

Our Ref: js:
Enquiries: Brett Davies
Direct Telephone: 08 9325 8033
Direct E-mail: bkd@TaxLawyers.com.au



Brett Davies

L A W Y E R S

Tax Lawyers Australia

201 Adelaide Terrace
Perth Western Australia 6000
Phone (08) 9325 7999
Facsimile (08) 9325 5999
www.TaxLawyers.com.au

Action Plan 2006

Thank you for your support of Brett Davies Lawyers. Thank you also for generating documents at www.LawCentral.com.au.

Why a “private” tax law firm?

As you know, we are a private tax law firm. We only take on clients referred by their accountant, lawyer and adviser. We work with you to achieve what your client needs. You know your client intimately. You have the long term relationship with your client. Once finished, we close the file. We won't take your client on again until you refer the client back to us. We have many loyal accountants, advisers and lawyers that honour us by entrusting the clients to us over and over again.

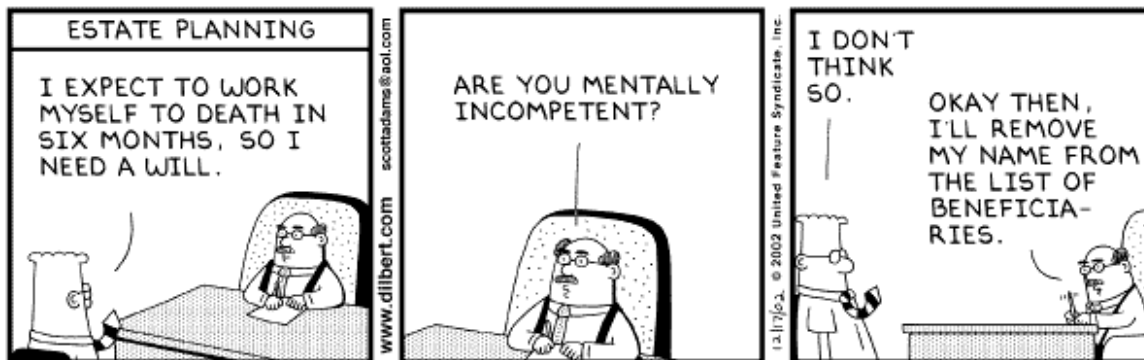
To make it easier for you to refer a client to us, I enclose our client “Fax Back” form on the back of our 2006 tax guide mouse mat. Simply photocopy the back of the mouse mat and complete the client's name, tick the area of law and give us any other relevant information you deem appropriate.

Predictions 2006

All our lawyers got together to look at 2006. These are our thoughts and predictions.

Accountants & Adviser to dominate Estate Planning

Many people believe that Estate Planning is about making a Will. It isn't. It is about protecting your assets and getting them to the right people. This is more the job of the Adviser and Accountant. Many assets don't even form part of your Will. Think about joint tenancy assets, Superannuation and Family Trust assets. There is an abundance of wealth as never before in Australia. The industrious baby boomers want their hard earned money to go to the right person – especially not the tax man. This is the era of Estate Planning.



Copyright © 2002 United Feature Syndicate, Inc.

The 4 types of Trusts in Wills

1. The 3 Generation Testamentary Trust

The first line of defence is the 3 Generation Testamentary Trust. This is simply the opportunity for each beneficiary to form as many (or as few) discretionary trusts from your Will. They substantially empower your family to wash out Capital Gains Tax, Income Tax and Stamp Duty.

2. Superannuation Testamentary Trusts

Your client dies with Superannuation. That Super is going to eventually get into the hands of the beneficiaries. Under the *Income Tax Assessment Act* “dependants” pay no tax. “Dependants” are your client’s spouse, children under 18 and people your client “maintains”. The others (like children over 18 that your client is not maintaining) pay tax of 16.5 or 31.5%. Grossly unfair and wasteful. Superannuation Testamentary Trusts can often wash out 100% of that tax for every beneficiary – whether they are “dependants” or not.

3. Protected Trusts – protect from bankruptcy

Protected Trusts are placed in the Will in case one of your client's children is bankrupt, a minor or suffering a disability. You will need to work with the Executors to ensure that the money is properly invested during this period.

4. Capital Protected Trusts – protect from divorce

Capital Protected trusts are Testamentary Trusts that last for 80 years but no one can touch the capital. They are good for the young, attractive widow and spendthrift divorcing children. You, as the adviser may need to hold one of the trustee positions to protect and invest the money for those 80 years.

Action List:

- Complete the enclosed "Estate Planning Questionnaire" and fax to me.

Assets not in your Will

1. Family Trusts

Family Trusts go for 80 years. Whether you die or not they still chug along saving tax for 80 years. People often get all excited about who the Trustee of the Family Trust should be when you die. Who cares? The Appointor (god) can sack the Trustee (puppet) on a whim. Control is with the Appointor. Take out your clients' Family Trust Deed. Read what happens when mum and dad as Appointors die. There may be some shocking news in store. Don't allow the Will to control the Appointor clause. Wills can be challenged very easily. Family Trusts can rarely be attacked.

Family Trust Deeds date and need an update every 4 or 5 years or so. I enclose a one page "Family Trust Deed Review".

Action List:

- Complete the "Review Family Trust Deed" form for all Deeds over 5 years old.
- Get the deed and tell your clients who "controls" the trust when they die.

2. Joint Tenancy Assets

Clients go off and buy shares and property without your advice. Silly. They then often buy the assets with the spouse as "joint tenants". Again, silly. Real estate agents blindly stick the real estate into Joint Tenancy. Why do this?

Back before 1980 Death and Probate Duties existed. At that time it was popular for couples to hold assets as Joint Tenants. This meant that when one person died the

survivor got the real estate irrespective of what the Will said. The Joint Tenancy property didn't go into the Will. Therefore, the old Probate Duties were avoided on that real estate.

Action List:

- Stop real estate agents interfering with your clients. Tell your clients to ring you whenever they are thinking of purchasing an asset.
- Avoid Joint Tenancy ownership, especially on business assets.

3. Superannuation – where does it go when you die?

Superannuation does not automatically go into the Will. It can go directly to the Dependant. Your client needs to talk to you to work out what is best for them.

Many of your clients have Self Managed Superannuation Deeds. Like Family Trust Deeds and cars the Self Managed Super Fund Deeds updating. Watch out for Deeds made since 1999 that don't include:

- (a) New market-linked pensions. (2004)
- (b) Interdependent relationships for beneficiaries. (2004)
- (c) Acceptance of government Co-contributions. (2003)
- (d) Changes to compulsory cashing of benefits rules.
- (e) Changes to contribution acceptance rules. (2004 - Changes to over 65 contribution and benefit payment rules)
- (f) Divorce and super splitting. (2003)
- (g) All members must be trustees. (1999)

SMSF pre 1995: Plus:

- (h) Accepting your wonderful spouse as a member and for contributions. (1997)
- (i) Expanding the in-house asset rules to related parties. (1999)
- (j) Providing for complying lifetime and term pensions. (1998)
- (k) Binding nominations for death benefits (otherwise your son in the SMSF can direct your Super goes to him and not evenly to all your children). (1999)
- (l) Full preservation of your Superannuation. No taking back out your undeducted contributions. (1999)
- (m) Ensuring you get the CGT retirement component. Up to \$500,000 can go into your superannuation CGT free from the sale of business assets. (1997)
- (n) The ever useful expanding of acquisition of asset rules to related parties. (1999)

SMSF pre 1994: plus

- (o) Uses of Pensions or Corporations powers.
- (p) Election to become regulated.
- (q) Covenants by the Trustees.

Action List:

- For all deeds older than 2000 complete the "Update SMSF Deed" Instruction Form
- Review where the Superannuation goes when the client dies

Asset Protection – 3 strategies

Professionals often come to their Accountant, Adviser and Tax Lawyer too late.

1. Limit Liability in your Business Structure

The best time to consider Asset Protection strategies is at start up. The type of entity, where it is formed and how it is financed has a tremendous impact on the security of your clients' personal and business assets. Minimising income, Capital Gains Tax and death taxes are also forms of asset protection (here it's the government, and not some creditor, going after your wealth).

2. Trust Splitting as an Asset Protection strategy

We are often asked, "How much wealth needs to be in my Family Trust to warrant splitting the trust for asset protection?" There are 3 truisms of asset protection in a family trust:

- (1) One asset in a family trust that goes bad will take out all the other assets in that Family Trust.
- (2) For asset protection, Assets are divided in 3 classes:
 - a. High Risk (trading business, e.g. accounting practice).
 - b. Medium Risk (all types of real estate).
 - c. Low Risk (Shares and Managed Funds)
- (3) You don't want to have too much wealth in a Family Trust. The more wealth in the Trust, the better the target for creditors.

3. Asset Protection within the family company

Do you need the whole family to be directors of the family company? Sharing the responsibility is all well and good, however, it also means sharing the liability. You can convert to a Single Director Company at www.LawCentral.com.au. It is effective immediately and takes less than 7 minutes. The cost is only \$99.

4. Business Succession Planning

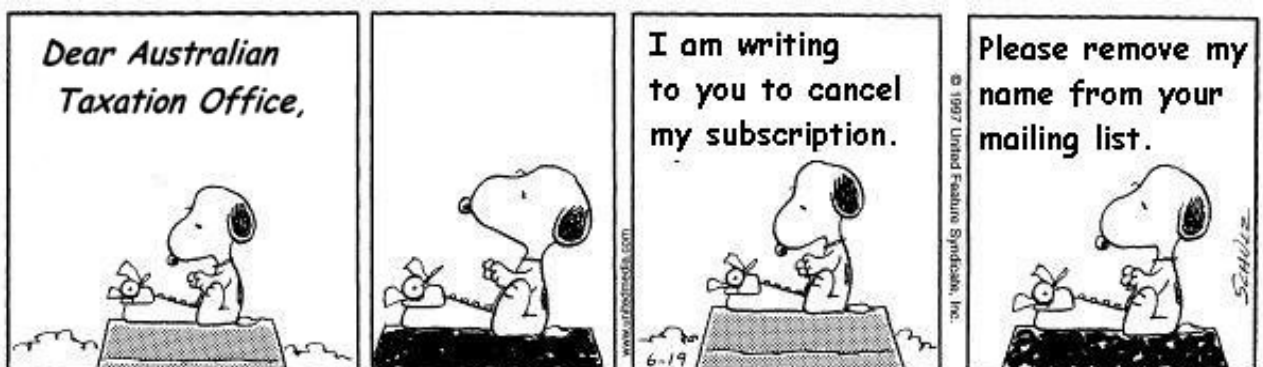
One key person gets sick and dies. Their whole business may fall apart. Business Succession Planning is all about the remaining partners getting the sick or dead partner out of the business with a fist full of dollars for the grieving widow.

Action List:

- Do a check-up by completing the "Protection Checklist"
- Complete the "Business Succession Checklist"

These are our thoughts on what is hot for 2006. I would love to hear your views. If you need anything, please give me a ring. My direct number is 08 9325 8033.

Brett Davies
Brett Davies Lawyers



Copyright © 1997 United Feature Syndicate, Inc.
Redistribution in whole or in part prohibited

Estate Planning Checklist

Clients of:



Brett Davies
L A W Y E R S

Tax Lawyers Australia

201 Adelaide Terrace
Perth Western Australia 6000

Phone (08) 9325 7999

Facsimile 0893255999

Estate Planning

If I had to narrow down Estate Planning to one word then that word is "flexibility". You can put in your Will many weapons. The best weapon is the "3 Generation Testamentary Trust". This is because it gives the ultimate flexibility to reduce tax. Every person should have a "3 Generation Testamentary Trust" in their Will. There is no downside - only flexibility.

1. Personal Details

Name _____

Partner's Name _____

2. Client Contact Details

Telephone number: _____

Mobile: _____

Email: _____

Postal address: _____

3. Do you have a current Will? (tick box)

If you do have a Will, does your Will have

- 3 Generation Testamentary Trusts - to save tax?
- Protective Trusts - if children bankrupt?
- Mutual Power of Attorney? – for husband and wife
- Cascading Power of Attorney? – for children
- Superannuation Trusts? – to deal with Super?
- Age of Majority Clauses? – when children get the money
- Maintenance Clauses? – if children need a guardian

Please complete this form, then fax it to Brett Davies Lawyers on 08 9325 5999. Our Office Manager will ring you to arrange a meeting with one of our solicitors.

- I as the Adviser would like to be part of the meeting.

For clients out of Western Australia, the meeting will take place over the telephone.

Brett Davies Lawyers is a private law firm. We only take on clients that are referred by their Accountant, Adviser or Lawyer.

Family Trust Deed Update Instruction Form

Clients of:



Brett Davies

L A W Y E R S

Tax Lawyers Australia

201 Adelaide Terrace
Perth Western Australia 6000
Phone (08) 9325 7999
Facsimile 0893255999

Instructions only accepted if form is completed with FULL PAYMENT

1. Name of Trust: _____

2. Name of Trustee(s): _____ (ACN) _____
(if company)

3. I Enclose (tick box):

- The Trust Deed
- Any variations of the above Trust Deed
- The last financials of the Family Trust

4.	Initial Appointor(s)	Appointors after initial appointors die
Full Name		

5. The Purpose or Use of the Family Trust is ... (you can select more than one) ...

- To hold shares in a family business
- To hold units in a unit trust
- Other _____

6. **Cost: \$1,100.** This includes our Letter of Advice and the Deed of Variation. The letter sets out what you can and cannot change in the family trust. We will go through strategies which will reduce the likelihood that there is a resettlement of your trust. We also ensure the following:

1. Appointors must act unanimously
2. Attribution complies with section 102-5
3. Compliance with Tax Ruling TR 92/13's effect on Streaming Provisions
4. Dealing with Prescribed Payments and Franking Credits is compliant

Charge my credit card

Card Type B/Card Visa M/Card

Card #															
Name on Card											Expiry	/200__			

or

Cheque enclosed for \$1,100

Self Managed Superannuation Fund Update Checklist



Brett Davies
LAWYERS

Tax Lawyers Australia
201 Adelaide Terrace
Perth Western Australia 6000
Phone (08) 9325 7999
Facsimile 0893255999

Clients of:

Instructions only accepted if form is completed with FULL PAYMENT

1. Name of Fund: _____

2. Address of Fund: _____

(only 1 address is required for all members. This may be the Advisers address)

3.	Before Variation (Use full names)	After Variation (Leave blank if no changes to members or trustees)
Trustee(s)	<input type="checkbox"/> All the members below are trustees <input type="checkbox"/> Company _____	<input type="checkbox"/> All the members below are trustees <input type="checkbox"/> Company _____
Member 1		
Member 2		
Member 3		
Member 4		

4. I Enclose (tick box):

- The Self-Managed Superannuation Fund Deed
- All variations of the Self-Managed Superannuation Fund Deed (if any)
- The last financials of the Self-Managed Superannuation Fund Deed Any

5. Cost: **\$550** (as of 1 December 2005)

Brett Davies Lawyers will:

1. Go through the old deed and completely update the deed
2. Insert a complying Product Disclosure Statement
3. Provide an up-to-date Investment Strategy (ready for you to complete)

Charge my credit card Card Type B/Card Visa M/Card

Card # _____
Name on Card _____ Expiry _____/20__

or

Cheque enclosed for \$550

Protection Checklist

Clients of:



Brett Davies

LAWYERS

Tax Lawyers Australia

201 Adelaide Terrace
Perth Western Australia 6000

Phone (08) 9325 7999

Facsimile 0893255999

Running a business and holding assets is an incredibly risky and often difficult pursuit. You can legally protect your assets - personal assets and family assets.

- 1. Are your assets at risk?** understand how you can lose assets to a creditor.
- 2. Limiting Liability** explore strategies
- 3. Avoiding Day-to-Day liability** minimise your exposure to risks of running a business.

If I went bankrupt today what assets are my family left with?	
What are my current business structures? (Sole practitioner? Partnership? Company? (Sole director?) Trust?)	
Legal restrictions on how I run my practice?	
Where are my personal assets? (spouse?)	
Maximum tax concessions and flexibility?	
Business Succession Plan in place, fully funded with insurance?	
Life insurance - cross owned or to my spouse?	
Do I have a Power of Attorney? Mutual? Cascading to the children?	
Binding Financial Agreement (pre-nup)?	
Is property held as Joint tenancy or Tenants in Common?	
Do I owe the family money?	
Does the family owe me money?	

Cost: \$550 (as of 19 January 2006)

Instructions are only accepted if you are referred by an Accountant, Adviser or Lawyer. For \$550 you get 1 hour with one of our specialist lawyers. They will provide you with advice and strategies. If there is any work after the meeting that is required our lawyers charge \$374 per hour.

Charge my credit card

Card Type

B/Card

Visa

M/Card

Card #

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Name on Card

Expiry

/200

or **Cheque enclosed**

Please fax to Brett Davies Lawyers on 08 9325 5999, or post to:
Brett Davies Lawyers, Reply Paid 1116, 201 Adelaide Terrace, Perth, 6000.

Checklist for Business Succession Planning



Brett Davies
L A W Y E R S

Tax Lawyers Australia

201 Adelaide Terrace
Perth Western Australia 6000

Phone (08) 9325 7999

Facsimile 0893255999

Clients of:

1. Name of Business: _____

2. Address: _____
(only 1 address is required for all members. This may be the Advisers address)

3. Phone: (____) _____ (____) _____

4. Who are the Owners of the business (trusts, individuals, companies etc)

Owner 1	
Owner 2	
Owner 3	
Owner 4	

5. Who will own and run the business after the client departs: (tick box)

- Remaining partners Family Key employees
 An investor A competitor

6. What does the client want to accomplish in the Business Succession Plan:
(tick box)

- Transfer the business to the remaining partners?
 Get a family member in control?
 Perpetuate the business?

7. What is the business worth without the client? \$ _____
(The Accountant can help with this)

8. Further client information

- I attach some background information and for this client
 I would also like to attend the appointment with my client.

Upon receipt we will telephone you and your clients to arrange an appointment. We will then arrange a meeting and send out an agenda.