



Legal Brief

Brett Davies
LAWYERS

Taxation & Superannuation

197-201 Adelaide Terrace
Perth Western Australia 6000

Phone (08) 9325 7999

Facsimile 0893255999
www.TaxLawyers.com.au

Welcome to the Autumn 2000 Edition of *Legal Brief*

In my role as Practice Manager of Brett Davies Lawyers, I am often asked for information on the latest changes to Tax Law and how they affect your clients. *Legal Brief* is designed to best answer these questions for your clients.

What's hot this quarter:

- Partnerships – Will the Tax Man agree that you are in a legitimate Partnership arrangement?
- Power Of Attorney- How do you lodge it? Do you even have to?
- GST – Do you have to leave an extra can for the Tax Man when you tip your Garbo at Christmas?
- Ralph and the 3 Generation Testamentary Trust – Is there a future for Estate Planning?

Legal Brief is prepared for your clients. You are licensed to print, copy and distribute the articles in *Legal Brief* to your top clients.

I would also like to take this opportunity to introduce the newest member of our team here at Brett Davies Lawyers – Peter Nettleton.

After successfully courting Peter, we have now lured him from his own private practice in Fremantle to join the team here at Brett Davies Lawyers. Peter brings a wealth of experience to the firm, having been a lawyer for over 20 years. You may also recall Peter in his role as an Appeals Officer with the Tax Office. After a total of 11 years with the Tax Man, Peter is now working on your side. Peter will work with you to minimise your clients tax burden and keep the Tax Man out of their wallets. Contact Peter on his direct telephone (08) 9221 6666 to find out how he can add value to your advice on complex taxation issues.

You can also find out more about Peter by visiting -
TaxLawyers.com.au/teammembers/TeamMembers.htm

If you want information on the full range of services we provide, I am happy to help. See <http://www.taxlawyers.com.au/> or please call my direct telephone (08) 9325 9777.

Yours Sincerely,

Jason Styles
Practice Manager



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Tax and Superannuation Update - Autumn 2000 Edition

Post Ralph – 3 Generation Testamentary Trusts needed more than ever

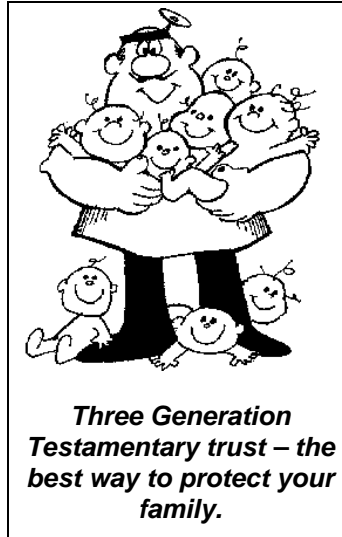
I have read recently that after June 2001 my Family Trust is taxed. Is it the most effective way to hold passive growth assets?

Why? From 1 July 2001 your family trust is taxed like a company. This means that assets you acquire are no longer be eligible for the 50% CGT discount. This exemption was previously available to both trusts and individuals.

The outcome of this is that a trust is taxed at 30% on the entire capital gain of a passive asset. An individual is only taxed at most 48.5% on half the capital gain on a passive asset. This is an effective rate of 24.25%. The individual rate is even less if the individual disposing of the asset was in a low tax bracket.

So does this mean that Ralph has killed the Three-Generation Testamentary Trust Wills?

Not on your life! There are many reasons why the Three-Generation Testamentary Trust is the most flexible and tax effective way of disposing your assets after you die.



But what happens to my Estate Plan if the tax laws change again in regard to Testamentary Trusts?

Tax laws do change often and quickly. Therefore the key to the best Estate Planning is flexibility and regular follow up. It is recommended that your Wills and Estate Planning strategy be reviewed at least every 5 years.

Your Tax Lawyer drafts into your Three-Generation Testamentary Trust Wills the flexibility for your beneficiaries to choose which of your assets to hold in the trust and which to hold personally. With the advice of your Financial Planner and Accountant this means that your family can use the Trust you have left for them in the most tax effective way when you die.

1. The Three-Generation Testamentary Trust allows for the deferral of the payment of Capital Gains Tax where an original estate asset is distributed to a beneficiary of a Testamentary Trust. So whether an asset is active or passive, it can be distributed to your beneficiaries free from CGT and with no stamp duty payable. Only when your beneficiaries dispose of the asset to a third person is CGT is payable. If your beneficiary is an individual then they are probably eligible for the CGT discount. The 12-month rule is relaxed when a beneficiary receives an asset as a result of a deceased estate and there must only be a collective period of ownership of more than 12-months for the CGT discount to apply.
2. The Three-Generation Testamentary trust offers protection for your beneficiaries especially if they are under age, of unsound mind or bankrupt when you die. Your Tax Lawyer drafts provisions into your Will to prevent any beneficiary suffering such a legal disability from taking control of their inheritance straight away. Your Three Generation Testamentary Trust Will allows for a Protective Trust to be set up. This gives your Executors the authority to act as trustees. This also provides income and capital from the trust to maintain any effected beneficiaries.
3. Beneficiaries of a Testamentary Trust that are under the age of 18 years are treated by the Tax Man as adults for income distributed to them from the trust. This means that each child beneficiary can receive up to \$6,000 tax free in distributions from a Testamentary Trust.
4. The Three-Generation Testamentary Trust also contains all the up to date provisions to allow for effective tax planning for your estate including the streaming provisions for income producing assets.

Balancing the Tip – Will you tip the Tax Man?

The Tax Man is frantically trying to ease public concern over the GST. The question of “is your bell boy a pseudo Tax Man?” has arisen. Is tipping subject to GST? Fortunately for us, the Tax Man has taken the time to issue a release on this very subject.

The rules are as follows:

If your tip is completely voluntary, you as the punter do not have to pay GST.

However if there is a preset amount for the tip or the tip is actually defined as a service charge, then the Tax Man wants a cut as well.

What if I pay by credit card I hear you ask?

Not to worry, the Tax Man has clarified this for us too. The tipping component of your credit card payment is GST free. This is so long as the tip is passed on to the relevant employee. It is then the business's responsibility to maintain accurate records to show that the money was not retained as part of business takings.

Brett Davies Lawyers is a private law firm. It only deals with clients through your professional advisers.



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Tax and Superannuation Update – Autumn 2000 Edition

Are Mum and Dad in a “real” Partnership?

Did you know that for a Tax Effective partnership you need a Partnership Deed? Only a Partnership Deed gives the power to use a partnership for tax strategies that the Courts will enforce.

Consider the new *Cripps* case - Mum and Dad own a rental property 50/50. They believe that they are in a partnership. Their accountant told them that they should allocate all of the income (profit) to Mum as she earns a lower income. This is Tax Effective, as the profit is taxed at a lower rate. But “your partnership isn’t real” says the Tax Man. Mum and Dad must claim 50% of the profit each. As Dad is on a higher tax rate, Mum and Dad receive a tax bill for the additional amount plus a fine for tax avoidance. Dad hits the roof, he was told that he was in a partnership and could allocate the income within the partnership as he saw fit.

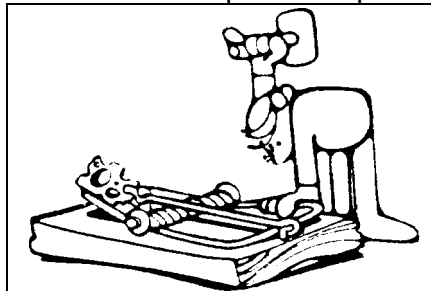
Unfortunately for Mum and Dad, *Cripps* held that people in Mum and Dad’s position do not have a real partnership. They didn’t even have a written partnership agreement.

So how do Mum and Dad get a real partnership? The Court said that within the statutory requirements a partnership is basically contractual, so a Partnership Deed helps.

How does a partnership deed help? The Court said it shows us your intention to create a real arms length relationship. You must conduct yourself in a manner that indicates a real partnership.

For the Courts to find a true business relationship, they need

such things as a written Partnership Deed setting out the activities of the business. The Deed states the accounting and management procedures to ensure the business is carried on in a manner that doesn’t contradict a true partnership.



Verbal Partnership Agreements – Are you setting a trap for yourself?

Will the Taxman recognise your partnership? Put it beyond doubt. Get your Tax Lawyer to prepare a Partnership Deed and protect your family business today. Your Adviser, Lawyer and Accountant can order a Partnership Deed on-line at www.TaxLawyers.com.au

Power of Attorney and Land Are you paying a toll on a bridge you may never cross?

Where should I lodge my Power of Attorney to make it effective?

Your Power of Attorney is effective once it is signed. You do not need to lodge or register it anywhere to make it effective.

Don’t I have to lodge it at the Department of Land Administration?

Lodging at DOLA is not required. This lodging is only required if you want to sell, buy or otherwise deal in land by using the Power of Attorney.

Shouldn’t I lodge if there is any chance I might have to deal with land in the future? Will I miss out

if I leave it too late?

A Power of Attorney can be lodged at DOLA any time- even 20 years down the track.

Are there any limitations if I lodge later?

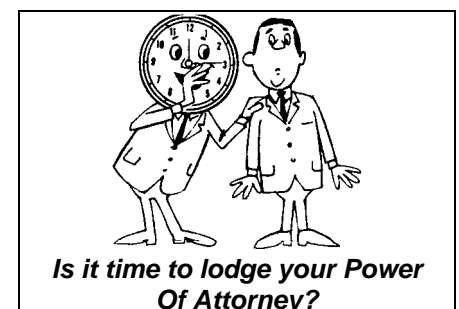
Once a Power of Attorney is 3 months old you need a supporting Statutory Declaration signed by the Donee (the person appointed to look after affairs under the Power of Attorney). This Statutory Declaration states to the best of the Donee’s knowledge the Power of Attorney has not been revoked.

Can my bank require DOLA lodging when I use my Power of Attorney?

Except for dealings with land the Power of Attorney DOES NOT need to be registered to be effective.

Why not just lodge the Power of Attorney at DOLA now?

Both DOLA and Lawyers charge for lodging each Power of Attorney. Both are happy to receive your money.



Is it time to lodge your Power Of Attorney?

Does a Power of Attorney need to be stamped?

Good news here, as well. Since 1996 the Commissioner of State Revenue under the *Stamp Act* (WA) has stated that Powers of Attorney do not need to be “stamped”.

See:

taxlawyers.com.au/manuals.htm

for more information.