

# Business Law

Thursday 17 August 2023

Session 4 – 1.45pm – 2.45pm

## Employees vs. Contractors: Reviewing the current tax and legal landscape

Whether an individual is an employee or contractor is a key commercial matter, as it can give rise to tax and legal implications for a business. Failure by a business to correctly characterise a worker can result in underpayment of worker entitlements (such as PAYG and superannuation), not meeting payroll tax obligations and risk of an employment claim. This session will provide: (i) an overview of the current tax and legal landscape following the recent High Court and Federal Court decisions in *Jamsek v ZG Operations* [2022] HCA2 and the Fair Work Commission's decision in *Deliveroo Australia Pty Ltd v Diego Franco* [2022] FWCFB 156; (ii) review activity of the ATO and Revenue NSW in light of these decisions; (iii) income tax, superannuation and payroll tax obligations for businesses that engage contractors; (iv) nuances in the employee and contractor tests for income tax, superannuation and payroll tax; and (v) importance of a written contract and whether this provides a complete solution.

### Meet the speaker

#### Elizabeth Burnheim, Consulting Principal, Keypoint Law

Elizabeth Burnheim is an expert superannuation and taxation lawyer. She is experienced in handling complex taxation issues, often involving assisting high-net worth clients, business owners, trustees and beneficiaries of trusts, advising on business and investment structures for payroll tax purposes such as de-grouping applications and payroll tax audits. Elizabeth works across a wide range of matters, from assisting SMSFs acquire property using limited recourse borrowing strategies, to large payroll tax audits, to amending trust deeds for NSW Surcharge Purchaser Duty, to complex estate planning matters involving inter vivos and testamentary trusts. Elizabeth is regarded by her clients as knowledgeable, helpful and precise. She places significance on ensuring a comprehensive understanding of her clients' circumstances to enable the best possible outcome.

#### King Tan, Consulting Principal, Keypoint Law

King Tan is an experienced lawyer, with a specialty in taxation law. King advises on Federal taxes (such as income tax and capital gains tax), State taxes (such as duty and land tax), and both advisory and dispute matters. King is often called upon by private groups, high net wealth families and professional advisers (such as accountants and financial planners) to advise on complex taxation issues. Apart from taxation, King practises in the areas of trust law, superannuation law and succession planning. He has extensive experience assisting clients with strategic business and personal succession plans, establishing cross-border family offices, dealing with trustee duties and beneficiary entitlements and implementing wealth preservation strategies. Prior to joining Keypoint Law, King led the Taxation & Superannuation team at Coleman Greig. He was formerly with King & Wood Mallesons and KPMG. King's experience working at a Big 4 chartered accounting firm and as a senior tax lawyer at international and mid-tier law firms bring a range of skills and experience to his clients.