Family Business Australia

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"our families mean business"

1st August 2008

Committee Secretary
Senate Standing Committee on Economics
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

By email: economics.sen@aph.gov.au

Inquiry into Tax Laws Amendment (2008 Measures No. 4) Bill 2008

Terms of Reference

The Bill reverses two of the family trust changes introduced by the previous government in the Tax Laws Amendment (2007 Measures No. 4) Act 2007.
The amendments restore the previous definition of 'family' in the family trust election rules by limiting lineal descendants to children or grandchildren of the test individual or of the test individual's spouse.
The amendments also prevent family trusts from making a variation to the test individual specified in a family trust election (other than specifically in relation to the 2007-08 income year or in the case of a marriage breakdown).

Introduction

Family Business Australia (FBA) is a national, member-based, not-for-profit organisation for family business owners and operators and their professional advisers. FBA recognises that family businesses have unique characteristics and they make a significant contribution to the life, culture and economy of Australia.
FBA's objectives are to:

- Improve the effectiveness of Australian families in business through the sharing of practical experience and knowledge;
- Promote the value and contribution that family businesses make to our society; and
- Represent Australian family businesses as a strong and united voice.

Constituency

Family and privately-owned businesses comprise about 97% of businesses in Australia and they employ more than half of the Australian workforce (MGI Australian Family & Private Business Survey 2006).

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Our case

The Government's re-introduction of these limitations has the potential to affect the ability of small business operators to keep their enterprises in family hands
As of July 2008, any distributions outside the family group are subject to family trust distributions tax. Who is in, or outside, the family group is determined by reference to a nominated individual. The previous rules, amended just 20 months ago, solved a long standing anomaly regarding businesses run through family trusts. The 'new' rules will likely throw family trust elections into turmoil and create a barrier for small business owners passing on their businesses to future generations.
It is predicted that the limiting of beneficiaries means that choosing the nominated individual becomes critical and is likely to cause great distress to families trying to nominate one sibling over another.
Income accumulated in old family trusts can no longer be passed through to great grandchildren without suffering an additional tax impost. Family groups may choose to wind up the trust and suffer the tax consequences if they wish to pass on benefits beyond the restricted family group.

There is a growing body of evidence to suggest that family businesses often out-perform their non-family counterparts, supporting the contention that family ownership is an effective organizational form. Some of the reasons for this are:

Shares in the family business are often inherited and are highly regarded as family heirlooms similar to tangible family assets such as furniture, jewellery, etc.

Such ownership contrasts with listed company shares which also are often inherited, but having a weaker family heritage link the attitude to their ownership is generally far more dispassionate and financially motivated.

Family members often take a custodial or steward-like attitude to ownership, which translates into 'patient capital' (de Visscher, Aronoff & Ward, 1995), wherein a long-term and broad view is taken in respect to financial return.

Shareholders in family businesses commonly hold their shares for their lifetime and pass them to their successors.

Such ownership stability contrasts with the listed public company wherein the owners typically comprise a diverse, ever-changing group.

Shareholders in family businesses often receive highly valued non-financial returns:

i. Among the non-financial returns is the often-expressed pride experienced by shareholders whose business bears their family name.
ii. The direct link between family, shareholder and business and various cultural attributes of the firm can create a sense of loyalty to the family firm beyond that generated by financial return.

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Family businesses often adhere to and overtly espouse admirable family values; many adhere to strongly-held familial cultural or religious beliefs, which become embedded in the business culture; and many make strong commitments to the local community or participate in other philanthropic endeavours.

Some family businesses invest in professional development, including family meetings and family business retreats, which are highly valued by shareholders and shareholder family members and create an informed ownership group.

Conclusion

FBA contends that the Tax Laws Amendments will do much to destroy this sense of legacy and family unity.

Should you wish to discuss any issues raised in our submission, please contact Philippa Taylor.

Your faithfully,

Philippa Taylor
Chief Executive Officer
Family Business Australia