

DAY 1 – WEDNESDAY 30 MARCH 2011

MORNING THEME: ESTATE PLANNING AND BUSINESS SUCCESSION STRATEGIES

9.00- 9.10 am Introduction and welcome

9.10 – 10.00 am Session 1: Transferring Assets in Trusts and Companies to the Next Generation

The biggest problem faced by estate planners is how to transfer control and ownership across the generations without being whacked for CGT. This presentation will explore the ever narrowing options by means of case studies. This session will examine the planner's options in dealing with assets in a single entity at parent level (trust or company) where there are two or more children wishing to go their separate ways.

- Use of trust cloning where there are no unrealised capital gains or where they can be sheltered
- Trust splitting –recent ATO ID
- Using dividend access shares in companies to transfer control (will value shifting rules apply?)
- Sheltering gains using the Div 152 concessions
- Taking advantage of and preserving pre-CGT asset status
- Dealing with loans from private companies to the deceased
- Obtaining cost base uplifts
- Other techniques
- Case studies

Speaker: Andrew O'Bryan, Partner, Hall & Wilcox, Melbourne

10.00–10.15 am Panel Comments and Questions

10.15 – 11.00 am Session 2: Business Succession and Estate Planning: Term Life Insurance and Other Funding Options

What options are available to fund business succession to ensure that business partners or family members can take over when the existing owners retire, become disabled or die?

The presentation will first consider life insurance:

- The role of term life insurance in estate planning:
- Client has a young family
- Blended family/second spouse
- Other uses
- The use of life insurance in the super fund – advantages and disadvantages
- Life insurance payouts from super funds
- If not super, who should be (a) the policy owner and (b) the policy beneficiary

It will then consider other options:

- Payment over time: terms contracts
- Third party debt products
- Provision of a retirement income stream other than super
- Provision of lump sum payouts
- Other options

Speaker: Peter Bobbin, Principal, Financial Services & Tax, Argyle Lawyers, Sydney

11.00–11.10 am Panel Comments and Questions

11.10–11.35 am Networking Break and Morning Tea

11.35 am – 12.35 pm Session 3: Succession Planning Case Studies

In this presentation, 2 estate planning experts will consider a series of six case studies designed to illustrate the key succession and state and federal taxation implications of the following three kinds of succession arrangement.

Case Studies 1 and 2 – Transfer to a business partner or partners

This case study considers the transfer of control and ownership of one partner's interest in a business to one or more non-family partners,

Case studies 3 and 4 – Transfer to staff

This case study considers the transfer of control and ownership of one partner's interest in a business to members of the business's staff.

Case studies 5 and 6 – External sale

This case study considers the process of preparing a business for a trade sale to a third party, and the tax and estate planning considerations in effecting a transfer.

Speakers: Kevin Munro, Principal, Munro Lawyers, Sydney and Craig Spink, Senior Associate, McInnes Wilson, Brisbane

12.35– 1.35 pm Luncheon

AFTERNOON THEME: TESTAMENTARY TRUSTS AND FAMILY DISCRETIONARY TRUSTS

1.35 – 2.15 pm Session 4: The Use of Master Trusts in Structuring Testamentary Trusts

This presentation will examine a novel approach to structuring testamentary trusts which allows the seamless transfer of control between generations.

- What is a master testamentary trust and who controls it?
- Subtrusts under the master trust – allocation of family assets
- Control of the subtrusts after death
- CGT events – are there any on death of spouse?
- Ensuring trust longevity: vesting date options
- Case studies

Speaker: Matthew Burgess, Partner, McCullough Robertson, Brisbane

2.15 – 2.25 pm Panel Comments and Questions

2.25 – 3.10 pm Session 5: Family Law Disputes: The Impact on Willmaking and Testamentary Trusts

This presentation will look at some useful techniques in making it less likely that family wealth will be regarded as part of the asset pool or a financial resource in family property proceedings of children of your clients.

- The status of assets of a testamentary discretionary trust
- The use of a flexible life interest – discretions with regard to income – power to loan etc.
- Single trust for all family members as opposed to separate trusts for each family member
- Will the estate be required to disclose financial information in Family Court proceedings
- Can the trust avoid the "financial resource" argument?
- The use of a capital reserve trust
- Case studies

Speaker: Steven Grant, Principal, Merthyr Law, Brisbane

3.10– 3.20 pm Panel Comments and Questions

3.20 – 3.40 pm Networking Break and Afternoon Tea

3.40 – 4.30 pm Session 6: The Family Trust on Life Support: The Trust Income Clause and Other Time Bombs

- (a) Updating the trust deed for Bamford:
- The clause defining trust income
 - Powers of the trustee to determine whether receipts are income or capital
 - The appropriateness of a default income clause
- (b) Finding other time bombs in the trust deed:
- The unwanted early vesting date
 - Ex-spouses as appointors and beneficiaries
 - Clauses stating UPEs are loans
 - No power to stream types of income
 - Narrow powers
 - No power to distribute capital gains
 - Who are the default beneficiaries
- (c) Locating other skeletons in the closet:
- Past distributions to persons who were not beneficiaries
 - Consent on guardian required for a transaction but not sought
 - Time for determining and distributing trust income – not done correctly
 - A trust clone which did not work

Speaker: Brian Hor, Partner, Solicitor & Barrister, PricewaterhouseCoopers, Sydney

4.30 – 4.40 pm Panel Comments and Questions

4.40 – 5.20 pm Session 7: Changes to Trust Deeds: When do they Constitute Resettlements?

Fixing problems with trust deeds often require deed variations. The risk of resettlement and the attendant tax and duty consequences is in the mind of every practitioner who varies a trust deed. This presentation will look at the theory of resettlements, the Commissioner's view, and the likely state of the law.

- What is a resettlement?
- Stamp duty cases
- Revenue law cases
- Resettlement vs mere variation – what's the difference?
- State Duty consequences of a resettlement
- CGT consequences of a resettlement
- Types of variations – are they resettlements?
 - o Appointors and guardians
 - o Beneficiaries
 - o Powers
 - o Income and capital clauses
 - o Other

Speaker: Damian O'Connor, Special Counsel, Hopgood Ganim, Brisbane

5.20 – 5.30 pm Panel Comments and Questions

5.30 – 6.30 pm Conference Drinks

DAY 2 – THURSDAY 31 MARCH 2011

MORNING THEME: ASSET PROTECTION

9.00–9.45 am Session 8: Fireproofing the Family Trust from Third Party Attack

The decisions of Richstar and Kennon v Spry have made trust structures porous to both a trustee in bankruptcy and a spouse or de facto. This presentation will recommend a series of steps that should be taken to minimise the risks of successful attack against a family discretionary trust, including preventing partners seeking access to information through the Family Court. These include:

- Choosing your appointors carefully
- Choosing your directors carefully
- Unpaid present entitlements and loans in the wrong places
- Ownership of corporate beneficiaries
- Ownership of companies acting as trustees
- Width of classes of beneficiaries
- Importance of distribution history
- Case studies

Speaker: Rob Jeremiah, Partner, Harwood Andrews, Melbourne

9.45 – 9.55 am Panel Comments and Questions

9.55 – 10.40 am Session 9: Managing the Risk of Parental Incapacity in Estate Plans

This presentation will examine how to structure the estate plan to guard against the risk of derailment through incapacity of one or both parents. It will analyse how control can be managed between incapacity and death of the parents through what should happen if:

- One parent only loses capacity
- Both lose capacity

assuming the existence of a trading business and a portfolio of share and property investments.

The presentation will consider:

- The incapacitated person's directorships and shareholdings (corporate trustees)
- Appointorships

taking into account the need for effective control and good decision-making and the need to avoid the risk of elder abuse and child greed.

Speaker: Brian Herd, Partner, Carne Reidy Herd, Brisbane

10.40–10.50 am Panel Comments and Questions

10.50–11.10 am Networking Break and Morning Tea

11.10 -11.50 am Session 10: Binding Financial Agreements as a Complement to the Will with Blended Families

BFAs are often used to protect the children of the first marriage in blended families. This presentation will discuss the nuts and bolts of making a BFA that works and will stand up to scrutiny and will discuss what the agreement should contain. Issues covered will include:

- What is a BFA under the Family Law Act
- Creating a BFA: formal requirements
- Independent legal advice and certificates
- BFAs subject to common law contractual as well as equitable relief
- Defects in BFAs: Can they be cured?
- Powers of Family Court to set aside a BFA
- BFAs and family provision/Part IV claims
- How to structure a BFA to protect children of the first marriage

Speaker: Stephen Bourke, Director, Certus Law, Canberra

11.50 –12.00 pm Panel Comments and Questions

Program continued overleaf...