

Why documenting transactions matters

Case studies and practical comments

Overview

- What can go wrong?
- What needs to be considered?
- What can you do?

A bit 'fluffy' (i.e. not tax technical), but an important topic as data matching and the law plays catch up.

Family breakdowns

Dunphy v Russell [2018] NSWSC 721

Family breakdowns part II

Lucas v Lucas [2018] NSWSC 962

Broken friendships

Sybil Dawne Hintze v Ratna Tsering & Anor [2018]
NSWSC 1190

Broken friendships part II

Wu v Yu & Ors [2018] QDC 169

To bare or not to bare

Ewert v Martin and Martin [2018] QDC 176

No document? No go!

Bosanac v Commissioner of Taxation [2018] FCA 946

Business as usual

Salser and FCT [2018] AATA 1311

Is it a sham?

Lewis v Condon; Condon v Lewis [2013] NSWCA 204

Documents matter

Atia v Nusbaum [2011] QCA 44

Legal and tax issues

Have your clients considered:

- If gifting – how is the gift being made, is it evidenced by an actual transaction or by some form of offset (in which case is another agreement required), who is gifting and do they have authority (i.e. can a company 'gift' money and does a trust deed provide sufficient power)?
- If lending – repayment terms, whether interest is payable, the taxation of interest, the interest rate, the potential to vary the interest rate or repayment terms, whether security should be provided or not, whether the arrangement is a facility arrangement or a one-off loan?
- If there is a trust arrangement – is it purely a bare trust, is actually in fact a bare trust, have the taxation on the income or capital proceeds been considered, who will actually benefit from the deductions, is a written bare trust deed being prepared to confirm the bare trust nature of the arrangement, does the bare trust affect any other taxes?
- Generally – what are the asset protection and potential tax effect of entering into the arrangement, is the dealing one that will attract the transfer pricing rules or FIRB issues?

Take outs

Documents do matter

- They enforce internal arrangements entered into
- They protect you when dealing with third-parties
- They provide certainty to benign scenarios
- They are needed if asset protection is important
- They can raise issues that have not properly been considered
- Every client should consider getting them in place
- Clients must understand complex affairs results in complex documents

Let your clients consider documents as insurance. If properly prepared, you hope to never enforce them, but will be grateful they are there when needed.

Sales pitch

What can Chat Legal do for you and your clients?

- Walking through the questions from the legal issues slide
- Working with you and your clients to review documents
- Working with you and your clients to draft documents
- Providing you and your clients an idea of what should be seen in such documents
- Developing simple 'templates' that can be tailored for a nominal fees for your clients

Let me know if any of the above would interest you and we can discuss the best way to proceed

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