



THE 13TH ANNUAL BUSINESS & PROPERTY TAX CONFERENCE

Tax Aspects of Buying and Selling a Business

Small Business CGT Conditions for Shares and Trust Interests

Subdivision 328-G: The Forgotten Roll-Over

The Division 615 Roll-Over

Division 7A: There's More to it Than Meets the Eye

Temporary Full Expensing

Family Trust and Interposed Entity Elections

Capital Gains and Non-Resident Beneficiaries

Allocation of Professional Firm Profits

Beware Section 100A

Partnership or Joint Venture: What's the Tax Difference?

Property and GST Adjustments

A Two-day Conference
Thursday 3 & Friday 4 March 2022

JW Marriott Gold Coast Resort
& Spa, Qld

Feedback from last year's conference:

- “The quality of the speakers were excellent and the topics were relevant and well presented.
- “The quality of the presenters matched if not bettered similar sized conferences I have attended with other organisations. TVED punched well above its weight with this conference.”
- “Excellent content and presenters who are able to make the confusing understandable.”
- “Another well run conference with plenty of great information. Majority of content was insightful and practical.”



Leaders in online CPD for Lawyers & Accountants

DAY 1 - THURSDAY 3 MARCH 2022

**CHAIR DAY 1: STEPHEN HOLMES,
PARTNER, WMS CHARTERED
ACCOUNTANT, GOLD COAST**

MORNING THEME: SMALL BUSINESS STRUCTURING

9.00 - 9.10am

Introduction and welcome

9.10 - 9.55am

Session 1: Tax Aspects of Buying and Selling a Business

The process of buying and selling a business has numerous tax issues that should be considered. To assist both buyer and seller in stamping the deal, this session outlines some of these tax considerations, including:

- Pre-sale clean-up, including:
 - intra group loans
 - UPEs
 - review of related party transactions (i.e. rent and salaries) on non-commercial terms
- The apportionment for depreciable assets sold and the effect of accelerated depreciation for both buyer and seller
- The apportionment for CGT assets sold and the effect for both buyer and seller
- Sale/purchase of shares or sale/purchase of business?
- GST free going concern exemption being used but are the conditions being satisfied? (GSTR 2002/5)
- Structuring the deal tax effectively, including:
 - when the tax benefit for one party may provide leeway in the sale price
 - the CGT implications of using an earnout arrangement
- Case studies

Speaker: David Marschke, Principal, DBM Horizons, Brisbane

9.55 - 10.05am Panel Comments and Questions

10.05 - 10.50am

Session 2: Getting up to Speed with the Additional Small Business CGT Conditions for Shares and Trust Interests

A relatively recent change to the basic conditions for the CGT small business conditions where the CGT asset is a share or trust interest, relates to CGT events occurring after 8 February 2018. This session explores the challenges that can arise in practice, including:

- What are the additional conditions for shares in a company or interests in a trust?
- How to work out the small business participation percentage when interposed entities are involved
- Practical examples of how the indirect small business participation percentage is calculated where trust distributions are involved
- Practical applications of:
 - the modified connected entity rule
 - the modified active asset test
 - the 90% test
- Case studies

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

10.50 - 11.00am Panel Comments and Questions

11.00 - 11.25am Networking Break and Afternoon Tea

11.25am - 12.10pm

Session 3: Subdivision 328-G: The Forgotten Roll-Over

There are various CGT roll-overs on offer depending on the circumstances of a business restructure. Alternatively, the small business CGT concessions may be utilised to achieve the desired result. This session looks at when the small business restructure roll-over (SBRR) may be a viable option, including:

- The 'genuine restructure of an ongoing business' requirement in subdivision 328-G ITAA 1997
- Factors to consider whether to:
 - sell and utilise the Division 152 CGT concessions;
 - roll-over using the SBRR; or
 - consider alternative roll-over options
- What is the SBRR 'safe harbour' rule?
- Tax consequences of the SBRR for the:
 - transferor
 - transferee
- ATO guidance for trust to company restructure where UPEs are extinguished (LCR 2016/3)
- Family trust election considerations when a trust is a party to a restructure
- Case study comparing the use of the SBRR and the Division 152 CGT small business concessions

Speaker: Raffi Tenenbaum, Director, William Buck, Sydney

12.10 - 12.20pm Panel Comments and Questions

DAY 1 - THURSDAY 3 MARCH 2022

12.20 - 1.05pm

Session 4: Outgrown the Small Business CGT Roll-Over and Concessions? Consider Division 615 Roll-Over

Business restructures are a hot topic for a variety of reasons, however if the “small business entity” definition is not satisfied, the options can be limited. This session delves into the general business restructure roll-over provisions of Div. 615, including:

- Which entities are eligible to use the roll-over
- Situations where a Div. 615 restructure may benefit an entity
- The conditions that need to be satisfied
- What are the CGT consequences for the roll-over?
- What if the original entity held pre-CGT assets?
- Case studies, including a company seeking to expand overseas (PBR 1051236733199)

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

1.05 - 1.15pm Panel Comments and Questions

1.15 - 2.15pm Luncheon

AFTERNOON THEME: PRACTICAL COMPLIANCE ISSUES

2.15 - 3.00pm

Session 5: Division 7A: There's More to it Than Meets the Eye

The ATO is stepping up its audit activity and from all accounts has the division 7A interposed entity rules firmly in its sights. Practitioners may be surprised at the type of scenarios these rules encompass. This session explores the workings of this piece of legislation, including:

- Section 109T ITAA 1936 explained
- What is the “reasonable person” test?
- Factors the Commissioner takes into account when applying section 109T
- What if the payment or loan from a private company to interposed entity is an ordinary commercial transaction? (TD 2018/13)
- Calculating the amount of a deemed dividend under section 109T
- A private company guarantee is called on to pay a Bank loan of a defaulting shareholder:
 - What are the tax implications?
 - Are there any exclusions?
- How does the ‘no potential deemed dividend’ rule for company to company payments or loans under section 109K interact with 109T?
- Distributable surplus rules in section 109Y and negative net assets in the company - when can the distributable surplus formula give some unusual results?
- Practical examples and case studies

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

3.00 - 3.10pm Panel Comments and Questions

DAY 1 - THURSDAY 3 MARCH 2022

3.10 - 3.55pm

Session 6: Temporary Full Expensing: Tax Benefits to be Had - But Don't Forget the Accounting

The temporary full expensing (TFE) measures have a proposed extension date to 30 June 2023. These measures provide welcome tax concessions for some entities and on face value what can be simpler than calculating a 100% write off. However, this session delves a little deeper into the workings of TFE with some tips to be mindful of along the way, including:

- How to present TFE in the financial statements, being mindful of:
 - bank requirements
 - plant and equipment written down values and the effect on business valuations
- The interaction of TFE and trust income or losses, including:
 - the definition of income in the deed
 - the availability of franking credits
 - the conditions required to satisfy the trust loss rules
- Opting out:
 - which entities are eligible to opt out?
 - when it may be prudent to opt out?
- Interaction of TFE with instant asset write-off and small business pool
- Interaction of TFE with the loss carry back rules
- The second-hand asset exclusion
- When are the backing business investment measures available?
- Practical examples

Speaker: Michelle Hartman, Partner, PwC, Brisbane

3.55 - 4.05pm Panel Comments and Questions

4.05 - 4.25pm Networking Break and Afternoon Tea

4.25 - 5.10pm

Session 7: Looking Beyond the Losses and Franking Credits: Family Trust and Interposed Entity Elections

Whilst the family trust election (FTE) can be a useful tool to ensure the benefits of trust tax losses and franking credits are maximized, there are other consequences that without proper planning, can lead to unforeseen tax consequences. This session sheds some light on these issues, including:

- The extended definition of 'distribution' for family trust distribution tax purposes (FTDT)
- When loans to parties outside the family group can lead to FTDT
- Issues to consider when a trust with an FTE moves assets by way of sale or restructure
- Future consequences of making an FTE and interposed entity election (IEE)
- Can an FTE and IEE be revoked or varied
- ATO guidance on strategies which may reverse FTDT subject to amendment periods (QC 48752)
- The calculation of FTDT when it applies
- Case studies

Speaker: Mark Molesworth, Partner, BDO, Brisbane

5.10 - 5.20pm Panel Comments and Questions

DAY 2 - FRIDAY 4 MARCH 2022

**CHAIR DAY 2: DAVID MARKS QC,
BARRISTER, QUEENSLAND BAR,
BRISBANE**

**MORNING THEME: CONTEMPORARY
CHALLENGES**

9.00 - 9.45am

Session 8: An Exception to Every Rule: Capital Gains and Non-Resident Beneficiaries

It could be said that a general rule is that non-residents are not taxed on capital gains that relate to non-taxable Australian property. However, the Greensill case throws up an exception when that gain flows to the non-resident from a resident discretionary trust. This session explains the key issues, including:

- Capital gains under Div. 855 ITAA 1997 in relation to:
 - fixed trusts
 - discretionary trusts
- Is the source concept relevant (TD 2019/D7)?
- What situations do not attract CGT event E5 when a beneficiary becomes absolutely entitled to a CGT asset of a trust?
- Are double tax agreements relevant in these scenarios?
- 2021-22 federal budget proposal for residency rules - what is the impact?
- What situation is the trustee assessed under sec. 98 ITAA 1936?
- A review of Peter Greensill Family Co Pty Ltd (trustee) v Commissioner of Taxation [2020] FCA 559
- Practical examples

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

9.45 - 9.55am Panel Comments and Questions

9.55 - 10.40am

Session 9: Allocation of Professional Firm Profits: The Commissioner has his Eye on You

The ATO's compliance approach to the allocation of professional firm profits (PCG 2021/4), has now been finalized and will apply from 1 July 2022. Now is the time for practitioners to get up to speed with this, not only for their professional clientele, but also for their own tax affairs. This session will assist in drilling down on the requirements, including:

- Who the guidelines apply to
- Indicators that would result in passing:
 - Gateway 1
 - Gateway 2
- What are the "high risk" features where the ATO would expect the professional to engage with them?
- How to calculate your score to risk assess your arrangement
- The extent of ATO engagement you can expect based on your risk assessment
- The traffic light system that guides you as to the likelihood of follow up ATO interaction
- When you can continue to rely on the ATO's previous guidelines which are now suspended?
- Case studies

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

10.40 - 10.50am Panel Comments and Questions

10.50 - 11.10am Networking Break and Morning Tea

DAY 2 - FRIDAY 4 MARCH 2022

11.10 - 11.55am

Session 10: That Distribution Could Incur More Tax Than You Think: Beware Section 100A

After much anticipation, the ATO has finally released on 23 February 2022 its draft ruling on section 100A, together with a Taxpayer Alert, a draft Practical Compliance Guideline, and a Draft Determination—the “Taxation Quad”! With audit activity is on the rise and, in light of the Federal Court’s recent landmark decision on sec. 100A, it has never been more important for advisers to be across the situations where the ATO may consider that a reimbursement agreement exists. This session covers:

- What is a “reimbursement agreement” and how far can sec. 100A go?
- Exception for “ordinary family or commercial dealings”
- Recent clarification on meaning of OFOCDs in Guardian AIT Pty Ltd v Cmr of Taxation
- What are the implications if sec. 100A is triggered?
- How many years can the ATO amend assessments?
- Deep dive into TR 2022/D1, TA 2022/1 and PCG 2022/D1, with focus on:
 - ATO’s detailed examples
 - White Zone, Green Zone, Blue Zone and Red Zone arrangements
- Can UPEs be in the firing line that have arisen from:
 - distributions to adult children?
 - distributions to loss entities?
- Are there any strategies to tidy up “at risk” loans (e.g. gift, assign, forgive or set off)—should trust distributions just be paid?
- Interaction of sec. 100A, Div. 7A and Pt IVA

Speaker: Michael Butler, Partner, Finlaysons Lawyers, Adelaide

11.55 am - 12.05pm Panel Comments and Questions

12.05 - 1.05pm Lunch

DAY 2 - FRIDAY 4 MARCH 2022

AFTERNOON THEME: PROPERTY TAXATION

1.05 - 1.50pm

Session 11: Partnership or Joint Venture: What's the Tax Difference?

There can sometimes be uncertainty as to the correct classification of a structure where parties combine their resources to enter into a syndicate for property acquisition or development. However, the tax differences can be significant. This session aims to provide clarity to the distinction, including:

- The tax attributes of a:
 - partnership
 - joint venture (JV)
- How are tax deductions treated under a JV
- The requirements to register a GST JV
- The GST implications of partitioning JV output
- Accounting for GST for:
 - participants with different intentions of use
 - a change of intended use by one party to the venture
- The CGT implications of partitioning JV output
- Case studies

Speaker: Melinda Peters, Partner, McCullough Robertson Lawyers, Brisbane

1.50 - 2.00pm Panel Comments and Questions

2.00 - 2.45pm

Session 12: Be Careful it Doesn't Come Back to Bite You: Property and GST Adjustments

A change in purpose can bring GST adjustments at a later date. With adjustment periods under the GST act increasing the higher the acquisition cost, it is no surprise that property and the potential for GST adjustments lingers long after a purchase. This session looks into how adjustments may occur, including:

- Adjustment periods and how these can apply to property
- Interaction of Divisions 129 and 135 of the GST Act
- Practical examples, including:
 - new residential property constructed for resale and subsequently rented
 - GST claimed on a property development that doesn't proceed
- Factors to consider if cancelling GST registration
- Farmland sold GST-free where the purchaser either:
 - changes intention of use after purchase, or
 - conducts a hobby farm on the land
- Calculating the adjustment
- Case studies

Speaker: Jeff Pfaff, Partner, PwC, Brisbane

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, conference papers, refreshment breaks and lunch on both conference days.

TEN will be live streaming the conference. Delegates have the option of attending the conference in person or attending it online.

All delegates will receive recordings of all sessions regardless of registration type. Delegates who can't attend in person or online have the option of purchasing the recordings to view at their leisure.

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 Certificate

Accountants attending the conference (either face to face or online) will earn 11 CPD hours. All delegates will receive a CPD Certificate.

The Conference Venue

JW Marriott Gold Coast Resort & Spa

158 Ferny Avenue, Surfers Paradise

Phone: (07) 5592 9800 (reservations)

Delegates can book at the JW Marriott at the conference special rate:

- Room only \$320 per room per night
- Room including breakfast for 1 guest \$350 per room per night

To book at this special rate please call the hotel and speak to reservations and ask to book on the Business & Property Tax Conference rate.

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).

TERMS AND CONDITIONS

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. "Plan" means the COVID-Safe Plan for the conference described below.
 - d. "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).
 - e. "live conference" means a conference other than a recorded conference.
 - f. "recorded conference" means a recording of a presentation or a series of presentations which you can view at a time of your choosing
 - g. "online" in relation to a conference means a conference you attend by viewing the conference over the Internet
 - h. "face to face" in relation to a conference means a conference held in an external venue where you view the conference in the conference room

General – all conferences

2. TEN may change the program for a live conference as described in the brochure you have downloaded or in the TEN website without notice to you in any manner and at any time.
3. The information and opinions of presenters at the conference are not necessarily those of TEN and are in the nature of general information and not professional advice and you rely on these at their own risk. TEN is not responsible for the accuracy of the information or the correctness of the opinions offered by presenters at the conference.
4. TEN is not responsible for any financial or other losses incurred by you or for injury or damage to persons or property which occur at or in connection with the conference.

COVID SAFE PLAN – FACE TO FACE CONFERENCES

What happens if you are diagnosed with COVID-19 or you are otherwise unwell?

5. If the conference is held face to face, TEN will conduct the conference in accordance with a COVID Safe Plan. You agree to comply with that Plan at the conference. If you fail to comply with the Plan, you agree to leave the conference immediately at the request of a TEN staff member or venue staff member. If you leave under these circumstances, you will not be entitled to a refund of any part of the registration fee. TEN will not be responsible for any travel or accommodation costs or fees incurred by you in relation to the conference or as a result of you leaving the conference early.
6. The COVID safe plan will prevent your attendance at a face to face conference if you are diagnosed with COVID-19 prior to or during the conference and the infection has not been cleared by two negative PCR tests, if you have a fever (ie raised temperature) at the time of registration or if you have a respiratory illness (including a cold or cough) at the start of or during the conference. In these circumstances:
 - a. You will be entitled to attend the live online version of the conference and/or recorded online version if that is offered; or
 - b. If not, you will be entitled to a full refund of the registration fee paid or a credit equal to that fee to use for a future purchase of a TEN product.

Conversion of face to face conferences to live online conferences

7. If the conference is being held face to face or face to face AND online, TEN reserves the right to convert the conference on no less than 24 hours' notice to a solely online conference or to cancel the conference or to postpone the conference to a later date if TEN determines that it is unable to hold the conference face to face on the date/s advertised for any one or more of the following reasons:
 - a. State or national border closures
 - 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
 - d. In its opinion, it is unsafe to hold the conference face to face for any reason.
8. If TEN converts the conference from face to face only or to face to face and online to online only or postpones the conference or cancels the conference, TEN will not be responsible for any loss or damage you suffer as a result including any travel costs relating to the conference.
9. If TEN converts the conference from face to face to online or postpones the conference and as a result you are not able to attend you will be entitled to a full refund of registration fee paid or a credit equal to that fee to use for a future purchase of a TEN product.

Copyright

10. The copyright in materials prepared by presenters at a conference and made available to you by TEN is and remains the property of each presenter.
11. You are entitled to use those materials for private study and research only.
12. The copyright in the live stream and in any recording of a conference offered online is the property of TEN.
13. You are entitled to watch a conference for private study and research only.

Conference cancellation by TEN – all conferences

14. TEN reserves the right to cancel a conference for any reason.
15. If TEN cancels the conference, you will be entitled either to a refund of the registration fee you have paid or to a credit equal to that fee which you can use to purchase another TEN product within 12 months of the first day of the cancelled conference.

Cancellation by You – all conferences

16. Refunds for registration cancellation by you other than under Clause 6(b):
 - a. If notice of cancellation is actually received by TEN more than 10 days before the first day on which the conference is to be held, 85% of the registration fee you have paid
 - b. Otherwise, no refund.

Governing Law – all conferences

17. The agreement between TEN and you is governed by the laws in force in the State of Victoria and the courts and tribunals of that State have sole jurisdiction to determine disputes arising in relation to it.

REGISTRATION FORM **TAX INVOICE***

Registration is simple; complete the form below and fax or post your registration to us or register online.
Television Education Network Pty Ltd, (ABN 19 052 319 365)
GPO Box 61, Melbourne, Victoria 3001
Fax (03) 9670 0588 Phone (03) 8601 7700 Enquiries Jenna Pickrell (03) 8601 7729
Register online: <http://www.tved.net.au> – go to CONFERENCES

Please register me for the **13th Annual Business & Property Tax Conference** – a 2-day conference to be held at the Gold Coast on Thursday 3 & Friday 4 March 2022

Delegates have 2 options for attending the 2022 conference – both cost the same.

Registration type 1: Attend in person * [code: GTXMAR22]

Registration type 2: Attend online * [code: GTXMAR22L0]

* all delegates will receive recordings of all sessions regardless of registration type

Discount Registration – for registrations made on or before 11 February 2022 - **\$2013** (\$1830 + \$183 GST)

Full Price Registration – **\$2178** (\$1980 + \$198 GST)

Multiple registration discount? Discounts are available for multiple registrations: The more you send, the greater the discount. You can access the discount by registering using the “multiple registrations” option online, or contact our Conference Manager, Jenna Pickrell, to organise your registrations. jenna@tved.net.au or phone (03) 8601 7729.

- 3 registrations – **5% discount** for each delegate
- If you register 4 people at the same time you are entitled to a **10% discount** for each delegate
- If you register 5 people or more people at the same time you are entitled to a **15% discount** for each delegate.

One-day only? We do accept bookings for attending one day only (either day 1 or day 2). To organise a one-day booking, please contact Jenna Pickrell (details above).

Conference Papers

The papers from this conference will be available in electronic format approximately 1 week after the conference has been held. You can pre-order the papers now online via our website at www.tved.net.au. The papers are \$198 (\$180 + \$18 GST) [code: PGTXMAR22].

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