# Business structures and restructures: Is your structure working against you?

Many business owners don't realise that the business has outgrown its structure until something comes up – and this something is usually something negative.

**Are your assets at risk?**

Legal action by employees, customers and suppliers as well as divorce are the two primary risk issues for many business operators. If you have been operating as a sole trade or as a partner in a partnership or have simply been holding all business assets in a single entity, your structure may not provide sufficient asset protection. If any personal assets or valuable assets of the business are held in the same entity which carries on the trading operations of the business, those assets may be at risk. To protect your assets it is generally preferable to separate as many valuable assets as possible from the trading operations.

**Can you introduce new business partners or investors?**

If you want to provide key employees or investors with an equity interest in your business, your current business structure may not allow for this. For example, it is not generally possible to provide fixed entitlements to the profits of a business operated by a discretionary trust.

Entities such as companies and unit trusts are a much more effective vehicle to facilitate the introduction of new equity partners as they can provide a fixed interest in the income and capital gains generated by the business. New investors can also potentially claim interest deductions on funds borrowed to invest in the company or unit trust.

**Reinvesting in growth**

Reinvesting profits in your business is important if you have or expect a strong growth path. Some business structures however don't readily facilitate profits being retained by the business. For example, it is generally more difficult for a trust to retain profits, as the trustee of a trust is taxed on these profits at penalty tax rates if they are not distributed to the beneficiaries of the trust each year. This is compared to private companies where profits are taxed at a maximum rate of 30% or 28.5% and can be retained in the company without the need to distribute these profits annually.

**Can you take money out of the business?**

When you first established your business, it's hard to know what your profits are going to be and for many, there are a few lean years of losses to get things up and running. Your personal circumstances might have changed as well – marriage, children, a spouse, etc. These changes can drive the need for change. The structure of your business has a direct impact on how money flows through it to the investors. For example, one of the benefits of a discretionary trust is that the income of the trust can be distributed to any of the beneficiaries of the trust in any proportion, and that proportion can change annually.

**Impeding international expansion**

If you are contemplating expanding overseas this can significantly increase the complexity of your operations. All of a sudden you will be exposed to a new set of Australian tax rules in addition to the legal and regulatory requirements that will need to be considered in the foreign jurisdiction. On top of the complexity, control may also become an issue. The right business structure can limit your exposure to risk.

**Access to tax incentives and concessions**

Research & Development (R&D) concessions are only available to companies. If you have a significant level of R&D activity that could potentially qualify for the tax incentives, it's worth exploring your options if you are not already in a company structure.

**Can you exit your business?**

The business lifecycle has shortened considerably with less business owners seeking to create empires but more opportunistic business models. The wrong structure will limit your ability to sell your business interests and may have a dramatic and detrimental impact on the amount of tax you pay on the sale proceeds. It's important that you explore this issue well before you actually plan to sell or reduce your stake in the business.

# China: Opportunities, investment & appetite

There has been a lot of discussion about China lately – Free Trade Agreements, financial stability and growth and the impact on the Australian economy, and Chinese investment in Australia. With the help of our international contacts, we explore the impact of China on Australia and give some context to the debate.

According to Austrade, one in every three Australian export dollars earned is from sales of goods and services to China. On top of that, 80 per cent of the value of Australia's export growth in 2013-14 was from trade with China. It's not surprising then that we have a fixation with the welfare and continued consumption of Australian goods and services by China and China's rising influence on the Australian economy.

**Chinese growth – an insider's view**

China's economic growth has been spectacular: until recently growing at around 10 per cent per annum from a low economic base to arguably the leading global economy. While construction and infrastructure projects were the primary drivers of growth, the opening of the Chinese economy to foreign investment in the late 1970s saw it become the 'factory of the world.' The fuel to drive this growth was a massive growth in Chinese consumption of resources - steel, iron ore, copper - you name it China needed it. You can see this consumption growth reflected in Australia's export statistics.

With an increase in wealth came an increase in consumerism with a growing middle class. And, with a growing middle class came a property boom with many Chinese able to afford better housing.

Demand for housing escalated and development after development was launched, many snapped up within hours of launching.

The cost of this success was a rapid increase in the cost of living, high property prices fuelled by speculators, and corruption.

With the global financial crisis, demand for China's goods started to decline creating excess capacity, factory and company closures, and staff lay-offs. Banks were then asked to reduce their loan exposure and Government projects scaled back. Starved of funds some companies sought funding from underground banks – shadow funding - paying extreme rates of interest that further aggravated the slow down and excess capacity.

**Looking forward**

The People's Bank of China recently reported that it expects economic growth to be 6 - 7 per cent over the next three to five years – although businesses on the ground will tell you it's lower than this at about 5.8 per cent. Interest rates were cut for the sixth time in 12 months in late October to try and hit growth targets.

To maintain growth, the Government is embarking on transformation programs focussed on austerity and knowledge technology and transfer.

We can see some of the fruits of this commitment to knowledge transfer with China now our largest export market for services representing 13 per cent of our global services exports.

On top of this investment program, China has eased restrictions on foreign owned investment firms, no longer requiring them to partner with local managers.

In terms of outbound investment, China's State Council recently bolstered its offshore investment program - the Qualified Domestic Individual Investor program. Currently limited to a pilot program with the Shanghai Free Trade Zone, the program allows for an expanded range of offshore investments in greenfield and joint venture projects, real estate, and shares, bonds, insurance products, etc. You can expect to see the effects of this in Australian development projects.

**Free Trade with China**

The Free Trade Agreement with China is set to pass Parliament with the Labor Party negotiating a series of reforms to protect workers rights. The amendments put in place minimum wage safeguards for temporary skilled migration, new 457 visa conditions linked to relevant trade licenses, and the capacity to impose a ceiling on the number of new work agreements for 457 visa workers.

Australian expansion into Asia is increasing for businesses of all sizes. In a recent survey, the ANZ recently reported that the majority of

Australian businesses that have expanded into Asia have experienced a substantial lift in profits, with almost 40 per cent of small businesses making a return on investment within 12 months.  If your business is not already looking at its international potential, is it time to review the opportunities?