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TRATEGIES

If it smells fishy is it fishy?

Having your company buy personal lifestyle items can work – but that's debatable.
Report Debra Cleveland

Fancy the use of a fabulous boat or weekend home, but can't afford it? If you're one of the many people who run a private or family-owned company, why not get your company to buy it instead?

It's an aggressive strategy – and not one that all advisers recommend – but some credible authorities believe it is quite legitimate.

Artwork, jewellery and furniture are other assets that can be bought this way, even if getting money out of such companies for personal consumption is notoriously difficult. "There is a general misconception that if you want to buy lifestyle assets, you must buy them with your after-tax money," Horwath Tax Sydney director Les Szekely says.

"You can, however, buy lifestyle assets in a company with income that has only been taxed at 30 per cent and still enjoy the use of the assets as if you owned them personally."

Let's say you want to buy an asset for $100 but the money is in the family company. You'd have to pay yourself a dividend of about $131 to end up with $100 after tax. But if the company decides to buy the asset and permit you to use it, without charge, in your capacity as a shareholder, the asset would cost its price of $100.

This is a fancy way of taking money out of private companies for personal consumption – maintaining your lifestyle without having to pay the gap between your personal rate of tax, which can be as much as 46.5 per cent, and the 30 per cent company-tax rate. It can also protect assets from creditors in case of personal bankruptcy.

"We always have to be aware of general anti-avoidance provisions, [but] if asset protection is one of the very important considerations, we might not have a tax problem," William Buck senior tax consulting partner Paul Hockridge says.

Others are more circumspect. A financial adviser at Bennelong Private Wealth and former tax partner at KPMG, Bill Raffle, says he doesn't think buying a boat in a company satisfies the "smell test".

"In many cases it may be difficult to argue that a boat or other lifestyle asset has not been acquired in the company for the dominant purpose of avoiding tax," he says.

Raffle also says that such a strategy could create extra capital-gains tax if the asset is sold – the 50 per cent capital-gains tax discount for individuals would be lost in a company structure.

"An additional factor to bear in mind when analysing such an arrangement is the costs of setting up and/or ongoing running costs of the company," he says.

Even those less conservative in their interpretation of tax law recognise the limitations of this strategy.

If use of an asset is related to employment in any way, fringe-benefits tax may apply.

So don't use the boat or the weekender to entertain company guests. You should also avoid the company's buying cars for your use. Hockridge says that using a special-purpose vehicle for the strategy, such as a corporate beneficiary of a family trust, would make FBT less likely.

Watch out for so-called deemed dividends. Division 7A of the Income Tax Assessment Act treats payments – including transfers of property – to shareholders or associates as dividends. But allowing shareholders the free use of company assets does not involve any "payment" unless the benefit is treated as a transfer of property, according to Szekely.

"If a company purchases a boat and makes it available to you to use under licence as a shareholder, there will have been no transfer of property," he says. "There may be various commercial reasons why a company would want to purchase an asset and retain ownership. It could be so that all shareholders can have access to the asset and enjoy the use of it."

Szekely is confident that anti-avoidance tax rules are unlikely to be broken when such assets are bought by a company, even if Raffle isn't. "Their application requires that the scheme has been entered into for the dominant purpose of obtaining a tax benefit. With careful planning, transactions can be structured so as to make it unlikely that the Australian Taxation Office would apply its powers to the buying of lifestyle assets in a company," Szekely says.

Two experts with two different opinions. Perhaps that's why it's necessary to plan carefully when attempting tax strategies that, at first glance, may not appear the norm.

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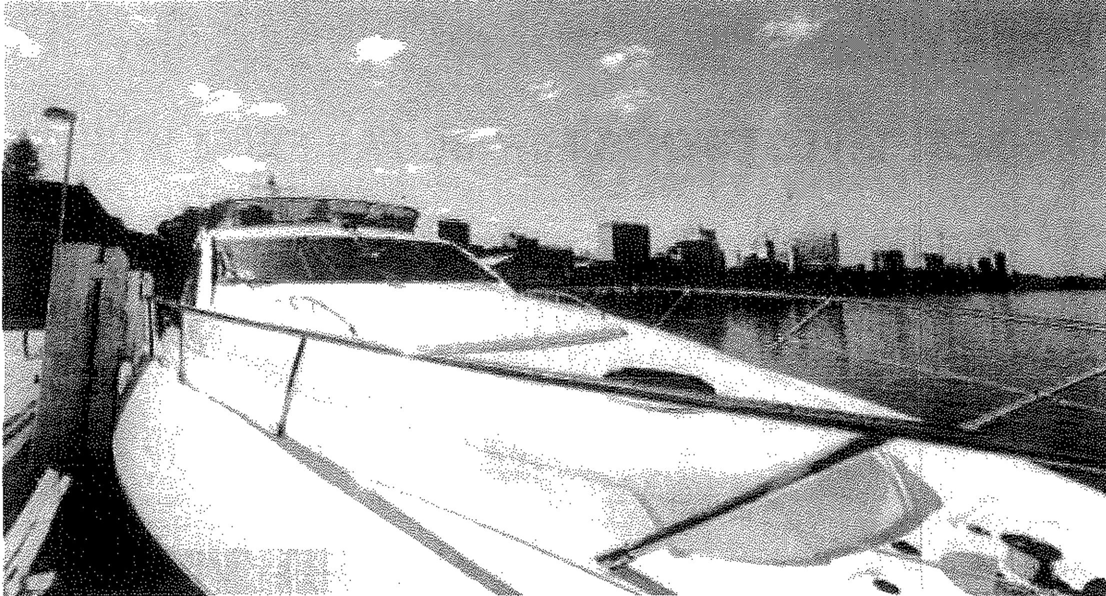

You may be able to buy a boat with company income that has only been taxed at 30 per cent. **Photo** Erin Jonasson

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