Questions from Choosing a Business Structure Webinar

1. How does the rollover work in the situation where a 2-partner partnership restructure/downsize to a sole trader, one of the partners wants to get out and the other one wants to stay on? And what are the tax implications?

A: The small business restructure rollover doesn't work in this situation because the ultimate economic ownership of the business isn't the same – there are two owners before the restructure but only one after. Consider the small business CGT concessions for the departing partner as an alternative.

2. A family trust owns a property - the daughter who is not currently a beneficiary is paying off the mortgage of the trust property by selling off her own house. How can this be best treated? Should the daughter be added as a beneficiary? Or recognise the contribution from the daughter as a loan?

A: The contribution from the daughter should be categorized as a loan to the trust. However, she should also be added as a beneficiary if there is an expectation that she will benefit from the trust in future. Most trust deeds say that 'all family members' are beneficiaries. This means she is already included. A lot of trust deeds contain a broad definition of what constitutes a 'beneficiary'. This is so that beneficiaries can be easily included or excluded at the discretion of the Trustee.

3. Payment for a shareholder, when they have an obligation to repay the amount classified as an amalgamated loan and comes under Div 7A. What will be the treatment in the case of a Discretionary trust loan to beneficiary?

A: Assuming there is no company involved in the transaction (for example, the trust make a distribution to a company, the distribution isn't paid and the cash is instead used to finance the loan to the individual), there are no tax implications where a trust makes a loan to a beneficiary. Where a company is involved, Division 7A can be an issue.

4. I have a client who is the sole director and shareholder of a company. The company is currently renovating a recently purchased property. The director plans to setup a new company and transfer this property into the new company with him being the shareholder and director of the new company. Will any CGT concessions be available for the rollover.

A: It depends on whether the asset is an active asset. If the property has been purchased with a view to rental, it will not be an active asset and no small business restructure relief (SBRR) will be available. The small business CGT concessions will also be disapplied. Where the property is being renovated with a view to being sold, it will be trading stock and therefore an active asset of the company and therefore the SBRR will be available.

5. Is there any difference between FBT treatment under a company and a Discretionary trust structure? For example FBT of the motor vehicle?

There is no difference where the person who gets the motor car is provided with it in respect of their employment. While their may not be an employment relationship between the trust and the individual, it is necessary to look at the actual duties of the person. A benefit provided to a person by reason of both employment and some other capacity (eg. a beneficiary of a trust), will be taken to be provided in respect of employment. However, if it is shown that the benefit was provided solely by reason of the person's status as the 'owner' of a business, or there is a complete absence of factors which indicate that the benefit was provided in respect of employment, it will not be considered to be a fringe benefit.