

16TH ANNUAL BUSINESS AND PROPERTY TAX CONFERENCE

The Expanding Obligations of Being a Tax Agent

Trusts Under the Microscope

Division 7A Ticking Time Bombs in Your Client Base

Maximising Tax Benefits in a High-rate Environment

SMSFs & Property: Unlocking the Keys to Smart Investment

Tax Implications for Small-Scale Land Subdivisions

Now You Listen to Me Young Man –

I Bought My Property on Revenue Account

Small Business CGT Concessions –

Added Complexities if the Asset is a Share or Trust Interest

Small Business 15-Year Exemption – Get it Right and no CGT

Business Restructuring: Don't Let Tax Get in the Way

Tax Avoidance: Decoding the ATO's Red Flags

Director Penalty Notices –

If the Company Can't Pay the Directors May Have To

A Two-day Conference

Thursday 13 & Friday 14 February 2025

Sofitel Gold Coast, Broadbeach

Feedback from last year's conference:

- Good coverage of topics and the presenters (as always) are very happy to mingle and discuss issues. Well run (as always).
- Liked the content. Explained better than at other conferences. Speaker quality excellent.
- A good panel of presenters who knew their stuff. Topical for the type of work that we do and some current topics that are front of mind..



Your Trusted CPD Partner for 50 years

DAY 1: THURSDAY 13 FEBRUARY 2025

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

**MORNING THEME: TRUSTS AND
COMPANIES UNDER THE TAX LENS**

9.00 - 9.15am

Introduction and welcome

9.15 - 10.00am

Session 1: Keynote - The Expanding Obligations of Being a Tax Agent

The legislators have been busy recently adding to the obligations that registered tax agents need to comply with when performing their duties. This session reviews the recent changes and how they may apply in practice, including:

- The breach reporting obligations:
 - when do you have to self-report?
 - when do you have to report another tax practitioner?
 - how to report
 - penalties for failure to comply
 - addressing confidentiality issues
- Will ATO's views on sec. 109RB applications for discretion for failure to comply with Division 7A be impacted by breach reporting obligations?
- A review of the eight additional obligations that supplement the existing obligations under the Code
- What do tax agents need to include in their quality management systems?
- What are the "relevant matters" you need to inform all your current and prospective clients about yourself?
- Practical examples that reflect common grey area situations in practice

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

10.00 - 10.10am Panel Comments and Questions

10.10 - 10.55am

Session 2: Tax A avoidance: Decoding the A TO's Red Flags

Like a lot of issues in tax, there is not necessarily a bright line that distinguishes between acceptable practice and arrangements that may fall foul of the general anti-avoidance provisions. This session takes a look at how the general anti-avoidance provisions are currently being interpreted in a range of situations, including:

- How selling shares at a loss to offset a capital gain can trigger adverse tax consequences (Merchant v C of T [2024] FCA 498 (on appeal); TR 2008/1)
- How loans forgiven between related entities can attract the general anti-avoidance provisions (Merchant v Commissioner of Taxation 2024 FCA 498)
- How Part IVA is being interpreted in relation to trust distributions (Minerva Financial Group Pty Ltd v C of T [2024] FCAFC 28)
- How do you determine if an arrangement involves dividend stripping? (C of T v Michael John Hayes Trading Pty Ltd as trustee for MJH Trading Trust [2024] FCAFC 80)
- How implementing a restructure to extinguish Division 7A loans is viewed by the Courts (Ierna v C of T [2024] FCA 592)
- How two legal practitioners fared when restructuring with asset protection intentions (Grant v FC of T [2024] AATA 427; Collie v FC of T [2024] AATA 440)
- Key themes from recent cases and takeaway lessons for navigating the line between sound tax planning and advice falling foul of Part IVA

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

10.55 - 11.05am Panel Comments and Questions

11.05 - 11.30am Networking Break and Morning Tea

DAY 1: THURSDAY 13 FEBRUARY 2025

11.30am - 12.15pm

Session 3: Division 7A: Are There Any Ticking Time Bombs in Your Client Base?

The ATO has been active in recent times in getting the message out there that Division 7A is proving to be a major cause of concern for them, with compliance levels not at a standard they would like to see. This session takes a look at the main issues attracting the ATO's attention, along with strategies to assist with defusing any potential adverse outcomes, including:

- Arrangements not included in the financial statements that are attracting the ATO's attention
- How the higher interest rate environment is impacting on Division 7A compliance, including:
 - determining interest deductibility
 - strategies to counter
- Has the Bendel case (Bendel v FCT [2023] AATA 3074) changed the treatment for a Division 7A unpaid present entitlement?
- How the ATO is applying Section 109R ITAA 1936 to deny loan repayments reducing a Division 7A loan
- Can amendment time limits assist with overlooked Division 7A issues?
- Can restructuring solve a Division 7A problem? (Ierna v C of T [2024] FCA 592)
- How generous is the Commissioner being with applying his discretion to disregard a Division 7A dividend or allow the deemed dividend to be franked? (Sec. 109RB ITAA 1936; TR 2010/8; PS LA 2011/29)
- How will uncovering non-addressed Division 7A issues fare in relation to the Tax Agent Services Act 2009 breach reporting obligations for:
 - breach self-reporting
 - breach reporting of another tax practitioner when taking on a new client with unattended Division 7A issues

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

12.15 - 12.25pm Panel Comments and Questions

12.25 - 1.10pm

Session 4: Interest Deduction: Maximising Tax Benefits in a High-rate Environment

In a higher interest rate environment, the value of interest incurred being eligible as a tax deduction has gained more importance. This session explores various situations where the claiming of interest may not be all that straightforward, including:

- When interest incurred on loans to trusts are tax deductible (TD 2018/9)
- Interest on investment properties, including:
 - when property in joint names and loan in name of one spouse only
 - when property in one name and loan in joint names
 - apportionment methods when loan funds mixed with private borrowings using line of credit and redraw facilities (TR 2000/2)
- The tax treatment of claiming interest:
 - for borrowed funds on lent to an associated company interest free (IT 2606; Economides v FCT ATC 2353)
 - on acquiring vacant land (Sec. 26-102 ITAA 1997; TR 2023/3)
 - on the commencement and cessation of a business
- When Part IVA could apply to arrangements maximising interest claims for tax deductible purposes over non-deductible private purposes (TD 2012/1)
- Practical examples

Speaker: Philip Diviny, Principal, Madgwicks, Melbourne, Vic

1.10 - 1.20pm Panel Comments and Questions

1.20 - 2.15pm Luncheon

DAY 1: THURSDAY 13 FEBRUARY 2025

AFTERNOON THEME: PROPERTY ISSUES

2.15 - 3.00pm

Session 5: SMSFs and Property: Unlocking the Keys to Smart Investments

With the steady growth of SMSF property investments, understanding the nuances of this strategy is more important than ever. This session will equip accountants with the essential insights to guide their clients in navigating the complexities of SMSF property acquisitions. It covers:

- The increasing trend of SMSF property investments and its implications
- Acquisition methods, including direct purchases, off-the-plan investments, and limited recourse borrowing arrangements
- The pros and cons of investing in commercial versus residential property
- The legislative framework and key case law - critical lessons for SMSF property investment success

Speaker: Graeme Colley, SMSF Professionals Association of Australia Specialist Advisor, Sydney, NSW

3.00 - 3.10pm Panel Comments and Questions

3.10 - 3.55pm

Session 6: Tax Implications for Small-Scale Land Subdivisions

One of the trickier issues that can come up in practice is when a client seeks advice on a small-scale property subdivision. Often the advice is sought by someone with no previous property development experience, who has just happened to find that as landowners, they can reap greater rewards if further development to their property is undertaken. This session looks into the issues, including:

- How the ATO's guidance material addresses the issues [QC 71028]
- What extent of development activity can turn a mere realisation of a capital asset into a profit-making venture?
- When will GST be applicable to a small-scale land subdivision?
- Recent private binding rulings addressing the tax implications for small scale subdivisions (incl. PBRs 5010073888407 & 1052196215679)
- Subdividing the land the family home is situated on to gift the subdivided rear yard to a child to build their own home:
 - are there any income tax issues?
 - are there any state and territory tax and duty issues?
- Knockdown/rebuild of family home as part of a subdivision - is section 118-150(5) an issue if original home owned for more than four years?
- Practical examples, including from ATO's "Examples of tax consequences on sales of land including small scale land subdivision"

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

3.55 - 4.05pm Panel Comments and Questions

DAY 1: THURSDAY 13 FEBRUARY 2025

4.05 - 4.25pm Networking Break and Afternoon Tea

4.25 - 5.10pm

Session 7: Now You Listen to Me Young Man - I Bought My Property on Revenue Account

The recent AAT case of an 86-year-old woman who went head-to-head with the ATO over whether she was entitled to a tax deduction for the loss on a unit she lived in for over two years shows that the capital versus revenue debate is alive and kicking. This session delves into the recent state of play, including:

- The differing tax treatment for property held on capital or revenue account
- The elderly lady, her residence and the tax deductible revenue loss [Bowerman v FC of T [2023] AATA 3547]
- Other recent cases that have decided on the revenue/capital distinction (incl. Mitri v FCT [2023] AATA 3762)
- A refresher on the Myer Principle for profits arising from an isolated business or commercial transaction and the application to property
- The tax implications if the intention for a property changes during its ownership from capital to revenue or vice versa
- Factors that can turn the mere realisation of a capital asset into a transaction on revenue account
- Tips for tax practitioners to manage the capital/ revenue distinction with a clients differing preferred treatment and expectations
- Practical examples

Speaker: George Kolliou, Director, AG Tax Lawyers, Melbourne, Vic

5.10 - 5.20pm Panel Comments and Questions

DAY 2: FRIDAY 14 FEBRUARY 2025

**CHAIR DAY 2: STEPHEN HOLMES,
PARTNER, WMS ADVISORY, GOLD
COAST, QLD**

MORNING THEME: CAPITAL GAINS AND BUSINESS RESTRUCTURING

9.00 - 9.05am

Introduction and welcome

9.05 - 9.50am

Session 8: Small Business CGT Concessions - Added Complexities if the Asset is a Share or Trust Interest

A methodical approach is required to navigate the small business CGT concessions. With the extra conditions that apply if the asset in question is a share or trust interest, practitioners really have to be on their game for those situations. This session explores why, including:

- The additional conditions to be met for shares and trust interests
- How trust distributions can impact on eligibility for the concessions
- How to apply the modified active asset
- How the accumulation of cash in an entity may put eligibility to the concessions in jeopardy for shares and trust interests
- How Division 7A loans can impact on the concessions
- When may it be more tax effective to sell the business and not the shares or trust interests, and vice versa
- Tips to assist with ensuring shares or trust interests satisfy the small business CGT requirements when the time comes to sell
- Case study

Speaker: Andrea Carrick, Director, SMSF Specialist Advisor, AG Tax Lawyers, Melbourne, Vic

9.50 - 10.00am Panel Comments and Questions

10.00 - 10.45am

Session 9: Small Business 15-Year Exemption - Get it Right and no CGT

Once you have satisfied the basic conditions for small business CGT relief, including any additional conditions that can apply for shares and trust interests, you can then move on to the concessions available to reduce any CGT otherwise payable. This session delves into the first of the four concessions, the extremely generous small business 15-year exemption, including:

- Who is entitled to use the exemption?
- How is the exemption applied when the entity deriving the capital gain is a trust or company, including from the perspective of:
 - the trust or company
 - the ultimate shareholder or beneficiary recipient
- How the exemption applies to shares and trust interests
- How is "retirement" defined to access the exemption?
- How the 15-year continuous ownership period requirement is impacted by relationship breakdowns or small business restructures (Sec. 152-115 ITAA 1997)
- The interaction with:
 - capital losses
 - the superannuation CGT cap
 - assets that become part of a deceased estate
- Tips to plan ahead for eligibility
- Case study

Speaker: Raffi Tenenbaum, Partner, William Buck, Sydney, NSW

10.45 - 10.55am Panel Comments and Questions

10.55 - 11.15am Networking Break and Morning Tea

DAY 2: FRIDAY 14 FEBRUARY 2025

11.15 - 12.00pm

Session 10: Business Restructuring: Don't Let Tax Get in the Way

Business restructures are undertaken for a number of reasons, and when considering the change, it is important that the tax implications be given due consideration. This session explores the tax consequences that can arise when implementing a restructure, as well as tips to assist with ensuring that unforeseen adverse tax consequences don't result, including:

- Common reasons why a restructure can benefit SMEs
- Common mistakes when implementing a restructure
- ATO concerns with certain restructures (incl. TAs 2023/1 & 2019/2)
- Can a restructure solve Division 7A issues?
- Tips and traps with restructuring to form a tax consolidated group
- The GST issues to consider when restructuring
- How state and territory duties can impact on a business restructure
- Lessons from recent cases including *Maloney v C of T* [2024] AATA 1483; *AusNet Services Ltd v C of T* [2024] FCA 90

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

12.00pm - 12.10pm Panel Comments and Questions

12.10 - 1.10pm Lunch

AFTERNOON THEME: CONTEMPORARY CHALLENGES

1.10 - 1.55pm

Session 11: Trusts Under the Microscope: Navigating Tax Scrutiny

Judging by the extent of TO guidance material released in recent years, it would be fair to say that the TO is keeping more than a watchful eye on the use of trusts. At the same time, practitioners have been kept more than busy conveying the issues attracting the TO's attention onto, at times, unsuspecting trustees. This session delves into some of the recent topical tax issues involving trusts, including:

- How and why family trust distribution tax is on the rise?
- Has the dust now settled since the ATO's sec. 100A guidance material was finalised during 2022?
 - identifying exclusions under "ordinary family or commercial dealing"
 - dealing with distributions that involve adult children
 - consequences of falling foul of section 100A
- Why sec. 99B ITAA 1936 is catching advisers off guard:
 - what type of income has the potential to attract section 99B
 - the tax implications if section 99B applies
 - how do the rules apply to foreign deceased estates
 - strategies to reduce the risks
- Unpacking the ATO's recent draft guidelines
- Practical case studies

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

1.55 - 2.05pm Panel Comments and Questions

DAY 2: FRIDAY 14 FEBRUARY 2025

2.05 - 2.50pm

Session 12: Director Penalty Notices - If the Company Can't Pay the Directors May Have To

It's no secret that the ATO is ramping up its debt recovery processes and one tool they are increasingly relying on is the issuing of the director penalty notice (DPN). This session looks into when the ATO can take this course of action and the implications for the recipient, including:

- The two types of DPNs and when the ATO can issue them.
- How lodgement status of certain ATO documents impacts on a director's exposure to company debts
- Action to take if in receipt of a warning that a DPN is pending or has already issued
- Can the DPN problem be solved by:
 - restructuring a company?
 - appointing a voluntary administrator or liquidator?
- How is liability apportioned between directors, whether:
 - recently appointed or recently resigned
 - active or non-participatory
- What methods does the ATO use to recover company liabilities from directors issued with a DPN?
- Are there any defences a director can put forward to be relieved of a DPN liability? (DC of T v Heinrich [2024] QSC 51)
- Tips to avoid DPNs being issued

Speaker: Prudence Barker, Barrister, Victorian Bar, Melbourne, Vic

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 on both conference days and lunch on day 1 are included for delegates attending the face to face event.

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 hours

Lawyers: 11 CPD units/points (substantive law)

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

CPD Certificate

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The Conference Venue

Sofitel Gold Coast

81 Surf Parade, Broadbeach, Qld

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Travelling to the Conference Venue

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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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