

There are a number of compliance issues that need to be considered with respect to Company Directors (Directors) appointed to the Board of your company. Under the tax law, employers have obligations for their employees, of which the definition includes Directors, regardless of how many Boards they are members of.

Have you considered your obligations with respect to your Directors lately?

Although the legal exposure is the same for Executive and Non-Executive Directors, there may be some tax differences. We have outlined some considerations below in relation to Australian tax resident Directors as well as Directors from overseas.

Tax considerations

1

Employment taxes



- Have you considered the following employment tax obligations:
- Are you withholding PAYG withholding from the Directors fees? Are you issuing an employment payment summary?
 - Is your company capturing benefits provided to Directors in the annual fringe benefits tax return?
 - Should your Directors fees and benefits be captured for payroll tax purposes?
 - Are your Directors covered for workcover purposes?
 - How will these payments be captured for Single Touch Payroll purposes?

2

Superannuation



Under the *Superannuation Guarantee Administration Act 1992*, employers are obligated to provide appropriate Superannuation Guarantee (SG) contributions for Directors.

Have you considered:

- If the appropriate SG contributions are being paid on behalf of Directors?
- Whether contributions should be limited such that Excess Concessional Contributions are not breached by all of the Directors' employers?

3

Cross border considerations



There are still a number of employment tax and superannuation considerations for Directors who are foreign nationals who carry out their director duties both within Australia and abroad. Have you considered:

- The immigration issues for the Directors?
- The relevant Double Taxation Agreement and how this may impact Australian and home country tax filing?
- Is there a Bilateral Social Security Agreement to exempt pension payments/ SG contributions in Australia?
- The appropriate visa requirements for entry of your overseas Director's into Australia?
- Do they need to obtain a Tax File Number in order to file Australian tax returns?
- Does the Director's home country also tax the Director's fees?
- Are there any overseas Directors eligible for a Senior Executive exemption from SG?
- Is the Director performing their services outside of Australia?
- Is there an ability to access a Departing Australia Superannuation Payment (DASP) where SG has been paid?

4

Equity



If you have an equity plan that Directors participate in, have you considered:

- Employee Share Scheme (ESS) reporting obligations with respect to your Directors?
- Payroll tax obligations?
- Treatment of salary sacrifice plans?
- Annual report inclusion and impact?
- Have you considered the opportunity for your Directors to sacrifice compensation for company equity in lieu of their Director's fees?

Legal considerations

5

Employment Law



Executive Directors should have a written employment contract. Non-Executive Directors are not employees for the purposes of Employment Law, but should still have a written letter of appointment.

Have you considered the following:

- Is their role clearly defined?
- If an Executive Director's employment ends, what happens to their appointment as Director?
- If a Non-Executive Director is providing additional services to the company, is that separately documented?
- How are confidentiality, conflict of interest and any other Board policies recorded?

6

Legal Considerations



- When did you last have your consulting arrangements reviewed by a lawyer?
- Have you considered whether your consulting agreements may include terms that cause them to be invalid, particularly when entering into arrangements with consulting companies.

You should also consider



Board effectiveness

- Is there the right mix of capabilities on the Board for the future strategy of the organisation?
- Have you established a future focused Board capability matrix that informs the appointment of new directors?
- How robust is your Board review process?



Remuneration reporting

- Have Board director fees been compared to the market to understand competitiveness and attractiveness?
- If you are a listed company:
 - How well equipped are your Board members to deliver on the company's remuneration reporting requirements?
 - Is your Board regularly engaging with key stakeholders (e.g. shareholders and proxy advisors) on remuneration arrangements?



Diversity and Inclusion (D&I)

- What is the company's view on D&I? Is this reflected in the composition of the company's Board?

Can we help?

If you have any questions or would like assistance in fulfilling your obligations with respect to your Directors, please contact one of our specialists below.

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