WHEN TAX NEEDS TO BE RAISED

Do you help your clients make informed choices about tax issues?

Every year the Legal Practitioners' Liability Committee receives notice of claims where one of the issues was the alleged failure by a practitioner to raise tax issues with the client.

Family law

In one claim a practitioner acted for a husband in a matrimonial dispute. Agreement was reached after many weeks of negotiations. The practitioner prepared and sent draft consent orders to the client and spoke with him on two occasions about the draft.

The orders provided for the transfer of an investment property from the wife to the husband and for the wife to retain ownership of the principal place of residence.

Two years after the orders were made the husband contacted the practitioner complaining that he only recently realised that if he sells the investment unit that was transferred to him he would have to account for any capital gain.

The client was upset because the practitioner did not specifically raise the issue of payment of capital gains tax (CGT). His view was that had the practitioner raised that issue he would have insisted that his ex-wife pay any CGT.

Conveyancing

In some conveyancing claims the failure to deal with tax issues has meant that the appropriate tax was not paid. This leads to penalties and interest being imposed when the error is discovered.

A common mistake is failing to give notice to the State Revenue Office about the acquisition by a trust. For more information about this issue see the LPLC column in March 2014 *LIJ* "Land can be taxing".

In other conveyancing claims there is a failure to deal with GST issues. In one such claim a practitioner was instructed to act in the sale of a café on the Mornington Peninsula. The property was subject to a month to month tenancy.

None of the GST boxes were completed in the contract of sale which meant the sale was GST inclusive.

Just prior to settlement the client complained to the practitioner that they expected to receive GST in addition to the price. Settlement was effected on the basis of the vendor reserving their rights about payment of GST.

The client's view was that the practitioner should have raised any GST issues with them and explained the effect of the contract prior to the client signing.

The matter eventually settled with a substantial payment to the vendor client.

Tax checklists

These claims highlight that there are many tax issues which practitioners need to raise with clients at the start of a matter.

The LPLC has prepared two new checklists to help practitioners identify many of these tax issues in the sale and purchase of real estate and businesses.

One of the new checklists is about GST and includes a list of the most common GST issues raised by practitioners with the LPLC. You will also find links to various resources and rulings.

The other checklist contains a list of the most common taxes and tax issues. It includes boxes which can be selected to indicate whether the client or practitioner is responsible for further action relating to each item. With some taxes it is expected that both practitioner and client may be selected to undertake further investigation.

A column has also been included in the tax issues checklist for initial comments. The LPLC recommends that a memorandum be sent to the client after the checklist is completed setting out what was agreed.

All the LPLC checklists are on the checklists page under the resources section of its website.

Please contact the LPLC with any suggestion and/or comments relating to any of the checklists. ■

This column is provided by the **Legal Practitioners' Liability Committee**. For further information ph 9672 3800 or visit www.lplc.com.au.

TIPS

- Have sufficient tax knowledge to know which taxes may impact on a client's matter.
- Use a checklist to ensure all tax issues are raised in a matter.
- Agree with the client about who has responsibility for tax issues. In many cases the client will need to discuss the tax consequences with their accountant and/or financial adviser before making a decision.