



PUBLIC TRUSTEE
AND GUARDIAN

GOING PUBLIC

Issue 6 ■ April 2017

"This issue deals with the significant, and often misunderstood, **TAXATION** issues associated with the services provided by the Public Trustee and Guardian for the ACT."

WELCOME

Welcome to the sixth edition of 'Going Public'.

This issue deals with the significant, and often misunderstood, Taxation issues associated with the services provided by the Public Trustee and Guardian for the ACT.

We look at some taxation issues, bust a few myths and provide answers to frequently asked questions. Additionally, this publication highlights some interesting matters, showcasing lessons learnt as professional executors and trustees.

We trust you find this edition of Going Public interesting and informative.

Andrew Taylor

PUBLIC TRUSTEE
AND GUARDIAN



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We have changed!

From 1 April 2016 the Public Trustee for the ACT (PTACT) merged with the Guardianship function of the former Public Advocate of the ACT to the Public Trustee and Guardian for the ACT, known as PTG.



What we do

The Public Trustee and Guardian (PTG) has the following responsibilities -

• Wills

Wills for ACT residents who appoint the Public Trustee as Executor.

• Financial Management Services

Under order of the ACT Civil and Administrative Tribunal.

• Guardianship

Decision-making services for persons who have lost capacity.

• Estates

Permanence, trustworthiness and professionalism are vital in the choice of an executor.

• Powers of Attorney

Power of Attorney services (for Will clients) where you appoint the Public Trustee as attorney.

• Investment/Funds Management

Investment/funds management services for client assets.

• Trusts

Act as trustee, manager or receiver of funds for those unable to manage their funds.

• Unclaimed Money

Pay claims associated with certain unclaimed money.

• Confiscated Criminal Assets

Administer forfeited or restrained assets.

• Official Visitors

Provision of administrative services to Official Visitors.

• GreaterGood

Our own Charitable Fund enables Canberra's to provide for charity in their community.

PTG is a **registered Tax Agent**

The Income Tax Assessment Act 1936 provides that a person or organisation that provides fee-based tax services, must be registered as a tax agent with Tax Practitioners Board. PTG has been a registered tax agent since year 1986.

PTG employs industry qualified taxation professionals and prepares approximately 1,500 income tax returns each year. Our taxation clients include those persons for whom we are appointed as trustee, financial manager, attorney or executor.

PTG uses industry standard, professional accounting software to prepare and lodge tax returns. PTG will upgrade to the practitioner lodgement service (PLS) when it is introduced by the Australian Taxation Office (ATO) during the 2017 financial year replacing the current Electronic Lodgement Service.



Withholding Tax

Withholding tax is a government requirement for the payer of an item of income to withhold or deduct tax from the payment and pay that tax to the government.

Withholding tax is income tax withheld from employees' wages and paid directly to the government by the employer, and the amount withheld is a credit against the income taxes the employee must pay during the year. It also is a tax levied on income (interest and dividends) from securities owned by a non-resident as well as other income paid to non-residents of a country.

Under rules that applied from 1 July 2010, trust income will be subject to withholding tax in trusts where entitled beneficiaries have not recorded their individual tax file numbers. These are commonly closely held trusts including family trusts or resident trust estates.

A closely held trust is a trust that -

- has up to 20 beneficiaries who have between them directly or indirectly fixed entitlements to a 75% or greater share of the income or capital of the trust, or
- is a discretionary trust, or
- is a trust that has made a family trust election.

The purpose of the ruling is to allow the ATO to check that beneficiaries of closely held trusts have included their share of the net income of the trust in their income tax returns.

Withholding tax is income tax withheld from employees' wages and paid directly to the government by the employer, and the amount withheld is a credit against the income taxes the employee must pay during the year.

Deceased estates

The person responsible for administering a deceased estate is most commonly referred to as an executor, but could also be an administrator or a legal personal representative.

The term 'executor', refers to executor, administrator and legal personal representative.

When a person dies, there are some important tax and superannuation issues for the executor and the beneficiaries. PTG will liaise with the ATO if any of the following applied -

- The deceased person had a tax file number (TFN).
- The deceased person has ever lodged a tax return.
- The deceased person should have lodged a tax return.

During the administration of the estate, PTG will:

- lodge a final tax return for individuals (called a 'date of death tax return') on behalf of the deceased person or advise ATO that a final individual tax return lodgement is not required
- lodge prior years' outstanding tax returns for the deceased person. (In many cases PTG must attend to many previous years outstanding returns for its clients).

For more information on the role and responsibilities of an executor, refer to the fact sheet at www.ptg.act.gov.au/images/pdf/ptg-fs-duties-executor.pdf



A deceased person's final individual tax returns are prepared and assessed in the same manner as when they were alive, for example:

- The general individual tax rates with the full tax-free threshold apply if they are an Australian resident.
- The Medicare levy and Medicare levy surcharge may also be payable.

When will PTG need to lodge a 'Date of Death' tax return

As executor, PTG will lodge a date of death tax return on behalf of the deceased person if they:

- had tax withheld from the income they earned
- earned taxable income exceeding the tax-free threshold
- had tax withheld from interest or dividends because no TFN was quoted to the investment body
- lodged tax returns in prior years (that is, for income years before the income year in which they died)
- should have lodged tax returns in prior years.

Prior Year outstanding tax returns for individuals

If the deceased person should have lodged prior year tax returns but didn't, PTG will need to prepare and lodge tax returns on their behalf.

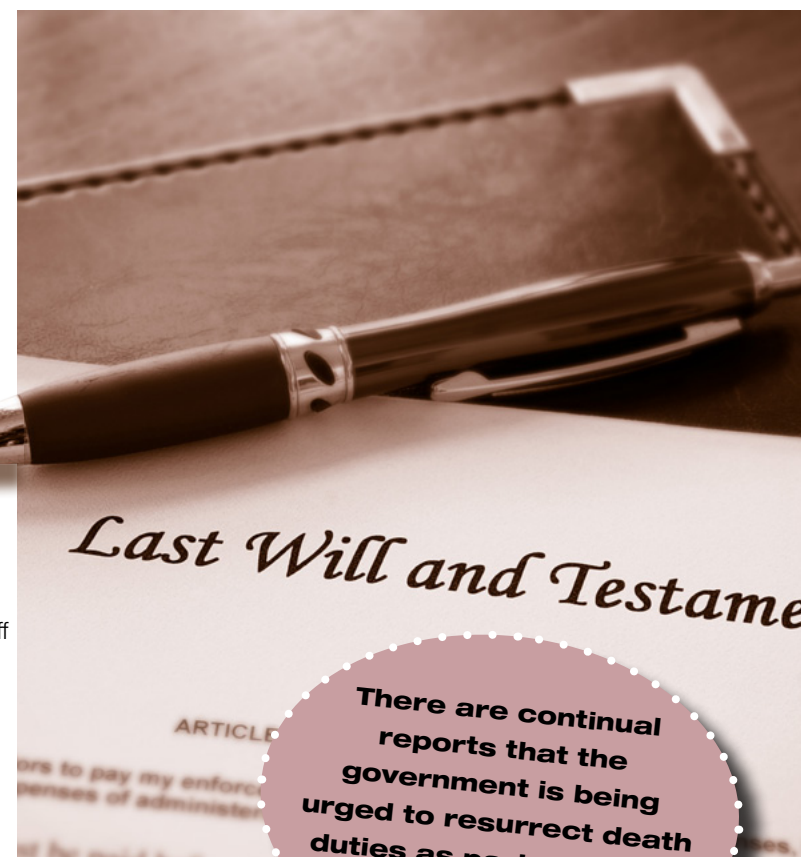
Death duties abolished long ago, but...

In Australia we were expected to pay death duties until about 40 years ago, when Australia abolished its state and territory inheritance taxes or "death duty".

Australian's former death duty dated as far back as 1894 when the government introduced estate duty, a tax on the capital value of land, in a bid to raise money to pay off Government deficit.

There are continual reports that the government is being urged to resurrect death duties as part of its tax reform process.

On average, OECD countries raise about 0.41% of total tax revenue from inheritance taxes. According to HSBC, the average Australian inheritance is about half a million dollars - the highest in the world.



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...We still pay taxes in death.

Whilst death duties were abolished some 40 years ago, as many capital growth assets have been acquired since introduction of Capital Gains Tax (CGT) in 1985, CGT has supplanted death duties as a concern when making your Will.

While death in itself is not a CGT event, difficulties can appear if a will attempts to leave named assets specifically to chosen beneficiaries. The truth is that assets, especially shares, will be acquired at various times with diverse acquisition values and therefore will have differing CGT impacts.

Accordingly, equal gifts under a will pre-tax may have an entirely different impact post-tax. Specific gifts may also make it difficult for an executor to gain advantage for the estate through offsetting capital loss assets against those with a capital gain.

Care needs to be taken if leaving real estate specifically to one beneficiary. The coast holiday home (acquired post 1985 and subject to CGT) may seem at first equal in market value to the family residence in Canberra (exempt due to the personal residence exemption). However, the tax on the capital growth component

attached to the holiday home could be substantial and assessable when the property is eventually sold.

If shares with capital growth attached are passed to a beneficiary who is overseas and no longer an Australian tax resident, CGT on the market value at date of death becomes payable in the deceased's tax return for the period to date of death. This may be desirable if there are brought forward losses to offset but, if not, it may be an unwanted crystallisation of a CGT event.

Changes in superannuation taxation rules now provide for tax-free superannuation pensions for those over sixty years old and are welcome news for seniors. However this benefit dies with us and, if we have left our estate to our adult children, then some superannuation components will become taxable in our estate.

We do not know when we might die and what our asset mix may be. Rather than leave assets specifically, a fitting strategy may be to give our executor power to appropriate assets to beneficiaries to suit the circumstances of the time. Our will, essentially our last words to our family, may have taxation consequences and warrants careful consideration.

Philanthropy, Income tax etc

Superannuation accounts figure highly amongst tax-effective strategies while a lesser discussed, socially desirable and tax effective aim is philanthropy.

There are many charities and charitable causes worth supporting and May to June is a good time to contribute as the benefit from the associated tax deduction is at its closest.

No doubt the best way to help is a straight out gift and, if the recipient charity holds tax-deductible gift recipient status, all cash gifts of \$2.00 and over are deductible. Additionally, gifts of property of \$5,000 and above may be deductible. For the larger gifts, a taxpayer may spread the claimable deduction over up to five tax years.

From the recipient charity's perspective, the more given the better however, when contemplating larger gifts, donors may wish to consider other options. Since July 1999, it has been possible to create Prescribed Private Funds (PPFs), similar to the United States family foundation model, to which 100 per cent tax deductible donations can be made in the form of money, shares or property.

Under a PPF, a capital sum can be settled to provide an ongoing income for charities. The recipient charities must be deductible gift recipients and full tax deduction is available for the settled sum. The fund can be given a name connected with the benefactor family and decisions made each year on the charities to benefit from the income www.philanthropy.org.au/ppfs

An attractive alternative to a PPF is a named account under 'GreaterGood' Canberra's own community charitable foundation administered by PTG providing the safety and certainty of government. Under GreaterGood (the Capital Region Community Foundation) you can create an account with your family name with a minimal initial donation of \$20,000. The gift is irrevocable and you may recommend to the trustee, each year, the deductible charities to benefit. Contact is not lost with the sum gifted and the donors can enjoy monitoring its growth and getting recognition for the income passed to charities each year.

An immediate tax deduction is available for the settled amount and persons in the top tax bracket can create a \$20,000 fund for an after tax cost of \$10,700.

Named funds can also be created under will. There are attractions in leaving growth assets to an account in the foundation by will as accrued gains can be ignored for capital gains tax purposes (provided the underlying charities to benefit have tax deductible status). This strategy can be particularly beneficial for assets with large gains attached.

GreaterGood provides a viable option for accountants, financial planners and solicitors when advising clients of their taxation and testamentary options.

At the date of this edition, GreaterGood held a total of \$18,578,186 representing 78 separate accounts providing some \$500,000 in annual distributions to charitable causes largely benefitting the Canberra community.

GreaterGood provides a viable option for accountants, financial planners and solicitors when advising clients of their taxation and testamentary options.



For more information on Philanthropy and income tax refer to the fact sheet at www.gretergood.org.au/images/stories/gg-fs-app-form.pdf



Meet our in-house Taxation professional

Carol McCallum is an industry qualified and experienced taxation specialist and was recruited from the private sector to Public Trustee and Guardian in August 2011 as PTG's Principal Taxation Officer.

Carol and her team have prepared in excess of 6,000 income tax return over the past 5 financial years and also provide advice on client tax-related matters.

Carol attained a bachelor of Commerce in Accounting at UC Canberra and a Master of Management in Technology at ANU Canberra. Carol is presently undertaking study towards qualification under the CPA program.

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MYTH -

When I die, if I don't have a Will, the Government will take my assets!

BUSTED! -

In reality, this seldom happens because the laws of intestacy in the ACT include beneficiaries as remote as cousins and children of cousins. Regularly, estate professionals at the Public Trustee and Guardian need to search birth, death and marriage registries back in the old countries where records are incomplete due to the 1939-45 war. Searches are made and often unmet remote relatives benefit despite there being good friends or a god-daughter whom the deceased may have preferred, if only there had been a Will!

MYTH -

A huge tax return refund is a great thing...

BUSTED! -

A big tax refund may make you feel good but it's not actually good for you. It means that way more than necessary was being withheld from your pay or, if you're self-employed, that your regular tax payments were much too large. The notion that large refunds are good is but one of the many enduring tax myths.

MYTH -

I have to pay tax on everything I inherited!

BUSTED! -

There is no inheritance tax or gift duty in Australia. However, you may have to pay (Capital Gains) tax when you eventually sell the inherited assets eg investment properties or shares you inherited. On the another hand, example is that you inherited \$100,000 cash from a family member, no tax payable on this \$100,000, if you gift this \$100,000 to your son/daughter, there is no tax payable.

MYTH -

The family home will not be subject to capital gains tax

BUSTED! -

If the family home was purchased before September 1985 and is sold within two years of date of death, it is tax free.

If you sell the family home which was purchased after September 1985, whether it is subject to capital gains tax will depend on whether it was income-producing immediately before death.

Minors and tax

Trust distributions are assessable income, just like wages and bank interest. A personal income tax return may need to be lodged for the minor if they have earned taxable income.

Although not carried out by PTG in our role as trustee, our tax experts can attend to the personal tax returns of the minor if needed, at an additional cost.

If you are uncertain about whether you need to lodge a personal tax return for the minor, you should either speak to your taxation adviser, or we can arrange for you to speak to one of our tax accountants.

In many cases, tax fees and liabilities can be deducted from trust funds when personal tax matters are attended to by PTG.

...our tax experts can attend to the personal tax returns of the minor if needed...



Trusts and Tax

Some trusts do pay tax and some trusts do not. It depends on the type of trust and what transactions have taken place.

Taxation law requires that a trustee must lodge an annual income tax return for any trust that earns taxable income in a given financial year. This is separate from the personal taxation obligations of the minor. The Public Trustee and Guardian reviews the taxation affairs of every trust and, depending on the nature and transactions of the trust, it may either:

- Pay tax on trust income not distributed to a beneficiary (in which case, the beneficiary does not need to pay tax on this income);
- Declare that the income is to be assessed in the hands of the beneficiary, rather than the trust itself (in this case, the beneficiary will need to include the trust

income, along with any other income they earn, for example, bank interest, wages, income from other trusts, in their own personal income tax return);

- A combination of the two above eg where some income has been accessed by the beneficiary and some income has been retained in the trust;
- In some cases where disability is involved, the trustee may be assessed to pay tax on the trust income on behalf of the beneficiary. The beneficiary is then entitled to a credit in their personal tax return for any tax paid by the trustee on their behalf (should they be required to lodge a tax return). When PTG has completed the trust's tax return after the end of each financial year, we will advise you in writing of the tax position of the trust.

Succession planning and tax

For most people, succession planning involves planning for the passing over of control of your affairs or assets to other family members when you retire or upon your death.

It may include realising assets, retirement planning and estate planning. A sound tax governance framework can help you manage tax issues around succession planning.

Though succession planning may not have an immediate tax impact, it's important to include tax considerations

in your plan. This will avoid unexpected tax issues arising down the track when you implement your plan.

Estate planning involves developing a strategy to deal with your assets after you die – the legal instruments and structures, such as a will, you put in place to transfer your assets in the event of death.

Tax is a major consideration in estate planning, and strong governance relating to the tax aspects of estate administration can help manage the risks.

Be prepared to seek assistance from external advisers on more complex tax issues.



Case-studies – Lessons learnt

The dreaded Capital Gains Tax

In making his Will an elderly man had two houses; the family home in Canberra and the holiday home at the Coast. Both were around the same value and, as his daughter liked the family home he decided to leave it to her. His son liked the holiday home and he decided to bequeath it to him. The reality was however that despite the properties being of equal value, the holiday home attracted Capital Gains Tax on the sale of the property by the son.

Lesson learned

We may consider that assets we leave in our estates are of a certain value, however once bequeathed, there may be a tax imposed introducing a liability and lowering the value of the bequest to the beneficiary.



Common pitfalls with income tax

Missing out on deductions

The ATO wants to make sure that no one misses out on the deductions that they are entitled to. The most common deductions include -

- vehicle and travel expenses, including travel between work and home
- clothing, laundry and dry-cleaning expenses
- gifts and donations
- home office expenses
- interest, dividend and other investment income deductions
- self-education expenses
- tools, equipment and other assets.

Get your facts right

On average, each year ATO contacts over 350,000 people with errors in their tax returns. Omitting income is the most common mistake they see. It is important to report all your income, including pay from second jobs, foreign income, bank interest and any Government payments you received.

Many of the other common mistakes ATO reports are easy to avoid. By simply checking that your tax return details are complete and correct before you lodge, you will avoid any unnecessary delays. Some common errors to avoid include:

- Supplying an incorrect TFN
- Spelling errors in your name.
- Supplying incorrect bank account details.
- Providing your year of birth rather than your full date of birth.
- Not completing the income test and/or spouse details.
- Lodging duplicate returns for the same year.

Get sorted by 31 October

If you're planning to complete your own return, make sure to lodge before the 31 October deadline to avoid penalties.

Frequently asked questions.

Q: If I receive superannuation lump sum without paying any tax when I turn 60 years old, will the same rules will apply if my estate received superannuation death benefit after I died?

A: It will be tax free if superannuation lump sum is paid to your dependents, eg spouse/minor children or interdependent. Different tax rates will apply if such lump sum amount is paid to non-dependents or the deceased estate.



Q: Do I have to pay tax if I inherit a dwelling?

A: If you inherit a deceased person's dwelling, you may be exempt or partially exempt when a capital gains tax (CGT) event happens (for example, you sell it). However, there can be very complicated taxation matters and different rules will apply depending on the ownership history. Professional advice should be sought when you sell the inherited dwelling.



Q: If I don't lodge my tax returns on time, will my tax obligations be ended after my death?

A: Incorrect. The legal representative or administrator will have obligations to lodge all outstanding tax returns and pay all taxation debts to the Australian Taxation Office before a distribution can be made to beneficiaries.

Q: My deceased estate will have to pay an outstanding HELP/SFSS to the Australian Taxation Office after I die?

A: No. Accumulated Higher Education Loan Program (HELP) or Student Financial Supplement Scheme (SFSS) debt by the deceased person, will only be repayable in the final individual tax if the deceased person's income exceeded the minimum repayment threshold. After this, any remaining HELP or SFSS debts are currently forgiven when someone died. However the government is reconsidering the policy now. Up to the time this article is written, the current policy is still in place.



Q: What happen if a deceased's asset passes to a non-Australian resident?

A: For most assets that are transferred under the will of an Australian resident to a non-resident, a capital gain or capital loss is taken into account in preparing the deceased person's date of death return if the asset is not 'taxable Australian property' in the hands of the beneficiary.

Q: If I have a carried forward losses from previous year's tax returns, will such losses be carried forward into my deceased estate?

A: No. Ordinary losses, as well as capital losses, it cannot be carried forward into the deceased estate. Unused losses will lapse.

Accumulated Higher Education Loan Program (HELP) or Student Financial Supplement Scheme (SFSS) debt by the deceased person, will only be repayable in the final individual tax if the deceased person's income exceeded the minimum repayment threshold.

OUR CUSTOMERS SAID...

PTG customers have responded positively to the new forum style presentations and here are a few comments from our Customer Surveys -

“The seminar was excellent. The content was clear and very useful, the presentation was interesting and engaging. The Q&A sessions were especially beneficial.”

“The presentation was very professional and I really appreciated the Q&A sessions. Thank you for providing this seminar.”

“The seminar was very informative and useful. It was easy to understand and there were very friendly presenters. PTACT provides a great community service.”

“This type of seminar is very helpful for people like myself who are ignorant and new to the Country. These seminars should continue and I would be happy to attend again.”

“Your Seminar was excellent - short answers and comments but very clear. There was no waffling on!”

FACT SHEETS



Our Fact Sheets can be found under “Publications” on our website at www.publictrustee.act.gov.au

You'll find comprehensive information about a range of issues and services.

Our top four Fact Sheets have been translated into five different languages.

CONTACTING US

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|---------------|--|
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DISCLAIMER

The content of this newsletter is general information only and should not be relied upon as legal advice. You should contact a solicitor or the Public Trustee and Guardian to obtain professional advice applicable to your particular issue and circumstances.