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# PROFESSIONAL PRACTICE STRUCTURES

**David W Marks CTA**

**Barrister, Inns of Court, Brisbane**

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# Legal restrictions on structures

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Cannot ignore structure rules:

- Solicitors
- Tax agents
- Consequences if ignore the rules – Jones' Case

Three basic issues:

- Ineffective transactions
- Non recognition, or incorrect recognition of CGT
- Part IVA

Dealing with first issue by referring to some cases including *Kelly*

# Documents & implementation

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Commissioner always argues documents legally ineffective:

- *Everett*
- *Galland*
- *Jones*
- *Case 2/2004* (marine pilot case)
- *Kelly*

Therefore get the documents professionally settled.

- Go outside your own firm
- This imposes the discipline of peer review
- Needn't be someone in your city – brief to another city or interstate

- 20% transaction
  - Nature of partnership
  - Nature of assignee's interest
  - What happened when Mr McFadzean retired
  - Nature of dissolution of a partnership
  - Cashflows all wrong
  - Why not argued as a case where trustees of trust were partners?
  
- 7.857% transactions
  - Accepted despite serious documentary problems
  - Survived successive changes in partnership

# TA 2013/3 - CGT issues

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- Obviously a technical area; people applying for PBR's
- Limits of IT 2540
- Recent discussions about incorporated practices

# TA 2013/3 – Part IVA

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- Cannot tell me not to gift an income producing asset
- Cannot equate returns of my business with those of my brow
- Lack artifice in a standard structure which does what it says on the label



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# Thank you

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forms and return them to the  
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