Tax Sharing Agreements and Tax Funding Agreements.

AN IMPORTANT RISK MANAGEMENT TOOL FOR TAX CONSOLIDATED GROUPS

If you are thinking about forming a tax consolidated group, you have probably asked yourself why the consolidated group might need a Tax Sharing Agreement and/or a Tax Funding Agreement.

These documents are risk management tools to ensure that the entities within the consolidated group share and fund the tax liabilities of the group in a manner that you determine, rather than that set by the law.

Even if you are currently accounting for, and funding, liabilities on a joint and several basis, there are elements to Tax Sharing Agreements and Tax Funding Agreements which are a useful tool to give certainty to members during the period they are part of a consolidated group as well as when they are exiting a consolidated group.

Tax Sharing Agreements

A Tax Sharing Agreement is important for consolidated groups to manage circumstances where members of a group may become jointly and severally liable for the tax liabilities of each group member. Without a Tax Sharing Agreement members of the consolidated group will always be jointly and severally liable for the tax liabilities of the group. With a Tax Sharing Agreement, a member may only be liable for the tax liabilities of that member.

Tax Funding Agreements

Consolidated groups can also have a Tax Funding Agreement to complement the Tax Sharing Agreement. The Tax Funding Agreement can assist with managing the way in which the subsidiaries members of a group can fund the head company's payment of the group liabilities (and vice versa, a subsidiary can be compensated).

Protecting against one of the woes of tax consolidation: joint and several liability

When a group consolidates for tax purposes, the group is treated as a single tax paying entity and the head company is primarily liable to pay tax on the income of all members of the group.

If the head entity fails to pay a group tax liability, each subsidiary may be jointly and severally liable to the Australian Tax Office for the entire amount of the tax liability. This could adversely impact a group in relation to matters such as the sale of subsidiaries, directors' duties, funding arrangements within the group, financial reporting, rating agency reviews and solvency requirements. For example, a subsidiary that has left the group may still remain jointly and severally liable in regards to a group liability.

To prevent a situation where all members of a consolidated group are jointly and severally liable for the consolidated group's tax liabilities, consolidated groups must have a valid Tax Sharing Agreement in place. Tax Funding Agreements complement the TSA by prescribing how the subsidiaries will fund the tax payment by the Head Company.

How can McInnes Wilson Lawyers help?

a. whether the entities can form a consolidated group for tax purposes;
b. the effect of forming a consolidated group for tax purposes;
c. the effect of the Tax Sharing Agreement and the Tax Funding Agreement and any impact on of these arrangements on the group members;
d. interaction with accounting standards and group accounting policies;
e. the ability of each group member to meet its obligations under the Tax Sharing Agreement and Tax Funding Agreement;
f. how any tax-related liabilities in relation to the *Petroleum Resource Rent Tax Assessment Act* 1987 are accounted for in the Tax Sharing Agreement specifically in regards to items 95, 100, 105 and 110 of paragraph 721-10(2) of the *Income Tax Assessment Act 1997* (Cth).
g. we draft, negotiate Tax Sharing Agreements and Tax Funding Agreements.

How can MCWonline.com.au help?

Interested in a Tax Sharing Agreement and/or a Tax Funding Agreement?

Click here to download a Tax Sharing Agreement

or

Click here to download a Tax Funding Agreements application form

If you have any questions please don't hestiate to get in contact:

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