

THE FIRST ANNUAL FAMILY BUSINESS TAXATION CONFERENCE

OUR REGULAR TWO DAY CONFERENCE
DELIVERED **ONLINE** IN FOUR PARTS
OVER FOUR HALF DAYS

Part 1: Taxation of Trusts

Wednesday 12 August 2020 [10am to 12.50pm]

Part 2: Tax Planning for Uncertain Times

Thursday 13 August 2020 [10am to 12.50pm]

Part 3: Tax Structuring Issues

Thursday 27 August 2020 [10am to 12.50pm]

Part 4: Taxation of Land

Friday 28 August 2020 [10am to 12.50pm]



Leaders in online CPD for lawyers & accountants

PART 1: WED 12 AUGUST 2020

**CHAIRPERSON: DAVID HUGHES,
PARTNER, MCCULLOUGH ROBERTSON
LAWYERS, BRISBANE**

THEME: TAXATION OF TRUSTS

10:00 – 10:05am

Introduction and welcome

10.05 – 10.45am

**Session 1: Trust Distributions Revisited:
Recharacterisation of Trust Income and Other Issues**

Despite the High Court clarifying its position in *FCT v Bamford* and the Government introducing legislation to specifically allow the streaming of franked dividends and capital gains to particular beneficiaries, there is still widespread confusion amongst trustees, practitioners and clients as to what can or cannot be done when making distributions to beneficiaries. This session seeks to dispel the confusion and focuses on the following areas:

- The recharacterization of trust income for tax purposes – the limits of the trustees powers
- The ATO view vs the profession and the courts
- Limits on recharacterisation of trust income – TA2016/12
- Practical tips for drafting distribution minutes in the light of the ATO view
- The importance of the trust deed in recharacterization
- Strategies to stream income other than franked dividends and capital gains
- The limits of a trustee's discretion - *Trani v Trani*, *Re Marsella* - do these cases have implications for trust taxation?

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

10.45 – 10.55am Questions and Discussion

10.55 – 11.00am

Short break

11.00 – 11.40am

Session 2: Family Trust Elections – Are you in the Family or Out?

Many practitioners and clients have a fundamental misunderstanding of the rules and procedures with respect to making a family trust election in a family trust. This session seeks to clarify the requirements and consequences of making a family trust election.

The following areas will be discussed:

- Why make a family trust election?
- Practically applying the family control test
- Who is in my family group?
- Tips on selecting the right test individual
- The impact of death and divorce on the family group
- Structuring issues and family trust elections (e.g. impact on corporate beneficiaries)
- Do I need a family trust election or interposed entity election?
- Revoking family trust and interposed entity elections
- IEEs and companies owned by trusts: you can never sell the company
- Circular trust distributions and the impact of the amendments in Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Act 2019

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

11.40 – 11.50am Questions and Discussion

11.50 – 12pm

Short Break

12.00 – 12:40pm

Session 3: Section 100A and Distributions to Adult Children: Avoiding the Sting in the Tail

Trustees often seek to optimise tax outcomes by ensuring distributions are tax effective. However, there can be significant and unwanted tax consequences if section 100A is triggered. This session examines the practical application of section 100A of the ITAA 1936 and how advisers can reduce the risks, including:

- What is a reimbursement agreement?
- What is an "ordinary family or commercial dealing"?
- Implications for discretionary trusts which "distribute" to adult children beneficiaries
- Implications for UPEs
- ATO scrutiny - what is the Commissioner's latest position

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

12.40 – 12.50pm Questions and Discussion

12.50pm

Part 1 Close

PART 2: THURS 13 AUGUST 2020

**CHAIRPERSON: ANNA WILSON,
BARRISTER, VICTORIAN BAR,
MELBOURNE**

**THEME: TAX PLANNING FOR UNCERTAIN
TIMES**

10:00 – 10:05am

Introduction and welcome

10.05 – 10.45am

Session 4: The Division 7A Time Bomb – UPEs, SubTrusts and Loans

The Government has still not released any draft legislation on the proposed changes to Division 7A. Notwithstanding the inactivity of the Government, you still have to advise your clients with the spectre of the proposed changes looming. Among those changes, pre December 1998 loans, subs trusts and unitisation arrangements: :

- UPEs and sub-trusts – prudent management or a ticking time bomb
- Managing “quarantined” loan accounts and UPEs
 - Pre-December 1997 loan accounts, pre-December 2009 UPEs and existing 25 year loan arrangements
 - Can you write off pre-1998 loans without tax consequences
 - Statute barred loans
- UPE unitisation arrangements
 - ATO concerns with these arrangements
 - Possible application of Division 7A, section 100A or Part IVA of the ITAA1936
- Review of the latest cases and rulings
 - What is an “honest mistake or inadvertent omission”? (section 109RB of the ITAA 1936) – Howard v FCT [2019] AATA 1910
 - Section 109T, interposed entities and ordinary commercial transactions – TD 2018/13

Speaker: Arthur Athanasiou, Partner, Thomson Geer Lawyers, Melbourne

10.45 – 10.55am Questions and Discussion

10.55 – 11.00am

Short break

11.00 – 11.40am

Session 5: Tax Obligations and Relief in Response to COVID-19

Significant economic challenges confront the Australian economy as a result of the continued spread of COVID-19. The tax concessions and cash flow support announced at Federal level have been welcomed by small and medium sized businesses, although practical challenges remain. Now that the dust has settled on these reforms, this session examines how to navigate the traps advisers are seeing in practice, including:

- Troubleshooting the JobKeeper scheme:
 - Turnover higher than predicted
 - Incorrect classification of employees
 - Dealing with casuals with more than employer
 - ATO audit activity and anti-avoidance issues
 - How has the Commissioner applied his discretion?
 - Recent ATO guidance
- Tips and tricks with the enhanced tax concessions for capital investment:
 - Increase in instant asset write-off
 - Accelerated depreciation deduction
- Navigating practical challenges with the deferral and time payment of tax liabilities
- ATO administrative relief for SMEs – challenges we’re seeing in practice

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

11.40 – 11.50am Questions and Discussion

11.50 – 12.00pm

Short Break

PART 2: THURS 13 AUGUST 2020

12.00 – 12.40pm

Session 6: 26% or 27.5% or 30% - Confusion Still Reigns When Calculating a Company's Tax Rate

The legislation dealing with a company's eligibility for the reduced company tax rate has been in place for quite some time. Unfortunately, practitioners and their clients are still having difficulty determining when they should pay tax and frank dividends at 27.5%. With the economic fallout from the coronavirus pandemic continuing, it has never been more important for companies to be across their eligibility for the reduced rate. This session examines the following areas:

- What is a Base Rate Entity (BRE)?
- Practically applying the BRE Passive Income and Turnover tests:
 - Examining BRE Passive Income following the release of LCR 2019/5
 - Calculating turnover and grouping rules (i.e. connected entities and affiliates)
- Case studies on structuring to avoid tips and traps (e.g. trading companies wholly-owned by discretionary trusts)
- Calculating a company's Corporate Tax Rate for Imputation purposes
 - The way imputation works when entities pay the higher rate (i.e. paying tax at 30% does not necessarily guarantee you get to frank at 30%)

Speaker: Raffi Tenenbaum, Director Taxation Services, Prosperity Advisers Group, Sydney

12.40 – 12.50pm Questions and Discussion

12.50pm

Part 2 Close

PART 3: THURS 27 AUGUST 2020

**CHAIRPERSON: SIMON TISHER,
BARRISTER, VICTORIAN BAR,
MELBOURNE**

THEME: TAX STRUCTURING ISSUES

10.00 – 10.05am

Introduction and welcome

10.05 – 10.45am

Session 7: Current CGT and Tax Traps in Business Restructures

The Commissioner's recent draft ruling on demergers (TD 2019/D1) and Taxpayer Alert TA 2019/2 highlight that restructure transactions are being closely scrutinised by the ATO. This session examines the draft determination in detail and considers the impact on back-to-back CGT rollovers. The following areas will be discussed:

- What is a restructure?
- Satisfying the "nothing else" requirement
- The impact of back-to-back rollovers on the availability of the CGT discount – Hart v FCT [2019] FCAFC 179
- Case studies on common rollovers and reorganisations
- Part IVA and section 45B of the ITAA 1936
- Examining the Board of Taxation review of rollovers

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

10.45 – 10.55am Questions and Discussion

10.55 – 11.00am

Short break

11.00 – 11.40am

Session 8: Am I Carrying on a Business? Unpacking the Tax Outcomes

The issue of whether or not a client's activities amount to a business has always been a problematic area for practitioners. This is further complicated by the fact that several concessions within the income tax law require taxpayers to be carrying on a business (e.g. the small business entity concessions). This session examines the following areas:

- The ATO definition of carrying on a business – TR 97/11 and TR 2019/1
- Am I a small business entity (SBE)?
 - Concessions available to SBEs
 - Calculating turnover
- Small business CGT concessions, active assets and the carrying on of business?
 - FCT v Eichmann [2019] FCA 2155
 - Application of small business CGT concessions to investment assets – TD 2019/D4
 - What supporting documentation is required when applying for a private ruling on carrying on a business?

Speaker: Philip de Haan, Partner, Thomson Geer, Sydney

11.40 – 11.50am Questions and Discussion

11.50 – 12.00pm

Short Break

12.00 – 12.40pm

Session 9: Deceased Estates and Testamentary Trusts: Making Sure Income is Excepted Trust Income

Practitioners are often called upon to assist executors of deceased estates or trustees of testamentary trusts with the tax affairs of the estate or trust. This session focuses on the recent developments in this area:

- Testamentary trusts and distributions to minor beneficiaries – proposed amendments
- Disclosure of protected information of a deceased taxpayer - CRP 2019/D1
- Draft Practical Compliance Guideline PCG 2018/D6 – Extension of 2 year period to dispose of inherited main residence
- Income tax liability of the LPR of a deceased person – PCG 2018/4
- Special disability trusts
 - Advantages and disadvantages
 - Requirements
- De facto testamentary trusts
 - Advantages and disadvantages
 - Requirements

Speaker: Matthew Burgess, Director, View Legal

12.40 – 12.50pm Questions and Discussion

12.50

Part 3 Close

PART 4: FRIDAY 28 AUGUST 2020

**CHAIRPERSON: PAUL SOKOLOWSKI,
PARTNER, ARNOLD BLOCH LEIBLER,
MELBOURNE**

THEME: TAXATION OF LAND

10.00 – 10.05am

Introduction and welcome

10.05 – 10.45am

Session 10: Property Developments and Mere Realisation: The Commissioner Changes His Spots

The Commissioner has traditionally treated small-scale property developments as mere realisations of a capital asset. Recent activity indicates that the Commissioner has changed his views and wants to tax these developments on revenue account. So gird your loins for a fight. This session examines the following areas:

- The revenue and capital distinction implications for property developers:
 - Subdividing land held for a long period- when does the land cease to be on capital account?
 - What then happens – pre and post CGT assets?
 - What is an isolated profit-making transaction?
 - Am I carrying on a business of property development?
- The new aggressive stance by the Commissioner –correct at law?
- Small two lot subdivisions and mere realisation
- Strategies for persuading the Commissioner that you are really just realising a capital asset
- Recent private rulings

Speaker: Philip Diviny, Partner, Madgwicks, Melbourne

10.45 – 10.55am Questions and Discussion

10.55 – 11.00am

Short break

11.00 – 11.40am

Session 11: The Vacant Land Measures – Is the Government Attacking Land Owners?

The vacant land measures in Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Act 2019 have been seen by some commentators as an attack on small land owners and mum and dad investors. The removal of tax deductions for holding costs associated with vacant land (e.g. rates, land tax or interest on a mortgage) from 1 July 2019 represents a significant financial cost for many small investors. This session examines the operation of the “new” rules and also identifies exemptions which may be available to clients:

- Overview of the “old” rules governing the deductibility of holding costs
 - FCT v Steele – Do I have a purpose of earning income?
- What is vacant land?
 - What is a substantial structure?
 - Vacant land and semi-completed residential property developments
- Who does the rules apply to?
 - Companies excluded
 - Primary producers and property developers excluded
 - What about agistment income?
 - Related parties using the land
 - Implications for investors purchasing off-the-plan
- Other exclusions/inclusions

Speaker: Andrew Rider, Barrister, Sydney

11.40 – 11.50am Questions and Discussion

11.50 – 12.00pm

Short Break

12.00 – 12.40pm

Session 12: GST Management in Pandemics: Planning for Survival

With an economic downturn and tightening rules on bank lending, developers are seeing an increase in the number of transactions where the initial purchaser is looking to pull out of a sale contract or to substitute an unrelated third party. This session examines the GST consequences of these types of transactions, as well as other GST strategies to consider in a contracting market. It covers:

- Impact of COVID-19:
 - GST reporting cycles – when to elect to increase frequency of reporting cycles?
 - Supplies among related entities – when to consider forming a GST group
 - Strategies to reduce unrecoverable GST costs and minimise GST leakage
- GST and property developments in trouble.
- Purchaser Substitution – what is the GST treatment of the amount paid by the initial purchaser to the vendor:
 - Forfeited deposits
 - Compensation payment
 - Incentive to accept step-in purchaser

Speaker: John Haig, Indirect Tax Specialist, Melbourne

12.40 – 12.50pm Questions and Discussion

12.50pm Conference Close

GENERAL INFORMATION

Conference Registration Fee

The registration fee includes attendance at the conference, online access to the conference materials and recordings of each of the sessions provided after the conference.

Conference Materials

Access to the conference materials (papers and Powerpoints) will be available online to all delegates in the lead-up to the conference (as the materials become available), during the conference and for 30 days after the conference. The materials will be available in .pdf format for easy download to your local computer or portable device.

Lawyers - CPD Units/Points

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

WA Lawyers: 6 CPD points (substantive law)

Accountants: 12 CPD/Training hours

CPD Certificate

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

Online Conference Delivery

The conference will be delivered online. Delegates will receive a link to login and attend each of the 4 parts of this online conference.

This online conference will be delivered in a style similar to a live conference. There are Chairs for each part to introduce speakers and facilitate question time and the online portal allows delegates to pose questions to the speakers via the chat facility.

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.

If a registration was purchased as part of a group discount the cancellation of that registration may affect the discount level for other members of the group. The amount of the refund will be adjusted to recoup any adjustment required to the overall registration fees for that group.

Conference Terms

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