

Advisor Training Services

Topics

Current Trust Issues

- a. Issues arising from Cajkusic, Bamford and PS LA 2009/7.
 - i. Issues requiring amendment in most trust deeds.
 - ii. What concept of income should you use.
 - iii. Using capital beneficiary agreements (PS LA 2005/1) to protect against penalties where trustee has capital gain.
 - iv. How to pass on franking credits where there is no accounting profit.
 - v. How should you draft distribution minutes.
 - vi. Problems with invalid distributions where trust deed requires that distributions must be made by 30 June.
 - vii. Importance of effective income attribution clauses.
- b. Broader trust issues.
 - i. Who should be trustee.
 - ii. Stamp duty issues on change of beneficiaries. When will Office of State Revenue accept that trust is a "family trust"?
 - iii. Issues with family trust elections.
 - iv. Restrictions on trustee's power to amend the trust deed (Jenkins v Ellett).
 - v. What is a trust resettlement?
 - vi. Can you extend the vesting date without a resettlement.
 - vii. Stamp duty exemption for trust cloning is still available in Queensland.
 - viii. Who should be the appointor and do you need one?
 - ix. When do you need a "fixed trust" and how hard is it to meet the ATO requirements.
 - x. Estate planning and asset protection issues.
 - c. Half day workshop on small business CGT scenarios covering strategies.

Div 7A session

Further details on this topic will be released when the updated legislation becomes available.

Stamp Duty update

Traps and opportunities:

- a. Traps with corporate trustee duty and change of trustee.
- b. When can you rely on the "Personal property" exemption.
- c. Issues with exemption for change of Trustee
- d. Problems with Office of State Revenue accepting trusts as "family trusts".
- e. Use of trust cloning exemption (s52(3)).
- f. Problems with exemption for transfers of family businesses.
- g. Penalty regime and inability of OSR to impose penalties if they assess under avoidance provisions.
- h. Land rich provisions – problems if a trustee is a beneficiary.
- i. Ability to restructure units in unit trust without duty.
- j. Use of company limited by guarantee as trustee of discretionary trust to avoid problems with corporate trustee duty.
- k. Ways around corporate trustee duty
- l. Share split and transfer small percentage to give control
 - i. Buy back shares rather than transfer;
 - ii. Use company limited by guarantee.





Topics

- iii. Corporate restructure provisions.

Estate Planning Workshop

In this session we consider practical scenarios and solutions drawn from CGW files. Examples of issues considered are as follows.

- a. Declaring deferred dividend out of company and leave as a debt owing to parents to allow equalisation of assets on death.
- b. Use of joint tenancy arrangements to transfer control of company/trustee and avoid Will disputes.
- c. Revaluation and capital distribution to allow for transfer of control of trust but preserve capital entitlement for non-active beneficiaries.
- d. Use of cascading share rights to avoid risk of a challenge to a will which leaves shares in trustee company to particular individuals.
- e. Use of generational transfer trust to ensure automatic transfer of control of trust assets on death of principals.
- f. Use of stamp duty trust claiming exemption to split assets.
- g. Testamentary trust issues.
- h. Estate planning problems if disgruntled beneficiaries allege there is a constructive Trust.

Planning for and handling a tax audit or review

- a. Need for care in framing correspondence seeking advice and outlining objectives.
- b. Importance of considering benefit of voluntary disclosure early in the review/audit process.
- c. Importance of having a documented "reasonably arguable position" (RAP).
 - i. What is a RAP?
 - ii. When do you have to document your RAP?

- c. Who should deal with the ATO in an audit.
- d. Should you allow the ATO to have direct access to clients.
- e. How to preserve legal professional privilege.
- f. Dangers in creating self-serving/backdated documents.

Payroll tax

- a. Update on changes to contractor and grouping provisions.
- b. Different tests in distinguishing between employee versus contractor for determining superannuation obligations and Workcover.



Workplace relations issues for professional service firms

- a. Issues with recruitment process.
- b. Drafting employment agreements.
- c. How to protect your confidential information and IP – do Restraint clauses work?

Restructuring issues for professionals

- a. Service trust issues.
- b. Incorporation of legal practices.
- c. Is there any restriction on carrying on legal practice in a trust structure?
- d. In what circumstances will the ATO allow you to distribute practice income to family members if you practice through a trust or ILP?
- e. Stamp duty and CGT issues on transfer of "goodwill" – is there any?
- f. Practical strategies to reduce value of goodwill to avoid/reduce stamp duty and

Topics

- CGT on a restructure.
- g. Everett assignments - what are they and are they still useful?
- h. Part IVA issues if practice transferred to ILP or trust.
- i. Can you grant a licence to operate practice to avoid stamp duty and CGT consequences of a transfer of practice goodwill?

Update for professionals on general revenue law issues

- a. Tax issues on sale of business assets.
- b. Current issues with trusts.
- c. Family law tax issues.
- d. Estate planning strategies.
- e. Tax and GST implications for small property developers.
- f. Small business CGT concessions –particular emphasis on inappropriate structures.
- g. Stamp duty issues (refer above).
- h. Payroll tax issues. Are non-equity partners caught?



Seminar for medical practitioners &/or their advisors on structuring issues

- a. Service trust issues.
- b. Incorporation of medical practices – is there any point?
- c. Is there any restriction on carrying on medical practice in a trust structure?
- d. In what circumstances will the ATO allow you to distribute practice income to family members if you practice through a medical company or trust?
- e. Practical issues with associateship

arrangements.

- f. Alternatives to associateship and partnership structures.
- g. Payroll tax issues for contracted doctors.

Asset Protection

- a. Recent developments with Bankruptcy legislation – particularly section 121.
- b. Gift and mortgage-back arrangements.
- c. Interposing holding company under trading company which is built up retained earnings.
- d. Use of business licence strategy.
- e. Use of trust as asset holding vehicles.
- f. Negative gearing trusts.
- g. Exposure of assets in discretionary trusts – Kennon v Spry
- h. Estate stripping

Family Law

- a. Exposure of assets in discretionary trusts – Kennon v Spry
- b. Appointment of independent appointers
- c. Tax issues/traps
- d. Use of small business concessions to trigger gains BEFORE doing property settlement.
- e. Benefits of child maintenance trusts.

Superannuation

- a. Update on “sole purpose” test.
- b. Update on in house asset issues - SMSFR 2009/4.
- c. Business real property – in light of SMSFR 2009/1.
- d. What is a “contribution” – in light of TR 2009/ D3?
- e. Issues with unpaid contributions - SMSFR 2009/3.



Topics

- f. Can superannuation fund enter into property development JV with related parties.

Issues for small property developers

- a. Mere realisation v profit making undertaking.
- b. GST – when are you carrying on enterprise.
- c. Do sales from mere realisation have to be included in determining whether small property developer exceeds GST turnover threshold.
- d. Property Joint ventures – do they exist?
- e. Project agreements – tax and GST issues
- f. Are project management agreements effective to accelerate tax deductions and defer tax on profits?
- g. In what circumstances can a client's self managed super fund acquire an interest in development land from related parties.?
- h. Can self managed super funds be involved with clients in property joint ventures?

Tax and Property Issues

- a. Maintenance & repairs v replacement
- b. Main residence exemption.
- c. Margin scheme
- d. Going concern for property assets/land developers
- e. Property syndicates with nominee entity holding land – does this create trust
- f. How to avoid a tax partnership arising where there is a joint property holding.

We can provide detailed workshop sessions on a wide range of practical tax and estate planning topics based on real life examples from CGW files. Some examples are as

follows:

- a. Use and implications of business licensing restructures.
- b. Practical problems and solutions in satisfying CGT small business basic conditions.
- c. How to have discretionary dividend shares and still ensure individual shareholders have a fixed interest so they qualify as "significant individuals" under small business CGT concessions.
- d. Use of long term tenancy arrangements to get main residence CGT exemption. Potential problems with ordinary income and value shifting.
- e. Practical issues arising from ATO audits on small business concessions..
- f. Stamp duty strategies on restructuring unit and discretionary trusts and transferring control of trustee.
- g. Use of interim capital distributions from trusts for estate and asset protection purposes..
- h. Debt forgiveness strategies.
- i. Transferring units in an unit trust without stamp duty.
- j. Issues with transfers of legal/accounting practices to avoid substantial stamp duty and capital gain on internal goodwill.
- k. Estate planning/matrimonial workshop.
- l. Estate Stripping strategies.



Probate masterclass

For more information or to arrange a training session please contact
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