



Betsy-Ann Howe

Partner

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OVERVIEW

Betsy-Ann Howe is a co-practice group coordinator for the global tax practice. As a corporate and transactional tax partner, she has deep experience in taxation issues associated with mergers and acquisitions, inbound and outbound investment, asset financing (with a particular emphasis on aircraft leasing), and corporate and international tax. With over 25 years' experience in taxation law, Betsy-Ann's experience includes advising on structured finance transactions, cross border leasing, and domestic and international tax issues.

Betsy-Ann's practice focuses on all areas of corporate finance tax, managed investment trusts, audits, disputes and litigation, and tax issues relevant to Australian and non-resident investors.

In 2016, *Chambers Asia-Pacific* legal directory again named Betsy-Ann as one of Australia's leading tax lawyers.

PROFESSIONAL BACKGROUND

Prior to joining the firm, Betsy-Ann has been a partner in national law firms based in both Australia and New Zealand, and most recently led the tax team at a national Australian firm. Betsy-Ann has also held the position as Head of Tax at an Australian listed public company.

ACHIEVEMENTS

- Ranked as a leading lawyer in the area of Tax in Australia by Chambers Asia-Pacific in 2014 – 2019
- A Finalist in the Lawyers Weekly Partner of the Year Awards in 2017
- Recognised as a leading lawyer for Tax in Chambers Global 2013
- Recognised in the Australian Financial Review's Best Lawyers in Australia, 2013
- Recognised as 'Best in Tax' at the Euromoney Australasian Business Women in Law Awards, 2013.

PROFESSIONAL / CIVIC ACTIVITIES

Betsy-Ann has been a member of the tax committee of the Law Council of Australia since 2002, and is involved in liaising with the Australian Tax Office (ATO) and Government in relation to tax policy and legislative reform. She has been involved in a number of Treasury Advisory Committees, including advising on:

- International tax reforms, specifically:
 - Taxation of collective investment vehicles
 - Implementing a conduit regime for Australia.
 - Changes to the permanent establishment rules to allow Australian branches of foreign non-bank financial institutions to access the limited separate entity treatment provided to foreign bank branches.
 - Aligning the tax treatment of dividends paid by Australian companies to permanent establishments on non-resident companies.
 - Changes to the controlled foreign company (CFC) and foreign investment fund (FIF) regimes.
 - Design of reforms to create an investment manager regime for foreign funds and fund managers.

Betsy-Ann is also a member of the tax committee of the American Chamber of Commerce, and provides advice to members on Australian tax issues affecting U.S. multinationals operating in Australia.

SPEAKING ENGAGEMENTS

Betsy-Ann is a regular presenter at taxation and industry conferences. Some recent examples are:

- Regtech, FinTech and Bitcoin – Taxation Issues – Australia Retail Credit Association Conference, November 2017
- Returns of Capital – Australian Taxation Issues – International Bar Association Conference 2017, October 2017
- Overseas Investment – Getting the Tax Right – Television Education Network – December 2016
- Attribution Managed Investment Trusts – February 2016
- Transfer Pricing Issues in Inter-company finance – New Zealand Law Society Tax Conference – September 2015
- The United Kingdom and Diverted Profits Tax – International Fiscal Association – August 2015
- Australian Tax Issues for Funds and Fund Managers – Investment Management Conference, London – June 2015
- Doing Business in the U.S. – American Chamber of Commerce – February 2015
- Australian Taxation Issues for U.S. Institutional Investors – New York, October 2014

- Doing Business in Australia – New Zealand Institute of Chartered Accountants, 2013
- Tax Risk Governance – Australian Institute of Chartered Accountants, conferences in Sydney, Melbourne, Perth and Adelaide, 2013

ADDITIONAL BACKGROUND

- Company Director Course Diploma, Australian Institute Of Company Directors, 2010

EDUCATION

- LL.M., University of Sydney, 2003 *Masters of International Tax*
- LL.M., Victoria University of Wellington, 1986 (*Honours*)
- LL.B., The University of Auckland, 1982 (*Honours*)

ADMISSIONS

- High Court of New Zealand
- Supreme Court of New South Wales
- Supreme Court of Western Australia

THOUGHT LEADERSHIP POWERED BY HUB

- 27 April 2020, COVID-19: (Australia) Employer Guide to the JobKeeper Scheme (Third Edition) (*Alerts/Updates*)
- 17 April 2020, Losses on the Disposal of Shares on Revenue Account (*Alerts/Updates*)
- 14 April 2020, COVID-19: (Australia) Employer Guide to JobKeeper Payments (Second Edition) (*Alerts/Updates*)
- 8 April 2020, COVID-19: Guide to Australia Taxation Measures (updated) (*Alerts/Updates*)
- 3 April 2020, COVID-19: (Australia) Guide to JobKeeper Payments (*Alerts/Updates*)
- 31 March 2020, COVID-19: (Australia) Changes to the Foreign Investment Review Board Approval Process (*Alerts/Updates*)
- 25 March 2020, COVID-19: (Australia) Frequently Asked Taxation Questions (*Alerts/Updates*)
- 23 March 2020, COVID-19: Guide to Australia Taxation Measures (*Alerts/Updates*)
- 21 February 2020, Director Penalty Notice Regime Extended (*Alerts/Updates*)
- 24 April 2019, Australia and Israel Sign Double Taxation Agreement (*Alerts/Updates*)

- February 2018, A Taxing Year Ahead: Hot Tax Issues for 2018 (*Research Surveys*)
- 25 May 2017, Implications of the Chevron Case for Multinational Clients (*Alerts/Updates*)
- 4 May 2017, Implications of the Chevron Case on the Pharmaceutical Industry (*Alerts/Updates*)
- 7 April 2017, Prepared for the Border Adjustment Tax? A U.S. and Global Perspective (*Alerts/Updates*)
- 16 February 2017, ATO Taxpayer Alert: Concerns about Certain Stapled Groups (*Alerts/Updates*)
- 14 February 2017, Border Adjustment Tax (*Alerts/Updates*)
- 21 April 2016, Bracing for BEPS: How the Evolving Global Tax System Will Impact Your Company (*Research Surveys*)
- 15 March 2016, Committee Report: New Tax System for Managed Investment Trusts (*Alerts/Updates*)
- 1 March 2016, New Tax Conditions for Foreign Investment in Australia (*Alerts/Updates*)
- 22 December 2015, New Tax Incentives for Early Stage Investment (*Alerts/Updates*)
- 18 December 2015, A New Tax System For Managed Investment Trusts (*Alerts/Updates*)
- 10 November 2015, OECD/G20 Base Erosion and Profit Shifting Project — Final Reports Released (*Alerts/Updates*)
- 14 July 2015, Travel Costs of Fly-In-Fly-Out Workers (*Alerts/Updates*)
- 14 July 2015, Foreign Resident Capital Gains Withholding Tax – Draft Legislation Released (*Alerts/Updates*)
- 29 June 2015, Goods and Services Tax in Australia to Apply to Offshore Digital Supplies (and More) (*Alerts/Updates*)
- 8 July 2014, Exploration Development Incentive Welcomed by Junior Miners (*Research Surveys*)

NEWS & EVENTS

- 26 May 2016, K&L Gates, Lawyers Earn Honors in Chambers Global, Regional Guides (*Press Release*)
- 6 May 2015, K&L Gates, Lawyers Recognized as Leaders in Chambers Global Guides (*Press Release*)

AREAS OF FOCUS

- Corporate Tax
- Securitization and Structured Finance

REPRESENTATIVE EXPERIENCE

- Acted on a range of issues associated with the Fish Market redevelopment and relocation project. The project is the priority component of the wider development of Blackwattle Bay and a State significant development. One important aspect of our involvement was obtaining a private ruling to determine the status of the transaction and to provide certainty for the client. The overall result achieved is highly favourable and provides certainty and protection for the client from the tax perspective in respect of a major strategic transaction for their business. Separately, we objected to land tax assessments received by SFM. This involved negotiations with the Valuer-General's office. We have also given land tax advice on the new site, so as to minimise future costs. Advising a privately owned property development group on a substantial restructure of their property portfolio to ensure tax efficiency and succession issues going forward. Advised an Australian aircraft charter company on the lease of Embraer aircraft from lessors located in the United States. Advised ASX-listed Hunter Hall International Limited, a specialist global and Australian equity investment manager, on tax issues relating to its reverse merger with fund manager, Sydney-based Pengana Holdings Pty Ltd. The merger sees funds under management of the combined group exceeding AUD3 million. Contemporaneously with the Pengana merger, we also advised the Board of Hunter Hall in relation to the hostile takeover bids for Hunter Hall by Washington H. Soul Pattinson and Company Limited (ASX:SOL) and Pinnacle Investment Management Group Limited (ASX:PNI). Advising an Australian consulting business on establishing a structure for operating in Australia, the United States, the United Kingdom and Asia, including advising on the most appropriate legal structure, taxation treatment of payment flows from the relevant jurisdictions, location of intellectual property and cross border fee arrangements with a particular emphasis on transfer pricing. Conducting tax due diligence, in concert with the corporate team's due diligence procedures, for the proposed acquisition of shares in an offshore company with Brazilian oil assets. The deal value was large – over USD 1 billion – and the complex ownership structure being acquired raised difficult tax issues from an Australian, Dutch and Brazilian perspective. Advising on the acquisition of the Queensland State forests, including advising on the most appropriate acquisition vehicle for offshore investors, including foreign pension funds and sovereign wealth funds based in Europe and the Middle East. Advice and documentation in relation to restructuring an investment unit trust, to provide liquidity options for divesting investors, and greater flexibility in managing trust assets. Advising on a number of tax matters arising from the acquisition of Minnovo Global - an engineering services provider based out of Perth that is noted for mineral project collaborations with a series of high-profile mining companies. The purchase of Minnovo added breadth to DRA's expertise across a range of minerals and enhance the group's overall strength in the design and construction of processing facilities. Advised the shareholders of Billi Australia Pty Ltd (a designer, manufacturer and distributor of instant filtered boiling, chilled and sparkling under-the-sink drinking water systems) and its UK counterpart GLGB Limited on its sale of a 100% interest in the Billi Group's global operations to an Australian-based subsidiary of Waterlogic (a designer, manufacturer, distributor and service provider of purified drinking water dispensers). Advising on incentivisation arrangements and employee share scheme for a privately owned financial services business. Advised the client in relation to tax issues regarding the AUD80 million sale of a 75% interest in the company to Hong Kong-listed Mason Financial Holdings Ltd (Mason Financial) with an additional 5% interest acquired by ASX-listed Wattle Health. Advised Americold in relation to tax, legal and fund formation advice in relation to its Australian operations, and specifically, in relation to the establishment of a managed investment trust structure which was to acquire interests in certain underlying Australian real

estate assets on which cold storage facilities were to be constructed. Once these key sites have been developed, Americold will enter into a lease agreement with a third party supplier. In addition to the structuring advice, K&L Gates' engagement also included the preparation of the relevant implementation documents, preparation and lodgement of the foreign investment review board (FIRB) application, and liaising with third-party trust companies, as required. This matter was important because it involved a careful assessment of complicated tax issues surrounding managed investment trusts. Advising on the income tax and stamp duty issues associated with the development of a solar energy plant and the leasing of that plant and associated take or pay arrangements. Advised a large multinational client in the online retail industry on a range of cross-border tax matters, particularly issues surrounding the jurisdiction in which income is derived for tax purposes, permanent establishment issues and interpretation of contract terms and how it impacts the tax treatment of income. Advising an Australian fund manager on the establishment of a U.S. based fund to acquire mining assets in Africa. The advice included consideration of carry arrangements and Australian, U.S. and Singapore tax issues. Advised a property group specialising in furnished apartments in relation to tax arrangements. Advising an Australian manufacturing company on the most efficient structure for establishing a manufacturing base in China, with a distribution network throughout Asia and the United States. Integral to the advice was the location of the intellectual property of the company and the licencing arrangements to ensure compliance with transfer pricing requirements of a range of jurisdictions including the United States, Australia, China and Singapore.

- Devising a tax efficient investment structure to enable a US VC fund manager to take in offshore and onshore investment, and invest in a range of offshore and onshore assets.
- Structuring of an investment by a US fund manager into a number of Australian farming properties. The tax practice was involved in structuring the investment to ensure Foreign Investment Review Board approval was granted, and that the structure was tax efficient, and in particular ensuring that concessions for offshore pension plans, and tax concessions for offshore investors under the managed investment trust regime, were obtained. Tax and GST treatment of ongoing operations, duty implications on direct and indirect land acquisitions, and creating flexibility for potential divestment in the future, were all advised on.
- Acted for a group of entities in the building and construction industry involved in a tax audit. The audit covered an extensive range of tax issues and involved making a number of submissions and voluntary disclosures to the Tax Office on various matters.
- Advised in relation to a convertible note issue by an Australian entity, with South African mining assets.
- Advised on tax efficient means of disaggregating a financial services business (predominantly aircraft leasing), divesting assets to one exiting group of investors, and restructuring the business for continuing investors.
- Advising on the restructuring of a towage business, including making provision for new employment arrangement.
- Advising on the early vesting of performance rights in the context of a scheme of arrangement.
- Advising U.S. Pension Fund on Australian tax issues associated with its cross border investments and advising on the availability of sovereign immunity under new legislation.

- Advising on a restructure and disaggregation of a privately held agricultural business with major property holdings across North Western Queensland.
- Advising CalPERS (the largest public pension fund in the U.S.) along with consortium partners Queensland Investment Corporation (QIC), Australia's Future Fund, OMERS pension fund, and Global Infrastructure Partners in the successful bid to acquire a 50-year lease of the Port of Melbourne. This was a strategic investment for CalPERS and its first investment in Australian infrastructure.
- Advised on the tax implications of a restructure and expansion of a fintech business which involved a platform for marketing loan products of lenders, facilitating the transactions between lenders and borrowers and managing the loan repayment process. The restructure involved establishment of new entities in various jurisdictions, including United States, Canada and Singapore. Tax advice provided to the client involved consideration of complex international tax issues, including tax residence of various entities, and the potential application of controlled foreign company (CFC) and controlled foreign trust (CFT) rules, as well as ongoing tax advice on specific transactions undertaken in various jurisdictions.