



This week: Asian Legal Business e-newsletter

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Taxation: Over-taxing legal talent



A thriving M&A market combined with legislative changes to superannuation are keeping taxation lawyers busier than ever, reports Mark Story

Unprecedented M&A activity on the back of an effervescent Australian economy stimulated by private equity looking for deals, plus a myriad of legislative changes - notably for small business reliefs and the superannuation space - is keeping tax lawyers extremely busy.

The net impact of this demand, according to Peter Beuvink, managing director of Sydney-based Search International and TAXVACANCIES.com, is a narrowing in the hourly rate between lawyers who typically undersell their tax capacities, and accounting firms. Not surprisingly, Beuvink is witnessing the biggest demand for professionals with cross-over skills, especially those with dual qualifications in accounting and law, many of whom are transferring from top-tier accounting firms to law firms.

While the big four firms have always led the industry in this field, Beuvink says the mid-tier firms are now focusing on developing specialist tax divisions with client bases independent of their existing business. As a result, he says the number of lawyers undergoing structured training - either through a Masters degree or via the Taxation Institute of Australia - to work in these firms is definitely growing.

What is attracting dual professionals like Perth-based Mike Frampton to work inside a law firm is the creativity that comes from being able to both advise and implement on a wider range of projects. "There's so much more variety when you're dealing with more complex issues at the pointier end of tax," says Frampton, tax partner with Deacons.

According to Frampton, working with someone who understands both the legal and accounting perspectives is like dealing with a one-stop-shop. He says as well as giving tax advice, they can also implement it by drafting the document and setting up the company or trust. "You're getting a more thorough review of the law than a more practical approach from accountants who tend to be more compliance-driven," says Frampton.

Industry drivers

While work is coming from all corners of the economy, Peter Gell, tax partner with Hunt & Hunt in Sydney, says up to half of all work is currently coming from lawyers within the same firm (or network) and accountants. Owing to the complexity of legislation, employee share and option schemes have traditionally been bread and butter work for tax lawyers.

But in the last week, Gell has been involved with tax issues ranging from charities on the proposed sale of excess land through to foreign venture and capital investment issues, small business reliefs, and issues of trust resettlements.

At the smaller end of the market, current superannuation changes (particularly the ability to transfer A\$1m in property assets into super before 1 July) are driving legal work associated with taxation. Other changes to these rules that make contributions tax exempt from the age of 60 have also put super in focus. But superannuation aside, Gell says changes to the small business capital gains tax reliefs are driving a re-examination of partnerships as the preferred vehicle for SMEs.

At the larger end of town, Gell says there is always activity in rollover relief on corporate reconstructions, particularly in de-merger reliefs using schemes of arrangement. "Tax sharing agreements for consolidated entities are becoming more complex with the changes to accountancy standards, and the volume of this work is growing work, albeit not for the smaller players," says Gell.

Saving a buck

With the property market being so buoyant, especially in Western Australia, Frampton says there are also a lot of tax law issues around land acquisition. At the commercial level, he says there is no shortage of work around buying and selling businesses. "Changes to SME business rollovers are also encouraging people to sell and get access to SME provisions," he says.

Beyond the more obvious drivers of demand for tax lawyers such as property, GST, stamp duty, M&A activity,

changes to super rules and SME provisions. Tax now intrudes on all areas of commercial activity. Across all these activities, Gell says the function of the tax lawyer is to add value by saving tax dollars in commercial transactions. As long as accretions of wealth by different entities are taxed differently and non-uniformly, he suspects tax lawyers will always be in demand, particularly when capital is taxed concessionary when compared to income.

According to Gell, it would be a poorly equipped commercial lawyer who did not have detailed knowledge of capital gains tax and GST and their impact on things such as asset sales. He says this may explain why tax lawyers are often brought into a deal sideways, to identify where the tax dollars can be saved. "More often than not, such savings come from identifying circumstances in which a receipt might be classified as capital rather than income, or gains taxed concessionary, exempted or delayed through rollover reliefs."

Client wish list

- Quick turnaround on advice
- Practical advice across all angles
- Minimal conflict situations with the ATO
- Advice that is not overly aggressive
- Simple structures
- Advice that considers long-term implications
- Simplification via tax consolidations
- A concise legal argument
- Minimal tax exposure through the right frameworks
- Sign-off that contracts are tax efficient with minimal risk

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