

# THE SEVENTH ANNUAL TRUSTS & COMPANIES TAXATION SYMPOSIUM

A two-day conference organised by Television Education Network Pty Ltd

Melbourne Marriott Hotel, Thursday 15 and Friday 16 August 2019

Next exit: trusts?

Understanding section 100A reimbursement agreements

Trust resolutions for small business CGT concessions and income recharacterization

A deep dive into loan accounts

Amending trust deeds and avoiding tax nasties

Getting a business ready for sale

Bringing in new investors in family businesses

The future of Division 7A

Managing distributions in cross-border trusts

**FEEDBACK FROM LAST YEARS CONFERENCE:**  
"Excellent content. Great knowledgeable speakers. I will be back."  
"Lots of content and things to think about."  
"Topics very topical and relevant for SME Advisers."



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# DAY 1 – THURSDAY 15 AUGUST 2019

## MORNING THEME: TAXATION OF TRUSTS

### 9.00 – 9.10am

Introduction and welcome

### 9.10 – 10.10am

#### Session 1: Next Exit: Trusts?

As the Division 7A reforms move closer to fruition and the ATO take a more aggressive approach on trusts, more taxpayers are considering the value of exiting trust structures. This session examines the tax issues that advisers need to consider when advising on trust restructures, including:

- Options for restructuring – what are the issues to consider?
- Which rollovers are available?
  - Division 122-A (trust to wholly owned company)
  - Division 124-N (trust to company)
  - Division 328-G (small business restructure)
  - Can Part IVA apply if several rollovers are used sequentially to get to desired structure?
- When is duty relief available for rolling assets out of a trust?
  - Corporate reconstruction relief

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

### 10.10 – 10.20am Panel Comments and Questions

### 10.20 – 10.25am

Short Break

### 10.25 – 11.25am

#### Session 2: Section 100A Reimbursement Agreements: When is a Dealing Between Family Members Not in the Course of Ordinary Family Dealing?

The ATO's impending release of guidance in relation to section 100A reimbursement agreements, together with its continued audit activity in this area, means the time is right to revisit section 100A and ask what it means for taxpayers and advisers. This session explores the ATO's current position on reimbursement agreements, including:

- Unpacking section 100A's main provisions
- Is section 100A limited to trust stripping? Not necessarily!
- What constitutes an 'ordinary family dealing'?
  - Redistribution of family assets
  - Using legal structures to ensure financial benefits go to family members
- Effect of changing social and economic factors
- What type of 'family' does one examine?
- Family dealings versus business dealings
- Can 'family dealing' become 'ordinary' on the basis it is commonplace?
- Can 'family dealing' cease to become 'ordinary' on the basis it is complicated?
- Does it matter if the main purpose is tax avoidance?
- Unpacking the ATO's guidance and views

*Speaker: Michael Butler, Tax & Revenue Partner, Finlaysons, Adelaide*

### 11.25 – 11.35am Panel Comments and Questions

### 11.35 – 12.00pm Networking Break and Morning Tea

### 12.00 – 1.00pm

#### Session 3: Trust Resolutions for Small Business CGT Concessions and Income Recharacterisation

It is axiomatic that trust resolutions have to be done right – but that may mean different things in different circumstances. This session considers what you need to do to get the most out of trust resolutions when there may be a desire to recharacterize income or to rely on small business CGT concessions in the relevant income year, and covers:

- Using trust distributions to get the right CGT concession stakeholder in the year of the capital gain:
  - Identifying the significant individual
  - Calculating their direct and indirect small business percentage
  - Making a distribution and getting income or capital gain in the relevant year
  - What if the trust has tax losses or no net income?
- Using trust resolutions to recharacterize trust income:
  - Does the trust deed give you the power?
  - How should the trust resolution be drafted?
  - Will ATO apply integrity provisions?

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

### 1.00 – 1.10pm Panel Comments and Questions

### 1.10 – 2.10pm Luncheon

# DAY 1 – THURSDAY 15 AUGUST 2019

## AFTERNOON THEME: TECHNICAL CHALLENGES FOR ADVISERS

2.10 – 3.10pm

### Session 4: A Deep Dive into Loan Accounts

Loan accounts are a hot spot for audit and compliance activity for the ATO as well as a focus of legislative reform. As a result, it has become more vital than ever for advisers to actively review and consider the status of loan accounts held by taxpayer companies and trusts. This session drills down into the treatment of loans in a private company and trusts context, including:

- Commercial debt forgiveness rules
- Deemed dividends under Division 7A
- Potential FBT implications where the borrower is also an employee
- The assignment of loans
- What tax implications arise from the statutory period of limitations?
- Understanding the implications of loan accounts on trust entitlements - *Fischer v Nemeske Pty Ltd* [2016] HCA 11

*Speaker: Mark Gioskos, Senior Associate, Thomson Geer Lawyers, Melbourne*

3.10 – 3.20pm Panel Comments and Questions

3.20 – 3.40pm Networking Break and Afternoon Tea

3.40 – 4.40pm

### Session 5: Amending Trust Deeds and Avoiding Tax Nasties

Given the long life of trusts, there is often a need to change the terms of the trust as it matures. This session considers the intricacies of trust amendments, and in particular examines the possibility of amending a trust deed to extend the vesting date. Issues discussed include:

- Amending trust deeds
  - What powers of amendment arise under the trust deed?  
*Jenkins v Ellett* and *Mercanti v Mercanti*
  - What makes an amendment valid?
  - Which types of amendments will attract stamp duty?
  - Which types of amendments might give rise to resettlement?
- ATO guidance on trust vesting TR 2018/6
- Effective strategies to defer trust vesting:
  - Extending vesting date?
- How to make a trust a South Australian trust?

*Speaker: Patrick Ellwood, Director, Clover Law, Brisbane*

4.40 – 4.50 pm Panel Comments and Questions

# DAY 2 – FRIDAY 16 AUGUST 2019

## MORNING THEME: TAX ISSUES AFFECTING COMPANIES

### 9.00 – 9.05am

Introduction and Welcome

### 9.05 – 10.05am

#### Session 6: Clearing the Tax Decks – Getting a Business Ready for Sale

There are many tax issues that need to be considered when preparing a business for sale, both from the perspective of offering up a 'cleanskin' entity and to arrange the most tax efficient transaction. This session explores the tax aspects of a transaction including:

- Preparing a clean entity for exit – mitigating or removing latent tax liabilities relating to:
  - Payroll tax
  - Land tax
  - Tax consolidation
- Does the taxpayer need to provide any voluntary disclosures as part of preparation process?
- Optimising chances of rollovers:
  - How to avoid clawback of duty/rollover relief?
- Preparing vendor due diligence – what are the key questions to ask?

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

### 10.05 – 10.15am Panel Comments and Questions

### 10.15 – 10.20am

Short break

### 10.20 – 11.20am

#### Session 7: Bringing in New Investors in Family Businesses

Outside investors may be brought into a family business for many reasons: additional capital, succession planning, employee remuneration and incentivisation. Whatever the commercial drivers, the tax issues need to be recognised and managed as part of the process. This session examines tax issues that arise from:

- Investors acquiring majority interests and the tax implications including:
  - Value shifting rules
  - Impact on past losses and the application of the business continuity test
- Issuing of employee equity and the application of:
  - Division 83A – are the shares eligible for deferred tax?
  - If employees are being offered loans to help fund the purchase of shares, can this trigger Division 7A?
- What kind of commercial issues may arise where employees have a substantial shareholding, such as voting on Board composition?
- Implications of management buy-outs

*Speaker: Mark Robertson, Queens Counsel, Sydney & Brisbane*

### 11.20 – 11.30am Panel Comments and Questions

### 11.30 – 11.50am Networking Break and Morning Tea

### 11.50am – 12.50pm

#### Session 8: Damocles' Sword: The Future of Division 7A

With the rewrite of Division 7A still looming, taxpayers and advisers will need to rethink their approach to taxation of private groups. This session considers what the new world may bring, including:

- Gazing into the crystal ball – where is Division 7A likely to go?
- Transitional arrangements for existing arrangements
- What are the best tax strategies following proposed changes?
- Should taxpayers be moving away from Division 7A loans?
- Managing financing issues going forward:
  - Choosing between internal or external financing
  - Which entity should be banker in the group? Issues where group includes base rate entities and non-base rate entities.
  - What is the impact on active asset tests where banker is part of the group?

*Speaker: Mark Molesworth, Partner, BDO (Qld)*

### 12.50 – 1.00pm Panel Comments and Questions

### 1.00 – 1.55pm Lunch

# DAY 2 – FRIDAY 16 AUGUST 2019

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## AFTERNOON THEME: CROSS BORDER ISSUES

**1.55 – 2.55pm**

### **Session 9: Managing Distributions in Cross-Border Trusts**

Increasing numbers of cross-border family trusts have led the ATO to intensified interest in distributions made by foreign trusts to Australian resident beneficiaries, and by Australian trusts to non-resident beneficiaries. This session explores various strategic tax issues that arise in this context, including:

- When is a distribution from a foreign trust taxable to the Australian beneficiary under s99B?
- The implications where a foreign trust distributes a foreign capital gain to Australian beneficiaries: TD 2017/23 & TD 2017/24
- Re-characterisation of income as part of cross-border distribution:
  - Examples in practice
  - What kind of documentation is required??
  - What kinds of arrangements does the ATO target?
- Strategic options for managing distributions to non-residents
- Winding up non-resident trusts before becoming Australian resident
- Getting market value uplift from trust becoming resident before distribution

*Speaker: Philip Diviny, Partner, Madgwicks Lawyers, Melbourne*

**2.55 – 3.05pm** Panel Comments and Questions

**3.05pm** Conference Close

# GENERAL INFORMATION

## Conference Registration Fee

The registration fee includes attendance at the conference, online access to the conference papers and refreshment breaks and lunch.

The registration fee does not include any travel or accommodation. Delegates are advised to make their own travel arrangements.

## Conference Papers

TEN no longer provides printed copies of conference papers at its events. Access to the papers will be available online to all delegates in the lead-up to the conference (as the papers become available), during the conference and for 30 days after the conference. The papers will be available in .pdf format for easy download to your local computer or portable device.

At the conference TEN will supply printed copies of the PowerPoint presentations used at the conference.

## CPD

**Accountants** can claim 11.5 CPD/Training hours.

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

**WA Lawyers:** 6 CPD points (substantive law)

## The Conference Venue

### Melbourne Marriott Hotel

Corner Exhibition & Lonsdale Streets, Melbourne

Phone: (03) 9662 3900

## Conference Rate at the Melbourne Marriott Hotel

Television Education Network has organised a discount rate with the Marriott for delegates of 10% discount off the best rate available. To access this rate please quote "LOKA" when making your booking.

*This rate is strictly subject to availability. Delegates are advised to make their own accommodation arrangements directly with the Melbourne Marriott Hotel.*

If you encounter any problems booking your accommodation please do not hesitate to contact our Conference Executive, Jenna Pickrell, on (03) 8601-7729 or email: [jenna@tved.net.au](mailto:jenna@tved.net.au)

## 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 room varies depending on where you are sitting. Light dress is generally OK, but it is advisable that you bring a jacket/long sleeved top in case you need it.*)

## 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.

## Conference Terms

Program subject to change without notice. The information and views presented in the conference are not necessarily those of TEN, and participants rely on these at their own risk. TEN is not responsible for any financial or other losses incurred by delegates or for injury or damage to persons or property. TEN's maximum liability for conference cancellation or any other loss or liability is the refund of the registration fee paid.

TEN is not responsible for financial loss incurred by you as a result of the cancellation or postponement of the conference as a result of strikes, natural disasters, and other Acts of God such as volcanic ash clouds in Australian airspace. We therefore strongly advise you to take out travel insurance if your attendance plans involve air travel or other significant travel to the conference venue.

