

THE 14TH ANNUAL BUSINESS AND PROPERTY TAX CONFERENCE

Reimbursement Agreements: Getting the Balance Right

The Division 7A Weather Report

The Employee versus Contractor Dilemma

Tax Implications of Disclaiming Trust Income

How to Determine the Tax Treatment on a Property Sale

Is Your Property Project Structure Sound?

GST Issues to Consider When Transacting in Property

Structuring to Maximise Active Asset Eligibility

Selling a Business in a Trust when the Buyer Wants Shares

Tax Consequences of Winding up the Business

Divorce and Relationship Breakdowns – Untangling the Business Wealth

Family Business Succession Planning

A Two-day Conference

Thursday 9 & Friday 10 February 2023

JW Marriott Hotel, Gold Coast

Feedback from last year's conference:

“This was my first one and the speakers were all really good and I took a lot away from it.”

“Good sessions and topics. Good chance to chat with presenters etc.”

“Excellent presenters and venue.”



Leaders in online CPD for Lawyers & Accountants

DAY 1 - THURSDAY 9 FEBRUARY 2023

MORNING THEME: KEEPING AHEAD OF THE CURVE

9.00 - 9.10am Introduction and welcome

Day 1 Chair: David W Marks KC, Barrister, Level 16 Inns of Court, Brisbane

9.10 - 9.55am

Session 1: Reimbursement Agreements (Section 100A): Getting the Balance Right

The ATO has recently issued guidance material on when they consider section 100A may apply to trust distributions. However, practitioners may be experiencing a feeling of uncertainty as to whether some trust distributions that they have helped shape could fall foul of the provision. This session reviews the ATO guidance as it currently stands, with tips to mitigate the risk, including:

- What are the consequences of section 100A applying?
- How the ATO classifies trust distribution arrangements for compliance action
- What distributions could be at risk of section 100A applying? i.e.:
 - a beneficiary not calling for their entitlement?
 - a beneficiary able to utilise losses (income or capital)?
- If a trustee retains funds distributed to a beneficiary, does the risk of section 100A applying differ depending on whether the trust operates a business or is an investment trust?
- Examples of arrangements “entered into in the course of ordinary family or commercial dealings” where the ATO have indicated section 100A shouldn’t apply
- What types of records can be maintained to assist trust distributions standing up to ATO scrutiny?
- Practical examples

Speaker: David Hughes, Partner, McCullough Robertson, Brisbane

9.55 - 10.05am Panel Comments and Questions

10.05 - 10.50am

Session 2: The Division 7A Weather Report - Headwinds Developing with Storm Clouds Ahead

Whilst practitioners are none the wiser on the progress of the introduction of the targeted amendments to Division 7A, in the meantime there is always ongoing ATO guidance material being released to keep practitioners on their toes. This session reviews recent guidance issued on Division 7A and UPEs, including:

- When will an arrangement between a private company and a trust be considered “financial accommodation”? (TD 2022/11)
- How to set up a sub-trust so the arrangement is not considered “financial accommodation”?
- Are there any administrative or reporting requirements for a sub-trust?
- Does the financial accommodation commence from the trustee’s distribution resolution or from finalising the financial statements?
- What is the ATO’s compliance approach pre and post 30 June 2022?
- Can any housekeeping be undertaken to minimise the risk of Division 7A exposure?
- Practical examples

Speaker: Raffi Tenenbaum, Tax Director, William Buck, Melbourne

10.50 - 11.00am Panel Comments and Questions

11.00 - 11.25am Networking Break and Morning Tea

DAY 1 - THURSDAY 9 FEBRUARY 2023

11.25am - 12.10pm

Session 3: The Employee versus Contractor Dilemma

Determining whether an arrangement is one of employment or an independent contractor is not always an easy task, with the implications of miscategorising an employee as a contractor being significant. This session reviews recent case law that may assist you in tackling the dilemma, including:

- What are the key principles that can be taken from recent High Court cases?
- How the High Court case principles were subsequently applied to a tertiary lecturer (JMC Pty Ltd v C of T [2022] FCA 750)
- How to determine if an employee or contractor relationship exists when there is no written contract, or the contract is sketchy at best?
- What if a worker asks to be a contractor?
- What are the implications if an employee is incorrectly classified as a contractor, including:
 - the removal of tax deductibility rules for non-compliant payments
- When can the superannuation guarantee apply to independent contractors?
- Case studies

Speaker: Fletch Heinemann, Partner, Cooper Grace Ward Lawyers, Brisbane

12.10 - 12.20pm Panel Comments and Questions

12.20 - 1.05pm

Session 4: Thanks, But No Thanks - The Tax Implications of Disclaiming Trust Income

The recent High Court decision in the Commissioner of Taxation v Carter [2022] HCA 10 has determined who is responsible for tax on a legally effective disclaimer of trust income and the result may surprise you. This session reviews the Carter Case as well as other issues to do with disclaiming the right to trust income, including:

- Situations where beneficiaries disclaim their interest in trust income
- A review of the Carter case and the key takeaway points
- What if a beneficiary is not aware of their original entitlement?
- What additional steps can be taken prior to finalising annual trustee income distribution resolutions to minimise adverse outcomes?
- Tips for tax effectively disclaiming an interest in trust income
- Can default beneficiaries effectively disclaim their entitlement on a year-by-year basis?
- The potential tax implications of having a default beneficiary clause versus not having the clause
- Case studies

Speaker: Damian O'Connor, Principal, Tax + Law, Brisbane

1.05 - 1.15pm Panel Comments and Questions

1.15 - 2.15pm Luncheon

AFTERNOON THEME: PROPERTY TAXATION

2.15 - 3.00pm

Session 5: How to Determine the Tax Treatment on a Property Sale

Being asked how a property sale is taxed can be one of those quick tax questions that can require significant time and research to not necessarily come up with a definitive answer. This session looks into the tax treatment of various types of property sales to assist you in answering that next property sale question, including:

- What are the three income tax scenarios that can apply to a land subdivision?
- Can a change of intention from main residence use to subdividing the land for sale, change the tax status from capital to revenue?
- If a profit-making intention is determined for the subdivision of land a main residence is located on, how is the profit calculated?
- What factors contribute to going beyond merely realising the asset (capital) to being on revenue account?
- When undertaking a subdivision, what type of activity has a bearing on the capital/revenue distinction? i.e.:
 - is the extent of engaging a developer and other professionals relevant?
 - obtaining building plans and permits for the sale of subdivided rear yard of a main residence to fetch a higher price?
- progressively subdividing and selling off farmland
- Are there any tax issues to consider for a builder who constructs a main residence then resides in it for a year or so before selling?
- Practical examples

Speaker: Paula Tallon, Tax Specialist, Salann, Sydney

3.00 - 3.10pm Panel Comments and Questions

DAY 1 - THURSDAY 9 FEBRUARY 2023

3.10 - 3.55pm

Session 6: Is Your Property Project Structure Sound?

When deciding from the outset the structure that a property will be housed in, consideration needs to be given to a number of factors which can include the intention for the property, the profile of the parties involved and the tax attributes of the various structures. This session reviews the various options and issues to consider for each, including:

- Structures to consider if the project is being undertaken with a third party (or a number of parties)
- Partnership or joint venture - what are the tax differences?
- Which structures suit:
 - development and sale
 - property which may incur tax losses prior to a subsequent sale
 - long term investment, which may include an accumulation of carried forward tax losses
- The use of unit trusts to hold property, including:
 - the tax aspects of funding by loans or capitalizing units (IT 2684)
 - CGT event E4 and capital works deduction implications
- Structuring loans when using a discretionary trust to hold property (TD 2018/9)
- Land banking and the limit on deductions for vacant land:
 - what land is affected by these rules?
 - which entities are affected by these rules?
- Case studies

Speaker: Philip Diviny, Partner, Madgwicks Lawyers, Melbourne

3.55 - 4.05pm Panel Comments and Questions

4.05 - 4.25pm Networking Break and Afternoon Tea

4.25 - 5.10pm

Session 7: GST Issues to Consider When Transacting in Property

There is much to consider when determining how GST can apply to various property transactions. This session provides a deep dive into the more challenging property related scenarios where GST may require consideration, including:

- When are residential premises considered to be “new” as a result of renovations? (GSTR 2003/3)
- Can property satisfy the GST-free “supply of a going concern” criteria? (GSTR 2002/5)
- What GST adjustments are required when a property’s intended use changes from developing for sale to deriving rent?
- Selling farmland:
 - when can the sale be GST-free?
 - GST and the sale of subdivided farmland
 - when can GST adjustments be required subsequent to purchasing GST-free?
- The GST withholding rules for supplies of new residential premises or potential residential land

Speaker: Jeff Pfaff, Partner, PwC, Brisbane

5.10 - 5.20pm Panel Comments and Questions

DAY 2 - FRIDAY 10 FEBRUARY 2023

MORNING THEME: TAX ASPECTS OF THE SMALL BUSINESS LIFE CYCLE

9.00 - 9.05am Introduction and welcome

Morning Chair: Stephen Holmes, Partner, WMC Chartered Accountants, Robina, Qld

9.05 - 9.50am

Session 8: Structuring to Maximise Active Asset Eligibility for Future Small Business CGT Concessions

Whilst the small business CGT concessions are applied at the time of a CGT event, it can be the structuring and planning in the numerous years prior that can determine the eligibility or effectiveness of those concessions. This session looks at some tips for effective structuring and traps to avoid, including:

- What is an active asset and why is the definition so important?
- The 80% test for shares and interests in trusts:
 - how loans between related entities can cause the test to be failed
 - strategies to maximise the possibility of the test being passed
- What tests will a holding company be required to pass for its shares to be considered an active asset?
- Scenarios where use of a business property may or may not satisfy the active asset test
- Structuring depreciable assets to maximise possibility of having CGT concessions apply to them
- Can asset protection strategies impinge on active asset eligibility?
- Case studies

Speaker: Linda Tapiolas, Partner, Cooper Grace Ward Lawyers, Brisbane, Qld

9.50 - 10.00am Panel Comments and Questions

10.00 - 10.45am

Session 9: Selling a Business in a Trust when the Buyer Wants Shares in a Company

Selling a business in a trust when the buyer wants shares in a company can be like fitting a square peg in a round hole. However, there are options available that can produce the desired outcome. This session looks at how the relevant rollovers work and how they can assist in preparing for a sale by using a case study as the learning tool, including:

- What options are available to transfer a business from a trust to a company when the trust is a:
 - discretionary trust
 - a unit or fixed trust
- What are the CGT consequences of the options?
- The tax implications where a buyer offers scrip and cash as the sale proceeds
- What are the special cost base rules that apply to scrip for scrip rollovers when the arrangement is a restructure? (Sec. 124-784B ITAA 1997)
- The issues of incorporating an earnout arrangement in the contract of sale, including:
 - what is the CGT treatment?
 - is an earnout right an active asset for the small business CGT concessions? (TR 2007/D10)
 - what is a "look-through" earnout right?
- Case study

Speaker: Andy Milidoni, Partner, Johnson Winter & Slattery, Sydney, NSW

10.45 - 10.55am Panel Comments and Questions

10.55 - 11.15am Networking Break and Morning Tea

DAY 2 - FRIDAY 10 FEBRUARY 2023

11.15 - 12.00pm

Session 10: Tax Consequences of Winding up the Business

As the saying goes “all good things must come to an end”. This session explores some of the options available to conclude the life cycle of a business with the aim of keeping as much surplus as possible in the hands of the business owners, including:

- Strategies to deal with debit shareholder loans
- What are the tax implications of ultimately paying out funds to shareholders that have benefited from the small business CGT:
 - 15-year exemption
 - 50% reduction
 - rollover retirement exemption
 - small business rollover
- When can a tax effective genuine redundancy payment be an option for the business owner? (TR 2009/2)
- The tax implications regarding the timing of:
 - unused long service leave payments
 - termination payments
- What are the tax implications of opting to voluntarily liquidate a company? (TD 2001/27 & TD 95/10)
- How the franking account may be tapped into for tax effective dividend payments from retained profits over numerous years post business
- Case studies

Speaker: Mark Molesworth, Partner, BDO, Brisbane, Qld

12.00pm - 12.10pm Panel Comments and Questions

12.10 - 1.10pm Lunch

AFTERNOON THEME: BUSINESS ENTITIES, FAMILY DYNAMICS AND THE TAX IMPLICATIONS

1.10 - 1.55pm

Session 11: Divorce and Relationship Breakdowns - Untangling the Business Wealth

It's not news that relationship breakdowns can be messy. However, throw a business entity or two into the mix and it is not just the relationship that may have unravelled. This session explores the issues and some tips along the way, including:

- How does CGT apply for assets:
 - divided under a private or informal arrangement?
 - using the CGT relationship breakdown rollover?
- How does the CGT rollover work if the asset is transferred:
 - from a company?
 - from a unit or fixed trust?
 - from a discretionary trust?
 - to an entity nominated by a spouse (Ellison v Sandini Pty Ltd [2018] FCAFC 44)
- What if the asset transferred is not subject to CGT (i.e., depreciating assets)?
- Do the tax implications differ if a private company transfers money or property under a court order to:
 - a shareholder spouse (TR 2014/5), or
 - a non-shareholder spouse?
- How do the franking credit rules apply to amounts paid from a company as a result of a marriage or relationship breakdown?
- Are cost base adjustments required for shares when property is transferred from a company under a family law obligation?
- The impact of marriage or relationship breakdowns on family trust elections
- Case study

Speaker: Paul Hockridge, Principal, Hockridge Advisory, Melbourne

1.55 - 2.05pm Panel Comments and Questions

DAY 2 - FRIDAY 10 FEBRUARY 2023

2.05 - 2.50pm

Session 12: Family Business Succession Planning

Planning for the continuity of a business beyond the current owners requires careful thought in advance of implementing the chosen strategy. This session delves into the options and issues that can arise on an intergenerational changeover, including:

- Strategies for passing control to the next generation when dealing with:
 - a trust
 - a company
- What are the tax considerations you should include in the succession plan?
- When a restructure may be a viable option
- How market value substitution rules can apply to succession planning
- Using the small business CGT concessions to obtain a cost base uplift
- Weighing up the pros and cons of dealing with the tax and duty issues of a transfer of control now or as part of an estate plan on death
- The tax aspects of exit strategies that cover:
 - CGT rollovers or applying the small business CGT concessions for an intergenerational transfer
 - the CGT implications on a sale where the next generation have conveyed their preference for the owner to “cash out”
- Case study

Speaker: David Marschke, Principal, DBM Horizons, Queensland

2.50 - 3.00pm Panel Comments and Questions

3.00pm Conference Close

GENERAL INFORMATION

Conference Registration Fee

The registration fee includes attendance at the conference and conference papers. Refreshment breaks and lunch on both conference days.

Conference Papers

TEN will not provide printed copies of the conference papers or Powerpoints. Access to the papers & Powerpoints will be available online to all delegates in the lead-up to the conference (as they become available).

CPD

Accountants: 11 CPD/training hours

CPD Certificate

All delegates attending the conference will receive a CPD Certificate confirming attendance.

The Conference Venue

JW Marriott Gold Coast Resort & Spa
158 Ferny Avenue, Surfers Paradise, Qld

Travelling to the Conference Venue

Delegates are advised to make their own travel arrangements.

Conference Dress

Smart casual attire is suitable (note: the temperature in the conference rooms can vary depending on where you are sitting. Short sleeves/summer tops are generally OK, but it is advisable that you bring a jacket/long sleeved top just in case you need it).

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 - b. "you" means the person who has registered to attend or the person or persons who attend[s] the conference (if different from the person registered)
 - c. "conference" means the live face to face or live or recorded online educational event or which you have registered (by whatever name called and includes conferences, masterclasses, webinars and webinar series).
 - d. "live conference" means a conference other than a recorded conference.
 - e. "recorded conference" means a recording of a presentation or a series of presentations which you can view at a time of your choosing
 - f. "online" in relation to a conference means a conference you attend by viewing the conference over the Internet
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 - b. Restrictions on movement of persons imposed on persons by any responsible authority in Australia
 - c. The inability or refusal of one or more presenters or TEN team members to attend the conference to present
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Cancellation by You – all conferences

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 - b. Otherwise, no refund.

Governing Law – all conferences

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