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**YSP Podcast Transcript: Episode 177. Owners taxed on OC income | display of fire statement | lot property defects | conversion to strata**

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**Amanda Farmer:** Hello and welcome. I'm Amanda Farmer and I have with me today Reena Van Aalst from Strata Central. Hi, Reena.

**Reena Van Aalst:** Hi, Amanda. How are you?

**Amanda Farmer:** I'm doing well, thank you very much. How are you today?

**Reena Van Aalst:** Yes, pretty good for a Friday.

**Amanda Farmer:** Ah, Friday for us, it is indeed. Ready to jump into our strata wins and challenges for the week. Let's kick off with your challenge, Reena.

**Reena Van Aalst:** This is probably one that perhaps many large buildings that might have income coming from non-owners, which is referred to as non-mutual income. It could be renting out common property. It could be a tower remuneration through a lease with Telstra or Optus or any of the other telecommunication providers. And, rather than being taxed, Amanda, by the owners corporation at that level where you pay tax like you would by anyone receiving income. Due to Tax Ruling TR215-3, that income is taxed in the hands of the recipient.

So, basically we have to advise all our lot owners that their portion of the income, which is in accordance with the unit entitlement, their share, is then declared on their individual tax returns. And unfortunately, we've had a few people that have been quite upset by that. And they've rung us and they've said, "Well, I'm not declaring this income. I didn't receive it. Why are you sending me this letter?" Et cetera, et cetera. And unfortunately, I think it is a very unusual thing to understand where you don't physically receive the money in your hand. But it's actually being received in the hands of the owners corporation, that you need to pay tax on that.

This probably wouldn't happen in perhaps too many buildings I think. But in probably the inner city areas, large schemes where they do have the ability to perhaps rent out some common property to a telecommunications tower company or perhaps they've got an apartment. I mean we've got buildings that actually have an apartment that's common property which they rent out. So I'm not sure, Amanda, if you have come across any owners coming to you and complaining about this particular issue?

**Amanda Farmer:** No, I haven't. And I find it fascinating. So the money is still held in the owners corporation's account.

**Reena Van Aalst:** Yes.

**Amanda Farmer:** It is not actually distributed to owners, but they must still declare it as their own income.

**Reena Van Aalst:** Exactly.

**Amanda Farmer:** Very interesting. And you said it's a 2015 ruling.

**Reena Van Aalst:** Yes.

**Amanda Farmer:** And is this something that an accountant has alerted you to somewhere along the line?

**Reena Van Aalst:** Yes, well, I mean, for schemes that I've managed for many, many years, the accountant will always tell us that...

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Obviously we can't give tax advice because we don't have the qualifications. But the accountant will say, "Okay, Reena, this is the income that needs to be declared to all owners. Please prepare a letter and issue with the schedule of payments." But they've got to actually declare.

**Amanda Farmer:** Well, I hope everybody is aware of that. Strata managers, listen up and make sure that if your buildings are receiving this kind of income that you're getting proper advice from the scheme's accountant.

**Reena Van Aalst:** Yes, exactly. But unfortunately I'm not really sure how the government would actually capture this to be honest. I mean if you don't declare it then how would they even know? Because it's not like there's data matching, like if you've got shares or interest and are in a bank, then, or when you get your accountant he's already got it all listed. So he knows more about what you've got. But in this case, I'm not really sure how that would be captured in terms of how the tax department would even know about this. But anyway.

**Amanda Farmer:** Yes, well I suppose they would know where you live if it is your residential property that is in the strata building. And they would know what your investment is if it is an investment property because you'd be declaring that income. So it wouldn't be too hard to be able to weed out those who live in strata buildings. And then to be able to match up what it is that the building is declaring as compared to what it is that the owners are declaring.

**Reena Van Aalst:** Yes, I think it sounds-

**Amanda Farmer:** I think it's possible.

**Reena Van Aalst:** Yes. I think obviously the telecommunications entity is paying the owners corporation. So it's not paying individuals. So I think it's just one of those things where I don't really know. And I think it would only apply, I think to obviously larger schemes where there is a capacity to be able to... There could be even in small medium schemes perhaps where they are renting out common property, non-owners. Then maybe there is, if they are renting out car spaces to third parties for example or...

**Amanda Farmer:** Yes and I suppose by the time it is distributed in accordance with unit entitlements, that figure that the owner is having to declare is probably... I mean who knows what the situation is. But it's not a huge amount and shouldn't really affect their tax position at the end of the day. But it's just the knowledge that you actually do need to disclose that because of this tax ruling.

**Reena Van Aalst:** Yes, and I think also, Amanda, the notion that you're paying tax on money you haven't physically received.

**Amanda Farmer:** Yes, if you are. If it changes your tax position, causes you to pay more tax. It probably doesn't in my second senses.

**Reena Van Aalst:** Yes, exactly.

**Amanda Farmer:** All right. Thank you for that, Reena. I will look up that tax ruling and put a link to that one in the show notes. And if you've got any fact sheets or summaries about this, Reena, that maybe is the shortcut for our strata managers, if you could flick those to me and I will put a link to those in the show notes as well.

**Reena Van Aalst:** Yes, definitely. Amanda.

**Amanda Farmer:** Beautiful. Okay. My challenge for this week relates to fire safety statements. And I just wanted to put this out there to make sure that committees and strata managers are aware of this. We know we have to have our annual fire safety statement prepared. However, do you know that you must display that fire safety statement in a conspicuous position somewhere on the building? Now that will usually be the notice board, but query this, what if a building does not have a notice board because you don't have to have a notice board.

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**Amanda Farmer:** So Reena, I'm not sure if this has come up in any buildings you manage, but it came up recently with an owner that I'm working with. And she said, "I'm aware that we have to display this. It's in the Environmental Planning and Assessment Act, but we don't have a notice board. So am I just going to stick it on a wall somewhere?"

**Reena Van Aalst:** Well, what we do with our schemes, Amanda, is that we would tell them just to get a very small one and perhaps put it in the basement or somewhere that's conspicuous. But yes, it's not necessarily, it's usually a lockable one so that people then can't go adding other notices on the notice board. But yeah, unfortunately you have to have something to display that annual fire safety statement. So even if you don't have a notice board per se for agendas and minutes or any other forms of communication, then you do have to have a notice board to actually display the annual fire safety statement.

**Amanda Farmer:** Yes, probably a good idea to get a notice board. Even in our smallest buildings I think they are put to good use, particularly when it comes to this important certificate.

**Reena Van Aalst:** Yes, exactly. And showing that the building actually is compliant. And also, Amanda, you need to serve a copy on the fire brigade as well. I'm not sure if people are doing that.

**Amanda Farmer:** Oh, okay.

**Reena Van Aalst:** Yes, so that's another requirement too. So when we issue them we also issue a copy to the fire brigade. I think this is probably important for any of the self-managed schemes that perhaps, Amanda listening to the podcast, that perhaps don't have a manager who can guide them in this area. That there's a lot of compliance measures that perhaps they're not aware of. And these 2 that you've mentioned, one that I just now mentioned are very important. And the fire brigade is also aware of the fire safety measures and the AFSS.

**Amanda Farmer:** Yes, definitely. Good reminders there. Not just for our self-managed but for our strata managers as well who might need to make sure that their committees are attending to this. If they're flicking off the AFSS once it's complete to the chair, including a note that that must be displayed is a good idea as well. Okay. Win for this week, Reena, jump in.

**Reena Van Aalst:** This is a very helpful one, I think, for lot owners who are experiencing building defects, Amanda. But these are lot owner losses and not ones that are associated with the common property. So we have a scheme with a high number of defects and individual owners have been advised by our office to basically refer them to Fair Trading or they need to take their own action.

So Fair Trading then rang us and said, "Well, we can't do this. We can't have every single owner just ring us individually. You need to do this." And I said, "Well, unfortunately, as an agent, we are engaged by the owners corporation to look out after the common property. We're not engaged to actually look after individual lots and their losses, in this case. All the defects with the lot. It's like, the kitchen cupboards and things like that, Amanda, and other matters inside the lot that aren't actually common property. And she said, "Oh, is that because you don't get paid to do it?" I said, "Well, it has nothing to do with not getting paid." I said, "It's irrelevant." I said, "I don't have the authority nor the power under the legislation to do it or our agency agreement, etcetera."

So I spoke to the person who's looking after the defects and he said to me that he will arrange someone, a separate sort of lawyer and a person that can collate all the owner losses. And perhaps then put in a claim, not a class action, but a joint claim by all owners. So basically we wrote to all the owners. We gave them the details of that person. And we've asked them to communicate with them directly. Because once the people are forwarded to us we just then forward it back on to that person.

And I think this is a great win for buildings, Amanda, because individual people don't really know what to do, how to do it. And sometimes I think, well if I have to engage a lawyer and I'm already paying so much in levies to cover defects. And having this idea, I think where you can recommend somebody else that can then collate this in a very cost efficient way, and then help all those owners is really made a big difference. I mean people are really grateful that we've actually done this.

**Reena Van Aalst:** And I think for any managers out there perhaps or schemes that are experiencing defects where there are lot

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owner individual defects that, we can help them in a way by having somebody else that we can direct them to and assist them in that way. And I think that makes such a big difference, I think for people who are quite stressed already about buying a new apartment and then having to deal with all these defects.

**Amanda Farmer:** Yes, absolutely. And when you're working with important time frames in place and making sure that those are met, and that all claims are in within the time that they need to be. And if you've got litigation on foot, then making sure you're complying with whatever the Tribunal might tell you, to then it can indeed become very stressful. And having that person there to help is an excellent idea. I love it.

**Reena Van Aalst:** Thanks Amanda.

**Amanda Farmer:** There is a section in our legislation in New South Wales, Section 254 which says that owners, corporations may represent owners in certain proceedings. But that section is very clear that it only applies in proceedings in relation to common property.

**Reena Van Aalst:** Exactly.

**Amanda Farmer:** Yes. So you're right. Where we have lot property defects and problems within the lot, owners do have a right to pursue those, but not in the name of the owners corporation.

**Reena Van Aalst:** Yes. And not with the assistance of the strata manager.

**Amanda Farmer:** Yes, indeed. Well, the win that I wanted to share this week relates to converting a company title building to a strata scheme. Now, we've been doing this for a few years now, Reena, and I don't think we have talked about conversion.

**Reena Van Aalst:** No, we haven't actually.

**Amanda Farmer:** We might've talked a little bit about company title but not this conversion process. I am currently helping owners in what is a 2 lot company title building to go through this conversion process. And it's a process that was instigated by their neighbour who has found out through the local council that it is now possible with council's planning controls to convert to strata. And their neighbour has decided it would be a good idea, would increase the value of their properties. And very astutely I think, these owners came to me and said, "Look, we don't know what this means. We don't know what this is all about. We don't understand this process. Can you please explain it to us, and let us know if there's anything that we need to be on top of?"

**Amanda Farmer:** And I say that they were quite astute because as part of converting from a company title scheme to a strata title scheme, you are doing things like proposing your by-laws. And where somebody who may be looking to sell very quickly, they're going through the conversion, they've increased the value of their property perhaps. And they're going to put it on the market. They don't really care what the by-laws are going to say. But somebody like my clients who are planning to be there for many, many more years, they've got a family, they're happy where they are. They are concerned to deal with things like, "Well, can we keep animals? We have a dog currently and we want to make sure that the by-laws are very clear that we're allowed to keep that dog. We also have some garden beds out the front and we usually maintain those. But we want to make clear in the by-laws that this is a shared garden, and that the other owner should be contributing to that maintenance."

And perhaps even more detailed, and Reena, you and I talked about this back in Episode 147 about 2 lot schemes making by-laws that help them to get along. They're actually thinking, my current client is thinking about developing by-laws that make clear each owner in this new strata scheme is responsible for their own walls, windows, that part of the roof that is above their lot, their own waterproofing in their bathroom. Because they are concerned to avoid all of those disputes that we see in 2 lot schemes. And that, I think we were talking about in Episode 147, where somebody wants things done to their side of the property that the other doesn't agree with. The other doesn't want to pay for, for example, or contribute to.

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**Amanda Farmer:** Where you're essentially living with only one common wall, being your dividing wall. I don't think it's a bad idea to have each owner take on responsibility for that part of the structure that is on their side. And if you don't have a by-law that says that, then the strata law does not help you in that respect. It does say that the common property will be anything past the upper surface or the inner surface of the wall. And the owners corporation will be responsible for dealing with the common property, your walls, your windows, your roof.

**Amanda Farmer:** I don't see why if you have the opportunity on registration of the strata plan to develop those kinds of by-laws that are going to help you live perhaps more peacefully down the track. You never know what neighbour you're going to get.

**Reena Van Aalst:** Yes, exactly.

**Amanda Farmer:** I think it's a good idea.

**Reena Van Aalst:** I think it's a wonderful idea, Amanda. I think especially in a two lot scheme where they usually are prevalent with litigation and disputes. Because the costs are only shared between 2 people. And if someone's not directly benefiting from the repair or replacement of common property, then it they're less likely to want to perhaps contribute.

The only thing I would probably add in that case that you're proposing is perhaps to have an architectural code. Because when people are responsible to do their own thing, you don't want to have a mishmash appearance. So, if you have windows that are a certain style, then you can't have someone trying to replace them later on. Perhaps who's an investor who doesn't want to spend a lot of money, having a cheap one that doesn't even match the other side. And perhaps having an architectural code so that the gardens are maintained to a certain standard and style. So I think that when you don't have that, then I think the value will diminish if the building is not maintained in a holistic way, architecturally.

**Amanda Farmer:** I like that. Thank you very much for that tip. I'll definitely add that to the list.

**Reena Van Aalst:** Yes. So yes. Well that's great, Amanda. I think that you've been able to achieve that. That's a wonderful thing. I think that would stop so many disputes I think. I think I'm sure that Fair Trading and NCAT will be happy with that too.

**Amanda Farmer:** Yes. Indeed.

**Reena Van Aalst:** Reduce their workload.

**Amanda Farmer:** Yes. Now if you are interested in finding out more about the conversion process or if you're in a company title scheme, and you're interested in looking at whether you can convert to strata title, I always say the best place to start is with your local council. Because they are the ones who do need to approve that change. And depending on where you are, the size of your building, things like that, the council may or may not support the conversion to strata.

So once you've got that in principle support, then you can go ahead and make your further investigations about what's involved. It's generally a lot of paperwork and, depending on the size of your building, lots of forms to fill out. Of course you need to involve a surveyor to draw a strata plan. You need a valuer to do your schedule of unit entitlements. You need to have all of your mortgagees, your banks that hold the mortgages to be involved and to consent. So it's really a process with a long checklist. And certainly get lawyers involved who are familiar with that process to hold your hand along the way.

**Reena Van Aalst:** Amanda, can I ask you one question about this conversion process? Many years ago I was involved in one and the problem that we had was that the, we needed to show that stamp duty had been paid on the transfer of shares from the old owner to the new owner. Did you actually have that problem? That you had to show that stamp duty had been paid on, evidence of stamp duty paid on the purchase of the shares?

**Amanda Farmer:** We're not there yet, but I have done a couple of conversions before and I don't recall that being an issue. So I'll

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come back to you on that and see if it comes up.

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**Reena Van Aalst:** Yes.

**Amanda Farmer:** Interesting. Government doesn't want to miss out on its tax.

**Reena Van Aalst:** Well I think for a lot of these company title buildings, sometimes, Amanda, people bought the shares 30 years ago and the conveyancing file has been thrown away. So there's no record.

**Amanda Farmer:** Oh yes.

**Reena Van Aalst:** The ASIC has a record that you actually own the shares. But apart from that there's no evidence of paying stamp duty, so.

**Amanda Farmer:** I'll let you know how that one plays out.

**Reena Van Aalst:** Yes.

**Amanda Farmer:** All right. I think that's it for this week, Reena. Anything to add?

**Reena Van Aalst:** No. All good, Amanda. Thank you so much. Enjoy the rest of your day.

**Amanda Farmer:** Will do. Bye.

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