arm's length. In an attempt to compensate the insolvency profession the Federal Government plans to provide

\$20m over two years to the ASIC assetless administration fund to provide a maximum of \$5,000 per appointment without the need to report on misconduct as a prerequisite.

Safe Harbour legislation is also subject to review after 14 recommendations from the Independent Safe Harbour review of which the Government agrees with most of them.

SMEs were also the recipients of additional deductions for training of \$120 per \$100 spent on external Australian training courses and incentives for the training and employment of apprentices. A further 20% in additional deductions for expenditure on technology including cyber security and cloud-based solution.

THE ATO TARGETS THE FAMILY TRUST



Australian Government

Australian Taxation Office

The ATO has released a draft tax ruling 2022/D1 regarding the Commissioner's view about certain arrangements:

- involving a benefit being provided to another person;
- intended to have the result of reducing someone's tax liability; and
- entered into outside the ordinary family or commercial dealing.

In the above cases, the ATO considers that section 100A of the Income Tax Assessment Act 1936 (ITAA) will apply with the result being that the Trustee will be liable for the tax at the top marginal tax instead of the presently entitled beneficiary.

There are four basic requirements for section 100A of the ITAA to apply and these are as follows:

1. There must be a present entitlement or deemed present entitlement of a beneficiary to a share of trust income arising out of a reimbursement agreement which:
2. must provide for the payment of money or transfer of property or provision of services or benefits to another person other than the beneficiary; and
3. has a purpose of one or more parties to the agreement to pay less income tax; and
4. must not be entered into in the course of ordinary family or commercial dealing.

The ATO is also in the process of reviewing trust arrangements whereby the parents receive an economic benefit of their over 18 children's trust income and exercise control over the income, particularly where the income is used to pay children's expenses that are ordinarily viewed as parental expenses. For example, these expenses may include school/ university fees, personal living expenses or rent and car expenses.

Concerns have also been raised by the ATO about unpaid trust entitlements of a private company beneficiary which provides financial accommodation to anyone the company allows access to then Div 7A may apply.

Where a corporate trustee has been issued with an assessment for the tax at the top marginal rate as a result of s100A of the ITAA and is unable to pay the tax then it may be necessary to consider the appointment of a liquidator to the corporate trustee.

Should your clients be in this position, please contact us to discuss the matter further.

STAFF PROFILE – NIGEL LAM



Nigel Lam has just newly joined Helm Advisory as a senior accountant. Although he started his career in 2018 in restructuring and insolvency in Sydney, like many others when Covid restrictions came in, he decided to return to Perth to be with his family. He is now happy to be back in livelier Sydney.

Nigel is looking forward to re-acquaint himself with Sydney's way of life, including visiting varieties of eateries, exploring many attractions, and joining in activities with his many friends he has not seen for a long time. In his spare time, previously a boxer and determined to maintain fitness, he is now a regular gym attendee. He has goals of achieving the best fitness levels he can. With the borders between Perth and Sydney now re-opened fully, he is also looking forward to frequent trips between Perth and Sydney.

BOOK THE DATE - JOIN US FOR A FEDERAL ELECTION PARTY 2022



The PM from marketing has finally declared it.

We are holding a Come as your Favourite Politician party on the evening of 21 April 2022 starting from 6.00pm till late.

The theme is politics, so present yourself as a statesman, politician or party rat bag, and all of us get to vote on the best dressed.

There will be a Jazz band and a few surprises, with big screens showing big results.

Start thinking! You could be a Penny Wong look alike, a Clive Palmer pal, or a wartime leader from Churchill to Zelensky.

Wear a dog collar as Clover Moore or barking Joyce, or just come as yourselves. The choice is yours.

Let us know if you are coming and who will be in your party by clicking here:

Federal Election Night Registration

Place: Royal Automobile Club of Australia,
89 Macquarie Street
Time: 6pm until 11pm
Date: Saturday 21 April 2022

We can help you now

If you have clients who are experiencing difficulty in paying their debts and/or need to restructure their business, please contact me.



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