

## CHAIR



### **Mike Lennard, Stout Street Chambers, Wellington**

Mike specialises in tax disputes and litigation. His career to date has involved eight years' practice as a Crown prosecutor and civil litigation lawyer, then eight years as head of litigation for Inland Revenue, and practice at the independent bar since June 2004.

Mike is a member of the NZLS Taxation Committee and regularly contributes to tax journals. He has been recognised for many years as a leading tax disputes lawyer in both of the leading international reviews.

Non-tax aspects of his practice include intellectual property, competition law, professional negligence, and relationship property litigation. He has a particular interest in financial regulatory and criminal issues, including money laundering and administration of the AML/CFT legislation.

## KEYNOTE SPEAKER



### **Emeritus Professor John Prebble QC, Te Herenga Waka – Victoria University of Wellington, Wellington**

John teaches at Te Herenga Waka, as a Gastprofessor at Wirtschaftsuniversität Wien, and as an Adjunct Professor, University of Notre Dame Australia. He is a member of Woodward Street Chambers, Wellington.

## SPEAKERS



### **Henry Brandts-Giesen, Dentons Kensington Swan, Auckland**

Henry is the Head of Private Wealth at Dentons Kensington Swan. His advisory practice involves family office design, family business succession planning and governance, family trusts, foreign trusts, charitable trusts, residency by investment, estate planning, relationship property, superannuation trusts, private funds, energy trusts, employee share schemes, fiduciary risk management, captive insurance, FATCA/CRS, and AML/CFT.



### **Brendan Brown, Mayne Wetherell, Wellington**

Brendon is a partner, and head of the tax practice, at Mayne Wetherell. He specialises in corporate and international taxation and has advised on some of New Zealand's most significant commercial transactions and tax disputes.

## **SPEAKERS**



### **Howard Davis, Inland Revenue, Wellington**

Howard is the Tax Counsel Office's Group Leader (Customer Advice), responsible for Inland Revenue's taxpayer rulings service. Prior to joining Inland Revenue, he worked in law and accounting firms in tax



### **Emma Grigg, Inland Revenue, Auckland**

Emma is a Policy Director in Policy and Regulatory Stewardship (PaRS) at Inland Revenue. She has been with IR for 26 years and prior to that worked in law and accounting firms as a tax advisor. Emma has degrees in law and commerce and is a FCA. She is responsible for the development of the Government's Tax Policy Work Programme and for PaRS's external engagement strategy.



### **Michelle Redington, Inland Revenue, Auckland**

Michelle took up her position as Inland Revenue's Chief Tax Counsel in March 2021. She is head of Inland Revenue's Tax Counsel Office, based in Auckland.

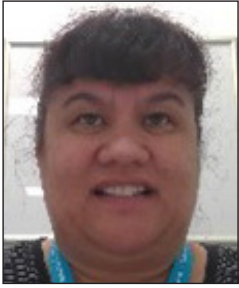


### **Neil Russ, Russ & Associates, Auckland**

Neil specialises in corporate and international tax issues, and domestic and cross-border transactions. He formed his current firm after over 20 years as a partner and head of tax at a national law firm. Neil has a multi-jurisdictional background in banking, capital markets, structured finance, venture capital and private equity transactions, and has expertise in AML/CFT matters.

He is Convenor of the NZLS Tax Law Committee.

## **SPEAKERS**



### **Tania Sauvao, Inland Revenue, Wellington**

Tania is the acting Group Leader responsible for Disputes in the Tax Counsel Office (TCO). She has worked in TCO for almost 20 years.



### **Justin Smith QC, Stout Street Chambers, Wellington**

Justin specialises in general corporate and commercial litigation including tax disputes. He is a former Crown Prosecutor and former Council member of the New Zealand Bar Association.



### **Tori Sullivan, EY Law, Auckland**

Tori has extensive experience representing both domestic and international clients in their tax disputes with Inland Revenue, with the tax issues involved being novel and complex.



### **Stephen Tomlinson, Tomlinson Law, Christchurch**

Stephen advises clients (including law firms and accounting firms) on a wide range of taxation and trust law issues. He is a member of the NZLS Taxation Committee and the ADLS Trust Law Committee.

# CONTENTS

<b>GENERAL ANTI-AVOIDANCE RULES IN THE LIGHT OF THE ARISTOTELIAN PRINCIPLE OF EXCLUSION OF CONTRADICTIONS.....</b>	<b>1</b>
ABSTRACT .....	3
I.    GENERAL ANTI-AVOIDANCE RULES .....	3
II.   EXAMPLE OF AVOIDANCE USING A TAX SHELTER.....	4
III.  THE FUNDAMENTAL PROBLEM OF GAARS .....	6
IV.  ARISTOTLE .....	7
V.   KELSEN .....	8
VI.  GAARS AND THE PRINCIPLE OF EXCLUSION OF CONTRADICTIONS .....	11
VII. RESOLVING CONFLICTS BETWEEN GAARS AND OTHER RULES OF TAX LAW .....	14
VIII. PRINCIPLES OF ECONOMIC SUBSTANCE .....	15
IX.  PRINCIPLES OF MORALITY.....	17
X.   ECONOMIC SUBSTANCE, MORALITY, AND THE PURE THEORY OF LAW .....	18
XI.  VALIDITY OF CONFLICTING NORMS.....	19
XII. CONCLUSION .....	20
APPENDIX A: SLIDESHOW NOTES .....	21
APPENDIX B: EXTRA MATERIAL.....	28
<b>EMERGING TAX TRENDS IN TAX CONTROVERSY .....</b>	<b>31</b>
1.    HOW ARE OTHER REVENUE AUTHORITIES AUDITING TAXPAYERS? .....	33
2.    HOW DOES INLAND REVENUE’S AUDIT STYLE COMPARE TO THE REST OF THE WORLD? .....	35
3.    WHAT ARE OTHER REVENUE AUTHORITIES AUDITING? .....	38
4.    WHAT IS INLAND REVENUE AUDITING IN COMPARISON TO OTHER REVENUE AUTHORITIES? .....	40
CONCLUSION.....	43
<b>FROM PRIVACY TO TRANSPARENCY: AN UPDATE ON GLOBAL AND DOMESTIC STEPS TO IMPROVE TAX COMPLIANCE AND PREVENT MONEY LAUNDERING.....</b>	<b>45</b>
INTRODUCTION .....	47
PRIVACY: A FUNDAMENTAL HUMAN RIGHT .....	48
PRIVACY: HOW IT IS ABUSED .....	51
GOVERNMENTS FIGHTING BACK.....	54
THE PRIVACY REAR-GUARD?.....	71
WHY THESE THINGS MATTER .....	74
WHAT NEXT? .....	80
CONCLUSION.....	90
<b>TRUSTS, TAX PLANNING AND THE 39% TAX RATE .....</b>	<b>93</b>
INTRODUCTION .....	95
IMPACT OF THE INCREASE IN THE TOP PERSONAL TAX RATE ON TRUST STRUCTURES .....	95
NEW TAX REPORTING REQUIREMENTS FOR TRUSTS .....	105
APPENDIX– CASE STUDY: INCORPORATING A PROFESSIONAL SERVICES FIRM .....	109
<b>THE ART, LAW AND SCIENCE OF A TAX DISPUTE .....</b>	<b>113</b>
INTRODUCTION .....	115
WHEN TO BRIEF A BARRISTER? .....	115
WHY BRIEF A BARRISTER? .....	116
HOW TO BRIEF A BARRISTER: FORMALITIES .....	117
WHO TO BRIEF?.....	117
HOW TO BRIEF: PRACTICALITIES .....	118
PREPARING FOR TRIAL .....	120
<b>MAKING A GOOD RULING APPLICATION .....</b>	<b>127</b>
INTRODUCTION .....	129
MAKING A GOOD PRIVATE OR PRODUCT RULING APPLICATION .....	132
MAKING A GOOD SHORT-PROCESS RULING APPLICATION .....	136
OTHER CURRENT RULINGS ISSUES .....	139

<b>REMEDIAL ISSUES FRAMEWORK .....</b>	<b>143</b>
A FRAMEWORK FOR THINKING ABOUT REMEDIALS?.....	145
KEY ISSUES TO BE DISCUSSED: .....	147
<b>ADDRESSING REMEDIAL ISSUES IN TAX LEGISLATION .....</b>	<b>149</b>
INTRODUCTION .....	151
THE PURPOSIVE APPROACH .....	152
“POLICY INTENT” AND THE DECISION IN <i>ROBERTS</i> .....	157
REMEDIAL AMENDMENT OR PURPOSIVE APPROACH TO INTERPRETATION? A RECENT EXAMPLE .....	159
CONCLUSION.....	163