Sladen Legal

Regulatory overreach, more red tape or business as usual?

Presented by Jasmine O’Brien, Neil Brydges, Josh Hunter and Daniel Smedley

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Everything we do embodies the passion and entrepreneurial spirit of our clients.

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The employment/contractor distinction

The employee / contractor distinction – why this issue remains as relevant as ever. This session will discuss:

- What is a contractor?
- Key differences between contractors and employees
- Factors to consider when appointing a contractor
- Avoiding legal and reputational risk, including:
  - claims for employee entitlements
  - sham contracting
  - accessorial liability
  - vicarious liability

A contractor is someone who…

- Is engaged by the company through a **commercial arrangement**
- Hires out their services to other businesses
- Negotiates their own fees and working arrangements
- Can work for multiple clients at one time

An employee is someone who...

- Is engaged by the company through an **employment contract**
- Has their salary and working conditions set by the company
- Works exclusively for a company
- Receives employment entitlements

Employee v Contractor

- **Employee**
  - **Ongoing** — Continues until either party terminates
  - **Fixed Term** — Ends at definite date
- **Contractor**
  - **Engage a company** — E.g. Sladen Legal
  - **Engage a sole trader (individual)** — E.g. Jasmine O'Brien

What does the law say?

There is no set legal definition of ‘independent contractor’. Instead, there are a series of factors the courts use to determine if someone is an employee or contractor

These factors are not always clear cut. You should consider the relationship as a whole.

Why is the employee / contractor distinction important?

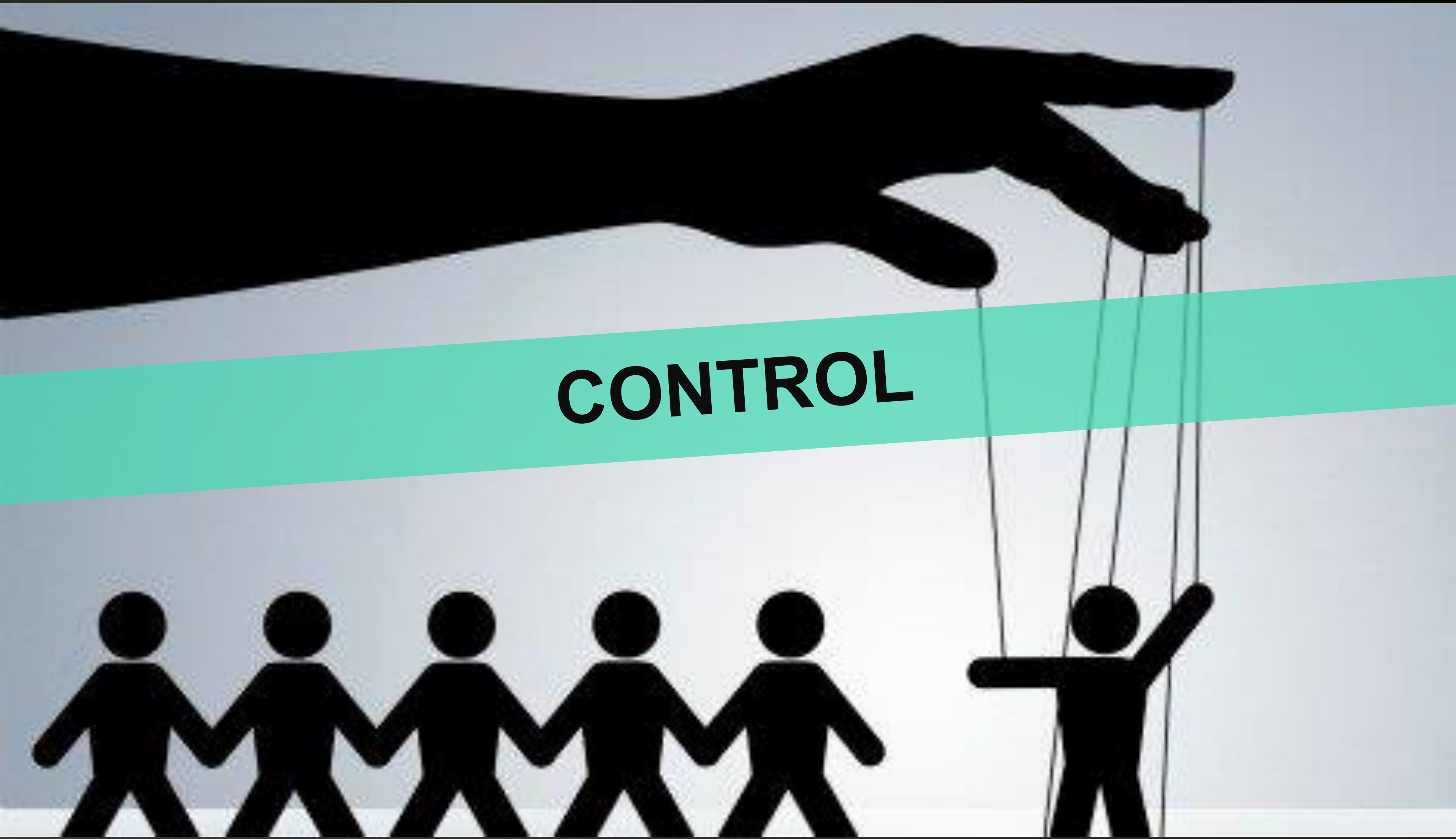
- Contractors do not receive employee entitlements, such as leave, or have access to unfair dismissal remedies
- Companies are not usually vicariously liable for the actions of contractors
- There are serious consequences, including heavy fines, for companies found to be engaging in sham contracting
- Taxation, super and workers' compensation implications

Key differences between contractors and employees

Control	Payment	Exclusivity	Delegation
Tools & Equipment	Commercial Risks	Entitlements	Intention of Relationship

What are the factors?

Factor	Contractor	Employee
Control	Able to exercise control over how or when work is performed	Lack of control, must perform employment duties
Payment	Payment for results, usually by invoice (no PAYG deducted)	Payment for time worked, usually as wages or salary
Exclusivity	Non-exclusive contract; able to seek work elsewhere	Exclusive contract; recognised as part of the company
Delegation	Power to delegate	Must perform work personally
Tools & equipment	Provides own	Provided for them
Commercial risks	Bears legal risk of business; can make profit/loss	No legal risks (employer is vicariously liable); cannot make profit/loss
Entitlements	Does not receive annual leave, personal leave or other NES/Award entitlements	Receive annual leave, personal leave and other NES/Award entitlements
Intention	Intention to be in a contracting relationship e.g. has ABN	Intention to be in employment relationship e.g. has employment contract


CONTROL

Control

KEY ISSUE:

Contractors can control how and when their work is performed

CONSIDER:

- Will the contractor set their own working hours?
- Will the contractor have control over how the work is performed, or will the company tell the contractor how the work is to be performed?

PAYMENT

Payment

KEY ISSUE:

Contractors invoice the company for their work

CONSIDER:

- Will the contractor invoice the company?
- Is the contractor paid for a result achieved based on a quote they provided?
- Will the contractor be responsible for their own taxation?


EXCLUSIVITY

Exclusivity

KEY ISSUE:

Contractors can work for multiple companies / contracts at once

CONSIDER:

- Will the contractor be able to perform services / work for other companies (in addition to the company)?


DELEGATION

Delegation

KEY ISSUE:

Contractors ordinarily have the power to delegate their work

CONSIDER:

- Will the contractor be able to subcontract/delegate the work the company engaged them to perform?

TOOLS AND EQUIPMENT

Tools and equipment

KEY ISSUE:

Contractors provide their own tools and equipment, while these are normally provided for employees

CONSIDER:

- Will the contractor provide and pay for the maintenance of their own equipment to perform the work?


COMMERCIAL RISKS

Commercial risks

KEY ISSUE:

The contractor bears the legal risks of owning a business

CONSIDER:

- Does the contractor bear legal responsibility for the work, including liability for the cost of rectifying any defects in the work?
- Is the contractor in a position to make a profit / loss?

ENTITLEMENTS

Entitlements

KEY ISSUE:

Contractors do not receive employee entitlements under the Fair Work Act / Award

CONSIDER:

- Have you notified the contractor that they will not accrue any annual leave or personal leave given their status as a contractor?
- Contractors are not entitled to access unfair dismissal remedies
- Will the contractor be responsible for their own taxation and superannuation?


INTENTION OF RELATIONSHIP

Intention of relationship

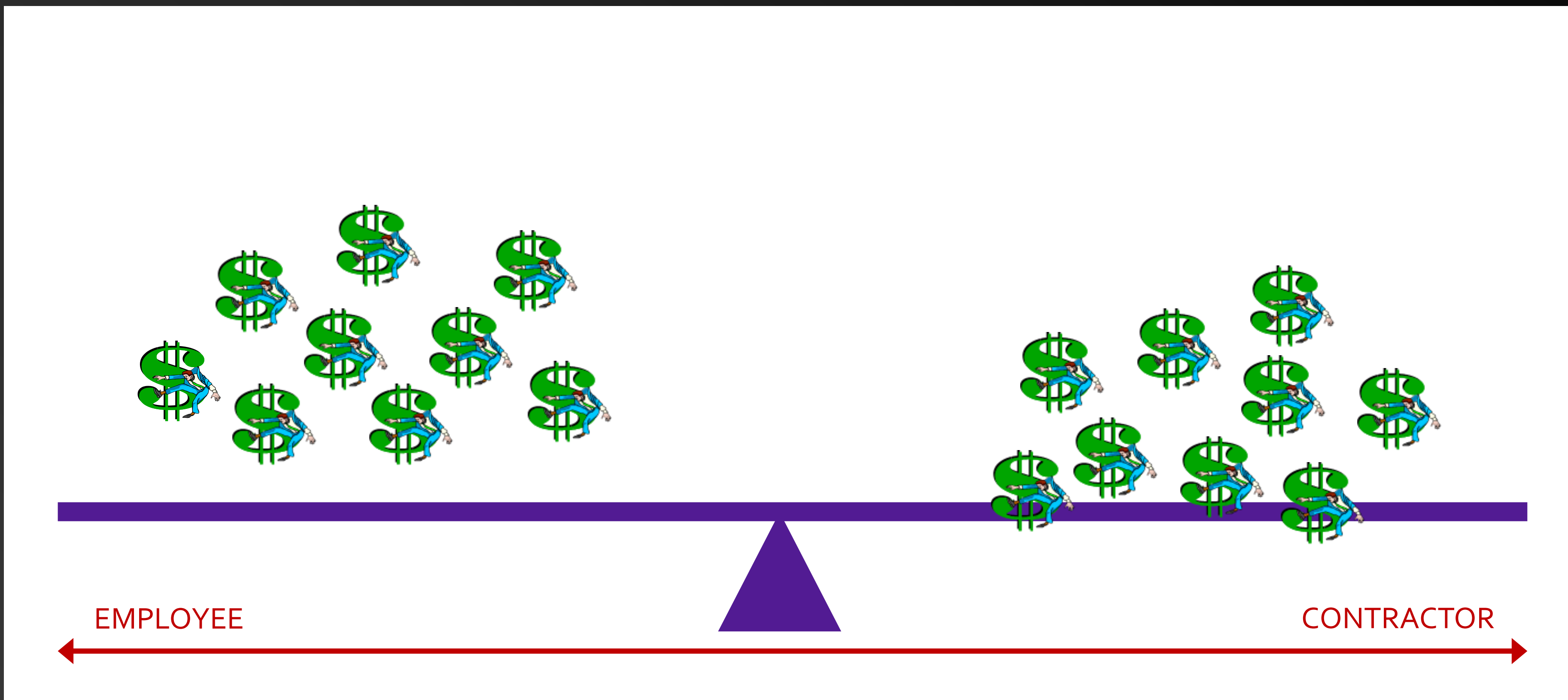
KEY ISSUE:

Did the parties intend to form a contractual or employment relationship?

CONSIDER:

- Has the contractor provided you with an ABN?
- Have you checked that the ABN is for an Australian Private Company?
- Has the relationship changed over time? Remember to re-evaluate this periodically

Risk Assessment



Managing Risk v Eliminating Risk

Sham Contracting

Sham contracting is where an employer **disguises** an employment relationship as an independent contracting relationship

The penalties for sham contracting are **severe** and involve fines levied against the company and individual managers

Sham Contracting - How to avoid this risk

- Work out what you want and then reverse engineer
- Assess contractors on an individual basis looking at the factors we discussed earlier
- Remember to consider the relationship objectively and as a whole
- Periodically reassess this relationship with contractors. If you can't spot the difference between employees and contractors you're in trouble.

Beware the Regulator:

- There may be additional risk of FWO investigation if the company converts employees to contractors or vice versa

Accessorial Liability

Company employees (i.e. you) can be held to be accessorily liable if you engage a “contractor” who is really an employee

The company has an obligation to be aware of the contracting arrangements in its supply chain (Coles trolley prosecution)

It is <u>not sufficient</u> to simply add a clause to in your commercial agreements saying ‘No sham contracts’!

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Property purchasers become the new taxman (or woman)

What will be talked about

- The impact on developer financing, banking, and contracts
- What transitional measures are in place?
- How does it apply to property sold under the margin scheme?
- Practical application problems
- How should standard land contracts be amended?
- New penalty regime and extent of liability
- Does it mean the ATO gets priority ahead of banks?

Why are we here?

- A supply is a taxable supply if:
  - the supply is for consideration
  - the supply is in the course or furtherance of an enterprise you carry on
  - the supply is connected with Australia
  - you are registered or required to be registered

Timing

- Announced in 2017 Budget
- Royal Assent on 29 March 2018
- Applies to new contracts on or after 1 July 2018
- Also applies to existing contracts if consideration other than a deposit provided on or after 1 July 2020

Who pays it and on what?

- The purchaser on a taxable supply of “new residential premises” or “potential residential land” (except if registered and acquired for a “creditable purpose”)

- Multiple purchasers – treat as separate – except if joint tenants – treat as single

- “New residential premises” does not include:
  - residential premises created through “substantial renovations”
  - “commercial residential premises”

- “Potential residential land”
  - included in a “property subdivision plan”
  - does not contain a building in use for a commercial purpose

How much must be paid?

- 10% of the contract price (subject to adjustments) if the margin scheme does not apply
- 7% of the contract price (subject to adjustments) if the margin scheme applies
- Commissioner can increase amount under margin scheme to up to 9%
- Associates – no consideration or not on arm's length terms – 10% of the market value
- Home & land packages

When and how must it be paid?

- On the day on which any of the consideration (other than the deposit) is paid
- Purchaser not liable for penalty if a bank cheque payable to the Commissioner for the correct amount on or before settlement

Notices and penalties

- On supplies of residential premises or potential residential land, the vendor must give the purchaser a written notice saying:
  - whether the purchaser is required to pay an amount;
  - the amount to be paid; and
  - when payment is required

- No notice required for commercial residential premises and potential residential land to registered purchaser for a creditable purpose

- Strict liability offence of 100 penalty units ($21,000) per offence

- Failure to provide a notice does not affect purchaser obligation to make a payment

- Failure to make payment results in a penalty equal to amount that was not paid (unless notice – not unreasonable – or bank cheque)

Credits and refunds

- The vendor is entitled to a credit if the amount is paid
- If amount paid in error to the ATO the vendor may apply for a refund within 14 days
- The Commissioner must refund if “fair and reasonable”
  - Draft LCR 2018/D1 vs EM
- Existing property development agreements

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Property purchasers become the new taxman (or woman) cont.

Practical issues - overview

- Application of transitional provisions
- Practical issues in implementation
  - Preparing and relying on notices
  - Multiple recipients
  - Settlement adjustments
  - Deposit release
- Financing and commercial implications
  - Does the ATO take priority over lenders?
  - Deal structuring
  - Is this the death of the margin scheme?
- Should contracts be updated to deal with the changes?

Application of transitional provisions

- Commencement date is 1 July 2018
  - Legislation relevant to all contracts entered into after that date
  - Can still apply to contracts entered into prior to 1 July 2018 where consideration isn't paid until after 1 July 2020
- Contract variations
- Development agreements
  - Landowner deemed to be recipient of GST amount

Preparing and relying on notices

- In which transactions should a vendor prepare a notice?
- When should the vendor issue a notice?
- Information to be set out in a notice
  - Is an amount to be withheld? If so, what is the amount?
  - Supplier's ABN
  - Time for payment of the amount
- Ability of a purchaser to rely on a notice – what enquiries should a purchaser make?

Multiple recipients

- Does multiple recipients equal multiple notices?
- Joint tenants or tenants in common

Settlement adjustments

- "Usual" settlement adjustments are not taken into account for the purpose of determining the "price".
  - What are "usual" settlement adjustments?

Deposit release

- Section 27 of the Sale of Land Act 1962 permits the release of the deposit to a vendor prior to settlement where:

  "the purchase price is sufficient to discharge all mortgages over the property"

- Section 27 requirements do not contemplate GST and CGT withholding
  - Contract to buy new residential premises signed after 1 July 2018 for $1,000,000 ($100,000 deposit paid)
  - On settlement (assuming foreign vendor):
    - $125,000 paid to ATO for CGT withholding
    - $100,000 paid to ATO for GST withholding
    - $675,000 paid to vendor
  - What if the mortgage on the property was for (say) $750,000?

Financing and commercial implications

- Does the ATO take priority over financiers?
- Tightened lending
- Deal structuring
- Is this the death of the margin scheme?

Ernie sells a property to Bert for $19,000,000 plus GST. Ernie purchased the property for $9,000,000 and the sale is eligible to use the margin scheme.

10% GST

- Vendor's actual GST liability (ignoring adjustments) - $1.9M
  - 10% of $19,000,000
- GST inclusive price - $20,900,000, being:
  - GST exclusive sale price - $19,000,000
  - Plus GST of $1,900,000
- Amount to be withheld by purchaser - $1.9M
  - 1/11th of $20,900,000
- At settlement, purchaser pays:
  - $19,000,000 to vendor
  - $1,900,000 to ATO

Margin Scheme

- Vendor's actual GST liability (ignoring adjustments) - $1.0M
  - GST exclusive sale price - $19,000,000
  - Less acquisition price - $9,000,000
  - Margin - $10,000,000
  - GST on margin - $1,000,000
- GST inclusive price - $20,000,000, being:
  - GST exclusive sale price - $19,000,000
  - Plus GST of $1,000,000
- Amount to be withheld by purchaser - $1.4M
  - 7% of $20,000,000
- At settlement, purchaser pays:
  - $18,600,000 to vendor
  - $1,400,000 to ATO
- Vendor is $400,000 out of pocket until next BAS is processed

Protecting clients

- Contractual provisions
  - Timing
  - Who collects the payment at settlement
  - Penalties
- Reviewing existing contracts and agreements
- What is the best commercial outcome for the client?

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Tax traps in dealing with UPEs

Creation and satisfaction/discharge of UPE

Does CGT event D1 occur on creation and C2 occur on satisfaction/discharge of UPE?

- Yes, but look through if mere facilitation of distribution of income.

Private binding ruling (PBR) 101257177732, Issue 3, Q1

- *"…consistent with the approach outlined in Commissioner of Taxation v Dulux Holdings Pty Ltd & Ors [2001] FCA 1344, (the Dulux case), the Commissioner's position has been that **it is appropriate to look through the legal rights incidentally created and discharged/satisfied** when they are merely facilitating the real transaction, being the distribution of income from a trust to a beneficiary."*

Release, waiver or assignment of UPE by beneficiary

Does it give rise to a forgiven debt for purposes of Division 245 (ITAA 97)?

- No

Does it trigger the application of s.100A (ITAA 36) reimbursement agreement

- No* (*if it is an ordinary family or commercial dealing*)

Does it cause an amount of ordinary income under s.6-5 (ITAA 97) for any of the parties?

- No

There are four basic conditions that need to be satisfied in order for section 100A to be applied (in very broad terms):

- There must be an **agreement** (which the provisions name as being a "reimbursement agreement").
    - *The term "agreement" is broadly defined but that definition specifically excludes an agreement that had not been entered into with an avoidance purpose or that was entered into in the course of ordinary family or commercial dealings.*
- A **beneficiary must become presently entitled** to income of the trust estate which must arise under the agreement.
- There **must be the payment of money** or the transfer of property to, or the provision of services or other benefits for, a person or persons other than the beneficiary or the beneficiary and another person or other persons.
- The agreement must have been entered into for purposes of securing that the liability to income tax of any person in respect of any year of income is **reduced or eliminated**.
    - *Therefore, evidence of what the taxpayer might have otherwise done is crucial to determine whether the requisite purpose existed.*

Result?

- The beneficiary is deemed not to be, and never to have been, presently entitled to the relevant trust income.
- The taxable income is assessable in the hands of the trustee at the top marginal rate of tax under section 99A ITAA 36.
  - *This only operates for the purposes of the taxation law. At trust law, the identified beneficiaries would remain entitled to the amount appointed to them.*

Target:

- Trustee appoints income to a beneficiary that is a previously unrelated entity that either qualifies for exemption of its income, or is a loss entity.
- No or little tax payable and the beneficiary does not receive the full financial benefits of those appointments.

100A(13) [Definitions]

In this section:

- ***agreement*** means any agreement, arrangement or understanding, whether formal or informal, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings, **but does not include** an agreement, arrangement or understanding **entered into in the course of ordinary family or commercial dealing**.

The ATO fact sheet does not provide much clarity on the issue

- *"There is no definition of ordinary family or commercial dealings. Whether a particular agreement comes within that **exclusion will depend on all of the relevant facts**. The courts have made it clear that the exclusion must be considered having regards to all steps comprising the reimbursement agreement – not merely components of it."*

And:

- *"An agreement will not necessarily be considered to **have been entered into in the course of** an ordinary family dealing merely because all of the entities involved are members of the same "family group"."*

PBR 1012113065944

- Unpaid present entitlements being released, waived or assigned by a beneficiary as part of an estate planning arrangement were concluded to be executed “in the course of ordinary family or commercial dealing”.
- It was found that although the transactions may not be an “ordinary” transaction that occurs day to day by family members, the arrangement was entered into **in the course of** ordinary family or commercial dealings, as **being part of the estate planning**.

- This is consistent with the approach taken in private binding ruling PBR 1012571177732 (Issue 2, Q1) noted earlier.

Taxation Determination TD 2015/20

Division 7A: is a **release** by a **private company** of its unpaid present entitlement a 'payment' within the meaning of Division 7A of Part III of the Income Tax Assessment Act 1936?

- **Yes.** A private company that releases all, or part, of its unpaid present entitlement (UPE) credits an amount within the meaning of that word in paragraph 109C(3)(b) of the Income Tax Assessment Act 1936 (ITAA 1936). Such a crediting is taken to be a payment for the purposes of subparagraph 109C(3)(b)(iii) **to the extent that the release represents a financial benefit to an entity**.

Example

6. Upon being made presently entitled, XYZ Pty Ltd accounted for the UPE by recording a debit entry against a 'trust entitlement' ledger. ***For the purposes of accounting for the release, XYZ Pty Ltd made a credit entry in that ledger to offset the debit*** *(reflecting the UPE ceasing to be an asset of the company). The amount so credited for the benefit of ABC Pty Ltd (in its capacity as trustee of the ABC Trust), is a payment within the meaning of subparagraph 109C(3)(b)(iii).*

Still need to consider other elements of Division 7A to determine if the “payment” triggers a tax liability.

Australian Taxation Office position

The ATO states that this applies regardless of:

- Doctrine of merger of estates.
- Whether the UPE is held in the main trust or a sub-trust.
- Whether the release is conditional or unconditional.
- Whether or not the UPE is released voluntarily or at the direction of a court order.

- The position in the TD applies both before and after its date of issue, and in relation to both pre and post-16 December 2009 UPEs.

Release, waiver or assignment of UPE by beneficiary

Capital gains tax (CGT)

Does **cancellation, release or waiver** of a UPE trigger CGT Event C2?

- Yes

Does the **assignment** of a UPE trigger CGT Event A1?

- Yes

Because it is **not** incidental to and facilitating of a distribution of income from a trustee to a beneficiary.

Anti-overlap provisions for CGT

Section 118-20 (ITAA 97) may apply to reduce the amount of the assessable capital gain by the amount that was previously included in the assessable income of the beneficiary when the distributions were made.

Amounts could be included in the assessable income of the beneficiary by Division 6 or Division 7A of ITAA 36.

But…given that:

1. UPEs could arise due to non-assessable distributions of income or capital; and
2. the distinction between income for trust law purposes and taxation law purposes (refer *Bamford v Commissioner of Taxation* [2010] HCA 10);

the anti-overlap provision **may not** prevent a CGT liability.

Cost base for CGT purposes

- Subsection 110-25(2) of the ITAA 1997 defines the first element of the cost base to be the money paid (or required to be paid) or the market value of any property given (or required to be given) in acquiring the CGT asset.
- Generally, **a beneficiary does not pay or give anything** to the trustee (nor is required to), to acquire the equitable right to demand and receive payment of the UPE.
- The market value substitution rule **will not apply**
  - There is an exclusion contained in Item 1 of the table in subsection 112-20(3).

Exceptions to the market value substitution rule

Item	You * acquired this CGT asset:	...in this situation:
1	A right to receive * ordinary income or * statutory income from a trust (except a unit trust or a trust that arises because of someone's death)	(a) you did not pay or give anything for the right; and (b) you did not acquire the right by way of an assignment from another entity

Capital proceeds for CGT purposes

- For a **waiver**, as there is **no consideration** the market value substitution rule in s.116-30 of ITAA 97 will apply.
- For an **assignment**, if the related parties to the assignment **did not deal with each other at arm's length** in connection with the event the market value substitution rule in s.116-30 of ITAA 97 will apply.

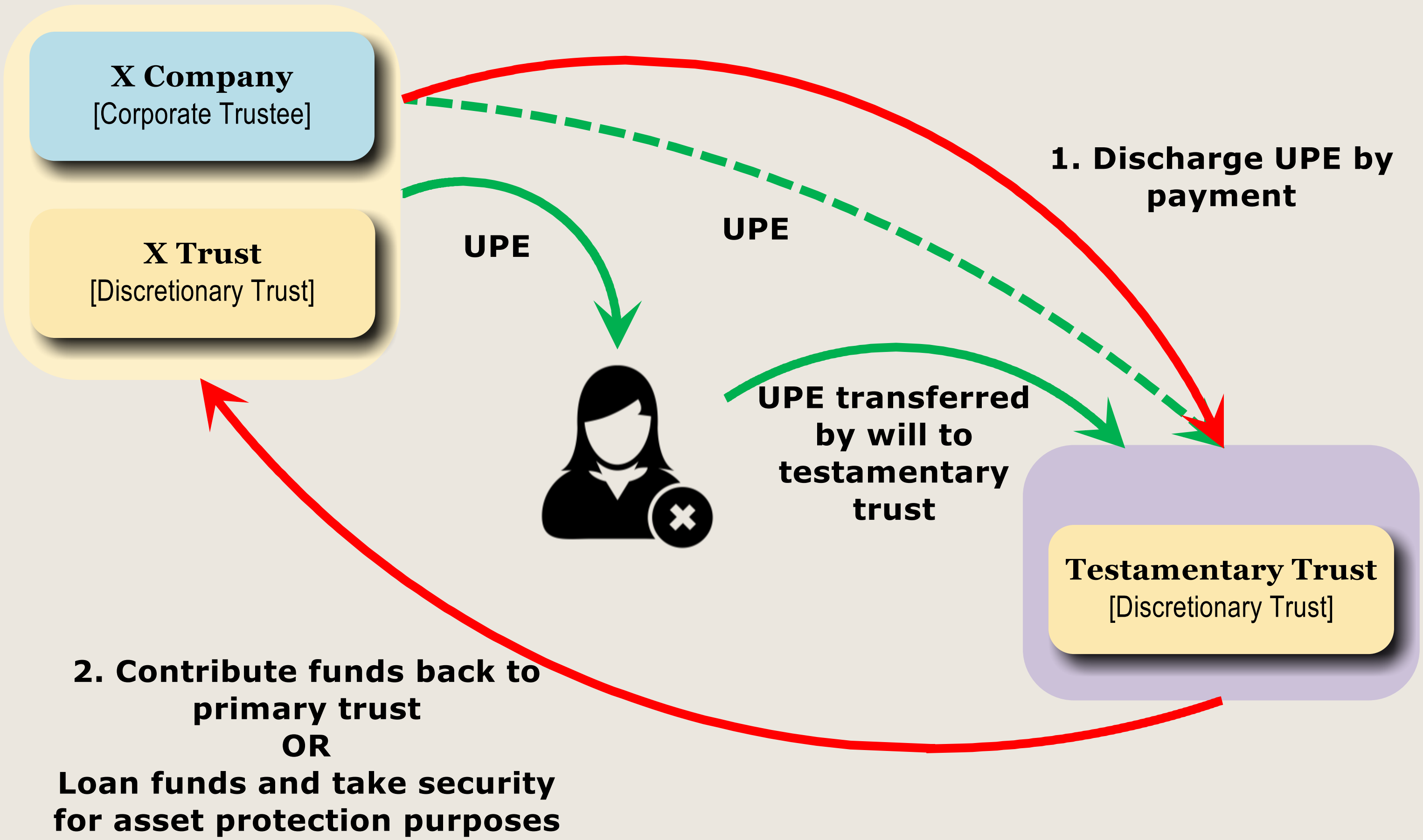
ATO have stated in a private binding ruling that:

- *"The market value of the UPE at the time of the CGT event will be at least the amount of the UPE. However, where the funds representing the UPE have been used by the trustee to administer the principal trust and invest in fungible or composite assets, the determination of the market value of the UPE must incorporate the value of any tracing rights in respect of those assets."*

Transfer the UPE to a testamentary trust

- If the deceased acquired the asset on or after 20 September 1985, the beneficiary's acquisition cost will be determined in accordance with items 1, 2, 3 or 3A of the table in subsection 128-15(4) of the ITAA 97.
- Will "look through" approach apply to the testamentary trust on discharge of the UPE such that there is no CGT Event C2?
  - Is it still a mere facilitation of distribution of income?
  - *Commissioner of Taxation v Dulux Holdings Pty Ltd & Ors* [2001] FCA 1344.
- PS LA 2003/12 Capital gains tax treatment of the trustee of a testamentary trust.

Dealing with the UPE in the will



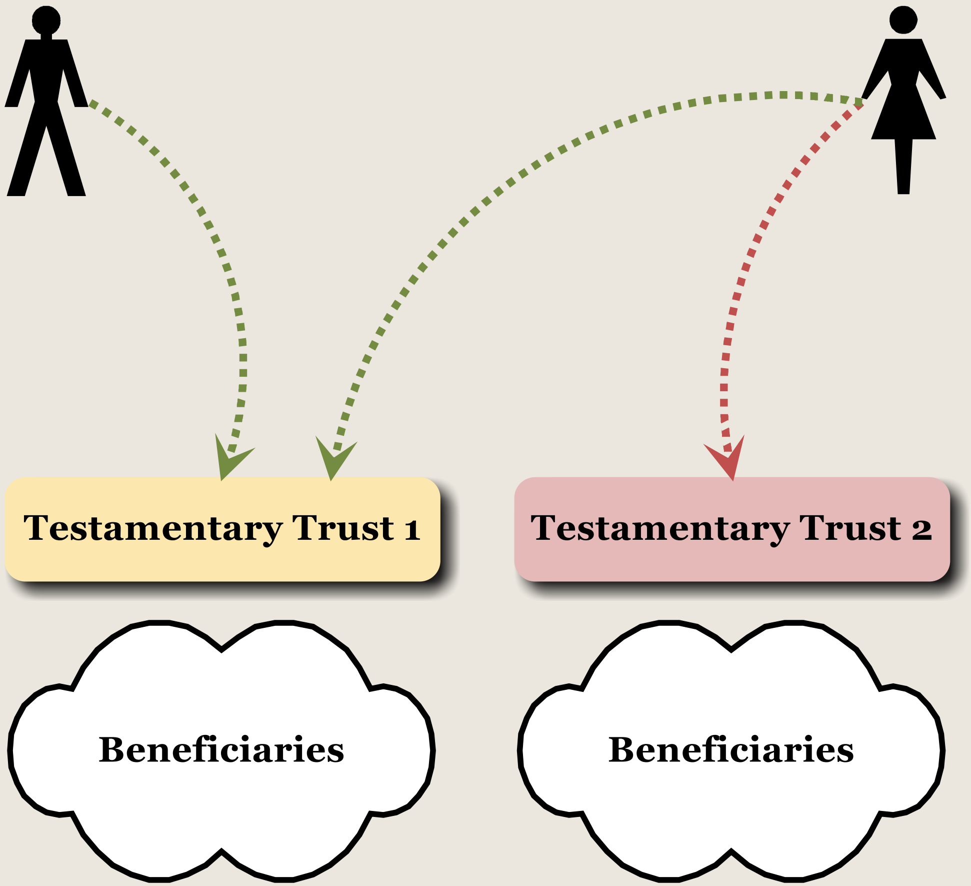
Some significant issues arising out of the 2018/19 Federal Budget

Restrictions on testamentary trusts

- *"…the concessional tax rates available for minors receiving income from testamentary trusts will be limited to income derived from assets that are transferred from the deceased estate or the proceeds of the disposal or investment of those assets."*

- *"…some taxpayers are able to inappropriately obtain the benefit of this lower tax rate by injecting assets unrelated to the deceased estate into the testamentary trust."*

- *"This measure will clarify that minors will be taxed at adult marginal tax rates only in respect of income a testamentary trust generates from assets of the deceased estate (or the proceeds of the disposal or investment of these assets)."*


Testamentary Trust 1
Testamentary Trust 2
Beneficiaries
Beneficiaries

UPEs to corporate beneficiaries as deemed dividends under Division 7A to be enshrined in law

Tax Integrity — clarifying the operation of the Division 7A integrity rule

Revenue ($m)

	2017-18	2018-19	2019-20	2020-21	2021-22
Australian Taxation Office	-	-	*	*	*

The Government will ensure that unpaid present entitlements come within the scope of Division 7A of the *Income Tax Assessment Act 1936* from 1 July 2019. This will apply where a related private company is made entitled to a share of trust income as a beneficiary but has not been paid that amount, known as an unpaid present entitlement.

Division 7A is an integrity rule that requires benefits provided by private companies to related taxpayers to be taxed as dividends unless they are structured as Division 7A complying loans or another exception applies. This measure will ensure the unpaid present entitlement is either required to be repaid to the private company over time as a complying loan or subject to tax as a dividend.

The Government will also defer the start date of the *Ten Year Enterprise Tax Plan – targeted amendments to Division 7A* measure that was announced in the 2016-17 Budget from 1 July 2018 to 1 July 2019. This will enable all Division 7A amendments to be progressed as part of a consolidated package.

This measure is estimated to have an unquantifiable impact on revenue over the forward estimates period.

Post-Implementation Review of Division 7A of Part III of the Income Tax Assessment Act 1936

18 May 2012	Post-implementation review of Division 7A announced.
20 December 2012	The Board of Taxation released its first discussion paper.
30 June 2013	Report due to be complete.
8 November 2013	Extension to terms of reference and reporting date.
25 March 2014	The Board of Taxation released its second discussion paper.
31 October 2014	Extended report completion date.
12 November 2014	Post-implementation review of Division 7A **completed**.
4 June 2015	The Government announced the release of the report.
3 May 2016	Budget statement regarding 1 July 2018 introduction.
8 May 2018	Budget statement regarding UPEs and 1 July 2019 introduction.

Ten Year Enterprise Tax Plan — targeted amendments to Division 7A

Revenue ($m)

	2015-16	2016-17	2017-18	2018-19	2019-20
Australian Taxation Office	-	-	-	-	*

The Government will make targeted amendments to improve the operation and administration of Division 7A of the *Income Tax Assessment Act 1936* (an integrity rule for closely held groups).

These changes will provide clearer rules for taxpayers and assist in easing their compliance burden while maintaining the overall integrity and policy intent of Division 7A. It includes a self-correction mechanism for inadvertent breaches of Division 7A, appropriate safe-harbour rules to provide certainty, simplified Division 7A loan arrangements and a number of technical adjustments to improve the operation of Division 7A and provide increased certainty for taxpayers.

These changes draw on a number of recommendations from the Board of Taxation's Post-implementation Review into Division 7A and will apply from 1 July 2018.

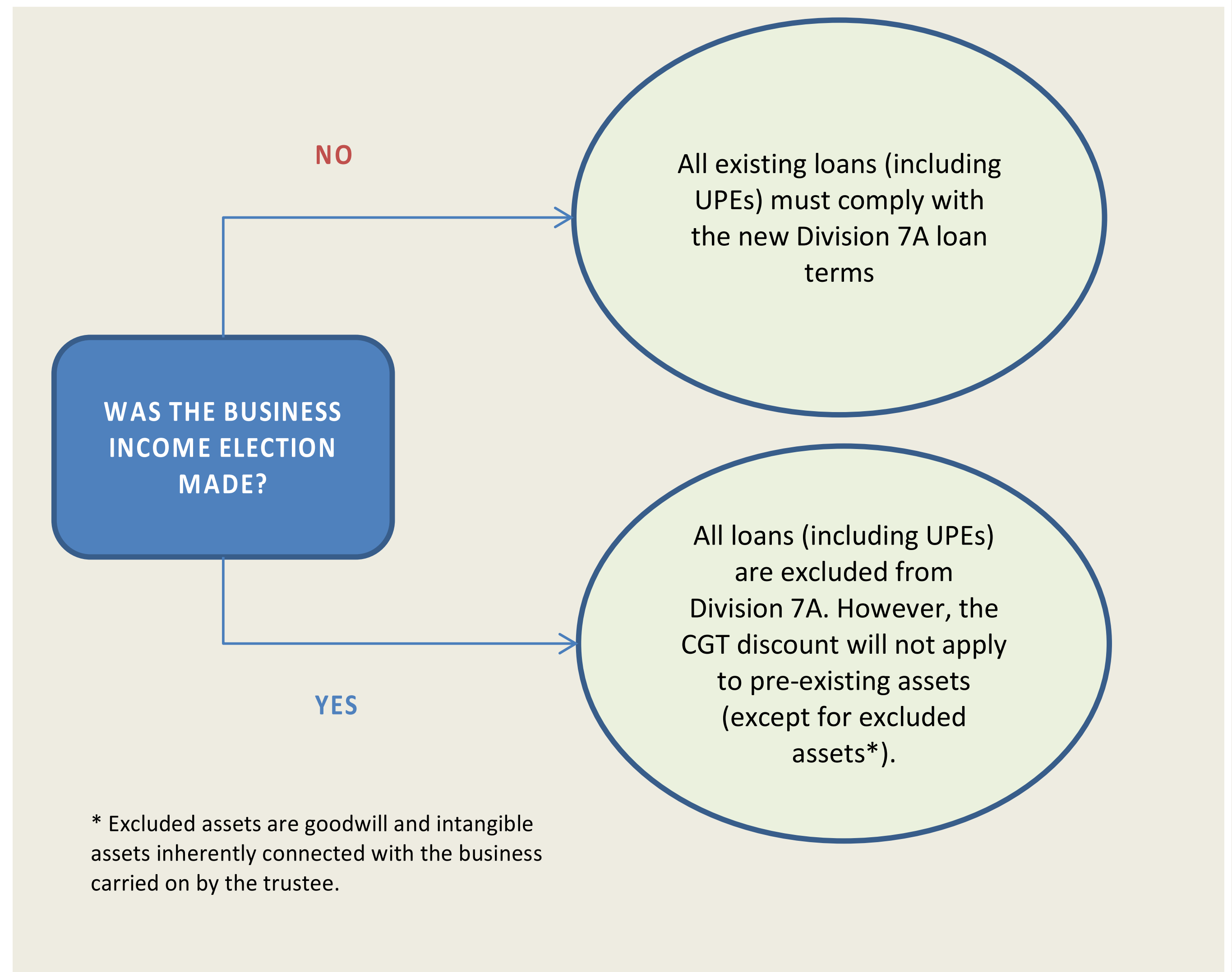
This measure is estimated to have an unquantifiable cost to revenue over the forward estimates period.

This measure forms part of the Government's Ten Year Enterprise Tax Plan, which will encourage Australians to work, save and invest.

Amortisation Model [Rec 6]

- The statutory interest rate would be the Reserve Bank of Australia's indicator lending rate for a small business; variable; other; overdraft for the month of May immediately before the start of that income year.
- The maximum loan term would be 10 years.
- The prescribed maximum loan balances during the term of the loan (including any accumulated interest) would be as follows:
  - 75 per cent of the original loan by the end of year three;
  - 55 per cent of the original loan by the end of year five;
  - 25 per cent of the original loan by the end of year eight; and
  - 0 per cent of the original loan (that is, fully repaid) by the end of year 10.
- Subject to meeting the maximum loan balances, there would be no specified annual principal repayments.
- Interest would be able to be accrued annually but would have to be paid by the end of years 3, 5, 8 and 10.

Business income election



Quarantined UPEs entering the Division 7A regime

Table 2

Proposed rules for pre-existing loans and UPEs

Pre-1997 loans	Repayable with interest over 10 years from the date of enactment in accordance with new complying loan rules.
Pre-2009 UPEs	Repayable with interest over 10 years from the date of enactment in accordance with new complying loan rules.
Post-2009 UPEs	Repayable with interest over 10 years from the date of enactment in accordance with new complying loan rules.
Complying seven-year loans	Term extended to 10 years, repayable with interest, in accordance with new complying loan rules.
Complying 25-year loans	Repayable in accordance with existing terms (that is, grandfathered).

Circular family trust distributions

- *"The Government will extend to family trusts a specific anti-avoidance rule that applies to other closely held trusts that engage in circular trust distributions."*

- So possible provisions include the income injection test in Schedule 2F and the section 100A reimbursement arrangement provisions. But it is likely as simple as the trustee beneficiary statement provisions and the income being assessed where no beneficiary presently entitled.

- *"This measure will better enable the ATO to pursue family trusts that engage in these arrangements by extending the specific anti-avoidance rule, imposing tax on such distributions at a rate equal to the top personal tax rate plus the Medicare levy."*

Everett assignments will not qualify for the small business CGT concessions

- *"Partners that alienate their income by creating, assigning or otherwise dealing in rights to the future income of a partnership will no longer be able to access the small business capital gains tax (CGT) concessions in relation to these rights."*

From the ATO matter under consultation [201806]:

- lack of any meaningful commercial purpose regarding arrangements such as disposal of an equity interest through multiple assignments;
- inappropriate use of CGT concessions;
- assignments where profit sharing is not directly proportionate to the equity interest held; and
- assignments where the arrangement is not on all fours with the principles of Everett and Galland.

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