

# THE 11<sup>TH</sup> ANNUAL BUSINESS & PROPERTY TAXATION CONFERENCE

A TWO-DAY CONFERENCE ORGANISED BY  
**TELEVISION EDUCATION NETWORK PTY LTD**

SHERATON GRAND MIRAGE, GOLD COAST  
THURSDAY 13 & FRIDAY 14 FEBRUARY 2020

Base rate entity tax issues  
Division 7A planning strategies  
The ATO's war on trusts  
Current issues in payroll tax  
Property developers and tax  
Traps and hazards in land tax  
Stepping through the margin scheme  
Structuring for the ultimate exit  
Essential tax issues in a sale of business  
Tricks and traps of Division 152  
Residency in the 21st century  
Outward bound - what expanding businesses need to know

## **FEEDBACK FROM LAST YEAR'S CONFERENCE:**

*"Content was excellent, great presenters."*

*"Excellent - practical content and quality speakers and resources to read when needed."*

*"Good content, presented at appropriately detailed level. Course notes thorough and good addition to professional library."*



The professional development specialists

# DAY 1 THURSDAY 13 FEBRUARY 2020

**CHAIR DAY 1: DAVID MARKS QC,  
BARRISTER, QUEENSLAND BAR,  
BRISBANE**

**MORNING THEME: CHALLENGES IN BUSINESS  
TAXATION**

**9.00 - 9.10am**

Introduction and welcome

**9.10 - 9.55am**

## **Session 1: Base Rate Entity Tax Issues: Opportunities and Traps**

With the dust having settled on reforms to the company tax rate, it's time to consider the strategic implications of differential tax rates for tax and franking purposes. This session considers opportunities and traps through the use of case studies, including:

- What is a base rate entity?
  - Types of entities covered
  - Understanding the aggregated turnover test
  - How do you calculate base rate entity passive income? LCR 2018/D7
- Managing scenarios where:
  - Tax was paid when taxpayer was not a base rate entity/small business entity, but franked dividend is paid while taxpayer is a base rate entity
  - Tax was paid while taxpayer was a base rate entity/small business entity, but franked dividend is paid while taxpayer is not a base rate entity
  - Are there opportunities for taxpayers hovering around the threshold?
- Interaction with small business concessions: TR 2019/1 on when company is carrying on a business

*Speaker: Raffi Tenenbaum, Chartered Accountant, Melbourne*

**9.55 - 10.05am Panel Comments and Questions**

**10.05 - 10.50am**

## **Session 2: Division 7A: Planning Strategies to Implement Now**

With continued uncertainty about the future of Division 7A, this session explores what taxpayers should do to manage their Division 7A risks in the short-term, including:

- PCG 2017/13 as updated - is it worth dealing with sub-trust arrangements maturing in FY2020?
- What are the current ATO focus areas in Division 7A?
- Options for cleaning up Division 7A issues:
  - Restructuring to sell business from trust to company and then use assignment and offsets to repay Division 7A loans
  - Treating UPEs as 7-year loans to eliminate application of section 109XA

*Speaker: Linda Tapiolas, Partner, Cooper Grace Ward, Brisbane*

**10.50 - 11.00am Panel Comments and Questions**

**11.00 - 11.25am Networking Break and Morning Tea**

**11.25am - 12.10pm**

## **Session 3: The War on Trusts - Understanding the ATO's Trust Taxation Focus Areas**

The ATO's war on trusts continues apace, with the taxation of family and discretionary trusts continuing to be a major source of audit activity. This session explores some of the recent legislative and administrative changes and how taxpayers can manage these, including:

- Extending anti-avoidance rules for circular trust distributions:
  - What situations would be covered?
  - What obligations are imposed?
  - When do the provisions apply?
- Areas of ATO audit activity:
  - Trustee reporting of beneficiary TFNs and withholding where no TFN reported
  - Reviews of family trust elections and interposed entity elections
  - Recharacterisation of trust income
- Risk mitigation strategies:
  - Reviewing and rectifying mistakes in test individual nominations
  - Ensuring efficacy of trust resolutions from trust law perspective

*Speaker: Damian O'Connor, Principal & Chartered Tax Advisor, Tax + Law, Brisbane*

**12.10 - 12.20pm Panel Comments and Questions**

**12.20 - 1.05pm**

## **Session 4: Current Issues in Payroll Tax - Grouping and Contractors**

The payroll tax thresholds in each State and Territory mean that SMEs, especially if grouped with other entities, can be faced with a payroll tax bill that is a significant impact on employee costs. This session explores:

- What are included as "taxable wages"?
- Understanding payments to contractors: Commissioner of State Revenue v The Optical Superstore Pty Ltd [2018] VSC 524
- When will entities be grouped for payroll tax?
- What are the Revenue Offices' areas of focus?
- How far back will the Revenue Offices go in collecting back-payroll tax in an audit?

*Speaker: Philip Magoffin, Director, PPM Tax & Legal, Brisbane*

**1.05 - 1.15pm Panel Comments and Questions**

**1.15 - 2.15pm Luncheon**

# DAY 1 THURSDAY 13 FEBRUARY 2020

## AFTERNOON THEME: PROPERTY TAXATION AND GST

2.15 - 3.00pm

### Session 5: Show Me the Tax: What Property Developers Want to Know

Property development is rife with tax issues, some of which are more well understood than others. This session explores some of the current questions that tax practitioners are being asked by property developer taxpayers, including:

- GST issues:
  - Characterising land transactions as input taxed, GST free or taxable
- Recharacterisation of land as a revenue asset
  - Making trading stock elections
  - Valuation of the recharacterised land for trading stock purposes
- Subdividing property:
  - Entering into partition agreements - choosing the right time
  - GSTR 2009/2 Partitioning of Land
  - Agreement between co developers and its impact on SMSF - are they related parties?
- Vacant land reforms – what will they mean for property developers?

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

3.00 - 3.10pm Panel Comments and Questions

3.10 - 3.55pm

### Session 6: Traps and Hazards in Land Tax

There are many potential traps and hazards in land tax, which has become an increasingly significant liability for businesses as property prices go up. This session explores a range of land tax issues in practice, including:

- Owning your home in a trust:
  - When is the principal place of residence exemption available?
  - Conditions for PPR exemption under a testamentary trust
  - Nominating beneficiaries to obtain a concession - when to make nominations and when to revoke
- Foreign owner surcharge:
  - Amendments to trust deeds to remove foreign beneficiaries
  - NSW OSR audit activity
- Victorian land tax on land adjoining principal place of residence
- Land tax exemption on residential parks
  - Is this available if each resident's parcel of land is on a separate title?

*Speaker: Andrew Rider, Barrister, Level 22 Chambers, Sydney*

3.55 - 4.05pm Panel Comments and Questions

4.05 - 4.25pm Networking Break and Afternoon Tea

4.25 - 5.10pm

### Session 7: Stepping Through the Margin Scheme in Practice

The provisions of the margin scheme are familiar to tax advisers and taxpayers in the property space. However, the practical application of the rules can lead to unexpected results, especially with the need to trace through historical transactions. This session provides a case study intensive practical exploration of how the margin scheme operates and understanding the importance of tracing historical transactions, including:

- Valuation methodology for margin scheme purposes
- Dealing with pre-GST property sales
- Using the margin scheme where a going concern exemption was used in the historical chain of property transactions
- Evidence of historical agreements to apply the margin scheme: *The Trustee for the Seabreeze Estate Unit Trust v Commissioner of Taxation [2019] AATA 1395*
- Options for purchasing property and their impact on using the margin scheme:
  - Development agreement and purchase later
  - Leave house on residential property
  - Knock down house and sell vacant land

*Speakers: Emily Bain, Senior Manager, and Jeff Pfaff, Partner, PwC, Brisbane*

5.10 - 5.20pm Panel Comments and Questions

# DAY 2 FRIDAY 14 FEBRUARY 2020

**CHAIR DAY 2: MURRAY SHUME,  
SPECIAL COUNSEL, COOPER GRACE  
WARD, BRISBANE**

**MORNING THEME: TAX ASPECTS OF BUSINESS  
CHANGE AND COMPLIANCE**

**9.00 - 9.45am**

## **Session 8: Structuring for the Ultimate Business Exit**

As a cohort of business owners hit their late 50s and 60s, taxpayers and tax advisers are turning their minds to business exit, whether that be through a third-party sale or passing down to the next generation. Planning ahead can make a significant difference in achieving the best tax outcome. This session explores the options, including:

- Restructuring for sale - what needs to be considered?
  - Stamp duty - is corporate reconstruction exemption available?
  - GST - what supplies are being made
  - Income tax - are there rollovers available?
- Streamlining the business and managing staff:
  - Deciding whether to issue shares to employees - getting the balance right between the employee and business
  - Issuing equity and golden handshakes for key staff - what is the tax effect? Are there corporations law issues to consider?
- Separating wealth and investment assets from business assets:
  - What structure should investments be transferred into?
  - Dealing with liquidity issues where business real property is held in the SMSF

*Speaker: David Hughes, Partner, McCullough Robertson Lawyers, Brisbane*

**9.45 - 9.55am Panel Comments and Questions**

**9.55 - 10.40am**

## **Session 9: Essential Tax Issues in a Sale of Business**

The sale of a business inevitably triggers a large number of tax issues, with the transfer of revenue assets such as trading stock and depreciable assets, CGT assets such as goodwill and even the transfer of non-assets. This session provides a run-down of the key income tax issues taxpayers need to keep in mind, including:

- Understanding CGT versus revenue assets and non-assets
  - Identify goodwill, know-how and intellectual property such as copyright
  - Alternative structuring - can you licence or lease the asset instead?
- Valuing assets and appropriate allocation to the right buckets
  - Understanding Commissioner of State Revenue v Placer Dome Inc [2018] HCA 59 and its implications on the attribution of value
  - Buying professional practices - how to allocate value to patient/client records, goodwill and other assets?
- Structuring decisions:
  - Share sale versus business sale?
  - Earnouts and their tax implications - the interaction with small business CGT concessions

*Speaker: David Marschke, Principal, DBM Horizons, Brisbane*

**10.40 - 10.50am Panel Comments and Questions**

**10.50 - 11.10am Networking Break and Morning Tea**

**11.10 - 11.55am**

## **Session 10: Tricks and Traps of Division 152**

Although the amendments to the small business CGT concessions in Division 152 are now two years old, there is still a great deal of confusion as to precisely how the new rules operate. This session explores the traps and hazards that can arise in practice through the use of case studies, including:

- Understanding the \$2m test versus the \$6m test:
  - Who has to meet which test?
  - When do you need to consider connected entities and affiliates?
  - Relying on liabilities to fall within the cap - are the liabilities connected to the active assets?
- Understanding significant individuals and CGT concession stakeholders
  - Calculating the small business participation percentage
  - How to determine beneficial entitlement if a trust has tax losses or no net income?
  - Planning ahead: drafting the trust resolutions appropriately

*Speaker: Andrea Carrick, Director, AG Tax Lawyers, Melbourne*

**11.55am - 12.05pm Panel Comments and Questions**

**12.05 - 1.05pm Lunch**

# DAY 2 FRIDAY 14 FEBRUARY 2020

## AFTERNOON THEME: CROSS BORDER CHALLENGES

### 1.05 - 1.50pm

#### Session 11: Home is Where ....? Residency in the 21st Century

Corporate and individual residency is more relevant than ever, with increased global mobility and an increase in the number of multinational enterprises. The technical principles are also being revisited in light of new case law and TO guidance. This session explores the question of residence and the issues that arise in practice, including:

- Central management and control: TR 2018/5 and PCG 2018/9:
  - Using case studies to understand the ATO guidance
  - Does the ATO guidance reflect the High Court's view in *Bywater Investments Limited v Commissioner of Taxation* [2016] HCA 45?
  - Following the ATO guidance - what steps should taxpayers take?
  - Understanding the ATO's approach in practice
- Individual residency:
  - Does *Harding v Commissioner of Taxation* [2019] FCAFC 29 change the present position?
  - What are the key criteria to consider?

*Speaker: Vanessa Priest, Partner, Baskin Clarke Priest, Sydney*

### 1.50 - 2.00pm Panel Comments and Questions

### 2.00 - 2.45pm

#### Session 12: Outward Bound: What Do Expanding Businesses Need to Know?

As the barriers to international trade decrease for small and medium enterprises, more and more Australian businesses are looking for international opportunities to grow. This session steps through the international tax issues that an SME taxpayer and their adviser need to consider, including:

- Decisions about structure:
  - Pros and cons of setting up branch or permanent establishment versus establishing a wholly owned subsidiary company
  - Considerations around getting money back into Australia - understanding non-portfolio dividends
- Common international tax issues:
  - Transfer pricing of services to the offshore company or permanent establishment
  - Funding issues and thin capitalisation
  - Determining residency - central management and control
  - The role of double tax agreements

*Speakers: Frank Hinoporos, Partner, and Joshua Haddad, Senior Associate, Hall & Wilcox, Melbourne*

### 2.45 - 2.55pm Panel Comments and Questions

### 2.55pm Conference Close

# GENERAL INFORMATION

## Conference Registration Fee

The registration fee includes attendance at the conference, online access to the conference papers and refreshment breaks and lunch.

The registration fee does not include any travel or accommodation. Delegates are advised to make their own travel arrangements.

## Conference Papers

TEN no longer provides printed copies of conference papers at its events. Access to the papers will be available online to all delegates in the lead-up to the conference (as the papers become available), during the conference and for 30 days after the conference. The papers will be available in .pdf format for easy download to your local computer or portable device.

At the conference TEN will supply printed copies of the PowerPoint presentations.

## Accountants & Lawyers: CPD Units/Points/Hours

**Accountants:** 11 CPD/Training hours

**Lawyers except WA:** 7 CPD units (substantive law)

**Lawyers WA:** 6 CPD points (substantive law)

## The Conference Venue

**Sheraton Grand Mirage Resort** - 71 Sea World Drive, Main Beach, Queensland

[www.sheratongrandmiragegoldcoast.com](http://www.sheratongrandmiragegoldcoast.com)

Phone: (07) 5577 0000 \*

\* Please stay on the line and ask for in-house reservations, do not push 1 for reservations (this may take you through to central reservations where you won't be offered the discounted price).

## Conference Delegate Rate at the Sheraton Mirage \*

Television Education Network has negotiated a special conference delegate rate with the Sheraton Mirage. These rates are strictly subject to availability. **Delegates are advised to make their own accommodation arrangements directly with the Sheraton Mirage.** When booking, please advise that you are attending this conference.

### Standard room with buffet breakfast for 1 person

\$330 (GSTinc)

If you encounter any problems booking your accommodation please do not hesitate to contact our Conference Executive, Jenna Pickrell, on (03) 8601-7729 or email: [jenna@tved.net.au](mailto:jenna@tved.net.au)

## 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 room varies depending on where you are sitting. Light dress is generally OK, but it is advisable that you bring a jacket/long sleeved top in case you need it.)

## Cancellation Policy

Cancellations must be received in writing at least 10 days prior to the Conference for a 85% refund. Substitute delegates accepted at any time.

## Conference Terms

Program subject to change without notice. The information and views presented in the conference are not necessarily those of TEN, and participants rely on these at their own risk. TEN is not responsible for any financial or other losses incurred by delegates or for injury or damage to persons or property. TEN's maximum liability for conference cancellation or any other loss or liability is the refund of the registration fee paid.

TEN is not responsible for financial loss incurred by you as a result of the cancellation or postponement of the conference as a result of strikes, natural disasters, and other Acts of God such as volcanic ash clouds in Australian airspace. We therefore strongly advise you to take out travel insurance if your attendance plans involve air travel or other significant travel to the conference venue.

