

# 28th Noosa Tax Intensive - Online

12 – 13 November | Online | 12 CPD hours

## *Family Business – continuing differently to thrive beyond 2020*

Due to popular demand we have made this event available online, so no matter where you are, you can still attend the 28<sup>th</sup> Noosa Tax Intensive, virtually.

### *Topics*

- Continuing differently: Building trust in decision-making teams
- Capital vs revenue – Is the sun setting on Sun Newspapers?
- No longer business as usual: Utilising tax losses
- Dividends and capital management into the twenties
- The pitfalls of particular financing arrangements
- Keeping it in the family – related party financing
- Asset protection: hard to make, easy to lose
- ATO update and hot spots
- Tax governance and asset protection - Breakout workshop
- The “right” way to manage a trust: Trustee vs beneficiaries vs accountant vs lawyers - Closing panel workshop

### *Presenters*

|                                |  |
|--------------------------------|--|
| <b>Chloe Burnett, ATI</b>      | Sixth Floor of Selborne and Wentworth Chambers |
| <b>Professor Justin Craig</b>  | Bond University                                |
| <b>Tim Dyce</b>                | Australian Taxation Office                     |
| <b>Linda Farmer, CTA</b>       | Grant Thornton                                 |
| <b>Stephen Holmes, CTA</b>     | WMS Chartered Accountants                      |
| <b>John Ioannou, CTA</b>       | Deloitte Private                               |
| <b>Mariana Von Lucken, CTA</b> | HLB Mann Judd                                  |
| <b>David W Marks QC, CTA</b>   | Queensland Bar                                 |
| <b>Andy Milidoni, CTA</b>      | Johnson Winter & Slattery                      |
| <b>Sally Newman, CTA</b>       | Sally Newman Consulting                        |
| <b>Karen Rooke, CTA</b>        | Australian Taxation Office                     |
| <b>Geoff Stein, CTA</b>        | Brown Wright Stein Lawyers                     |

### *Choose a format that suits?*

Attend the webinars live to watch our expert presenters in real-time or replay the webinars (post-event) at a time that suits you.

### Schedule

#### Day 1:

Thursday, 12 November 2020

**Time:** 9.00am–6.00pm AEDT

#### Day 2:

Friday, 13 November 2020

**Time:** 9.00am–4.00pm AEDT

### CPD proficiency level:

Proficient/  
advanced 

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### For event queries please contact:

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All materials will be supplied electronically to delegates approximately 1-2 weeks prior to the event.

# Technical Program

*Day 1 – Thursday, 12 November 2020*

| Time (AEDT)     | Topic  | Presenter   |
|-----------------|--|---|
| 9.00–9.10am     | Official opening   | <b>Paul Banister, CTA</b><br>Chair, 2020 Noosa Tax Intensive Organising Committee |
| 9.10–9.30am     | President's welcome  | <b>Peter Godber, CTA</b><br>President, The Tax Institute                          |
| 9.30–10.00am    | <b>Keynote: Continuing differently: Building trust in decision-making teams</b><br><br>To survive and thrive through and beyond a crisis involves continuing differently. In doing that, building and maintaining trust is an ongoing challenge for all. Leaders of business owning families put trust at the epicentre of their world through the commitment to developing and implementing four independent but interdependent plans: <ul style="list-style-type: none"><li>– The strategic plan</li><li>– The wealth, estate and asset plan</li><li>– The talent development plan</li><li>– The governance plan.</li></ul> Understanding the importance of these plans provides much needed accountability in the family, ownership and business systems. In configuring their own way forward, they consider that planning is not about control, but about trust. Successful leaders will be conscious that continuing differently requires building trust in their decision-making teams. | <b>Professor Justin Craig</b><br>Bond University                                  |
| 10.00–11.00am   | <b>Plenary 1: Capital vs revenue – Is the sun setting on Sun Newspapers?</b><br><br>The principles laid out by Dixon J in the Sun Newspapers case in 1938 have long been regarded as cornerstone principles in Australian taxation law for determining whether expenditure is on capital or revenue account. Recent cases suggest the Commissioner is rethinking whether that formula ought to be reconsidered or redefined. With many taxpayers incurring investment losses in the current environment, this is a “hot” issue. This session will: <ul style="list-style-type: none"><li>– Review the foundation principles from <i>Sun Newspapers</i></li><li>– Consider recent cases and rulings</li><li>– Explore what constitutes a business</li><li>– Discuss whether a one-off venture may be a profit-making undertaking on revenue account.</li></ul>  | <b>Chloe Burnett, ATI</b><br>Sixth Floor of Selborne and Wentworth Chambers       |
| 11.00–11.30am   | <b>Delegate break</b>  |   |
| 11.30am–12.30pm | <b>Plenary 2: No longer business as usual: Utilising tax losses</b><br><br>In the wake of devastating bushfires and a global pandemic, many businesses will have survived only through being agile, for example closing shopfronts, adapting their business models, providing different service offerings to its customers and perhaps taking on investors. Tax advisers will need to assist their clients in confirming any tax losses that have arisen and preserving losses for future tax planning. This session will cover: <ul style="list-style-type: none"><li>– A review of the continuity of ownership test</li><li>– The same or similar business test, including the business continuity ruling</li><li>– The impact of Div 35 for non-commercial losses</li><li>– Practical planning opportunities.</li></ul>   | <b>Stephen Holmes, CTA</b><br>WMS Chartered Accountants                           |

| Time (AEDT)  | Topic   | Presenter  |
|--------------|---|--|
| 12.30–1.00pm | <b>Case study-facilitated discussion</b> <p>This session will walk delegates through a practical case study taking into consideration the issues raised in Plenaries 1 and 2. The session will be facilitated by a local expert who will draw out key takeaways and provide delegates with the opportunity to raise questions and comments.</p>   | <b>Paul Banister, CTA</b><br>Grant Thornton              |
| 1.00–2.00pm  | <b>Delegate break</b>   |  |
| 2.00–3.00pm  | <b>Plenary 3: Dividends and capital management into the twenties</b> <p>All too often, tax practitioners focus on the risks around Div 7A deemed dividends and forget about the real traps that remain in the tax law concept of “dividend” itself. Present uncertainty around the notion of “profits”, and the last gasps of the doctrine of maintenance of capital, mean that paying out a dividend without meaning to has significant franking account consequences. Addressing complexities of capital reductions and share buybacks poses further challenges including s 45B. This session will consider:</p> <ul style="list-style-type: none"> <li>– Corporations Act and tax law dividends</li> <li>– Profits or s 254T – or both?</li> <li>– Frankable distributions</li> <li>– Capital reduction or share buyback – what is the difference anyway?</li> </ul> | <b>David W Marks QC, CTA</b><br>Queensland Bar           |
| 3.00–4.00pm  | <b>Plenary 4: The pitfalls of particular financing arrangements</b> <p>Private businesses and family investment structures often have a need for additional working capital. This may arise as a result of various environmental factors, an economic shock or other social and political forces. In its simplest form, an entity can obtain additional working capital by taking on debt or issuing more equity. This plenary will explore the risks associated with certain financial instruments and the refinancing of debt:</p> <ul style="list-style-type: none"> <li>– Debt/equity rules</li> <li>– Converting debt to equity</li> <li>– Funding from offshore</li> <li>– Foreign trusts – what are the funding risks?</li> </ul>  | <b>Mariana Von Lucken, CTA</b><br>HLB Mann Judd          |
| 4.00–4.30pm  | <b>Case study-facilitated discussion</b> <p>This session will walk delegates through a practical case study taking into consideration the issues raised in Plenaries 3 and 4. The session will be facilitated by a local expert who will draw out key takeaways and provide delegates with the opportunity to raise questions and comments.</p>   | <b>John Middleton, CTA</b><br>Australian Taxation Office |
| 4.30–5.00pm  | <b>Delegate break</b>   |  |
| 5.00–6.00pm  | <b>Plenary 5: Keeping it in the family – related party financing</b> <p>At face value, funding options to/from related parties may appear to be simple. However, care needs to be taken to avoid creating both tax and asset protection risks for the group and family members. This session will examine issues associated with related party financing arrangements, including:</p> <ul style="list-style-type: none"> <li>– Managing loans to “at-risk” family members</li> <li>– Impact of family trust elections</li> <li>– Implications of assignment or forgiveness of related party loans.</li> </ul>   | <b>Sally Newman, CTA</b><br>Sally Newman Consulting      |

## Day 2 – Friday, 13 November 2020

| Time (AEDT)    | Topic  | Presenter   |
|----------------|--|---|
| 9.00–9.50am    | <b>Plenary 6: Asset protection: hard to make, easy to lose</b><br>COVID-19 has been a reminder to us all of how quickly things can change and that events outside our control can have devastating effects on businesses and the value of assets. It is therefore very timely to revisit how businesses and assets are structured and whether these are exposed if things go wrong. This session will include: <ul style="list-style-type: none"> <li>– What and who do we need protection from?</li> <li>– Identifying who is a risk</li> <li>– Identifying what is at risk if things go wrong</li> <li>– Structuring to provide clients with the ultimate protection.</li> </ul>   | <b>Andy Milidoni, CTA</b><br>Johnson Winter & Slattery  |
| 9.50–11.00am   | <b>Plenary 7: ATO update and hot spots</b><br>With the tax landscape changing so significantly in the last 12 months, this session will be covering the major areas of focus for the ATO in the private groups market, including: <ul style="list-style-type: none"> <li>– The Top 500 private groups tax performance program, and other supporting compliance programs being undertaken in the private groups market</li> <li>– The impact of recent litigation relating to the revenue/capital distinction and capital gains made by trusts</li> <li>– The current state of issues relating to Div 7A, s 100A and professional firms from a tax administration perspective.</li> </ul>   | <b>Tim Dyce and Karen Rooke, CTA</b><br>Australian Taxation Office<br><b>Facilitator:</b><br><b>Geoff Stein, CTA</b><br>Brown Wright Stein Lawyers                                      |
| 11.00–11.30am  | <b>Delegate break</b>  |   |
| 11.30am–1.30pm | <b>Breakout workshop: Tax governance and asset protection</b><br>The breakout workshop will be delivered to the online audience by dedicated workshop leaders. In building on the case study-facilitated discussions, this workshop will address tax governance issues generally and related party financing and asset protection issues in particular, including the importance of getting things right at the front end before it is too late. In doing this, aspects covered will be: <ul style="list-style-type: none"> <li>– Identifying what is at risk</li> <li>– Strategies to protect assets of “at-risk” entities and individuals</li> <li>– Why documentation matters and journal entries just don’t cut it</li> <li>– What is required to effectively register security interests over assets on the PPSR.</li> </ul>  | <b>Leo Efthivoulou, CTA</b><br>ENA Law<br><b>Rob Jeremiah, CTA</b><br>Sladen Legal  |
| 1.30–2.30pm    | <b>Delegate break</b>  |   |
| 2.30–4.00pm    | <b>Closing panel workshop: The “right” way to manage a trust: Trustee vs beneficiaries vs accountant vs lawyers</b><br>This facilitated panel session will examine practical issues faced in managing family trusts from multiple perspectives. In Australia, there are hundreds of thousands of discretionary family trusts conducting a range of activities, from holding assets through to operating businesses. Tough times lead to greater scrutiny, and family interests often lead to friction. Our panel will look at the risks and provide views on how to manage the administration of family trusts, including: <ul style="list-style-type: none"> <li>– Disputes with beneficiaries</li> <li>– Trustee removal and appointment</li> <li>– What is a “proper” trustee decision-making process?</li> <li>– Documenting reasons and risks of getting it “wrong”</li> <li>– Do you have the power?</li> <li>– Does the paperwork reflect the facts and intentions?</li> <li>– Succession planning for trusts.</li> </ul> | <b>Panellists</b><br><b>Linda Farmer, CTA</b><br>Grant Thornton<br><b>David W Marks QC, CTA</b><br>Queensland Bar<br><b>Facilitator</b><br><b>John Ioannou, CTA</b><br>Deloitte Private |



# Presenter profiles

**Paul Banister, CTA**, is a Chartered Accountant and a Partner at Grant Thornton, leading their tax division in Brisbane. He has over 30 years experience working with clients to help them navigate through complex and potentially risky tax and commercial issues. His expertise includes domestic and international tax planning, transaction advisory and support, superannuation structuring and advice, succession planning and estate planning. Paul has presented at many professional and business forums, both in Australia and internationally. He is a contributing author to Thomson Reuter's *Financial Planning Handbook*. Paul is a National Councillor and was also the recipient of The Tax Institute's SME Tax Adviser of the Year Award for 2016.

**Chloe Burnett, ATI**, practises in commercial, regulatory and public law, with a specialisation in tax law. She specialises in international tax and statutory interpretation and is an active member of the International Fiscal Association. Chloe appeared in the Chevron transfer pricing case, the News Australia Holdings and Citigroup Part IVA cases, the Consolidated Media Holdings and Cable & Wireless buyback cases, and other significant disputes. Chloe is a member of Sixth Floor Selborne/ Wentworth Chambers. Before joining the Bar, she practised as a solicitor at Allens. She also worked for Macquarie Bank in Sydney and Slaughter & May in London. Chloe teaches the Tax Litigation and Statutory Interpretation courses in the Sydney Law School LLM program.

**Professor Justin Craig** is Professor of Entrepreneurship and Family Enterprise at the Bond University Business School. Dr Craig's research focuses on the strategy, function, management, and performance of multi-generational family enterprises and those who lead and steward them. He has held faculty positions at the Kellogg School of Management at Northwestern University in Chicago, where he remains a Visiting Professor of Family Enterprise, Northeastern University in Boston, and Oregon State University. Dr Craig completed undergraduate degrees in Business and Psychology (with Honors) at Griffith University, a Master's in Counseling and a PhD in Behavioral Science at Bond University.

**Tim Dyce** is the Deputy Commissioner for Private Wealth. Tim was appointed as a Deputy Commissioner in 2006 following a long and established career in the ATO. Having held senior leadership roles in a number of business lines, including Income Tax, Aggressive Tax Planning and Indirect Taxes (GST and Excise), Tim has extensive experience in taxation administration. Drawing on this experience, Tim is an active and influential contributor to various internal and external committees and forums that shape the Client Experience for Not for Profit entities, Excise entities and Private Groups. Ultimately, Tim has national responsibility for the willing participation and voluntary compliance of private groups and high wealth individuals in Australia. To achieve this outcome, he is focused on implementing contemporary client engagement strategies, which seek to provide tailored, real time services.

**Linda Farmer, CTA**, is a Director in the Private Advisory area of Grant Thornton, providing advice to high net worth individuals, their businesses and investment entities, including self-managed superannuation funds, focusing on estate and successful planning.

**Stephen Holmes, CTA**, is a Partner at WMS Chartered Accountants based on the Gold Coast. Stephen has a particular focus on CGT, taxation implications of trusts and SME tax issues generally. He is a regular resource for other accounting professionals on tax matters. He is also a regular speaker on tax matters across south-east Queensland and northern New South Wales. In addition to holding Masters degrees in both Taxation and Economics, Stephen holds a Juris Doctor degree from Bond University Law School with first class honours.

**John Ioannou, CTA**, was admitted as a solicitor in 2002 and is a Partner at Deloitte Private. He has experience in the areas of taxation, structuring, trusts and estates, succession and asset protection planning. John has a Bachelor of Arts, Bachelor of Laws and a Masters of Law. He is currently Queensland's representative on The Tax Institute's National Professional Development Committee and chair of Queensland's State Council.

**David W Marks QC, CTA**, is a commercial Silk at the Queensland Bar practising principally in tax. He has a broader practice in commercial litigation, trusts and estates, and administrative law. He contributes to the life of the profession through his committee work for The Tax Institute and other professional bodies. He is a Chartered Tax Adviser and a registered Trust and Estates Practitioner. He received The Tax Institute's Meritorious Service Award in 2013. David serves on the disciplinary panel of an international practitioner association.

**John Middleton, CTA**, is part of the ATO's Tax Counsel Network, where he works on complex technical advice, tax reform projects, and strategic litigation. Prior to this, he had over 20 years in the private sector as Special Counsel at Clayton Utz Brisbane specialising in revenue and commercial law. He practised in CGT, stamp duty, GST and general tax. While in private practice he was listed in Doyle's and Best Lawyers in respect of tax matters.

**Andy Milidoni, CTA**, specialises in all aspects of taxation, revenue law and trust law and some aspects of superannuation law. He advises both public and private corporate groups, SMEs and high wealth individuals across industry sectors and in a range of income tax, international tax, GST, duty, payroll tax, land tax and SGC matters and both in a contentious and noncontentious context. Andy also works closely with a range of intermediaries such as accountants, business and corporate advisors, liquidators, financial planners and court appointed trustees and guardians.

**Sally Newman, CTA**, is the Principal of Sally Newman Consulting. Sally's practice focuses on GST, stamp duty and other state taxes and she advises SMEs and high wealth including in respect of trusts and estates, restructuring and asset and business sales. Sally also helps clients resolve tax disputes. Prior to starting her own firm in 2018, Sally worked for over 12 years in MinterEllison's Brisbane tax team.

**Karen Rooke, CTA**, is an Assistant Commissioner in the Tax Counsel Network in the Australian Taxation Office. Her principal focus is the private groups/ SME market. She has been a member of the Tax Institute for more than 30 years and has presented at a number of Institute events over the years.

**Geoff Stein, CTA**, is a partner of Brown Wright Stein Lawyers. Geoff has been a lawyer in Sydney for over 25 years, specialising in commercial and tax law. He is one of only a few New South Wales Law Society Accredited Specialists in taxation law. He works extensively with many accounting firms to assist their clients and gains great satisfaction knowing he is also helping them build their practices. Geoff advises clients on tax, trust law, estate planning, and general commercial issues. He has developed an in-depth understanding of the legal challenges faced by business owners.

**Mariana Von Lucken, CTA**, is a Tax Partner with HLB Mann Judd, and has advised a wide range of clients on a wide range of income tax, GST, FBT, international issues, payroll and R&D issues. It is important to her to give back to the profession – she is involved in The Tax Institute's Professional Development and Women in Tax committees.

## WORKSHOP LEADERS

**Leo Efthivoulou, CTA**, is a principal at ENA Law. Leo has over 12 years experience in advising in various industries, including agriculture and food, property, health and fitness, to a broad client base. Leo has extensive experience in tax advisory, structuring and restructuring, succession planning, and general commercial legal transactions and advisory. Leo is also a Chartered Accountant, a member of The Tax Institute's Continuing Professional Development Committee and various other sub-committees.

**Rob Jeremiah, CTA**, is a principal of Sladen Legal. He is accredited by the Law Institute of Victoria as a specialist in both Tax Law and Business Law and is on its Tax Law Specialisation Advisory Committee. He is a member of the board and technical and policy committee of SISFA. Rob is acknowledged as a leader in his field and is regularly asked to share his specialist knowledge on areas such as tax, superannuation, succession and

estate planning and trusts. Rob has been a principal of Sladen Legal and its predecessor firm since 1981.

## *Led by tax practitioners for tax professionals*





THE TAX INSTITUTE

# 28th Noosa Tax Intensive - Online

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| <b>Day 1</b> (6.5 CPD hours)                       | <input type="checkbox"/> \$390 | <input type="checkbox"/> N/A |
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### 2 Delegate contact details

If your member details are up-to-date, you can skip this section

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