



Tax & your private company

Check with your tax adviser if the terms of loans you, as a shareholder, have from your private company comply with Division 7A. Also, see us for issues you should look out for if you have plans to enter into transactions with your private company.

Continued Page 3



Family law property division – the High Court has spoken

The High Court has given clear guidelines for property division of parental property when children of an elderly couple in a blended family initiate proceedings.

The husband and wife were married in 1971. Both were previously married and had adult children from their previous marriages. They did not have children together and made wills in favour of their children. They owned a \$1.5 million home in Perth registered in the husband's name.

The wife suffered a stroke and her daughter was appointed her guardian. She brought an application for property orders in the Magistrate's Court. This Court found the husband contributed 57.5% and the wife 42.5% and ordered about \$600,000 be paid to the wife. The wife died in the interim.

Continued Page 2

Issue 5

- Page 2 Family law property division – the High Court has spoken
- Page 2 An executor of a deceased estate assumes liability
- Page 2 Restrictive covenants
- Page 2 2013 Federal Election
- Page 3 Restructuring your business – removing income tax impediments
- Page 5 Self-managed Super Funds
- Page 3 Special rules for private companies

7 Kororoit Creek Road
Williamstown
Victoria
3016

Telephone 03 9397 1900
Facsimile 03 9399 9343
Email: admin@kooblalslawyers.com.au
Follow us: Facebook, Twitter, LinkedIn, YouTube



Family law property division

On appeal, the Full Court found in favour of the husband, but ordered that the \$600,000 be paid to the wife's estate on the husband's death.

On appeal to the High Court, it was found that it was not just and equitable to make the orders because: -

- The wife's needs were met;
- The husband needed to live in the house.



2013 Federal Election

With the early announcement of the 2013 federal election, this will cause the government to reprioritise tax measures it may choose to pursue or no longer pursue over the coming months.

There may be delays in areas where change was pending and changes sped up in other areas.

We will keep you informed of these changes as the government announces them.

An executor of a deceased estate assumes liability

An executor of a deceased estate is bound to go through documents to ensure that debts of a deceased estate are paid. An executor must be aware of the legal effect of the steps being taken when assuming the role of an executor. The Supreme Court recently found in *Lederberger and another v Mediterranean Olives* [2012] VSCA 262 that an executor is at risk of breaching that duty.



Restrictive covenants – how this may affect you

Restrictive covenants

A restrictive covenant is an agreement restricting the use or enjoyment of land for the benefit of other land. It usually is imposed by a sub-divider of a lot on purchasers agreeing to refrain from certain actions, for example, erecting more than one dwelling.

One may apply to have the covenant modified or removed if: -

- The covenant is obsolete by reason of changes in the neighbourhood.
- It impedes reasonable use.
- It substantially injures the person entitled to benefit from the restriction.

There have been several decisions on this legislation recently. If you have been affected, you may talk to us in regard thereto.

Restructuring your business – removing income tax impediments

The federal government is looking to remove certain income tax impediments that impact business restructures contained in the capital gains tax (CGT) provisions. The changes affect rollovers, which apply to deferring when taxable capital gains are recognised for tax purposes and would involve as discussed below.

Providing rollovers for revenue assets and trading stock where a person who owns units in a unit trust exchanges units for shares in a company (because the assets of the business are being moved from a trust into a company structure).

Providing rollovers for revenue assets and trading stock where shares are exchanged in one company for another company (because a new company is introduced into the business ownership structure).

Ensuring integrity in the tax system for a rollover to apply where replacement assets are of the same character for tax purposes (e.g. capital or revenue).

Resolving technical defects with certain rollovers offered for restructures.

The amendments are captured in some draft legislation the government put out for review late last year.

Note:

If you are planning on changing the structure of your business, for example, converting from a trust to a company, speak to us to see if any of the proposed changes to CGT provisions might affect your restructuring plans.



Special rules affecting private companies

The Board of Taxation has announced that it will review the special rules, colloquially known as “Division 7A”, which apply to certain transactions between shareholders and private companies. The rules as they currently stand have been in place for approximately fourteen (14) years and therefore are due for a review into how they have been implemented and whether they successfully achieve their purpose.

The rules are designed to treat certain loans, payments and debts forgiven as “dividends” unless certain conditions have been met. They prevent shareholders from taking money out of a private company in a way, where the money has not been subject to tax.

These rules also interact with other areas of the tax law. The Board will have a look at these interactions and consider if the results are appropriate.

If you run your business through a company, at some stage you may wish to borrow money from the company, or may have borrowed money from the company in the past. Your loans are required to comply with the requirements of Division 7A. You should talk to us if you have any concerns about loans or other transactions between yourself and your private company or if you plan to borrow money out of your company in the future.

What is a supply for GST purposes – the Qantas case?

Recently, the High Court handed down a decision in which it held that Qantas had made a taxable supply for GST purposes in the case where a passenger does not board a booked flight and, either a refund or payment of the flight is not claimed by the passenger, or the payment is not refundable. This is because the High Court considered that, in simple terms, the passenger was supplied with the right to fly even though they did not take the flight and so Qantas had made a supply for GST purposes.

What this might mean for your business

In response to the decision, the ATO has taken the view that it does not significantly change the way the ATO approaches determining what is a supply, though the particular facts and circumstances of each case will always play a role.

If you have any concerns about transactions you may have entered into in the course of your business, for example, with your customers or suppliers, and you are concerned about whether there may be any change to the GST treatment on those transactions, you should seek proper advice.



Rules against Tax Avoidance

Following some decisions in cases going against the ATO, the government has decided to tighten up the rules that target tax avoidance by taxpayers. Legislation bringing in the changes the government wishes to make will be introduced in the autumn sittings of Parliament.

We will be able to advise you if there is any concern about these provisions with respect to your business activities.

Self-managed super funds

There is lots of activity going on in relation to self-managed superannuation funds (SMSF). More and more people are deciding to set up their own SMSFs. We highlight below some of the current issues for SMSFs.

1. Regulations relating to audits of SMSFs – Stronger Super

New regulations will be introduced relating to the SMSF auditor registration regime and the prescribed period for the provision of an audit report and accompanying explanatory material for an SMSF. The government recently released the draft proposed regulations for public consultation.

The purpose of the regulations is to ensure auditors of SMSFs meet a high standard of competency so that they may carry out their role as auditor of SMSFs to the highest standards.

If you run your own SMSF, it is useful to know that an auditor you obtain to audit your SMSF will be required to meet these high standards.

2. SMSF arrangements to acquire property which contravene superannuation law

The ATO has released a Taxpayer Alert (TA2012/7) about certain arrangements entered into by SMSFs to acquire property. There are certain arrangements that the ATO consider do not comply with the superannuation laws. These are described in the Taxpayer Alert.

The ATO is concerned that some arrangements, if structured incorrectly, may not be able to be fixed up easily and may require sale of the property.

If you have an SMSF, you need to ensure care is taken when investing in property particularly where certain types of borrowing arrangements are involved.

3. Pre-retirement super withdrawals

A recent decision of the Administrative Appeals Tribunal held that an individual who withdrew funds from their self-managed super fund without meeting the qualifying conditions for withdrawal was subject to tax on the amounts withdrawn.

If you are thinking about withdrawing funds from your SMSF, obtain advice about whether you have met the qualifying conditions that will allow you to draw the funds out without triggering a liability to tax.

4. Acquisitions and disposals of certain assets by SMSFs and related parties

Some draft legislation was released by the government that affects certain transactions involving acquisitions and disposals of certain assets (e.g. real property used in a business) between SMSFs and parties associated with the SMSF.

If you have plans to transfer an asset into your SMSF or for the SMSF to dispose of an asset, you should obtain advice about how these proposed rules might affect your proposed transaction.

Motor vehicle data matching program

The ATO has embarked on a “data matching” program where they will collect details of individuals or businesses that have acquired a vehicle with a transaction value of \$10,000 or greater in the 2011-2012 and the 2012-2013 financial years from motor vehicle registries in all States and Territories.

The ATO will then electronically match that data with data they have on file to see if individuals and businesses are meeting tax obligations in relation to the vehicles acquired. This program may pick up obligations that have not been met in regards to fringe benefits tax, luxury car tax and Fuel Scheme compliance verification activity.

Our location

Boyle Telfer & Kooblal
Barristers & Solicitors
7 Kororoit Creek Road
Williamstown
Victoria
3016

Disclaimer

This newsletter is distributed quarterly by Boyle Telfer & Kooblal Legal Practitioners to provide information of general interest to their clients. The content of this newsletter does not constitute specific advice. Clients are encouraged to consult us for advice on specific matters.

Contact us

Telephone 03 9397 1900

Facsimile 03 9399 9343

Email: admin@kooblal lawyers.com.au

Follow us on: Facebook, Twitter, LinkedIn, YouTube