

TAX ASPECTS OF DEATH AND ESTATE PLANNING CONFERENCE

Division 7A, Section 100A and Other Inter Entity Loan Issues

How Family Trust Elections Impact the Estate Plan

Don't Leave Me Out: Trustee Distributions and Discretion

Receiving Funds from a Foreign Trust

Be Careful What You Put into a Testamentary Trust

Testamentary Trusts: Are They Next in the Firing Line?

When Assets Testamentary Trusts Become Assets of Beneficiaries

Super Strategies for the Estate Plan – Pre and Post Death

Considering a Business in the Estate Plan

Tax Consequences for the Family Home After Death

Trust Splitting is Not Necessarily Dead: Long Live Trust Splitting!

Is Change as Good as a Holiday? Not if it Resettles a Trust

A Two-day Conference

Monday 23 & Tuesday 24 October 2023

Melbourne Marriott Hotel



Leaders in online CPD for Lawyers & Accountants

DAY 1 - MONDAY 23 OCTOBER 2023

MORNING THEME: DISTRIBUTIONS AND LOANS IMPACTING THE ESTATE PLAN

9.00 - 9.15am Introduction and welcome

Today's chair: Paul Sokolowski, Partner, Arnold Bloch Leibler, Melbourne, Vic

9.15 - 10.00am

Session 1: Division 7A, Section 100A and Other Inter Entity Loan Issues Impacting the Estate Plan

A balance sheet review of loans between associated entities is a necessary, yet sometimes overlooked, procedure in developing an estate plan. Unravelling these loans after the death of an affected party without proper forethought can be messy and result in unintended consequences. This session explores the issues and strategies available when such loans are identified, including:

- What are the issues arising with associated entity loans that are going unaddressed until a deceased estate is being administered?
- Addressing issues where loans owing to a deceased estate are funding business operations
- How to deal with Division 7A loans and issues in the estate plan
- The unforeseen tax implications that may arise when writing off loans by journal entry
- How timing the forgiveness of a loan can impact the tax outcome (ATO ID 2012/77)
- Is recent ATO section 100A guidance material impacting on estate planning?
- How to manage loan issues associated with bucket companies
- Strategies pre death to minimise adverse tax consequences for a deceased estate, including:
 - reviewing dividend policies and the impact on loans
 - ensuring loans are tax compliant
- Case study

Speaker: Daniel Smedley, Principal, Sladen Legal, Melbourne, Vic

10.00 - 10.10am Panel Comments and Questions

10.10 - 10.55am

Session 2: How Family Trust Elections Impact the Estate Plan

Family trust elections are often made, amongst other reasons, to achieve a tax effective outcome for claiming carried forward losses or ensuring beneficiaries can access franking credit entitlements. However, it is also important to ensure the making of an FTE aligns with the longer term estate planning objectives of the controlling individuals. This session explores the issues, including:

- What is the impact on trusts that have and haven't made an FTE?
- What is the effect on a trust if a "test individual" dies?
- How important are the existing relationships of a "test individual" as at the date of the test individual's death?
- Can the effects of having a "test individual" create complications for blended families?
- Can you revoke an FTE if it is not meeting estate planning intentions?
- Does the death of a "test individual" restrict other entities from making an interposed entity election to be included in the family group? (ATO ID 2014/3)?
- Can a deceased estate be part of a family group, making it potentially eligible to receive trust distributions?
- Practical case studies

Speaker: Ian Burgess, Director, Burgess Chartered Accountants, Brisbane, Qld

10.55 - 11.05am Panel Comments and Questions

11.05 - 11.30am Networking Break and Morning Tea

DAY 1 - MONDAY 23 OCTOBER 2023

11.30am - 12.15pm

Session 3: Don't Leave Me Out: Trustee Distributions and Discretion

The financial year end is drawing to a close, marginal tax rates of potential beneficiaries have been considered and the trustee determines the income distribution allocation for the trust. If this is the annual procedure being followed for distributing trust income, recent developments arising from disgruntled beneficiaries may cause you to have a rethink. This session looks into how trustee discretion is being challenged, including:

- Why are trustee distributions being challenged?
- What are the duties of a trustee when distributing trust income?
- What are the rights of the potential beneficiaries of trust income?
- Case review and key takeaways of a successful challenge to discretion applied by a trustee (*Owies v JJE Nominees Pty Ltd* [2022] VSCA 142)
- What is the tax impact if distributions are held to be void?
- Tips for procedures for trustees and advisers to follow to minimise risk
- Case studies

Speaker: Edward Skilton, Principal, Sladen Legal, Melbourne, Vic

12.15 - 12.25pm Panel Comments and Questions

12.25 - 1.10pm

Session 4: Receiving Funds from a Foreign Trust: What's Assessable May Not Be What You Think

The complexities of tax legislation can often reveal unexpected implications, as exemplified by recent ATO guidance on section 100A. However, another provision, section 99B, has received limited attention despite its potential for broader application. This session explores the implications of section 99B when receiving capital distributions from foreign trusts, including:

- When does section 99B apply?
- Are there any situations where payments or benefits from an Australian trust could attract section 99B?
- How section 99B impacts on:
 - benefits flowing from a non assessable capital gain from from a non resident trust (TD 2017/23)
 - capital losses and the 50% discount for the beneficiary (TD 2017/24)
- Could a loan from an overseas trust be treated as income?
- How section 99B can apply to distributions from a deceased estate
- The interest regime the ATO can apply to amounts assessable under section 99B
- If receiving payments, benefits or assets from a foreign trust, what records should be maintained to minimise the risk of an adverse tax outcome?
- Case study

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

1.10 - 1.20pm Panel Comments and Questions

1.20 - 2.15pm Luncheon

DAY 1 - MONDAY 23 OCTOBER 2023

AFTERNOON THEME: NAVIGATING TAX BOMBS IN TESTAMENTARY TRUSTS

2.15 - 3.00pm

Session 5: Be Careful What You Put into a Testamentary Trust: Dodging the Hidden Tax Traps

The use of testamentary trusts can be an extremely effective estate planning tool, particularly when minors are involved. However, care needs to be taken when administering these types of trusts to ensure that what goes in doesn't taint their effectiveness. This session explores the issues, including:

- Who is an "excepted person" and why it matters?
- When can income from a deceased person's estate be classified as "excepted trust income"?
- The tax and accounting implications for a TT partially consisting of assets not sourced from a deceased estate
- Is the tax treatment of a TT impacted by:
 - borrowings to acquire assets?
 - obtaining further assets from more than one deceased estate?
 - conducting a business?
 - gifts to beneficiaries deposited into the TT
 - who acquires the trust property at the end of the trust?
- Tips to avoid inadvertent tax consequences arising in a TT
- Practical examples

Speaker: *Greg Russo, Principal, Greg Russo Law, Melbourne*

3.00 - 3.10pm Panel Comments and Questions

3.10 - 3.55pm

Session 6: Testamentary Trusts: Are They Next in the Firing Line?

There has been a lot of activity recently in the tax arena on the interaction of trusts, section 100A and Part IVA, which involve various ATO guidance material and case decisions. How does this activity flow through to the administering of testamentary trusts? This session explores the question, including:

- Are TTs differentiated from other trusts when applying section 100A?
- Unpaid present entitlements from a TT:
 - Is there a section 100A risk for distributions to minors?
 - Is there a tax risk for UPEs that have accumulated up to the beneficiary turning 18?
- The tax impact of injecting assets or loaning funds to a TT
- Can a TT be set up with proceeds from a deceased estate if:
 - there is no instruction to do so in the will?
 - the deceased dies without a will?
- How are super death benefits taxed when channelled into a TT with a broad class of beneficiaries, some being dependants?
- Can a non dependant beneficiary tax effectively transfer a super death benefit to a super proceeds trust?
- Case study

Speaker: *Dung Lam, Principal, West Garbutt, Sydney, NSW*

3.55 - 4.05pm Panel Comments and Questions

4.05 - 4.25pm Networking Break and Afternoon Tea

DAY 1 - MONDAY 23 OCTOBER 2023

4.25 - 5.10pm

Session 7: When the Assets of a Testamentary Trust Eventually Become the Assets of the Beneficiaries

The lifespan of a testamentary trust will be reliant upon the terms of the deed. Some of those terms state that the trust is to exist for a number of generations, or until beneficiaries reach a certain age, or until a variety of other requirements are met. This session looks into the tax aspects of a TT that has assets remaining when it reaches the end of its life, including:

- Can a TT end before the conditions of its deed say it can?
- What are the tax consequences, if on the termination of a TT, the trustee:
 - sells CGT assets prior to, however in the same financial year, as the final distribution
 - transfers remaining CGT assets to beneficiaries?
- Can the trustee extend a vesting date, and if so:
 - are there any tax consequences?
- Can a discretionary TT continue to be discretionary if its vesting date has passed?
- When may beneficiaries be the “taxpayer” for a CGT asset, even though the asset is held or sold by a trustee of a TT, including:
 - why it may matter whether or not the asset in question is “fungible” (TR 2004/D25)
 - the tax treatment when there are multiple beneficiaries
- The tax implications when the CGT asset remaining on the cessation of a TT is a property remaining after the death of a life tenant, where:
 - the property is sold by the trustee and funds disbursed to remainder beneficiaries
 - the property is transferred to remaining beneficiaries
- Practical examples

Speaker: Nathan Yii, Principal lawyer, Nathan Yii Lawyers, Melbourne, Vic

5.10 - 5.20pm Panel Comments and Questions

DAY 2 - TUESDAY 24 OCTOBER 2023

MORNING THEME: DEALING WITH SPECIFIC ASSETS IN THE ESTATE PLAN

9.00 - 9.05am Introduction and welcome

Day 2 Chair: Bernie O'Sullivan, Principal, Sladen Legal, Melbourne, Vic

9.05 - 9.50am

Session 8: Super Strategies for the Estate Plan – Pre and Post Death

Whilst death duties in Australia are a thing of the past, the taxing of superannuation death benefits is a topic gathering momentum to becoming very much front and centre in the minds of fund members and their advisors. This session explores the tax impact associated on the death of a fund member, including:

- The different ways super death benefits flow through to the beneficiaries depending on the estate planning documentation, if any, in place
- The circumstances that support an adult child or parent being either interdependent or financially dependent on the deceased and why it matters [Tratter v Aware Super [2023] FCA 491]
- Planning strategies to minimise the tax impact of superannuation proceeds to the next generation
- How pre death withdrawals can impact on both tax and the future recipient of those funds on death
- Strategies that direct the components of a deceased's estate to the tax preferred beneficiary for that particular asset, including the effect of incorporating a testamentary trust as a superannuation proceeds recipient
- Planning for a potential tax impact from life insurance proceeds within superannuation
- Case studies exploring the impact of the proposed 15% tax on super balances over \$3 million

Speaker: Jennifer Dixon, Practice Leader, Moores, Melbourne, Vic

9.50 - 10.00am Panel Comments and Questions

10.00 - 10.45am

Session 9: Considering a Business in the Estate Plan

Having an involvement in a business can create challenges when it comes to estate planning. However, some forethought as to the future intentions for the business now will assist in avoiding knee jerk decision making down the track. This session explores the tax issues to consider, including:

- When a partnership may continue as a “reconstituted partnership” on the death of a partner, including the tax benefits of maintaining the deceased's partner's estate as a partner in a family partnership
- Estate planning for a business conducted in a company, including whether the CGT small business concessions can be used if inherited shares are subsequently sold
- Estate planning for a business conducted in a discretionary trust, including:
 - whether a pre death change in structure would assist with succession
 - what the impact is on the death of a test individual from a previous family trust election
- Can the small business restructure roll-over be used for estate planning purposes?
- How the small business CGT concessions are applied to a deceased estate
- Strategies to avoid potential conflict post death for a business in one entity and the business premises in another
- Practical examples of comparisons of the tax impact of conducting a business sale pre death or by the LPR

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

10.45 - 10.55am Panel Comments and Questions

10.55 - 11.15am Networking Break and Morning Tea

DAY 2 - TUESDAY 24 OCTOBER 2023

11.15 - 12.00pm

Session 10: The Tax Consequences for the Family Home After Death

For many deceased estates, the major asset is the deceased's main residence, being a CGT asset with a difference due to the various emotions and memories that may be attached. Determining whether there are any tax consequences for this asset will depend on a number of variables, which this session explores, including:

- Does the history of use of a main residence matter?
- How the CGT main residence rules interact with:
 - section 118-145 ITAA 1997, if main residence use ceases pre death
 - moving into an aged care facility pre death and maintaining home ownership
- the two year rule, including:
 - the relevant dates to use
 - when the period may be extended
- How the CGT cost base rules apply to a main residence, including:
 - the situations where historical ongoing ownership costs may be required
- Why the residency status of the deceased matters
- When the will grants a beneficiary a right to reside
- Applying the rules for a main residence on land in excess of two hectares
- Practical examples of CGT implications based on the various usage of a main residence post death

Speaker: Craig Spink, Principal, Spink Legal, Brisbane, Qld

12.00pm - 12.10pm Panel Comments and Questions

12.10 - 1.10pm Lunch

AFTERNOON THEME: THE TAXING ISSUE OF DISCRETIONARY TRUSTS

1.10 - 1.55pm

Session 11: Trust Splitting is Not Necessarily Dead: Long Live Trust Splitting!

Dealing with trusts in the estate plan can create challenges, with a willmaker often surprised to find it is not simply a matter of picking and choosing assets within a trust to leave behind to loved ones. This session explores whether the "picking and choosing" option may not necessarily be ruled out altogether, albeit in a modified way of control as distinct from direct ownership, including:

- How the process of trust splitting works
- Why would you consider undertaking a trust split?
- What are the situations that may be conducive to a trust split?
- When a trust split may trigger unintended tax consequences
- Does appointing separate trustees and appointors over different pieces of trust property trigger tax consequences that can apply to resettlements?
- Unpacking the two examples in TD 2019/14 to uncover why one is tax friendly and the other isn't
- Using recent PBRs that involve shareholder deeds and trust deed amendments, as case studies of ATO's current interpretation approach
- Are there other estate planning alternatives to share the spoils of a trust? Case studies exploring the potential use of:
 - CGT rollovers or small business CGT concessions
 - asset revaluation reserve (*Fischer & Ors v Nemeske Pty Ltd & Ors* [2016] HCA 11)

Speaker: Michael Butler, Partner, Finlaysons, Adelaide, SA

1.55 - 2.05pm Panel Comments and Questions

DAY 2 - TUESDAY 24 OCTOBER 2023

2.05 - 2.50pm

Session 12: Is Change Really as Good as a Holiday? Maybe Not if it Resettles a Trust

Throughout the life of a trust, there may be times when the deed may need an amendment for a variety of reasons. However, care needs to be taken to ensure the change doesn't inadvertently result in a new trust. This session explores the issues, including:

- Why the contents of the existing deed are so important when it comes to changing a deed
- What variations to a trust can be done without causing a resettlement?
- Can a change of trustee or appointor trigger unintended tax consequences?
- How CGT and stamp duty issues can arise if it is considered that a resettlement has occurred
- How are inadvertent resettlements occurring in practice?
- Can a resettlement occur when a trust's vesting date is extended? (TR 2018/6)
- A review of recent PBRs to get a feel of the ATO's interpretation
- Practical examples

Speaker: Matthew Burgess, Director, View Legal, Australia

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

Lawyers (except WA): 11 CPD units (substantive law).

WA Lawyers: 6 CPD points (substantive law). WA practitioners can claim 6 CPD points for attending the conference (being the maximum allowable by the LPBWA per event). TEN is an accredited CPD provider.

Accountants: 11 CPD/training hours.

CPD Certificate

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

The Conference Venue

Melbourne Marriott Hotel
Cnr Lonsdale & Exhibition Streets, Melbourne

Delegate Accommodation rate at the Marriott

Delegates can receive a 10% off the best available rate at time of booking by contacting the reservations department on (03) 9660 1128 or emailing: reservations.melbourne@marriotthotels.com. Please quote The Education Network Conference when booking to receive the discount.

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 so it is advisable that you bring a jacket/long sleeved top in case you need it).

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1. In these terms,
 - a. "TEN" means Television Education Network Pty Ltd
 - 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
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General – all conferences

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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.

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