

Your Ref:

Our Ref: Direct Advocacy: 21000208/6

17 April 2012

The Hon. Tim Nicholls MP
Treasurer and Minister for Trade
GPO Box 611
Brisbane QLD 4001

By email: [REDACTED]

Dear Treasurer

QLS ISSUES FOR TREASURY

Further to my letter of 4 April 2012, I thought it may assist if I provided you with a snapshot of policy issues that we would appreciate you considering in due course.

Transfer Duty Exemption for incorporating legal practices

The Society wrote to the former Treasurer in late January this year to raise again the equity of not providing law practices that become incorporated legal practices (ILP) with an exemption from transfer duty. (A copy of that correspondence is **enclosed** for your information.)

We did not receive a reply from the former Treasurer, nor did he acknowledge receipt of our letter.

The Society's request is that law practices which were prevented by legislation from adopting an incorporated form until 1 July 2007 should not be subject to transfer duty on moving from a partnership to an ILP. It appeared to us inequitable that law practices which were prevented from structuring their affairs from inception as a company should be taxed when the State finally permitted them to do so.

We would like to know your views on this issue of equity for the legal profession.

OSR Information Notice on Unit Trusts

Prior to and during the State Election the QLS raised concern with the Commissioner for State Revenue, and his responsible Deputy Commissioner, about a notice purported to be under section 87 of the *Taxation Administration Act 2001* to a number of law practices which sought to compel contact details of our members' clients where those clients were unit trusts operating a business in Queensland, amongst other information. Our letters of concern are attached for your information as is the Commissioner's reply.

The issue is that the scope of the information requests may be beyond the power of the Commissioner under the Act. This places our members in an invidious position as release of the information sought without consent of the target client breaches the professional duty of confidentiality, which can only be

overcome by a valid compulsion under statute. If the notice is *ultra vires*, our members are placed in the position of either repudiating OSR's request or breaching their professional duties. It does not seem appropriate in our view that OSR should seek to obtain information by misusing a statutory power.

It would seem to us appropriate that the information notices should be discontinued. We can not accept that an invalid notice can be remedied through negotiation between individual firms and OSR. We understand that some firms have complied, begrudgingly and at significant cost, to avoid future unfavourable treatment.

We would appreciate your assurance that your Government will not seek to place our members in this position.

Treatment of Testamentary Trusts

The Society has also raised concern with the Commissioner for State Revenue, and his responsible Deputy Commissioner, that notwithstanding the exemption, testamentary trusts are being assessed as being liable for duty.

Historically, when the *Duties Act 2001* was introduced, the legal profession was assured that there was no policy intention to alter the duties positions of assets entering or leaving a testamentary trust. Our members have understood that section 66, *Duties Act 2001* operates so that the benefit of the duty exemption for deceased estates in section 124, *Duties Act 2001* and the benefit of the trust duty exemption for particular trust distributions in section 123, *Duties Act 2001* are both retained when an Executor or Trustee distributes an estate trust asset to a beneficiary.

To the best of our knowledge, up until late 2009, OSR had honoured this procedure when dealing with testamentary trusts. Our concern is that there has been a recent attempt to depart from the long standing practice. One example has been the OSR's determination that the transfer of units in an inter vivos Unit Trust to a trust pursuant to a Will is a dutiable transaction. This is inconsistent with the philosophy and the long standing practice that testamentary dispositions are exempt from duty and is, in effect, tantamount to **death duty by stealth**. We are also concerned that this inconsistent practice not only complicates matters for the OSR when considering testamentary trusts but also provides ambiguity for our members in advising clients and administering an estate.

The Society therefore calls for legislative amendment to the *Duties Act 2001* which clarifies that **all** testamentary trusts (i.e.- creations, acquisitions and surrenders) as well as **all** transfers and agreements to transfer which gives effect to a distribution *in the estate of a deceased person* are exempt. To avoid any doubt, this exemption includes:

- The creation of a testamentary trust;
- Transfers of estate assets from the deceased to an Executor, Trustee or Administrator;
- Transfers of estate assets by an Executor, Trustee or Administrator to beneficiaries which gives effect to a distribution in the estate of a deceased person; and
- The acquisition or surrender of a testamentary trust by a beneficiary which gives effect to a distribution in the estate of a deceased person.

QSuper

The Society is concerned that QSuper does not recognise Binding Death Nominations for accumulation accounts and defined benefit accounts as s89B of the *Superannuation (State Public Sector) Deed 1990* (QLD) states:

89B Compulsory withdrawals on death

As soon as practicable after a member dies, the board must withdraw the amount in the member's accumulation account and pay it to the member's legal personal representative or another person who applies to the board to be paid the amount and who the board considers appropriate.

The Society calls for certainty for estate planning by revising this clause so as to provide a facility for QSuper to receive and recognise Binding Death Nominations.

The Society would be pleased to meet with you as soon as possible to further advance these issues. Please contact our Principal Policy Solicitor, Mr Matt Dunn on [REDACTED] to arrange a suitable time. We look forward to hearing from you.

Yours faithfully

[REDACTED]
Dr John de Groot
President