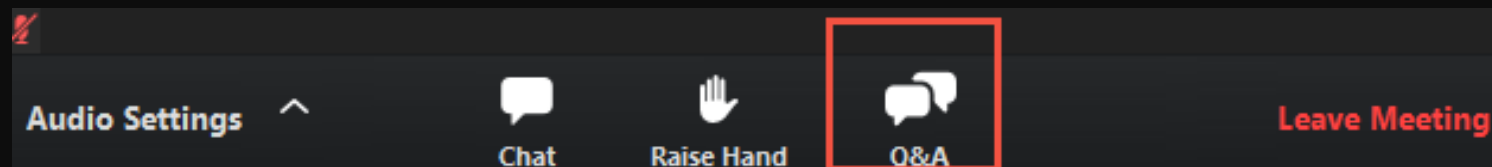


Welcome to the session. We'll be starting shortly.

Section 100A
23 September 2020

Your video and audio will be switched off during this session.
If you experience technical issues, please contact Mariana Olivieri on +61 415 091 316.

To ask questions during the webinar, use the Q&A button below.





Arnold Bloch Leibler

Lawyers and Advisers

Quick takes on tax – ABL webinar series

Session 3: Section 100A

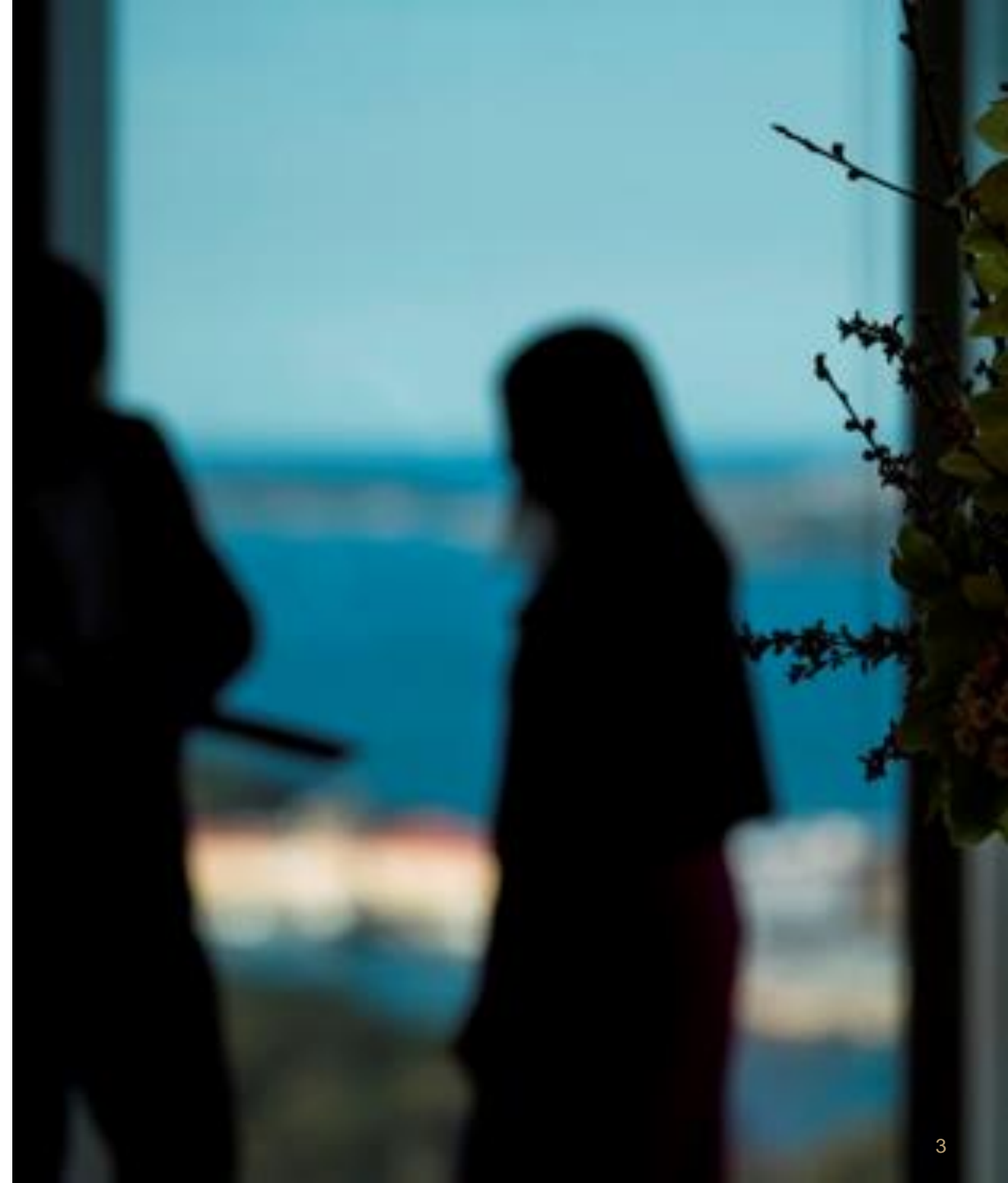
Presenters:

Paul Sokolowski (Partner – Arnold Bloch Leibler)

Kaitilin Lowdon (Senior Associate – Arnold Bloch Leibler)

Introduction

- Section 100A – an overview
- Section 100A – the key elements
- Case studies
- The future for s 100A





Section 100A – an overview

- Anti-avoidance provision
- If s 100A applies, the beneficiary is deemed not to be presently entitled
- Self-executing – a taxpayer must self-assess
- Unlimited period of review

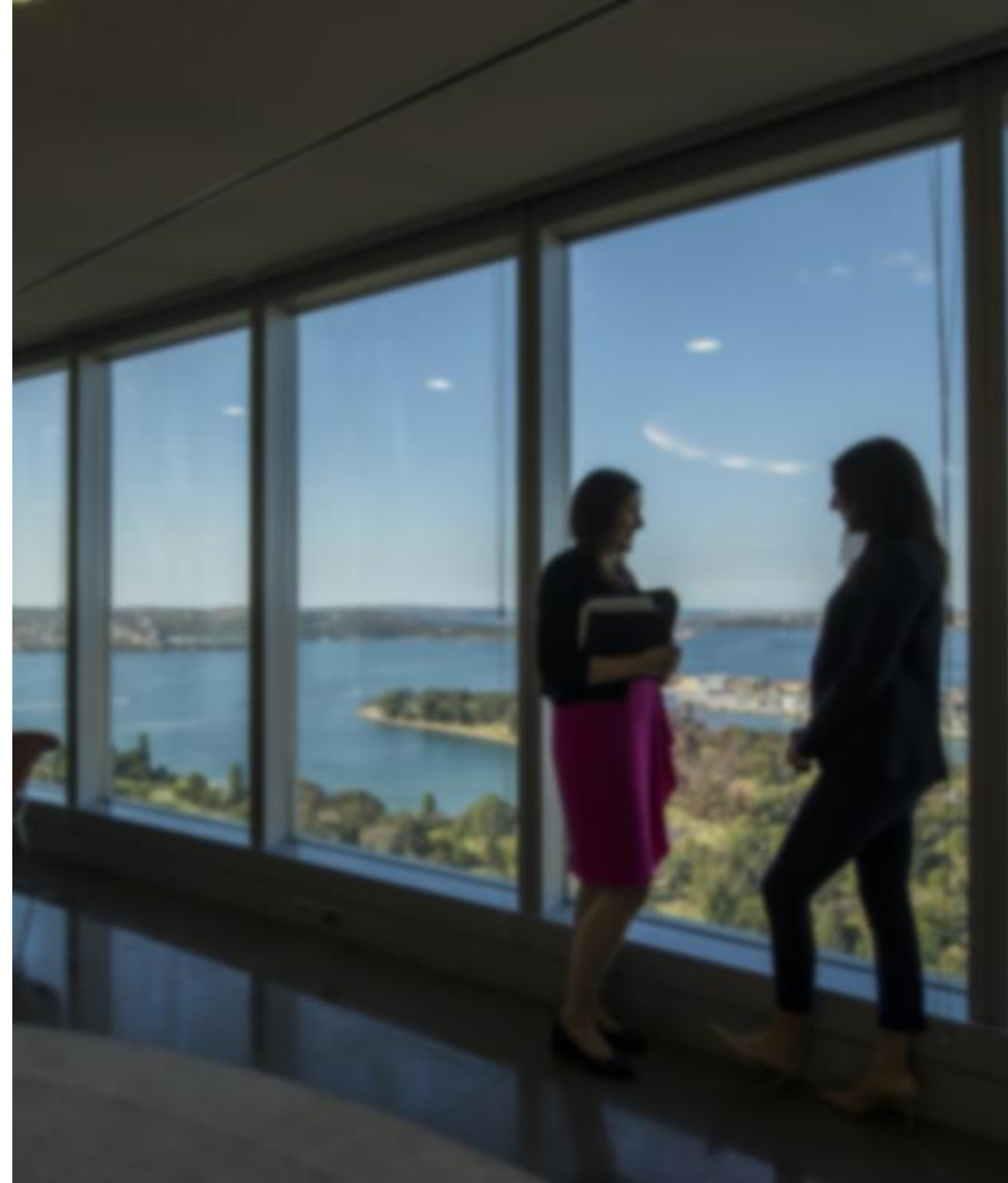
Section 100A – Elements

- A beneficiary (not under a legal disability) must be “presently entitled to a share of income of the trust estate”
- There must be a “*reimbursement agreement*”
 - There is an “*agreement*”
 - Ordinary family or commercial dealing exception
 - Benefit person other than beneficiary
 - Have a tax avoidance purpose
- Nexus requirement

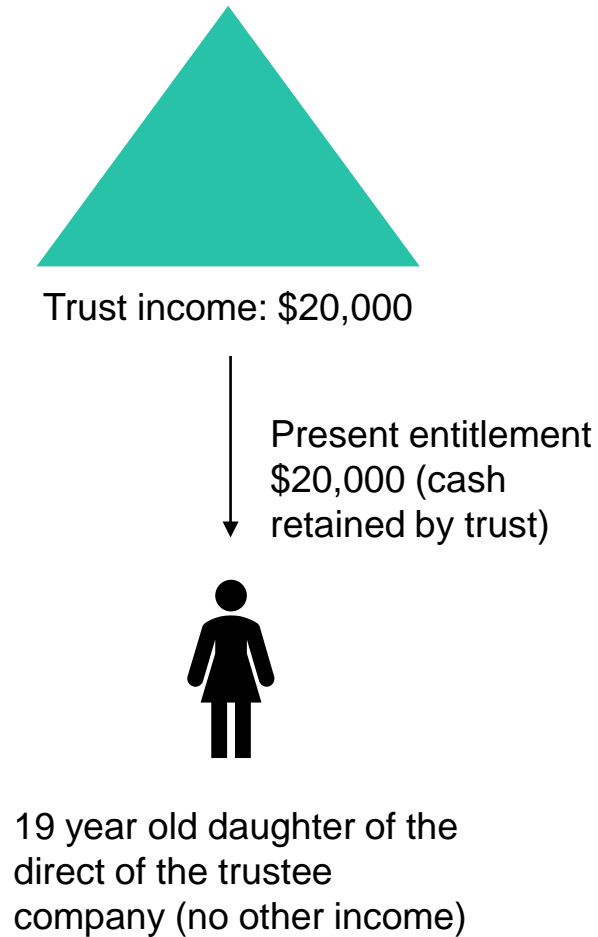


Ordinary Family and Commercial Dealings Exception

- “*The past is a foreign country. They do things differently there.*”
- Section 100A designed to “*counter tax avoidance through trust stripping*”
 - But scope of the provision potentially much broader
- Elements of the ordinary dealings is not enough
 - has to be in the course of those dealings
- No statutory definition but may simply suggest a means of avoiding tax
- Appears to be an objective test
- No objective criteria
- Statutory context suggests a high bar – “*blatant, contrived or artificial*”

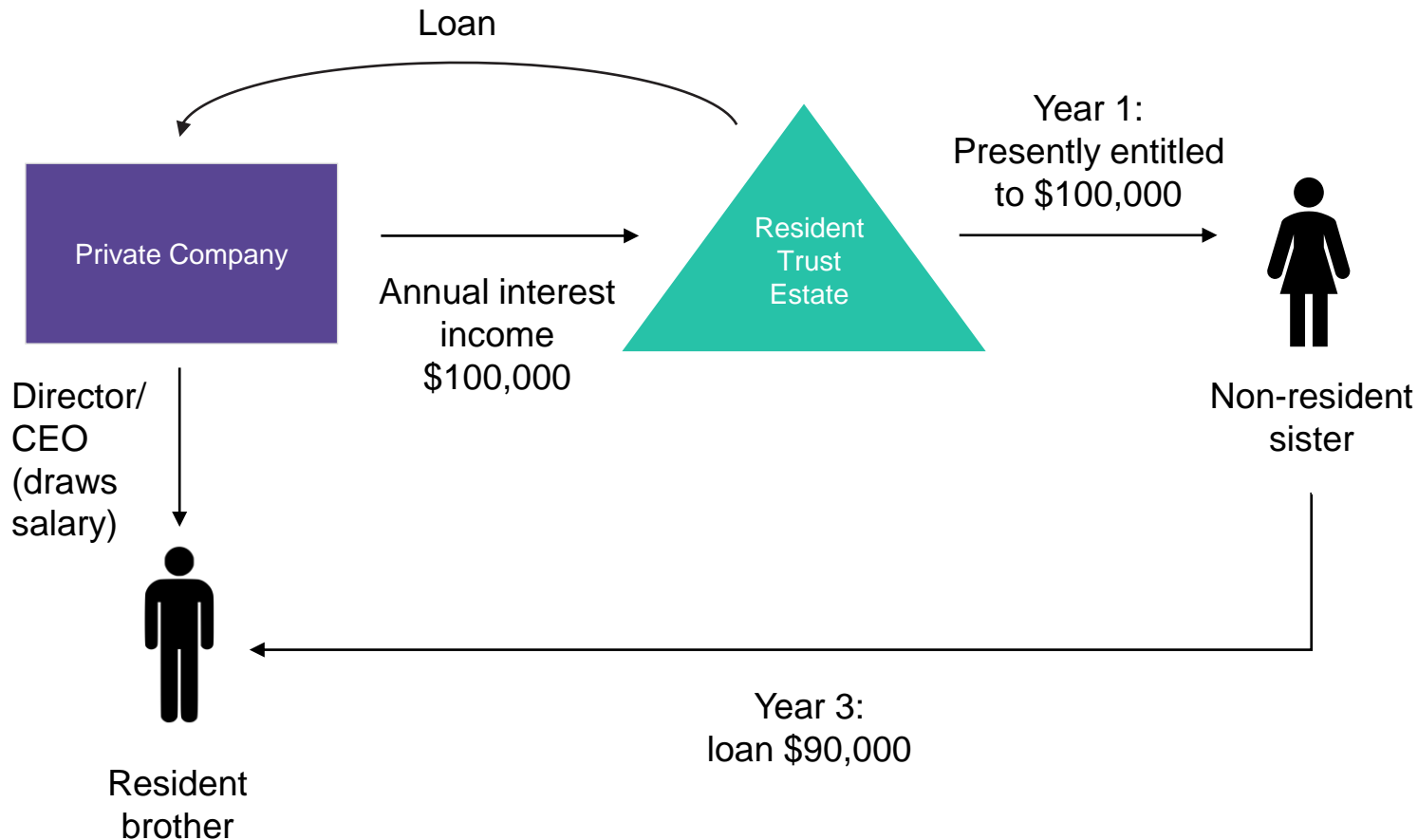


Case Study A: The Basic Case



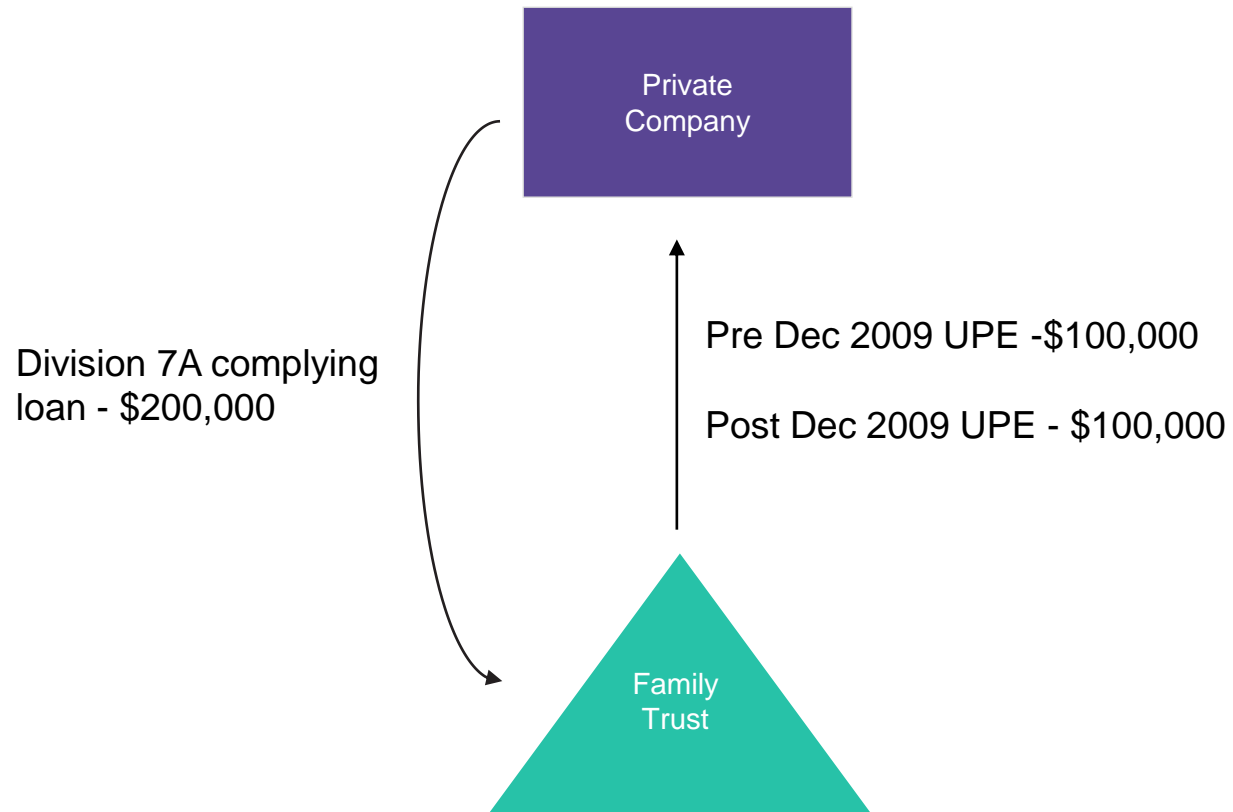
- Is there a present entitlement?
- Is there an agreement that is a reimbursement agreement?
 - Is there an agreement?
 - Does someone other than the beneficiary benefit?
 - Is a tax avoidance purpose?
- Does the present entitlement of the beneficiary arise out of the reimbursement agreement?
- Did it arise in the course of an ordinary family or commercial dealing?

Case Study B: The Offshore Beneficiary



- Is there a present entitlement?
- Is there an agreement that is a reimbursement agreement?
 - Is there an agreement?
 - Does someone other than the beneficiary benefit?
 - Is a tax avoidance purpose?
- Does the present entitlement of the beneficiary arise out of the reimbursement agreement?
- Did it arise in the course of an ordinary family or commercial dealing?

Case Study C: The Corporate Beneficiary



- Is there a present entitlement?
- Is there an agreement that is a reimbursement agreement?
 - Is there an agreement?
 - Does someone other than the beneficiary benefit?
 - Is a tax avoidance purpose?
- Does the present entitlement of the beneficiary arise out of the reimbursement agreement?
- Did it arise in the course of an ordinary family or commercial dealing?

The Future

- Fear and loathing? Cautious optimism?
- What is the scope of the tax avoidance purpose and the ordinary dealing exclusion?
- Advice under development: draft tax ruling
- Guiding principles should be:
 - Restraint
 - Strong, productive and measured consultation and consideration
 - A high bar for entry
 - If change to approach, must be prospective



Q&A



Thanks for joining us.

To contact our team about the issues discussed today:

- Paul Sokolowski: psokolowski@abl.com.au
- Kaitilin Lowdon: klowdon@abl.com.au

Upcoming session:

Wednesday 30 September, 12pm

Session 4: NSW and Vic state tax and FIRB topical issues