



# Northern Focus – Winter 2008

## Welcome

Welcome to Mackey Wales' inaugural e-newsletter, where we provide insight and information on legal issues that are of interest to you and presented in a way that won't have you reaching for the unsubscribe facility.

You will receive our newsletter at the beginning of each new season. We promise that every issue will contain a wealth of interesting information as well as including a profile of one of our greatly valued staff members, beginning first with our bubbly English rose-receptionist – Sarah Money.

We will also provide some horror stories of people along the way who haven't given adequate consideration to their estate planning requirements... and hopefully this will ensure you don't follow in their footsteps.

## Changes at Mackey Wales Law

Our firm has undergone some significant changes in recent times. Here are our top five:

1. Appointing two new Partners, **Patrick Sutton** and **Ross Greatrex**, who joined **Peter Mackey** as equal owners of the Firm on 1 April last year (though, more than a year on, feel anything but April fools);
2. Expanding from a seven person firm to our current configuration of 14 comprising Peter, Patrick and Ross and eleven employees consisting of solicitors, senior conveyancers, senior support personnel and an office junior - our aspiring young actress Sally Roebuck;
3. Being able to provide a greater range of expertise in our chosen **practice areas**, particularly business/commercial law and estate planning law;
4. Undergoing a relatively unspectacular, but nonetheless important name change to Mackey Wales Law, and adopting a fresh new logo and look to match our new name.
5. Building a brand new website containing all kinds of useful information and resources so you can learn more **about us** and **our people**, as well as view previous **newsletters and other publications**.

What we haven't departed from is our unwavering commitment to building strong relationships with all our clients and continuing to produce the highest quality legal services at a reasonable cost.

We now invite you to take ten minutes to sit back, relax and enjoy our first instalment.

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# DEMYSTIFYING CAPITAL GAINS TAX



Let's face it, while law can sometimes be considered glamorous, tax law just isn't and the truth is it never will be! Nor is it sexy or fashionable to talk about tax at dinner parties and to make matters worse, if you are a lawyer already battling society's perception that you're about as interesting as an episode of The Antiques Roadshow, attempting to raise tax as a topic in your firm's first ever newsletter is probably fraught with danger.

But if you turn your mind to the fact that for most of us, the biggest investment we will ever make is to purchase our own home, or an investment property, learning a few tricks about capital gains tax, or CGT as it's better known might just save you thousands.

## THE 6 BASICS OF CGT

The fact is you can't un-sign or un-date a contract and once it is signed and dated that horse has bolted and your fate is sealed so far as CGT is concerned. So here are some tips:

1. Your home is free of CGT if it is held only in the names of one or both of the occupiers. This presents a challenge for those in "at risk" professions such as doctors and engineers as their personally owned assets will be exposed if they are involved in a law suit for negligence. From an asset protection point of view, owning assets in your own name should be avoided.

Additionally, if business owners hold their property in their own names, their home could be lost to creditors, but if they hold it in the name of a family trust or family company, they will lose the CGT exemption, which could also cost tens of thousands in the long-term. Be sure to speak to us before you sign a contract if you are grappling with the age old conundrum of the entity in which to purchase your residential or commercial property.

2. For investment properties and land, a 50 per cent discount on CGT is available, but only for assets that have been owned for more than a year. Remember, the relevant dates for CGT are the purchase and sale **contract dates**, not the settlement dates. All commercial lawyers, and accountants for that matter can recount stories of clients who have donated loads to the tax man by signing a contract within the 12 months because they were under the misapprehension that the settlement of the purchase and sale contracts were the relevant dates. Please don't provide us with any more war stories! We have enough!

A company is not entitled to the 50 per cent discount, it is only available for individuals and trusts. Real estate that is expected to appreciate in value is rarely bought by companies for this reason.

3. You can be absent from your home for up to 6 years without losing the CGT exemption status so long as you don't claim any other home as your principal residence in that period. If, during the 6 years, you move back into the original property and then move out a second time, the 6 years restarts from the date you move out the second time. This is a strategy regularly used in practice,

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especially by our clients who move away for work but expect to return at some time in the future.

4. Sometimes people will move out of their home, upgrade to another home to live in and then rent out the original home. In this instance, you pay CGT only on the increase in value from the date it was rented out. It is therefore necessary to get a valuation when you leave so that the appreciation in value while you're gone can be ascertained and the CGT calculated.
5. If you're lucky enough to have a non-income producing property that is not your own home, for example a beach house or a block of land, you can add the holding costs to the base cost for CGT purposes. These items would include the interest payments on your mortgage, rates, repairs and insurance. While you won't be able to avoid paying CGT, you will definitely be able to reduce it.
6. With a new financial year looming, it is important to be aware that the actual tax to be paid upon disposal of a property is payable in the financial year that the sale contract is signed. So if you seek to defer the payment of tax to the following financial year, hold off on signing your sale contracts until post 1 July.

The six points above bring me to our conclusion and that is the importance of retaining the paperwork we send you after the settlement of your contract, as well as keeping proper receipts and other documentation of all monies expended on investment properties and non-income producing investments excluding your own home. This will ensure that while tax will remain as unfashionable as ever, you might just be able to afford that sexy new jet ski with the money that would've otherwise been directed straight to the dreaded tax man.

## STAMP DUTY SAVINGS FOR QUEENSLANDERS



Stamp duty (or transfer duty as its now known) is widely regarded as the single largest expense incurred when you buy a property.

It's no secret that of late there has been much pressure placed on State Governments to reduce the rate of transfer duty in order to make home ownership more affordable. In response to this, the Government in the recent budget increased the first home buyer transfer duty exemption from \$320,000.00 to \$350,000.00 effective from 1 July, 2008, providing small savings for those buying their first home.

In further addition, from 1 September, 2008 the first home buyer transfer duty exemption will be increased to \$500,000.00, providing more significant savings when compared with the current schedule.

There is currently a principal place of residence concession by applying a 1% transfer duty rate to the first \$320,000.00 of the value of the home. The budget has increased this concession to the first \$350,000.00 of the value of the home from 1 July. This equates to a saving of up to \$750.00 for those purchasing their own home, other than their first.

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The budget has also brought forward the date for abolition of mortgage duty to 1 July, six months earlier than scheduled, providing benefits for everyone taking out a mortgage.

With the new changes to the thresholds, if you are buying your first house or a home in Queensland, you will be paying far less transfer duty than any other State. The diagram below presents a comparison:-

<b>TRANSFER DUTY FEES</b>						
Duty payable on first-home purchases from September 1						
Value	QLD	NSW	VIC	WA	SA	Tas
\$100,000	-	-	-	-	\$1,415	-
\$200,000	-	-	\$3,370	-	\$5,615	\$1,675
\$300,000	-	-	\$8,370	-	\$11,300	\$5,550
\$400,000	-	-	\$13,370	-	\$16,330	\$13,550
\$500,000	-	-	\$18,970	-	\$21,330	\$17,550
\$600,000	\$12,850	\$22,490	\$31,070	\$22,515	\$26,830	\$21,550
\$700,000	\$17,350	\$26,990	\$37,070	\$27,265	\$32,330	\$25,550
\$800,000	\$21,850	\$31,490	\$43,070	\$32,316	\$37,830	\$29,550
\$900,000	\$26,350	\$35,990	\$49,070	\$37,466	\$43,330	\$33,550
\$1m	\$31,000	\$40,490	\$55,000	\$42,616	\$48,430	\$37,550
\$1.5m	\$57,250	\$66,740	\$82,500	\$72,200	\$76,330	\$57,550

Source Queensland Budget 2008

Only time will tell whether these changes actually have the desired outcome of enabling more first home buyers to enter the market, but it does represent a good start.

## ESTATE PLANNING HORROR STORY NUMBER 1



When making your Will you should be aware that superannuation can be taxed at different rates which can affect the size of the distributions your beneficiaries receive.

We have recently been involved in a deceased estate where the deceased died after making a Will using a homemade Will kit. The facts were:

- Jane died, leaving 2 adult children, Bart and Lisa from a previous marriage aged 24 and 26
- Jane had remarried and also left behind husband Tom and daughter Maggie aged 12
- There was a joint home owned by Tom and Jane that went to Tom on death as well as some bank accounts
- To even things up, Jane stipulated in her Will that the death benefit payment from her superannuation fund of \$400,000.00, which included a life insurance component, be paid in equal one quarter shares to Tom, Maggie, Bart and Lisa.
- The rest of Jane's estate, which included a share fund investment of \$200,000.00 was left to Tom on the basis that Maggie would benefit from her father's estate in due course.

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Everybody was happy with the terms of the Will, as each seemed to receive a fair share of the estate considering the circumstances. Both Bart and Lisa owned their own home and were self sufficient, earning a reasonable income so did not have any further need for a bigger slice of the estate.

However, once we explained the tax consequences of the payments from the superannuation fund, disappointment set in. As Bart and Lisa are over 18 years they are not considered dependents for tax purposes and 30% of their payment from the superannuation fund was handed to the government as tax.

Tom and Maggie were okay as they are both considered dependents under the Tax Act, one being a spouse and the other a child under 18 so they receive their payments tax free.

There was no solution to the problem, but it could have been avoided had Jane obtained appropriate advice at the outset. We would have ensured that the payments to Bart and Lisa were paid from the capital of the estate ie. the share fund investments or other investments as they would have been tax free.

Tom and Maggie would then have received the total benefit of the superannuation death benefit tax free as tax dependents saving \$60,000.00 in tax.

This case shows that a properly drafted Will and Enduring Power of Attorney is a must for everybody, irrespective of the size of your estate.

We can assure you that our fees are much less than the ramifications involved in using a homemade Will kit or not having a Will at all.

NB. Names have been changed.

## STAFF PROFILE – Sarah Money



**Occasionally, some clients can slightly misunderstand your accent. Exactly where are you from?**

A little town in West Yorkshire called Mirfield - it is between Leeds and Huddersfield and about 300kms North of London. It was the smallest village in England till not too long ago, but still managed to have 23 pubs!

**When & why did you choose to move to Australia and why Townsville?**

I came out to Australia backpacking nearly 20 years ago for 6 months and fell in love with the place. Went back home and met my future husband Craig and then brought him out 7 years ago - he also fell in love with it! So made a huge decision to emigrate here, that was 2 years ago.

We chose Townsville as it ticked all the boxes:- sunshine, beaches, friendly, not too big a city and a small hop to Maggy Island which we both love!

**How often do you whinge?**

Would normally say never - but at the moment, most mornings as I get stuck in the traffic at Bushland Beach trying to get to work.

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**How often do you bathe?**

Sunbathe? Whenever I get a chance. Bath? As frequently as any Aussie....so maybe not that often! ??

**What were your favourite places to stay when you travelled round Australia?**

We were lucky enough to be able to take a year out when we arrived and spent that time travelling round in a caravan, seeing the beautiful country. We loved the small places that you could so easily miss, like the Town of 1770, South West Rocks and loved Ayres Rock.

**You wrote Home Loan Mortgages back home. Why the change to reception?**

I wanted to become as laid back as the Aussies and had had enough of being a stress head, but still wanted a busy job where I met people and where each day is different.

**Give us 3 words that spring to mind about your workplace?**

Professional. Friendly and Fun!

**What are your interests outside of work?**

I love walking my 2 dogs at the beach, George a 9-year-old British Bulldog that we brought over with us and Mildred a 22-week-old Staffy.

We also love going over to the island where we are currently purchasing some land at Horseshoe Bay, on which we will build a pet friendly rental holiday home, all so exciting!

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