Applying the 'Keep it Simple' principle to corporate structures

There are many benefits available to those corporates that simplify their group structures. Here, PwC Partner and corporate structure specialist, David Pratt outlines the benefits and demystifies the simplification process.

Senior managers and board members are increasingly recognising that simplifying the legal structure of a group can reduce the regulatory compliance and corporate governance burden on a business and increase transparency.

At the same time, there is a growing understanding of the consequences of a misalignment of the operational and legal structure and the negative impact on business efficiency that comes with maintaining a number of non-trading or dormant entities.

Historically, tax consequences, stamp duty and operational issues have been hurdles to simplifying corporate structures. But many of these have been removed and the availability of a variety of stamp duty exemptions for corporate reorganisations and liquidations means there has never been a better time for corporates to simplify their group structures.

Defining complexity

Company structures have become more unwieldy and costly for businesses. According to ASIC's figures, there are more than 1.8 million companies registered in Australia[1]. IBIS research shows there are approximately 20,000 subsidiaries related to major reporting entities (defined as the top 500). Complexity is not just a problem experienced by large businesses; it's endemic across businesses of all sizes.

Maintaining a large number of registered companies comes at a significant cost. Research by PwC shows Australia's top companies are spending more than $50 million annually maintaining inefficient corporate structures.

PwC estimates the direct cost of merely maintaining a redundant corporate entity is between $5,000 to $10,000 per annum.

[1] http://www.asc.gov.au/asic/asic.nsf/byheadline/2011-company-registration-statistics?openDocument

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Evaluating the benefits

Tangible long-term benefits include:

- A structure that reflects business needs;
- More efficient oversight of corporate governance requirements;
- Alignment of assets and liabilities with the businesses that uses those assets or that are responsible for specific liabilities;
- Reduction of administrative costs;
- Reduction of intercompany problems related to income tax, GST and payroll tax;
- Simplification of cross-border transactions;
- Elimination of duplicate entities;
- Freeing up of regulatory capital;
- Reduction in the number of bank facilities;
- Up-to-date statutory registers;
- Unlocking tax value that may otherwise not be accessible.

How to achieve a corporate simplification

Securing buy-in of the board to undertake a corporate structure is critical to the success of the project. The process of simplification will require dedicated resources and a project manager.

Irrespective of the size of an organisation or the nature of its business, corporate structure simplification initiatives can generally be split into four stages, as follows:

Stage one: Determining the ideal corporate structure

This stage generally involves a high level review of the essential elements of the group including operations, regulatory, tax, HR, finance, legal, governance and strategy. An ideal structure can be determined as a result of this review.

Stage two: Information gathering and issue identification

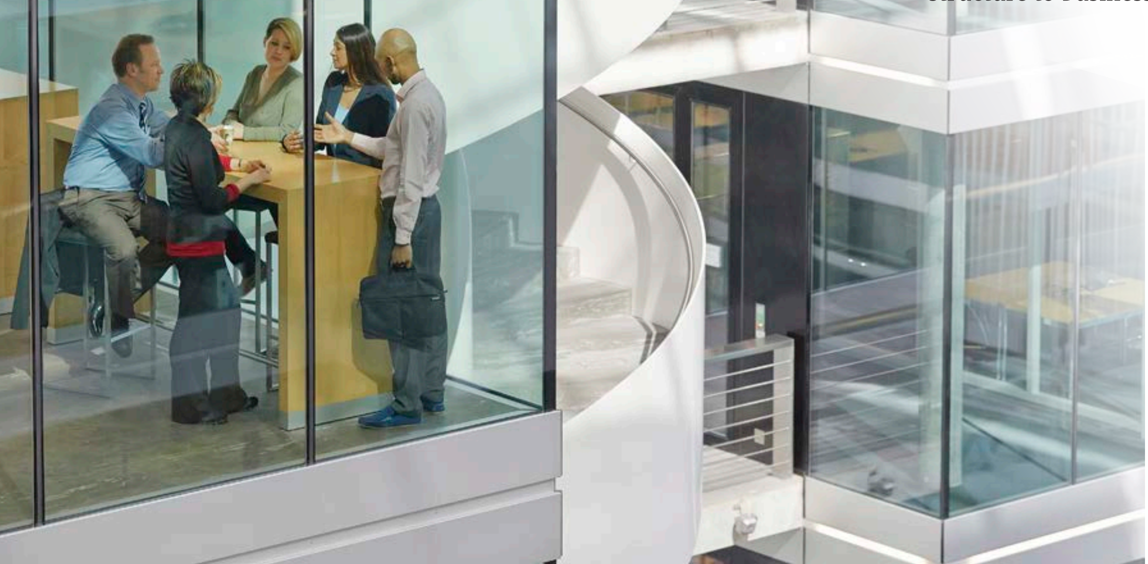
Stage two facilitates collection of information on all entities within an organisation including:

- Current business activities and purpose, together with information in relation to assets, liabilities and obligations;
- Employee information;
- Trading history; and
- 'Unrecorded' assets and obligations.

The use of workshops and questionnaires can help get the initiative underway and establish the involvement of parts of the whole company to gather the required information in a manner that is co-ordinated and time efficient.

Subsequent analysis of the information gathered will seek to highlight issues and identify options for positioning each entity/business within the structure. Opportunities for stamp duty exemptions and transfer of assets between entities are explored.

The analysis identifies the major issues relevant to simplifying the group structure. Once the issues are understood the group is then in a position to re-evaluate the ideal structure and determine the most practical structure, ultimately producing a road-map of the issues to resolve and how to address them, with the ultimate goal of aligning the structure to business needs.



Stage three: Planning and development

A comprehensive plan is built to address and resolve issues to achieve the desired structure. The project plan will outline the sequence of steps to be taken for each entity.

Here are some of the issues to address during stage three, with input from legal, human resources, finance and tax advisers:

- The status of various taxes including payroll tax, GST, land tax and FBT;
- Status of all statutory records of lodgements;
- Situations where consent is required from third parties for changes to company status, such as leases, liabilities and supply contracts;
- Renegotiation of supplier contracts;
- Review of employee contracts
- A review of shareholders' rights looking at what types of shares have been issued;
- The status of trademarks, patents and other forms of intellectual property – in consultation with IP experts; and
- The type of transfer that should take place for each entity's assets, such as an internal sale, assignment or distribution *in specie*, based on the circumstances for each asset.

Stage four: Implementation and liquidation

The final phase concerns the actions that are required to ready each entity for liquidation. These may include:

- Arranging asset transfers and liability settlements;
- Advising authorities and interested parties of asset transfers;
- Transferring employees;
- Realisation of remaining assets;
- Applying for appropriate stamp duty exemptions;
- Protecting intellectual property in consultation with legal specialists;
- Obtaining consents and advising suppliers, licensees, agents and other contracted parties of new arrangements in accordance with relevant legal obligations; and
- Preparation of documentation to advise regulatory authorities of voluntary liquidation and deregistration of companies.

Once all requirements for liquidation have been met, the companies that have been prepared for liquidation can be formally disposed.

Obtaining experienced advisers

Having access to experienced advisers and a sound, proven methodology is essential to managing a successful corporate structure simplification.

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