

THE FIRST ANNUAL FAMILY WEALTH TAXATION CONFERENCE

Trust Distributions and Section 100A: Where to from Here?

Is 99B the Next Sleeper to be Awakened?

Creating Bullet-proof Trustee Distribution Resolutions

Division 7A: Taking Advantage of the Exceptions

Share Sale or Asset Sale? Getting the Best Tax Outcome

Getting Funds Out of a Company

Proposed Changes to SMSFs: Now for the Strategy

Superannuation Contributions: Maximising the Benefits

Super Benefit Withdrawals and Transfers Prior to Death

Converting a Trust to a Company: Is it Time to Make a Change?

Trust Vesting Dates: Avoiding a Tax Disaster

A Two-day Conference

Thursday 31 August & Friday 1 September 2023

Sofitel Gold Coast



Leaders in online CPD for Lawyers & Accountants

DAY 1 - THURSDAY 31 AUGUST 2023

MORNING THEME: THE ROLE OF TRUST DISTRIBUTIONS IN FAMILY WEALTH MANAGEMENT

9.00 - 9.15am Introduction and welcome

Day 1 Chair: David Marks KC, Barrister, Queensland Bar, Brisbane

9.15 - 10.05am

Session 1: Trust Distributions and Section 100A: Where to from Here?

Since the ATO first issued its draft guidance material on section 100A early in 2022, tax advisers have had to come to grips with the realisation that the world of trust distributions has significantly changed. With the ATO finalising its guidance material, now is the time to take stock to ensure that future trust distributions can stand up to ATO scrutiny. This session is designed to assist, including:

- Identifying exclusions under “ordinary family or commercial dealing”, including:
 - the core test
 - factors that may lead to failing the test
- The ATO’s compliance approach (PCG 2022/2), including where it may be important to:
 - pay present entitlements within 2 years
 - place entitlements on commercial terms
- Dealing with distributions that involve:
 - adult children
 - loss company or loss trust beneficiaries
 - bucket companies
- Can the commercial debt forgiveness rules have implications with section 100A?
- How record keeping requirements have changed for trust distributions
- Consequences of falling foul of section 100A
- Lessons from recent cases
- Practical case studies

Speaker: David Hughes, Partner, McCullough Robertson, Brisbane

10.05 - 10.15am Panel Comments and Questions

10.15 - 11.00am

Session 2: Counting Down From 100: Is 99B the Next Sleeper to be Awakened?

Whilst section 100A was introduced into the Income Tax Assessment Act 1936 back in 1979, it would be fair to say it may have only become entrenched in some advisers’ minds in recent times. In that same year, section 99B relating to the receipt of trust income not previously subject to tax, was also introduced into the 1936 Act. Is this the next sleeper to catch advisers off guard, with a scope far broader than first realised? This session looks into finding out the answer, including:

- What type of income has the potential to attract section 99B?
- Is section 99C (interwoven with 99B) worded so broadly that advisers may be forgiven for saying “I didn’t see that coming”?
- The tax implications if section 99B applies, including the interest component (sec. 102AAM ITAA 1936)
- Does section 99B extend to proceeds from a CGT event involving units in a foreign managed investment trust, including whether it makes a difference if the units are “redeemed” or “sold”?
- Interaction with disregarded capital gains in foreign trusts (TD 2017/23, TD 2017/24)
- How do the rules apply to foreign deceased estates?
- Strategies to reduce the risk of section 99B applying
- Practical examples

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

11.00 - 11.10am Panel Comments and Questions

11.10 - 11.35am Networking Break and Morning Tea

DAY 1 - THURSDAY 31 AUGUST 2023

11.35am - 12.25pm

Session 3: Preventing Future Challenges: Creating Bullet-proof Trustee Distribution Resolutions

A recent case of *Owies* has put into question whether the “discretionary” in a discretionary trust is a proper use of that term. This session reviews the impact this case may have on trustee distribution resolutions, including:

- What are the tax implications if a trust distribution is deemed invalid?
- To what extent does a trustee need to give “real and genuine consideration” to potential beneficiaries?
- What records should be maintained to support a trustee’s decision to distribute income or capital?
- How do you effectively change a trustee, appointor or guardian?
- How might *Owies* case affect pre 30 June trustee distribution resolutions?
- What lessons can trustees and advisors take from the case?
- The tax consequences where flexibility is removed and a trust is:
 - unitised (PBR 1051872353826)
 - arranged to hold particular assets for particular beneficiaries (TD 2012/21, TD 2019/14)
- Practical examples

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

12.25 - 12.35pm Panel Comments and Questions

12.35 - 1.35pm Luncheon

AFTERNOON THEME: GETTING MONEY OUT OF COMPANIES

1.35 - 2.25pm

Session 4: Division 7A: Taking Advantage of the Exceptions

Since its introduction, Division 7A has been a complex and evolving area of tax law, presenting significant challenges for tax professionals and their clients. One of the key ways to manage the complexity of Division 7A is to take advantage of the various exceptions and concessions available under the legislation. This session explores the exceptions to Division 7A and provide practical guidance on how tax professionals can help their clients navigate this provision and make the most of the available tax benefits. It covers:

- When forgiven debts are treated as a dividend (secs. 109F & 109G ITAA 1936), including:
 - how the legislation applies when a statute of limitations prevents recovery of the debt
 - how the rules apply on the death of a shareholder (ATO ID 2012/??)
- When a repayment of a loan account can be disregarded and the resulting tax implications (sec. 109R ITAA 1936)
- In what circumstances may a Division 7A deemed dividend be disregarded or allowed to be franked (sec. 109RB ITAA 1936)?
- The Division 7A and the distributable surplus rules (sec. 109Y ITAA 1936)
- how the division applies to non resident companies (sec. 109BC ITAA 1936)
- Case studies

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

2.25 - 2.35pm Panel Comments and Questions

DAY 1 - THURSDAY 31 AUGUST 2023

2.35 - 3.25pm

Session 5: Share Sale or Asset Sale? Getting the Best Tax Outcome

When selling a business housed in a company, the question needs to be addressed as to whether it is the assets or the shares that should be sold. Whilst there are numerous commercial considerations that will no doubt need to be negotiated, this session drills down on the tax issues that affect the seller, including:

- Capital gains tax comparisons of a share or asset sale, including:
 - the 50% discount
 - the small business CGT concessions and the additional requirements for share sales
- The type of assets that do and don't attract the CGT concessions
- Has temporary full expensing had an impact on the share/asset sale decision making?
- How non asset amounts can affect the tax equations for the share/asset sale alternative, including:
 - company liabilities
 - employee provisions
- What if the company has carried forward losses?
- Is there an opportunity for CGT rollovers to be utilised?
- GST implications and when the use of the GST-free supply of a going concern treatment can apply
- Case study highlighting a share/asset sale comparison

Speaker: Briony Hutchens, Partner, Finlaysons, Adelaide

3.25 - 3.35pm Panel Comments and Questions

3.35 - 4.00pm Networking Break and Afternoon Tea

4.00 - 4.50pm

Session 6: Getting Funds Out of a Company - More to it Than Raiding a Piggy Bank

Getting money out of a piggy bank usually meant carefully manoeuvring a knife through a slot to guide out a few coins (no good for notes) or taking to it with a hammer if more serious funds were needed. Getting funds out of a company is a bit more complicated.

This session explores the various methods funds can be extracted from a company, along with the anti avoidance provisions that need to be given due consideration, including:

- Setting remuneration for associated parties, including:
 - the implications if deemed excessive (sec. 109 ITAA 1936)
 - how the genuine redundancy payment rules work for directors and associates (TR 2009/2)
- Liquidation or deregistration: getting the best tax outcome
- Managing strategies for extracting capital from the company, including:
 - temporary full expensing, accounting depreciation and franking credit mismatch
 - dividend access share schemes - can they be effective? (TA 2012/4, TD 2014/1)
- Strategies to manage top up tax where highest marginal tax rate 47% and company tax rate 25%
- ATO's concerns where a holding company is interposed to access company profits tax free (TA 2023/1)
- Road testing of various scenarios through case studies

Speaker: Raffi Tenenbaum, Director, William Buck, Sydney

4.50 - 5.00pm Panel Comments and Questions

DAY 2 - FRIDAY 1 SEPTEMBER 2023

MORNING THEME: MAXIMISING FAMILY WEALTH THROUGH SUPER

9.00 - 9.05am Introduction and welcome

Day 2 Chair: *Paul Paxton-Hall, Director, Paxton-Hall Lawyers, Brisbane*

9.05 - 9.50am

Session 7: Proposed Changes to SMSFs: Now for the Strategy

There have been a number of Government announcements in recent times that, if legislated, will impact on the administering of SMSFs. This session looks at recent announcements, with a focus on the \$3 million threshold, including:

- The extra tax on super balances in excess of \$3 million:
 - why the proposed calculation of the tax isn't as simple as you would think
 - likely strategies that may be considered
- The \$3 million threshold –
 - an aggregation of balances in all funds
 - how and when it is calculated
 - how the proportion of "earnings" over \$3 million will be calculated
- Implications for retirement planning:
 - how to determine when your clients are likely to be affected
 - a comparative analysis of retirement income strategies on balances above \$3 million including worked examples
- Non arm's length expenditure rules, including the ATO's:
 - progress reviewing its initial approach that triggers significant tax outcomes from minor NALE breaches
 - current compliance approach
- The proposed relaxing of residency requirements for SMSFs:
 - what are the current requirements?
 - what is the current safe harbour test and is it looking like changing any time soon?
- Proposed increase for the superannuation guarantee rate

Note: The above content will likely change as further information is made available by the government

Speaker: *Andrew Smyth, Partner, Robbins Watson Solicitors, Gold Coast*

9.50 - 10.00am Panel Comments and Questions

10.00 - 10.45am

Session 8: Superannuation Contributions: Maximising the Benefits

There are numerous contribution rules and caps in place to navigate when determining how to maximise the benefits of contributing to superannuation. This session explores some of the strategies available to assist in making the most of those benefits and the tax concessions available, including:

- How the indexed transfer balance cap impacts on non concessional contributions
- Can you manage your total superannuation balance to maximise non concessional superannuation contributions?
- The concessional contributions cap and strategies when the carry-forward of unused concessional contributions may be beneficial
- Why the timing of contributions can matter, including:
 - how the downsizer contribution interacts with other contribution caps
 - how the small business CGT cap interacts with other contribution caps
- Strategies to time contributions subject to the various caps to maximise super balances
- Planning contribution strategies in the 2024 financial year with an eye on the 2025 financial year, including how the transfer balance cap and non concessional contributions cap are indexed
- The impact the work test changes have on recontribution strategies, including:
 - potential death benefits tax planning
 - managing the transfer balance cap between spouses
- Practical examples

Speaker: *Peter Crump, Senior Consultant, BDO, Adelaide*

10.45 - 10.55am Panel Comments and Questions

10.55 - 11.15am Networking Break and Morning Tea

DAY 2 - FRIDAY 1 SEPTEMBER 2023

11.15 - 12.00pm

Session 9: Super Benefit Withdrawals and Transfers Prior to Death

The issue of managing potential super benefits to non tax dependants can be a delicate one. Weighing up keeping funds in the concessional taxed super environment as long as possible against knowing a tax hit may occur on a member's balance on death, is just one of the factors to consider. This session explores the issues, including:

- Can the funds can be tax effectively transferred to the non tax dependants' own super balances pre death?
- Dealing with business real property in the fund
- The tax implications of fully or partially commuting a pension
- Loss of capacity and whether an enduring power of attorney can take action in managing the non tax dependant death benefit issue (SMSFR 2010/2)
- ATO's views on a member requesting a benefit pre death which is ultimately paid post death (QC 45254), including:
 - whether pre signed withdrawal requests and auto trigger products are effective
 - time lags when withdrawal requests involve the disposal of lumpy assets
- Weighing up the effect estate planning intentions can have on funds left within or outside of an SMSF
- Case study

Speaker: Jennifer Dixon, Practice Leader & Accredited Specialist, Wills & Estates, Moores, Melbourne

12.00pm - 12.10pm Panel Comments and Questions

12.10 - 1.10pm Lunch

AFTERNOON THEME: UNWINDING TRUSTS: THE TAX IMPLICATIONS

1.10 - 1.55pm

Session 10: Converting a Trust to a Company: Is it Time to Make a Change?

There are a myriad of reasons why consideration may be given to changing a structure from a trust to a company. These considerations could range from the difficulties complying with complex trust related tax rules or a potential purchaser preferring to buy shares in a company rather than acquire assets from a trust. But how do you go about the restructure? This session is designed to assist you in the process, including:

- The type of situations which may benefit from a change of structure from trust to company
- The CGT rollovers available for a trust to company restructure, including:
 - Subdivision 122-A ITAA 1997
 - Subdivision 124-N ITAA 1997
 - Section 328-G small business restructure rollover
 - Subdivision 615 ITAA 1997
- Which rollovers can a discretionary trust utilise?
- Are there situations where the small business CGT concessions can produce a more tax effective outcome than the CGT rollovers?
- How is GST treated for the CGT rollovers and small business CGT concessions?
- Can the accounting treatment for a rollover have an impact on future tax consequences?
- A checklist of non tax related matters to consider, including how the restructure affects:
 - commercial arrangements such as leases, employment contracts and entitlements, suppliers and customers
 - stamp duty
- Case study

Speaker: David Marschke, Principal, DBM Horizons, Queensland

1.55 - 2.05pm Panel Comments and Questions

DAY 2 - FRIDAY 1 SEPTEMBER 2023

2.05 - 2.50pm

Session 11: Trust Vesting Dates: Avoiding a Tax Disaster

Most trusts have a limited lifespan. Knowing when that termination date is to occur and the action to take if that date is fast approaching, is crucial in avoiding any adverse tax consequences that can arise. This session explores the topic of trust vesting, with some traps and traps to look out for along the way, including:

- Why the trust deed is so important
- What are the tax implications when the vesting date arrives?
- Can you extend the vesting date?
- What to do if your trust has already passed its vesting date, including
- How are distributions of trust income treated that occur after the vesting date?
- Case studies exploring the consequences if a trust within its own vesting date, distributes income to a trust whose vesting date has passed?
- Lessons from cases, including:
 - McGowan and Valentini Trust [2021] VSC 154
 - Hancock v Rinehart [2015] NSWSC 646
 - Palato Pty Ltd v Herro [2015] NSWSC 445

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

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 lunches are included for face to face attendees.

Conference Papers

TEN does 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/Training hours

CPD Certificate

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

The Conference Venue

Sofitel Gold Coast

81 Surf Parade, Broadbeach, Qld

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Sofitel are offering a **15% discount** on the unrestricted rate of the day to any guests attending this conference.

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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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 Phone (03) 8601 7700 Enquiries Hayley Williams-Cameron (03) 8601 7730
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Please register me for the **1st Annual Family Wealth Taxation Conference** – a 2-day conference to be held at the Gold Coast on Thursday 31 August & Friday 1 September 2023 [GFWSEP23]

- [] **Discount Registration** – for registrations made by 18 August 2023 – **\$2013** (\$1830 + \$183 GST)
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- 3 registrations – 5% discount for each delegate
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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 Hayley (details above).

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