The Tax Institute

Tax Update

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About Brown Wright Stein

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- Tax
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- Corporate & Commercial
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- Employment
- Estate Planning
- Elder Law
- Intellectual Property
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Our lawyers specialise in working with business owners and their business advisors, such as accountants, financial consultants, property consultants and IT consultants – what we see as our clients' 'business family'. We develop long-term relationships which give our lawyers a deep understanding of our clients' business and personal needs. Over the years we have gained a unique insight into the nature of operating owner-managed businesses and the outcome is that we provide practical commercial solutions to business issues.

At Brown Wright Stein, we believe in excellence in everything we do for our clients. It's this commitment that enables us to develop creative, innovative solutions that lead to positive outcomes.

Contents

Our tax training notes are prepared by Marianne Dakhoul, Jane Harris, Matthew McKee, Gillian Tam, Hayden Rudd, Aritree Barua, Amy Burriss and Luke Hermez.

1. Tax Update Pitstop

The Tax Update Pitstop provides a quick reference to the top 5 tax matters from the month as determined by our experts.

Tax Update Matter	Impact Summary	Further Detail
Item 2.1 SNA Group	The Federal Court has found fees between related entities each year were 'incurred' in the relevant year, despite the fees not being consistent written agreements previously entered into by the entities. While the taxpayer was successful, the case highlights the growing importance of documenting inter-entity arrangements, particularly service fees between related entities. Written agreements are best, but at a minimum, a consistent and commercial methodology for determining fees should be documented, applied and followed.	Page 8
Item 2.2 Shaw	The Administrative Review Tribunal (**ART**) has held that a truck driver was entitled to a deduction for meal expenses incurred and that he met the conditions for the substantiations as his claims had been within the reasonable allowance limits. The ART rejected a contention by the Commissioner that has the expenses actually incurred, if the taxpayer contentions were accepted, exceed the reasonable allowance limits, the substation exception did not apply, notwithstanding that the claims had been limited to the exceptions. While the taxpayer was successful, this case is a reminder that even where substantiation exceptions apply, you must still prove that an amount was actually incurred. Reasonable expectations around not needing receipts will not save a deduction claim if you cannot demonstrate the outlay was real. Acceptable evidence may include samples or diaries showing typical expenditure during part of the income year.	Page 10
Item 2.3 Stagliano	The Supreme Court of Victoria had delivered a decision concerning whether a deceased estate is a trust estate. The issue was being considered in the context of trust distributions and whether the deceased estate was in the class of beneficiaries of the trust on the basis that it was a trust under which other beneficiaries could benefit. The Supreme Court held that, prior to the administration of the estate, the estate was not a trust and, therefore, was not a beneficiary under the relevant trust deed. The case reinforces the importance of ensuring, when preparing trust distribution resolutions, that the persons to whom distributions are being made are beneficiaries. This is particularly important if making distributions to a deceased estate.	Page 12
Item 2.4 Hixson	The Supreme Court of New South Wales has delivered a very important decision concerning the application of NSW foreign person surcharge provisions for duty and land tax. The case concerned whether, in respect of residential land owned by a company, the	Page 15

	modified definition of foreign person for a testamentary trust (which treats a testamentary trust as not being a 'foreign person' in certain circumstances) applies in ascertaining whether the company is a foreign person. The Court held that it does not. Instead, whether the company is a 'foreign person' is based solely on the definition under the *Foreign Acquisitions and Takeovers Act 1975* (Cth). The decision potentially has wider implications for other modifications to the definition of 'foreign person' in the surcharge provisions.	
Item 4.5 Payday Super	Treasury has released exposure draft legislation for the 'Payday Super' changes. While the legislation is only am exposure draft, it signals a fundamentally change to the way employers manage superannuation obligations. The change will impact payroll systems, cashflow planning, and reporting obligations, so early preparation is key. The laws are currently proposed to commence from 1 July 2026.	Page 31

2. Detailed case summaries

2.1 S.N.A Group – deductibility of service fees to related entities

Facts

Theo Peter Coronis, after venturing through a number of interesting careers, acquired a real estate agency in Stafford, Queensland, in 1996. Eventually, this small business became the Coronis group. Theo's son, Andrew Coronis, joined the predecessor family business in the late 1980s and went on to be sales manager of the real estate agency and later CEO.

The Coronis real estate business operated with two main revenue streams: income from the management of rental properties and commissions earned from property sales.

In 2005, the Coronis group underwent a restructure, primarily aimed at safeguarding assets from operational risks such as negligence claims arising from the management of rental properties. As part of the restructure, four entities were created:

1. two operational companies:
   (a) APTR Pty Ltd (**APTR**), which carried on the business of real estate sales and earned commission income; and
   (b) S.N.A. Group Pty Ltd (**SNA**), which managed real estate properties;
2. two asset-holding unit trusts:
   (a) the Emily Trust, established on 2 March 2005, with P.A.C Realty Pty Ltd (**PAC Realty**) as trustee. This trust owned the rent rolls, acquired progressively with borrowed funds. All of the units in the Emily Trust were owned by the Henry Trust; and
   (b) the Henry Trust, established on 1 April 2006, with CLAARS Pty Ltd (**CLAARS**) as trustee. This trust held the "Coronis" trademark. This trust allowed key individuals in the Coronis group to benefit through unit distributions. There were up to 15 unitholders in the Henry Trust during the years in question.

Both APTR and SNA paid service fees to PAC Realty and CLAARS respectively, which were tied to rights granted under licensing agreements established during the restructure.

The original agreements were entered into in 2005:

1. the 2005 APTR Agreement between APTR and CLAARS, whereby CLAARS licensed APTR to use certain intangible assets, including trademarks and goodwill.
2. the 2005 SNA Agreement between SNA and PAC Realty on similar terms.

These were superseded in 2006 by:

1. the 2006 APTR Agreement, which provided that APTR would pay CLAARS a percentage of its gross revenue for the use of the Coronis name in relation to commission-based real estate sales.
2. the 2006 SNA Agreement, on similar terms for property management services.

These service fees were generally capped at no more than 8% of the Coronis Group's net assets.

Over time, the arrangements between the parties did not reflect the agreements and Andrew and Theo were more concerned with ensuring the fees set each year were fair and reasonable, rather than whether they were consistent with the prior agreements.

On 30 November 2021, the Commissioner issued amended income tax and penalty assessments to APTR and SNA for the income years ending 30 June 2015 to 30 June 2019. The central issue was whether the service fees paid to PAC Realty as trustee of the Emily Trust and CLAARS as trustee of the Henry Trust were deductible under section 8-1 of the ITAA 1997. The Commissioner disallowed the claimed deductions, resulting in tax shortfalls of $1,622,508 for APTR and $3,458,294 for SNA.

On 4 February 2022 SNA and APTR objected to the amended assessments, penalty assessments, and interest charges. However, on 30 June 2023, the Commissioner disallowed the objections in full.

On 25 August 2023, SNA and APTR appealed the objection decisions to the Federal Court and simultaneously appealed to the AAT (as it was then known) in relation to the penalty assessments. These proceedings were heard together.

The key issue in the appeal was whether SNA and APTR were entitled to deductions for the service fees under section 8-1 of the ITAA 1997. If so, the amended assessments would not stand. The Commissioner argued that the 2005 and 2006 agreements had expired or lacked sufficient documentation to create a liability that was incurred.

The Commissioner also challenged the reasonableness of the service fees claimed by SNA and APTR, suggesting that they were excessive or not genuinely reflective of services provided. The underlying implication was that the fees might have been used as a vehicle for distributing profits within the Coronis group, particularly to entities under common control, rather than as legitimate business expenses.

Expert evidence from Murray Scott Graham, a chartered accountant, supported the reasonableness of service fees in the range of 7-10% of gross revenue. Mr Graham confirmed that the fees charged could be considered reasonable and might even have been higher.

Issue

Were the service fees deductible under section 8-1 of the ITAA 1997?

Decision

Logan J found that because Theo and Andrew exercised effective control over APTR, SNA, PAC Realty and CLAARS, the obligation to pay service fees under section 8-1 of the ITAA 1997 did not arise from the 2005 or 2006 licence agreements. Instead, he accepted that in each relevant year, Theo and Andrew fixed the service fees through an informal process, with APTR and SNA treating themselves as liable to pay, and PAC Realty and CLAARS treating themselves as entitled to receive, those fees.

In addition, his Honour noted that the rent roll was a valuable asset owned by trustee of the Emily Trust, which was essential to the operation of the property management services provided by SNA. Therefore, as the trustee of the Emily Trust, PAC Realty expected a reasonable return on the rent roll. Similarly, CLAARS as trustee of the Henry Trust owned the intellectual property, being the Coronis name, and employed essential persons in the group's operation. Consequently, Logan J held that during the years in question, APTR and SNA were subject to a liability to pay a service fee. This service fee would be no more than an 8% overall return.

Logan J found that the service fees were fair and reasonable, and a necessary expense. Specifically, APTR and SNA needed to pay for the assets and expertise which were essential to produce the income in their respective operations. The assets and expertise were held by other entities, which similarly expected a return.

Accordingly, the fees were held to be deductible for APTR and SNA.

COMMENT – the key consideration in this case is that Logan J accepted that there was a clear understanding between the parties that a fee would be paid and that it would be set on fair and reasonable basis. A different outcome would have been reached had a fee merely been charged at year end without an understanding of the amount that would be charged or at least the basis on which it would be determined. In *Anglo American Investments Pty Ltd (Trustee) v Commissioner of Taxation* [2022] FCA 971 a practice of setting fees after the relevant income year merely to achieve a tax outcome was found to result in the fees to not have been incurred in the relevant year and, therefore, not being deductible.

COMMENT – Logan J noted that an expenditure voluntarily incurred may be deductible under section 8-1 of the ITAA1997: *John Fairfax & Sons Pty Ltd v Commissioner of Taxation* (Cth) (1959) 101 CLR 30, at 40 (Fullagar J). Consistent with this, even if the fees were not a liability under an agreement in each relevant year, it is unclear why the Commissioner would not accept them to be incurred once paid in the following year.

TIP – having written agreements that provide a methodology for the fees between related parties is best practice to ensure that the fees are properly deductible in the relevant year.

Citation *S.N.A Group Pty Ltd v Commissioner of Taxation* [2025] FCA 240 (Logan J, Queensland)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2025/240.html

2.2 Shaw – substantiation of meal expenses

Facts

Daniel Shaw is employed by VPL Transport (WA) Pty Ltd as a long-haul truck driver. He drives long distances through remote parts of Australia and is away from home for long periods of time, generally 6 days every week.

VPL pays Daniel a travel allowance.

As Daniel drives through remote parts of Australia that may not have available banking facilities or EFTPOS, he keeps about $1,500 in cash in his truck to pay for costs.

Often there are no available food outlets on Daniel's transport route. Where there are outlets, they are usually a roadhouse or a service station. Some examples of Daniel's food purchases on his transport route include breakfast (including coffee) of about $25-$30, lunch (such as a pizza) of about $32, and dinner of up to $65.

To reduce his reliance on food outlets, Daniel has a freezer and a hotplate in this truck so he can prepare his own meals. Daniel and his wife also make sure there is sufficient food in his truck before each trip. Daniel usually does a 'big shop' on a Monday or Sunday before he goes on the road, or transfers funds to his wife so that she may buy food for him.

In the 2021 income year, Daniel claimed a deduction of $33,325 for meal expenses. This was amended to $32,782.50 following a voluntary disclosure.

Daniel calculated his deduction by the multiplying the number of days he was away from home by the maximum reasonable daily allowance under *Taxation Determination* TD 2020/5 *Income tax: what are the reasonable travel and overtime meal allowance expense amounts for the 2020–21 income year?*

$32,782.5 = 310 days away from home x maximum reasonable daily allowance of $105.75.

Daniel argued he actually spent more than $105.75 on food a day and only claimed this lesser amount based on his tax agent's advice that he did not need to substantiate his expenses if he claimed the maximum reasonable daily allowance under TD 2020/5.

Daniel provided a copy of a "fatigue diary", that he was required to maintain for the 2021 income year, and bank statements for periods from 18 April 2020 to 16 April 2021. The diary did not say when Daniel had his meals, just when he had breaks.

The Commissioner argued that Daniel did not demonstrate his claim is for entirely work-related expenses, rather than for private purposes, as required under section 8-1 of the ITAA 1997.

The Commissioner considered Daniel's evidence could be construed as self-serving and considered the bank statements provided by Daniel should be dismissed as they do not connect the expenditure to Daniel with any specificity.

Daniel argued it was clear he incurred the expenditure as he had to eat to live. Daniel also explained his food habits, the withdrawals from his account, and his wife's role in purchasing food.

Section 900-50 of the ITAA 1997 provides that if the Commissioner *"considers reasonable the total of the losses or outgoings **you claim** for travel covered by the allowance"*, there is relief from the substantiation provisions.

Section 900-200 of the ITAA 1997 provides that a taxpayer's right to claim a deduction is not affected by a failure to meet substantiation requirements if they had a reasonable expectation that substantiation was not needed.

On 27 June 2022, following an audit by the Commissioner, Daniel was issued a Notice of Amended Assessment which reduced his deduction for meal expenses to zero.

On 31 January 2023, Daniel objected to the Amended Assessment.

On 4 August 2023, the Commissioner partially allowed the objection, increasing Daniel's allowable deductions for meal expenses to $5,890. The Commissioner said that Daniel had incurred, on average, expenses of $5 for breakfast, $5 for lunch and $9 for dinner.

On 11 August 2023, the Commissioner issued an Amended Notice of Assessment.

On 21 February 2024, Daniel applied for review of the objection decision in the AAT (now the ART).

Issues

1. Did Daniel incur the meal expenses in gaining or producing assessable income?
2. Was Daniel required to substantiate his expenses or is he entitled to rely on an exception?

Decision

Incurred in gaining or producing assessable income

The ART accepted that Daniel incurred the meal expenses while performing his duties as a long-haul truck driver. He was regularly away from home for approximately 310 days during the relevant year and needed to purchase and prepare meals during his journeys. The ART found his evidence to be credible and practical, particularly his explanation of how he sourced meals during trips, including buying food from roadhouses and service stations, as well as preparing meals from groceries stocked in his truck.

The ART made the following comments concerning the Commissioner's position that it was only satisfied Daniel had incurred $19 per day for meal expenses:

> *For the Commissioner, the objection decision allowed $19 per day for Mr Shaw's meals while on the road. **This is, in the Tribunal's assessment, an absurdly inadequate amount.** While the Tribunal appreciates that the Commissioner was seeking to assess the evidence to determine what could be substantiated, sensible tax administration is realistic. I put this reaction to the Commissioner at the hearing, and Ms Dubey said the Commissioner was willing to reconsider $19 and told Mr Shaw it would do so if substantiation could be provided. That seemed to me to be saying that the Commissioner was not willing to move from this position as the point of principle was substantiation.*

On balance, the ART found that Daniel incurred the claimed expenses in gaining or producing his assessable income. In making this finding, the ART distinguished this case from the case of *Duncan v Commissioner of Taxation* [2024] AATA 974 (see our May 2024 Tax Training Notes) because Daniel gave sworn evidence which meant it was not necessary for the ART to estimate what was private expenditure and what was not. The ART found that Daniel's evidence was credible and provided a link between the expenditure on the bank statements and his work.

Daniel's sworn evidence was supported by his fatigue management records and bank statements. While the Commissioner argued that some of Daniel's expenses could have been for private use or lacked clear connection to his work, the ART concluded that Daniel 's overall explanation and supporting documents were sufficient to demonstrate that the expenses were incurred in gaining or producing his assessable income.

<u>Exception to the substantiation provisions</u>

The ART held the exception to the substantiation provisions, in section 900-50 of the ITAA 1997, applied to Daniel on the basis that:

1. a travel allowance was paid to Daniel by VPL;
2. Daniel incurred this expenditure in gaining or producing his assessable income;
3. Daniel's expenditure falls within the limits of TD 2020/5; and
4. the expenses incurred by Daniel were "covered by" the travel allowance.

The ART also held that Daniel had a reasonable expectation that TD 2020/5 would apply due to the advice he received from his tax agent. Therefore, section 900-200 of the ITAA 1997 would have applied to relieve him from the obligation to substantiate his meal expenses.

Daniel's objection was allowed in full.

COMMENT – while section 900-50 provides an exception from substantiation, there is still a need to be able to "prove" the loss or outgoing was incurred. The difference between this case and *Duncan* was that the taxpayer had evidence that, while not perfect, provided proof of what he had incurred. A key aspect of the decision here was that Daniel was considered to be a credible and honest witness by the ART.

COMMENT – The ART noted that the ATO's insistence in this case on full substantiation despite its own TD 2020/5 was inconsistent with its rulings (e.g. TR 2004/6, TR 95/18).

Citation *Shaw and Commissioner of Taxation (Taxation)* [2025] ARTA 224 (General Member J. Dunne, Melbourne/Perth)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2025/224.html

2.3 Re Estate of Stagliano – trust distributions

Facts

On 14 September 2019, Nicola Stagliano died without leaving a will.

Nicola was survived by his wife Patricia Stagliano and Patricia's daughter Lauren, as well as Nicola's children John, Lisa, Sue and Anne-Maree from a previous marriage.

On 28 June 2020, Hazeltone Pty Ltd, the trustee of the Stagliano Family Trust with Patricia as its sole director, resolved to distribute 50% of the Family Trust's income for the 2020 financial year to the 'Estate of Nicola

Stagliano' and the other 50% to Patricia. At that time, the estate had not yet been granted letters of administration.

Clause 3(1) of the Trust Deed provides, relevantly:

> *The beneficiaries of the Trust shall comprise:*
>
> *(a) The following persons: Nicola Stagliano;*
>
> *(b) any person who shall at any time be or have been a spouse of NICOLA STAGLIANO;*
>
> *(c) any child or grandchild of NICOLA STAGLIANO born before the termination date;*
>
> *(d) the parents, brothers, sisters, spouse, widows, widowers, cousins, children and remoter issue and next of kin of the specified beneficiary or specified beneficiaries and the spouses, widows, widowers, children and grandchildren of such parents, brothers, sisters, spouses, widows, widowers, cousins, children and remoter issue and next of kin;*
>
> *(e) Corporations: Any company which now or before the termination date is incorporated, of which a director, or person who beneficially owns a share carrying a right to vote at general meetings, is a beneficiary by reason of a preceding paragraph of this sub-clause.*
>
> *(f) Secondary trust:* ***the trustee or trustees of any trust, whether now existing or hereafter created, ('the secondary trust') of which a beneficiary or discretionary object thereunder is a beneficiary of the trust and where the provisions of the secondary trust require a vesting in interest of the trust property prior to the termination date and that the beneficiaries shall always be such as not to cause this deed to breach any applicable rule or law against perpetuities*** *(bold emphasis added).*

Clause 4(3) of the Trust Deed relevantly provides that if the trustee fails to effectively set aside the whole of the income for a financial year, the undistributed income must be held on trust absolutely for the default beneficiaries named in clause 13(2)(d), in equal shares if there is more than one.

On 4 September 2020, letters of administration were granted to Patricia.

On 5 August 2022, the Court made orders by consent removing Patricia as administrator of the estate and appointed Suzanne Lyttleton as the administrator.

Suzanne sought advice from the Supreme Court of Victoria about the validity of the distribution of income.

Clause 13(2) provides that the default beneficiaries are the spouse, parents, brothers, sisters, widows, widowers, cousins, children and remoter issue and next of kin of Nicola.

Issue

At the time of the resolution on 28 June 2002, was the estate of Nicola an eligible beneficiary under clause 3(1)(f) of the Stagliano Family Trust Deed?

Decision

The Court considered the definition of 'beneficiary' under the trust deed and the wording of the distribution resolution.

In *Re Constantinou* [2013] Qd R 219, [33]-[36], the Supreme Court of Queensland explained the status of the interests of a deceased person's property following their death and until completion of the administration of the estate:

> *On death the entire interest in property (legal and beneficial) owned by a deceased person passes to the deceased person's executor for the purpose of administration under the will. While the estate remains in the course of administration, no person entitled under the will has any proprietary interest in any particular asset.*

While an estate remains under administration, the executor, or in this case, the administrator, retains the entire legal and beneficial interest in all estate property, as the administration of the estate and its assets has not yet been completed, there is no property that forms the subject of any will trusts. Since Nicola's estate had not yet been administered and lacked a trustee, it could not meet the definition of a beneficiary under the Deed

Furthermore, the definition of beneficiaries does not encompass trusts themselves but refers specifically to "the trustee or trustees of any trust." As the terms of the resolution were to set aside income for the 'Estate of Nicola Stagliano', rather than for a trustee, the resolution was invalid in relation to that part of the income purportedly distributed to the estate.

The question then arose as to whether the entire distribution was invalid, or only the part that related to the income purportedly set aside for the estate. This matter was not fully addressed by the submissions of the parties to the case and the Court did not make an official decision. However, Harris J expressed some preliminary views about the effectiveness of the distribution of 50% of the income to Patricia.

The Court considered that it should not be assumed that Patricia, as the sole director of the Trustee would have allocated the full income to Patricia if she had known the distribution to the estate was invalid. Because the Trustee acted on a mistaken understanding, beneficiaries may argue that the director relied on incorrect or irrelevant information, and did not properly consider how the distribution power should be used. If that argument is accepted, the resolution may be considered voidable, meaning it was legally effective at the time it was made, but can later be declared invalid by a Court if challenged by an affected party.

While the Court considered that the distribution was only voidable and not void, it still considered that this meant that the resolution as a whole was an 'ineffective distribution' within the meaning of clause 4(3) of the trust deed and the default beneficiaries would be entitled to the whole of the income for the 2020 financial year under that clause.

COMMENT – That a voidable distribution would be regarded as 'ineffective' prior to the Court setting aside it is hard to rationalise, but it ultimately comes down to a construction of the ineffective distribution clause in the trust deed. It would be interesting to consider how this case would have been decided if was it a tax case. Putting aside the "ineffective distribution" clause, it is suggested that the effect of *Federal Commissioner of Taxation v Carter* [2022] HCA 10 that the estate of Nicola would have still been presently entitled to the income for the purpose of section 97 of the ITAA 1936, even if the distribution was later set aside, as by virtue of it merely being voidable, the estate remained entitled to the distribution as 30 June 2020.

TIP - Take care when a proposed trust beneficiary dies during the income year. A distribution to their estate may be invalid if the estate is not a legally recognised trust or is not an eligible beneficiary under the trust deed. In that case, the income may pass to default beneficiaries or, if none exist, no one may be presently entitled. This can result in the trustee being taxed at the highest marginal rate. It is essential to confirm that the intended recipient is alive or that their estate qualifies as a valid beneficiary under the deed.

Citation *Re: Estate of Stagliano* [2025] VSC 39 (Harris J, Melbourne)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2025/39.html

2.4 Hixson – testamentary trusts as foreign persons

Facts

On 16 July 1999, Lady Mary Fairfax executed a Will which included terms establishing a testamentary trust, known as the Lady Mary Fairfax Trust. These terms were later modified through codicils dated 25 October 1999 and 14 April 2003.

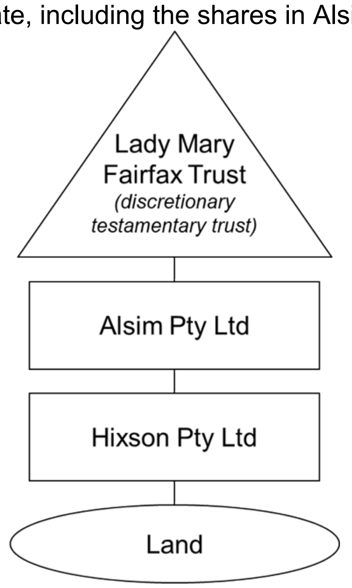
On 18 February 2000, Lady Fairfax acquired ownership of the shares in Alsim Pty Ltd, a company incorporated in Australia.

On 3 April 2012, Hixson Pty Ltd was incorporated in Australia. Since its incorporation, all its shares have been wholly owned by Alsim.

Between 2012 and 2014, Hixson acquired residential land at Catherine Field and Oran Park in New South Wales, amounting to a total of 111.105 hectares. This land later became part of a residential development known as Catherine Park Estate.

In about 2004, Lady Fairfax experienced cognitive decline, rendering her unable to manage her personal and business affairs. These responsibilities were assumed by four individuals under a Power of Attorney dated 16 July 1999.

On 17 September 2017, Lady Fairfax passed away. At the time, she was an Australian citizen and ordinarily resident in Australia. Her residuary estate, including the shares in Alsim, passed to the Lady Mary Fairfax Trust.



On 3 January 2018, probate of Lady Fairfax's Will was granted. Four executors were appointed, who, upon completing their executorial duties on 16 May 2018, became trustees of the Lady Mary Fairfax Trust. An additional three trustees were appointed on the same day to comply with the trust's requirement for seven trustees.

Between 31 December 2015 and 31 December 2022, Hixson settled 928 sales of residential lots from the Catherine Field and Oran Park land.

On 31 December of each year from 2018 to 2022, Hixson was assessed for surcharge land tax on the basis that it was a "foreign person" under section 5A of the *Land Tax Act 1956 (NSW)* (**Land Tax Act**), which adopts the definition of "foreign person" from section 104J of the *Duties Act 1997 (NSW)*. That provision, in turn, incorporates the definition from the *Foreign Acquisitions and Takeovers Act 1975 (Cth)* (**FATA**). Under FATA, a "foreign person" includes an individual not ordinarily resident in Australia, a foreign corporation or government, or the trustee of a trust in which such individuals or entities hold a substantial interest. For discretionary trusts, FATA treats each potential beneficiary as holding a 100 percent beneficial interest for control and tracing purposes. As a result, where a discretionary trust has any potential foreign beneficiary, the trustee, and any company controlled by that trustee, may be deemed a foreign person.

On 24 June 2020, the *State Revenue Legislation Further Amendment Act 2020* (NSW) commenced. Among other provisions, it introduced section 5D into the Land Tax Act, which deems a trustee of a discretionary trust to be a foreign person unless the trust both: (a) has no potential beneficiaries who are foreign persons, and (b) cannot be amended to allow a foreign person to become a potential beneficiary.

Hixson objected to the assessments, arguing that it should not be classified as a foreign person based on Clause 66(4) of Schedule 2 to the *Land Tax Management Act 1956* (NSW) (**LTMA**). Clause 66(4) provides a targeted exemption for trustees of Australian testamentary trusts. A trustee will not be deemed a foreign person under section 5D, despite the presence of foreign beneficiaries, if any of the following conditions are met:

1. the deceased's will or codicil was executed on or before 31 December 2020; or
2. the trust arose from the administration of an intestate estate where the deceased died before, or within two years after, the commencement of section 5D; or
3. the trust resulted from a court order made on or before 31 December 2020 varying the application of a will, codicil, or intestacy rules.

Hixson submitted that this clause exempted the trustees of the Lady Mary Fairfax Trust from surcharge land tax, and that the exemption should extend to Hixson as a company owned by those trustees.

The Chief Commissioner of State Revenue rejected this argument, maintaining that clause 66(4) only applied to trustees directly and did not extend to companies owned by them. As a result, Hixson remained classified as a foreign person for the purpose of the surcharge land tax.

Hixson commenced proceedings in the Supreme Court of New South Wales.

Issue

Does the exemption from “foreign person” status granted to trustees of testamentary trusts under clause 66(4) Schedule 2 to the LTMA extend to entities owned by those trustees for the purposes of surcharge land tax?

Decision

Justice Hmelnitsky found that clause 66(4) of the LTMA operates solely to exempt trustees of qualifying Australian testamentary trusts from being deemed foreign persons under section 5D of the *Land Tax Act*. It does not extend that exemption to entities owned by those trustees, nor does it alter how section 5A applies to determine whether a company is a foreign person under the tracing rules in FATA. The Court held that Hixson’s foreign person status arose independently of section 5D, through the application of section 5A and the FATA tracing provisions. Because Hixson was ultimately controlled by a trust with a foreign beneficiary, FATA deemed Hixson a foreign person regardless of the exemption available to the trustees.

The Court was not persuaded by Hixson’s argument that clause 66(4) should be read broadly to modify the definition of “foreign person” in its application to subsidiaries. Justice Hmelnitsky emphasised that the clause refers specifically to the trustee “in that capacity,” making clear that it addresses the trustee’s own landholdings rather than those of related entities. The clause was found to be a carve-out from section 5D, and not a provision that displaces FATA’s operation or rewrites the broader definition of foreign person used in section 5A.

The Court also rejected Hixson’s reliance on legislative purpose and extrinsic materials, such as ministerial statements and second reading speeches. While these materials described clause 66(4) as a grandfathering provision aimed at relieving unfairness for testamentary trusts, they did not support the interpretation that the exemption was intended to extend to corporate subsidiaries. Justice Hmelnitsky cautioned against deriving purpose from perceived policy objectives rather than from the statutory language itself.

Although the Court acknowledged the practical difficulties and potential unfairness faced by entities like Hixson, it held that those considerations could not override the clear legislative framework. The Court concluded that Hixson remained a foreign person under section 5A for each relevant year and was therefore properly liable for surcharge land tax for each of the relevant land tax years from 2019 to 2023.

Citation *Hixson Pty Limited v Chief Commissioner of State Revenue* [2025] NSWSC 192 (Hmelnitsky J, Sydney)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2025/192.html

2.5 Malcolm – land tax aggregation

Facts

Paul and Susanne Malcolm are joint proprietors of two investment properties in Glen Iris and Mount Martha, Victoria.

On 10 February 2023, the Commissioner of State Revenue assessed Paul and Susanne for land tax of $36,900 in respect of the properties for the 2023 land tax year on an aggregated basis.

Paul and Susanne argued that the assessment was excessive on the basis that section 38 of the *Land Tax Act 2005* (Vic) requires the Commissioner to issue separate land tax assessments in respect of each property they own jointly. If separate assessments were issued in respect of the properties, Paul and Susanne would have only been liable to pay land tax of $21,400. This is because land tax is imposed progressively on the value of land held, with a tax-free threshold for the first $300,000 of value.

Section 36 of the Land Tax Act provides *"… a taxpayer is to be assessed for land tax on land for a tax year on the total taxable value of all taxable land of which the taxpayer was the owner at midnight on 31 December immediately preceding that tax year".*

Section 38 of the Land Tax Act is headed 'Assessment of joint owners of land'. Section 38(2) of the Land Tax Act provides that:

> *… joint owners of taxable land are to be jointly assessed for land tax on the land as if it were owned by a single person, without regard to –*
>
> *(a) the separate interest of each joint owner; or*
> *(b) any other land owned by any joint owner (either alone or jointly with someone else).*

The Commissioner argued section 38(2) of the Land Tax Act operated with section 36 to impose land tax on the aggregated value of the jointly owned properties in the same way that land tax applies to an individual who owns multiple properties.

The Commissioner also argued that while section 38(2) of the Land Tax Act refers to 'land' in the singular, this should be taken to refer to 'lands', i.e. in plural, consistent with section 37(c) of the *Interpretation of Legislation Act 1984* (Vic) that a word in the singular includes the plural unless the contrary intention appears.

Issue

Should separate assessments have been made in respect of the properties?

Decision

The VCAT accepted that, even though section 38(2) of the Land Tax Act refers to 'land' in the singular, that word includes the plural, and there is no contrary intention expressed, or otherwise apparent, in section 38 of the Land Tax Act. The VCAT held the requirement in section 38(2) to disregard ‘any other land owned by any joint owner (either alone or jointly with someone else)’ is consistent with the inclusion of more than one piece of jointly owned land in a joint assessment.

The VCAT stated section 38 of the Land Tax Act should be read with section 36, finding that section 36 addresses the time at which the assessment is to be made, while section 38 is silent on that point. In holding this point, a contrast was made with sections 37 and 37A of the Land Tax Act where separate assessments are provided for and in which a timing provision is included. The VCAT also noted that other provisions in the legislation, such as those relating to charitable and vacant residential land, include specific language allowing for separate assessments, but section 38 does not include any such provision.

When looking at the purpose of the provisions, the VCAT noted it is to support the progressive nature of land tax and only allowing joint owners to claim the benefits of any concessions once.

The VCAT affirmed the Commissioner's decision to assess Paul and Susanne to land tax on the aggregated value of the properties.

Citation *Malcolm v Commissioner of State Revenue (Review and Regulation)* [2025] VCAT 218 (Senior Member R Tang AM, Melbourne) w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2025/218.html

2.6 Wan – remission of interest

Facts

In 2015, Xiaofeng Wan purchased two residential properties in New South Wales. On the notices of sale, the address for service of notices referred to the first street address.

Revenue NSW sent the following to Xiaofeng at the first street address, which Xiaofeng claims he never received:

1. on 16 July 2018, a letter regarding his potential land tax liabilities. The letter explained that, for the 2018 land tax year, a surcharge would be imposed on 'foreign owners' of residential land in NSW. The letter went on to state that, if Xiaofeng was liable for surcharge as a foreign owner, he should update his records within 21 days of the date of the letter;
2. on 9 August 2018, a Notice of Assessment for the 2018 land year of $452.30; and
3. on 28 September 2018 and 15 October 2018, two follow-up notices for payment.

Xiaofeng changed his address to the second street address in February 2016. Revenue NSW obtained details of this from Service NSW (formerly, the RMS) on 13 November 2018.

On 14 November 2018, Revenue NSW sent a legal notice for the overdue assessment to the second street address.

On 19 January 2019, Revenue NSW sent a Land Tax Assessment Notice for the 2019 land tax year. The assessment:

1. recorded a "nil" amount, showing the land tax taxable value was below the general land tax threshold and stating "Not Applicable" under the surcharge taxable value column for each property; and

2. included $452.30 from the 2018 assessment, being the outstanding amount.

On 21 January 2019, Revenue NSW receipted payment of the 2018 assessment.

On 16 November 2023, Revenue NSW reassessed Xiaofeng for surcharge land tax of $13,430.65 for the 2019 land tax year, as well as market rate and premium rate interest of $4,356.83.

English is not Xiaofeng's first language.

On 30 January 2024, Xiaofeng lodged an objection to the reassessment stating:

> *In December 2023, I received the first letter from the NSW government about the surcharge land tax surcharge. After five years of delay due to government reasons, I received the land tax surcharge letter at the end of 2023....*

Xiaofeng conceded his liability to surcharge land tax on 20 March 2024, but queried the interest imposed stating:

> *Why do I need to pay interest on the total balance of the assessment? I received the letter about the Surcharge Land Tax at the end of November 2023, and I started communicating with your division by mail in December 2023...*

Pursuant to section 21 of the TAA, if a tax default occurs, taxpayers are liable to pay interest on the amount of tax unpaid. The interest rate, in accordance section 22 of the TAA, is the sum of the 'market rate component' and the 'premium component'. However, under section 25 of the TAA, the Chief Commissioner may remit interest.

The Chief Commissioner did not remit the interest, as:

1. the market rate component can only be remitted in exceptional circumstances. In the case of *Trust Co. of Australia Ltd v Chief Commissioner of State Revenue* [2002] NSWADT 21, this means circumstances where the default is entirely due to a fault of the Chief Commissioner, or circumstances completely out of the control of the taxpayer, such as postal strikes, serious illness of the taxpayer and natural disasters. None of which, the Chief Commissioner considered, applied to this case; and
2. the premium component can only be remitted if, in the opinion of the Chief Commissioner, the taxpayer took reasonable care. In *Chief Commissioner of State Revenue v Incise Technologies Pty Ltd* [2004] NSWADTAP 19, the following four criteria are, though not exhaustive, relevant to remission or reduction of the premium component of interest:

   (1) all principal tax that is owing and not in dispute has been fully paid;
   (2) there has been co-operation by the taxpayer in providing relevant information to the Commissioner so as to enable the Commissioner to issue assessments;
   (3) such co-operation by the taxpayer has occurred prior to any investigation being commenced by the Commissioner (voluntary disclosure) or, at the very least, within reasonable time after requests for information have been made by the Commissioner – i.e. the taxpayer has taken reasonable care; and
   (4) there has been no wilful default by the taxpayer in not paying tax on time.

While the Chief Commissioner was satisfied there was no intentional disregard of the law, he was not satisfied that 'reasonable care' was taken.

Xiaofeng argued that interest should be remitted as:

1. when he purchased the properties, there was surcharge land tax imposed on 'foreign owners' of residential land in NSW. Xiaofeng said he did not know about any liability to pay surcharge land tax before 16 November 2023;
2. Revenue NSW is a powerful organisation with extensive resources and powers and could obtain any information it desires;
3. he diligently followed Revenue NSW's instructions, but it failed to provide him with guidance;
4. Revenue NSW sent letters to the wrong address, despite him changing his address with Service NSW; and
5. Revenue NSW did not send him any payment letters or search for his registered address for four consecutive years and it was this inaction that led to the accrual of interest.

At first instance, the NCAT refused to remit either the market rate of interest or the premium rate of interest on the basis that Xiaofeng had not exercised reasonable care and there were not exceptional circumstances.

Xiaofeng appealed to the NCAT Appeal Panel.

Issue

Had the NCAT made an error of law in refusing remit interest?

Decision

The Appeal Panel noted that section 25 of the TAA gives the Chief Commissioner a broad discretionary power to remit interest imposed for tax defaults. The current version of the provision, effective from 1 February 2024, does not place any explicit limits on the exercise of this discretion. While it allows the Commissioner to issue guidelines that must be followed if made, no such guidelines have been formally issued.

The Appeal Panel noted that the courts and tribunals have repeatedly affirmed that section 25 confers an unconfined discretion, constrained only by reference to the subject matter, scope and purpose of the provision: *Golden Age and Hannas the Rocks Pty Ltd v Chief Commissioner of State Revenue* [2024] NSWSC 249. These cases support the view that considerations relevant to the discretion are not limited to whether the taxpayer took reasonable care or faced circumstances beyond their control. The discretion must be exercised having regard to the broader factual context, including degrees of taxpayer culpability.

The Appeal Panel noted that a Practice Note CPN-024 has been issued, but its focus on “special circumstances” and “reasonable care” has been criticised as too narrow and potentially unhelpful to decision-makers assessing whether interest should be remitted: *Xin v Chief Commissioner of State Revenue* [2024] NSWCATAD 333.

The Appeal Panel considered it necessary to consider the position separately for the market rate component and premium rate component of interest.

<u>Market rate component</u>

The Appeal Panel considered that the NCAT made no error in concluding that absent fault by the Chief Commissioner or exceptional circumstances, there was no basis to remit the market rate of interest. In this respect, the Appeal Panel noted that the Chief Commissioner does not have any obligation to make enquiries and to track down taxpayers.

<u>Premium rate component</u>

The Appeal Panel considered that the NCAT, at first instance, had erred by constraining itself to an overly narrow inquiry focused on whether the taxpayer had exercised reasonable care or could demonstrate exceptional circumstances. It was found that the NCAT did indeed ask the wrong question. Rather than determining whether there was a broader basis for exercising the discretion in light of the taxpayer’s full personal and factual circumstances, the NCAT limited itself to considerations consistent with the language of the Practice Note. This was an error of law, as the NCAT failed to consider the actual statutory test under section 25, which requires an assessment of whether, in all the circumstances, remission is warranted.

In particular, while the NCAT acknowledged the premium interest component as penal in nature, it did not properly engage with Xiaofeng's personal situation or assess the degree of culpability beyond the absence of reasonable care. Factors that may have provide a basis to remit some of the premium interest, included the following:

1. English is not Xiaofeng's first language;
2. when Xiaofeng acquired the properties, there was no surcharge land tax;
3. the assessment for the 2019 land tax year was nil, although it was incorrect as he was liable to surcharge land tax;
4. Xiaofeng notified Service NSW of a change of his address, although this is not the way to notify Revenue NSW; and
5. Xiaofeng's case is that he was not aware of his obligation to lodge a return, and the Commissioner did not contend to the contrary. It is consistent with there being no wilful default.

The appeal was allowed, and the matter was remitted to the NCAT for reconsideration.

Citation *Wan v Chief Commissioner of State Revenue* [2025] NSWCATAP 54 (19 March 2025)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCATAP/2025/54.html

3. Cases in brief

3.1 Hatfield Plumbing – employee vs contractor

For over a decade, Christopher Hargreaves performed plumbing work for Hatfield Plumbing Pty Ltd, which operated as the trustee for the Peter Hatfield Trust. The sole director of the trustee was Peter Hatfield, who engaged Christopher as a licensed plumber under a verbal agreement on a “do and charge” basis. Christopher was licensed by the Queensland Building and Construction Commission (QBCC) and operated under his own ABN. He submitted invoices weekly, detailing the hours worked for each job and claiming any expenses incurred under his ABN. Christopher used his own tools and vehicle, which he maintained and insured, and advertised his own plumbing business on his work van, also distributing business cards for his services.

In 2021, Christopher complained to the ATO, alleging that Hatfield Plumbing had not made superannuation contributions on his behalf. The ATO investigated and concluded that Christopher was an employee under section 12(3) of the *Superannuation Guarantee (Administration) Act 1992* (Cth) (**SGAA**), assessing the trustee for a superannuation guarantee charge of $123,522. Hatfield Plumbing objected to the assessment, and when the objection was disallowed, it sought review in the AAT. The AAT ruled in favour of Hatfield Plumbing (see our October 2024 Tax Training Notes), finding that Christopher was not an employee under section 12(3). The Commissioner subsequently appealed this decision to the Federal Court.

The Federal Court dismissed the appeal, agreeing with the AAT’s conclusion that Christopher was engaged as an independent contractor rather than an employee. Section 12(3) expands the definition of “employee” to include individuals engaged under a contract “wholly or principally for the labour of the person.” However, the Court found that Christopher’s engagement was not for his labour but to complete specific plumbing jobs and produce a given result. The Court emphasised that the factors outlined by the AAT at [144] supported this conclusion, including that Christopher set his own hourly rate, worked independently without supervision, and had the freedom to accept or reject jobs. Additionally, Christopher used his own tools and vehicle, claimed expenses under his ABN, and advertised his own business, all of which pointed towards an independent contractor relationship.

The Court noted that while Christopher was paid an hourly rate, remuneration by time does not automatically indicate an employment relationship. Referring to cases such as *JMC Pty Ltd v Federal Commissioner of Taxation* (2023) 297 FCR 600 and *Jamsek v ZG Operations Australia Pty Ltd (No 3)* (2023) 296 FCR 336, the Court reiterated that payment by the hour is not inherently inconsistent with an independent contractor relationship. The Court also agreed with the AAT’s finding that Peter exercised little to no control over Christopher’s work, consistent with the expectations for a licensed plumber to perform work without supervision.

The Commissioner argued that the AAT had improperly conflated the common law test for determining employee status with the statutory test under section 12(3). However, the Court rejected this argument, concluding that the AAT had correctly applied the relevant legal principles and appropriately considered the evidence. The Court accepted that Christopher’s arrangement with Hatfield Plumbing was not “wholly or principally for his labour” but was instead for the completion of tasks with an expectation of a specific outcome.

Considering these factors, the Court concluded that Christopher was engaged as an independent contractor, and Hatfield Plumbing had no obligation to make superannuation contributions. As a result, the Court upheld the AAT’s decision and dismissed the Commissioner’s appeal.

Citation *Commissioner of Taxation v Hatfield Plumbing Pty Ltd (Trustee)* [2025] FCA 182 (Logan J)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2025/182.html

3.2 Pascua – offshore employees

Doessel Group Pty Ltd was unsuccessful in its application to seek permission to appeal to the Full Bench of the Fair Work Commission against the decision of Deputy President Slevin in *Ms Joanna Pascua v Doessel Group Pty Ltd* [2024] FWC 2669, made on 26 September 2024 (see our November 2024 Tax Training Notes).

Joanna performed work as a legal assistant for Legal Practice Holdings Group Pty Ltd, which trades as 'MyCRA Lawyers', a related entity of Doessel Group based in Queensland. Joanna lived in the Philippines and performed her duties remotely. Doessel Group terminated the contract it had with Joanna on 20 March 2024, asserting she breached the contract. Following her termination, Joanna filled an application for an unfair dismissal remedy on the basis she was an employee. Doessel Group argued Joanna was an independent contractor.

At first instance, Deputy President Slevin held the relationship was one of employment.

In seeking permission to appeal, Doessel Group contended Deputy President Slevin erred in finding that Joanna was an employee rather than an independent contractor as Joanna:

1. was responsible for the equipment she used for her work;
2. had control over the order of the files she dealt with and her hours of work;
3. used specific skills and experience in providing credit repair services;
4. was paid an hourly rate in excess of the rates generally paid to paralegals in the Philippines; and
5. is a Philippine national who has never worked in Australia or held a work visa enabling her to perform work in Australia.

Doessel Group also argued that the Independent Contractor's Agreement used the term "independent contractor" 52 times and the term "employee" only five times, and that Deputy President Slevin applied the new definition of "employee" and "employer", which now appears in section 15AA of the *Fair Work Act 2009* (Cth), even though it was not in force at the time of the termination of Joanna's contract.

The Full Bench of the FWC found no error in the overall assessment made by Deputy President Slevin. There was nothing to suggest Deputy President Slevin applied section 15AA of the *Fair Work Act* in assessing whether Joanna was engaged as an employee or independent contractor, especially as he expressly referred to the approach in *Personal Contracting* and *Jamsek*. The Full Bench also considered the fact Joanna performed work in the Philippines was not relevant to the legal character of the relationship between the parties.

The Full Bench of the FWC held there is nothing preventing an Australian employer from engaging an employee under a contract of employment to perform work overseas.

Permission to appeal was refused.

Citation *Doessel Group Pty Ltd v Joanna Pascua* [2025] FWCFB 43 (Vice President Gibian, Deputy President Clancy, Deputy President Roberts, Sydney) w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FWCFB/2025/43.html

3.3 Talia – life interest

On 24 May 2019, Colin Edward West died. Colin was survived by Siobhan Blaney (his partner), Michelle West and Sharon West (his two daughters from a previous relationship), and his three grandchildren, namely Zakk Miller (Michelle's son), Dale Townsend and Bryce Townsend (Sharon's sons).

Colin made a Will on 15 May 2018. The Will named Siobhan as executor and trustee of Colin's estate and Zakk as the alternative executor if Siobhan was unable or unwilling to act.

On 21 November 2019, Siobhan obtained a grant of probate.

Zakk sought to remove Siobhan as executor and trustee of the estate and commenced separate proceedings in 2022. Siobhan was eventually removed as executor and trustee of the estate, and the Court appointed Natalie Talia as the administrator.

Natalie applied to the Court for judicial advice in relation to the proper construction of clause 2 of the Will. Clause 2 of the Will read as follows:

> ***I GIVE*** *my house known at the date of this my Will as 133 Albert Street, Warragul, Victoria and if I do not own this house at my date of death any other house that comprises my principal place of residence to my Trustees* ***UPON TRUST*** *for sale with power to postpone sale and to retain the same unsold and* ***I DIRECT*** *that my Trustees shall not be responsible for any loss occasioned through the exercise of the discretionary powers vested in them by this clause and pending sale and subject thereto:*
>
> > *a) To permit my partner* ***SIOBHAN RHAPSODY BLANEY*** *(in this clause called 'the Donee') to have the use and occupation of my property for life;*
> >
> > *b) Subject to the Donee paying all rates taxes and other outgoings from time to time payable in connection with my said property and keeping the same in good order and condition (excluding any structural repairs) to the satisfaction of my Trustees and insured against such risks and for such amounts as my Trustees shall reasonably require with an insurance company approved by my Trustees;*
> >
> > *c) And upon the death of the donee* ***I DIRECT*** *my Trustees to* ***PAY OR TRANSFER*** *my property to form part of my residuary estate.*

Natalie stated that Siobhan has not lived at the property since at least 12 December 2023, but likely since 2021.

Natalie also claimed that Siobhan has not complied with the conditions contained in clause 2(b) of the Will as she had not maintained insurance for the property since 13 February 2020. However, the Will does not set out any consequences for Siobhan failing to comply with the conditions of clause 2 of the Will.

Clause 9(c) of the Will provides the trustees with *"the discretion to apply income and capital for the benefit of"* any beneficiary, which would include Siobhan. Natalie claimed this is inconsistent with clause 2 of the Will being a life interest. Natalie also noted the property is in a poor condition and needs to be sold as the estate does not have the ability to pay for the ongoing costs of retaining and maintaining the property.

Siobhan did not file a notice of appearance or appear at the hearing of this application.

The Court considered the principles regarding the construction of the wills, which are summarised in *Greenham v Greenham* [2020] VSC 749. The fundamental rule in construing a will is "*to put on the words used the meaning which, having regard to the terms of the will, the testator intended"*.

The Court held the nature of the gift of property was that of a life interest. This was established on a plain reading of clause 2 of the Will, which provided Siobhan has the right to *"have the use and occupation of the property for life"*. The Court also held that clause 9(c) of the Will was consistent with giving the trustee the powers to deal with the property in the event the life interest is forfeited.

Siobhan forfeited the gift in clause 2 of the Will as she failed to comply with the conditions in clause 2(b).

Citation *Talia v Blaney* [2025] VSC 131 (Ierodiaconou J, Melbourne)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2025/131.html

3.4 Appeal updates

AusNet Services

AusNet Services Ltd has applied for special leave to appeal to the High Court from the Full Federal Court decision in *AusNet Services Limited v Commissioner of Taxation* [2025] FCAFC 21 (see our March 2025 Tax Training notes). The decision concerned the application of the CGT rollover in Division 615 of the ITAA 1997 to a multi-entity restructure involving AusNet's acquisition of interests in Distribution, Transmission, and Finance, with the Full Federal Court confirming that the roll-over applied despite AusNet's arguments that the restructure was not limited to reorganising Distribution's affairs, did not meet the statutory ratio test, and failed the "nothing else" condition.

Baya Casal

The Commissioner has appealed to the Full Federal Court from the Federal Court decision in *Baya Casal v Deputy Commissioner of Taxation* [2025] FCA 87 (see our March 2025 Tax Training Note). The decision concerned whether a significant reduction in hours and pay of a pre-school teacher could constitute "genuine redundancy".

Bendel

The Commissioner has applied for special leave to appeal to the High Court from the decision in *Commissioner of Taxation v Bendel* [2025] FCAFC 15 (see our March 2025 Tax Training Notes). The decision concerned whether an outstanding unpaid present entitlement (UPE) owed by a trust to a corporate beneficiary could constitute a "loan" under section 109D(3) of the ITAA 1936, with the Full Federal Court affirming the AAT's conclusion that such UPEs do not amount to loans for Division 7A purposes, because they do not involve a transaction that creates an obligation to *repay* an amount, and thus cannot trigger a deemed dividend under section 109D(1).

Quy

The taxpayer has appealed to the Federal Court from the ART decision in *Quy and Commissioner of Taxation (Taxation*) [2024] AATA 245 (see our March 2025 Tax Training Notes). The decision concerned whether an individual was a resident of Australia for tax purposes under the ordinary concepts test and the domicile test during the income years ended 30 June 2016 to 30 June 2020, despite living and working in Dubai under an international assignment.

Tabcorp

The taxpayer has appealed to the Full Federal Court against the Federal Court decision in *Tabcorp Maxgaming Holdings Limited v Commissioner of Taxation* [2025] FCA 115 (see our March 2025 Tax Training Notes). The decision concerned whether Tatts could claim a $1.49 billion deduction under the TOFA regime for a contingent right to receive a terminal payment after its gaming operator's licence expired, but the Court held that no financial arrangement existed under section 230-45 of the ITAA 1997 because the right had ceased due to legislative changes in 2009.

3.5 Other tax and superannuation cases published from 10 Mar to 9 Apr 2025

Citation	Date	Headnote	Link
Gardner and Commissioner of Taxation (Practice and procedure) [2025] ARTA 203	6 February 2025	PRACTICE AND PROCEDURE – Applicant sought review of taxation decision where Respondent did not accept a late objection – No reasoning provided for why late objection should be accepted – Applicant given directions to file statement of facts issues and contentions and further evidence – Respondent provided Applicant further information about the late objection discretion – Applicant repeatedly failed to meet Tribunal directions within a reasonable time – Application dismissed.	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2025/203.html
Murphy and Australian Securities and Investments Commission (Taxation and business) [2025] ARTA 75	6 February 2025	SUPERANNUATION – Applicant disqualified from being an approved auditor of Self- Managed Superannuation Funds (SMSFs) – Applicant's failure to comply with conditions imposed by Respondent (ASIC) on registration as an SMSF auditor – Applicant's failure to comply with applicable auditing standards and reporting requirements – whether the Applicant is a fit and proper person – specific and general deterrence considerations – Reviewable Decision to disqualify the Applicant affirmed	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2025/75.html
Montessori Children's Foundation v Commissioner of State Revenue [2025] QCAT 63	17 February 2025	TAXES AND DUTIES – STAMP DUTIES – EXEMPTIONS – CONVEYANCE OR TRANSFER ON SALE OF REAL PROPERTY – QUEENSLAND – where the Commissioner of State Revenue refused an exemption to stamp duty – where the Applicant sought a review of the Commissioner's decision to refuse the exemption – whether the Applicant is an "institution" within the meaning of s 149C of the Taxation Administration Act 2001 (Qld)	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QCAT/2025/63.html
Lecky and Tax Practitioners Board (Taxation and Business) [2025] ARTA 119	20 February 2025	Tax Agents -Breach of TASA Code of Professional Conduct -— whether the applicant provided tax agent services competently, whether the applicant is a fit and proper person- reviewable decision varied - suspend rather than terminate for a period of two years, or until the applicant has filled all of the outstanding income tax and business activity statements for the tax agents business and the partnership the tax agent is a partner in- order the applicant complete a	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2025/119.html

Citation	Date	Headnote	Link
		course of education that satisfies the Board's requirement for BAS agents of 30 hours of continuing professional education.	
Li v Perpetual Holdings Pty Ltd [2025] NSWSC 175	12 March 2025	EQUITY — Trusts and trustees — Quistclose trusts — Whether funds advanced under unwritten agreement were only to be used for purpose of investing in specific land — Whether subsequent loan agreement had legal effect of wholly dealing with any equitable interest in funds — Where subsequent agreement was written EQUITY — Trusts and trustees — Breaches of trust — Whether defendants held traceable proceeds — Whether corporate defendants liable for knowing receipt or knowing assistance — Whether defendants liable as constructive trustees	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2025/175.html
McPartland v Commissioner of Taxation [2025] FCAFC 23	12 March 2025	TAXATION – appeal from judgment upholding Tribunal decision in relation to default assessments made under s 167 of the Income Tax Assessment Act 1936 (Cth) – whether primary judge erred in dismissing appeal – whether taxpayers had discharged their onus under s 14ZZK(b)(i) of the Taxation Administration Act 1953 (Cth) – whether sufficient evidence was disclosed to Tribunal to discharge onus –appeal dismissed	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCAFC/2025/23.html
Commissioner of Taxation v Zou (No 3) [2025] FCA 216	14 March 2025	PRACTICE AND PROCEDURE – application to vary freezing orders – where respondent taxpayer required to give security for tax-related liability – where Deputy Commissioner of Taxation obtained judgment against taxpayer for tax-related liability – where Commissioner of Taxation sought to enforce judgment debt against real estate owned by taxpayer – where freezing orders restrained Registrar of Titles from registering dealings affecting the property – whether freezing orders should be varied to allow registration of transfer arising from seizure and sale of property by sheriff – application granted	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2025/216.html
Thomas v Chief Commissioner of State Revenue [2025] NSWCATAD 67	17 March 2025	ADMINISTRATIVE LAW – Civil and Administrative Tribunal (NSW) – application made out of time – First Home Owners Grant and First Home Buyers Assistance Scheme – application for extension of time – exercise of discretion TAXES AND DUTIES – First Home	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCATAD/2025/67.html

Citation	Date	Headnote	Link
		Owners Grant and First Home Buyers Assistance Scheme – residence requirement – discretion to ease or waive the requirement	
Williamson v Chief Commissioner of State Revenue [2025] NSWCATAD 69	21 March 2025	TAXES AND DUTIES — Dutiable transactions —Concession from duty under First home buyers assistance scheme — Reassessment — No exercise of discretion - Onus of proof not satisfied	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCATAD/2025/69.html
Australian Investment & Development Pty Ltd v Commissioner of State Revenue [2025] VSCA 47	26 March 2025	TAXATION – Land tax – Appeal – Appeal against assessments by Commissioner of State Revenue – Primary production exemption – Whether land was used primarily for business of primary production – Whether applicant's main undertaking was primary production – Whether applicant's sole shareholder normally engaged in substantially full-time capacity in business of primary production – Whether primary judge's reasons vitiated by unattributed copying of respondent's submissions – Primary production exemption not made out – Vitiating error not established – Application for leave to appeal from primary judge's orders upholding Commissioner's assessments refused. WORDS AND PHRASES – Primary production – Business of primary production – Primarily for business of primary production – Principal business – Main undertaking.	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSCA/2025/47.html
Vatner v Chief Commissioner of State Revenue [2025] NSWCA 35	31 March 2025	TAXES AND DUTIES — land tax — liability —principal place of residence — unoccupied land concession — where multiple strata lots are claimed as principal place of residence — where strata lots are intended to be consolidated into a single lot — where taxable land does not exactly correspond to future lot intended to be occupied — whether subject matter of concession is existing land or future lot — whether substantial coincidence between existing land and future land is required	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCA/2025/35.html

4. Federal Legislation

4.1 Progress of legislation

Title	Introduced House	Passed House	Introduced Senate	Passed Senate	Assented
Superannuation (Better Targeted Superannuation Concessions) Imposition Bill 2023	30/11	9/10	10/10		
Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023	30/11	9/10	10/10		
Treasury Laws Amendment (Tax Incentives and Integrity) 2024	28/11	26/3	26/3	26/3	27/3
Treasury Laws Amendment (More Cost of Living Relief) Bill 2025	26/3	26/3	26/3	26/3	27/3

4.2 2025-26 Federal Budget

On 25 March 2025, the Federal Treasurer handed down the 2025–26 Federal Budget.

Individuals

The tax and tax-related highlights from the budget relevant to individuals include the following:

1. from 1 July 2026, the marginal tax rate for the $18,201 to $45,000 personal income tax bracket will be reduced from 16% to 15%. It will be further reduced to 14% from 1 July 2027;
2. from 1 July 2024, the Medicare levy low-income thresholds for singles, families, and seniors/pensioners will be raised;
3. student loan debts will be reduced by 20%, with other reforms to the repayment system set to begin from 1 July 2025;
4. the start date for the 2024–25 budget measure to strengthen the foreign resident CGT regime will be delayed from 1 July 2025 to either 1 October 2025 or the next available date that is 1 January, 1 April, 1 July, or 1 October, after royal assent; and
5. foreign ownership of housing will be restricted.

Tax Administration

The highlights from the budget relevant to tax administration include the following:

1. the managed investment trust rules will be amended to ensure legitimate investors continue to access concessional withholding tax rates. This will be from 13 March 2025;
2. the start date for the 2023–24 budget measure extending the clean building managed investment trust withholding tax concession will be delayed from 1 July 2025 to the next available date that is 1 January, 1 April, 1 July, or 1 October, after royal assent; and
3. $999 million in funding, over four years, will be given to the ATO to expand its tax compliance activities.

Indirect Taxes

The highlights from the budget relevant to indirect taxes include the following:

1. starting August 2025, indexation of the excise on draught beer and excise equivalent customs duties will be paused for two years;
2. from 1 July 2026, the excise remission cap will increase from $350,000 to $400,000 per financial year for eligible alcohol manufacturers. Similarly, starting 1 July 2026, the Wine Equalisation Tax producer rebate will rise from $350,000 to $400,000 each financial year; and
3. additional tariffs on goods produced or manufactured in Russia or Belarus will be extended for two more years.

4.3 Regulation of tax professionals

The regulation and compliance framework for tax practitioners will be strengthened by enhancing the sanctions available to the TPB. The Government is also proposing to modernise the registration framework and allocate funding to the TPB, over a four-year period starting 1 July 2025, to enhance its compliance efforts, focusing on high-risk tax practitioners.

w https://budget.gov.au/content/bp2/index.htm

4.4 Income tax cuts and changes to Medicare levy thresholds

The *Treasury Laws Amendment (More Cost of Living Relief) Bill 2025* (Cth) passed both Houses of Parliament on 26 March 2025, providing cuts to individual tax rates, and increase the Medicare levy thresholds, as announced in the 2025-26 Federal Budget.

Personal income tax cuts

Commencing 1 July 2026, every Australian individual taxpayer will receive tax cuts, as part of the tax cuts which commenced rolling out on 1 July 2024. Schedule 1 of the Bill sets out the following tax rates:

Income Thresholds and Personal Tax Rates for FY25 to FY28

Income Threshold ($)	2024-2025 and 2025-26 (%)	2026-2027 (%)	2027-2028 (%)
0–18,200	0	0	0
18,201–45,000	16	15	14
45,001–135,000	30	30	30
135,001–190,000	37	37	37
>190,000	45	45	45

Medicare Levy

Schedule 2 of the Bill amends the *Medicare Levy Act 1986* (Cth) and the *A New Tax System (Medicare Levy Surcharge — Fringe Benefits) Act 1999* (Cth) to increase the Medicare levy low-income threshold for individuals and families, and the Medicare levy low-income threshold for the Senior Australian and Pensioner Tax Offset (**SAPTO**). The changes to the Medicare Levy reflect movements in the CPI from the 2024-25 income year, retrospectively.

Medicare levy low-income thresholds 2024-25

	Low-income threshold (above which levy begins to phase in)	**Full Medicare levy (2%) applies for income above**
Singles	$27,222	$34,027
Single Seniors and Pensioners	$43,020	$53,775
Families (not eligible for SAPTO)	$45,907 (plus $4,216 for each dependent child)	$57,383 (plus $5,270 for each dependent child)
Families (Senior and Pensioner)	$59,886 (plus $4,216 for each dependent child)	$74,857 (plus $5,270 for each dependent child)

The Medicare levy phases in at 10 cents for each dollar above the relevant low-income threshold until the full Medicare levy at 2% applies. This column shows the level of income at which the levy begins to be paid in full.

The Bill also amends the low-income threshold to reflect the amounts in the above table in the *Medicare Levy Act 1986* (Cth) and the *A New Tax System (Medicare Levy Surcharge – Fringe Benefits) Act 1999* (Cth).

Treasury Laws Amendment (More Cost of Living Relief) Act 2025 (Cth)
w https://www.legislation.gov.au/C2025A00028/asmade/text

4.5 Payday super

Treasury has released exposure draft legislation to align the payment of superannuation guarantee (**SG**) payment to employees on the day on which they are paid their wage.

Change from quarterly to payday super

At the core of these reforms is a shift from the current quarterly SG contribution requirement to a new framework where superannuation must be paid on the same day that employees receive their wages. This day is referred to in the draft legislation as the qualifying earnings day or QE day.

Under the proposed changes, an employer's liability for the SG charge will be calculated based on whether eligible contributions are received by an employee's superannuation fund within seven days of the QE day. This represents a move away from the current system where SG shortfalls are assessed on a quarterly basis. The intention is to ensure that superannuation contributions are made more promptly and consistently, thereby improving employees' retirement outcomes through more frequent compounding and earlier investment of funds.

To support this new approach, the draft legislation introduces a number of new technical concepts and replaces or updates several existing ones. For example, the term "ordinary time earnings" remains central to the calculation of SG amounts, but the new framework introduces *qualifying earnings* as the unified earnings base for both calculating required contributions and determining SG shortfalls. This is intended to simplify the system by removing the dual use of "salary or wages" and "OTE" found in current legislation.

Employers will also be required to assess their SG obligations more frequently, as SG shortfalls will be calculated in relation to each QE day. If an employer fails to make contributions within the prescribed time, they will be liable for the SG charge, which includes various components: the shortfall amount, a notional interest component (replacing the previous nominal interest component), an administrative uplift, and, in some cases, a choice loading.

The exposure drafts propose closing the Small Business Superannuation Clearing House, which currently helps small employers meet their super obligations. This change aligns with the shift to payday super and aims to streamline administration. Affected employers would need to arrange contributions directly through payroll systems or super funds.

Changes to penalty and interest regime

The exposure drafts propose a more robust penalty regime to encourage timely compliance and deter ongoing non-payment.

A key feature of this new regime is the *administrative uplift* amount, which replaces the existing fixed administration fee of $20 per employee per quarter. The uplift is calculated as 60 per cent of the combined amount of the SG shortfall and the notional interest component. This uplift may be reduced under certain conditions, for example where an employer lodges a voluntary disclosure before the Commissioner initiates an assessment.

The notional interest component will apply from the date an SG shortfall arises and will accrue daily, using the general interest charge rate, until either the contribution is made in full or the Commissioner issues an assessment. This change is designed to ensure that employees are compensated for the delay in their contributions being received, and to prompt employers to act promptly in rectifying any shortfalls.

In addition to the SG charge and the uplift, the draft legislation retains and updates provisions for further penalties. Where an employer fails to pay the assessed SG charge within 28 days of a notice being issued, they will incur a mandatory penalty equal to 25 per cent of the outstanding amount. This increases to 50 per cent for repeat non-compliance within a 24-month period. Notably, these penalties are not subject to remission, reflecting a more stringent approach to enforcement.

Administrative changes and voluntary disclosures

The proposed reforms also update administrative processes to reflect the new structure. Employers will no longer be required to lodge SG statements as a matter of course. Instead, they may voluntarily disclose shortfalls before an assessment is made, which can reduce their liability for administrative uplift. If no voluntary disclosure is made, the Commissioner may issue a default assessment based on available information.

The draft legislation provides for various extensions to the contribution timeframe in specific circumstances. For example, employers will have 21 days to make contributions in relation to a new employee's first pay, and similar extensions are available where contributions are prevented due to fund rejections or exceptional circumstances such as natural disasters.

The reforms maintain the existing treatment of defined benefit schemes. Where employees are members of such schemes, employers may rely on notional contributions as certified by an actuary, which are treated as eligible contributions under the proposed law.

The exposure draft also proposes to ban the advertisement of some financial products to employees whilst employer onboarding into the payday system takes place. The proposed amendments aim to provide greater flexibility as to when an employer can request an employee's stapled superannuation fund details from the Commissioner during onboarding.

The proposed start date for payday super is 1 July 2026. The Treasury is accepting responses to this consultation until 11 April 2025.

w https://treasury.gov.au/consultation/c2025-627396

4.6 Extended GST determination on NDIS supplies

A legislative instrument entitled *A New Tax System (Goods and Services Tax) (GST-free Supply—National Disability Insurance Scheme Supports) Amendment (Application Period) Determination 2025* (Cth) has been made under subsection 117-10(5) of the GST Act. The new instrument amends the *A New Tax System (Goods and Services Tax) (GST-free Supply—National Disability Insurance Scheme Supports) Determination 2021* (Cth).

The effect of the new instrument is to ensure NDIS participants continue to access GST-free NDIS support on services supplied before 30 June 2027, provided these supplies meet the conditions outlined in section 38-38 of the GST Act.

Supplies funded under the NDIS are generally GST-free, even though funding is often provided directly to the participant or a fund manager rather than the supplier. To qualify, the supplies must be reasonable and necessary supports specified in the participant's plan and satisfy substantiation requirements. If a supply does not qualify as GST-free under section 38-38, it may still be exempt under other provisions of the GST Act, such as GST-free health-related services in Subdivision 38-B.

w https://www.ato.gov.au/law/view/document?docid=OPS/LI20251/00001
w https://www.ato.gov.au/law/view/document?docid=ESO/ESLI20251/00001

5. State legislation

5.1 QLD changes for transfer duty and payroll tax

On 20 February 2025, the *Revenue Legislation Amendment Bill 2024* (Qld) was passed and will become law upon Royal Assent.

The Queensland Revenue Office announced the following changes are expected in relation to transfer duty:

1. from 1 May 2025, first home buyers who enter a contract to purchase a new home to live in, or vacant land on which to build a home to live in, will be able to apply for a full transfer duty concession; and
2. from 6 December 2024, recipients of the home concessions will be allowed to rent part of their property during the 1-year occupation period and keep the full benefit of this relief.

In relation to payroll tax, the Queensland Revenue Office announced that from 1 December 2024, wages paid by medical practices to general practitioners will be exempt from payroll tax.

w https://qro.qld.gov.au/2025/02/legislation-duty-payroll-tax/

5.2 Western Australia updates first home owner stamp duty and off-the-plan concessions

The WA government has adjusted the value thresholds for vacant land and homes which qualify for the concessional rate for first home-buyers, aiming to ensure more first-home buyers can access the scheme. In addition, the government has extended and expanded the off-the-plan duty concession. The changes are effective for transactions which were initiated from 21 March 2025. The government expects the legislative amendments will be effective from early June 2025, pending approval through Parliament. For any transactions which occur prior to June 2025, purchasers may be reassessed for a refund of duty, post-settlement.

First Home Owner Duty

The first home owner rate duty is a concessional rate of duty applied to transactions involving the purchase or transfer of a home or vacant land. The WA government announced changes to the threshold value of the land, as set out below.

Vacant land requirements

For a purchase of vacant land to be eligible for no transfer duty or a reduced rate of duty, the following requirements must be satisfied:

1. value of the land must not exceed $450,000 (previously $400,000);
2. no duty is payable on land valued up to $350,000 (previously $300,000); and
3. reduced duty if the value is between $350,000 and $400,000 (previously between $300,000 and $400,000).

Purchase of a home

For a purchase of an established dwelling to be eligible for no transfer duty or a reduced rate of duty, the following requirements must be satisfied:

1. the value of the home must not exceed $700,000 for properties located in the Perth Metropolitan and Peel regions; and $750,000 for properties located outside these regions (previously $600,000 for both);
2. no duty is payable on homes valued up to $500,000 (previously $450,000); and
3. a reduced rate of duty applies if the value is between $500,000 and $700,000 in the Perth and Peel regions, or between $500,000 and $750,000 outside those regions (previously between $450,000 and $600,000).

Off-the-plan Duty Concession

The off-the-plan Duty Concession aims to make home ownership accessible, and encourage the construction of apartment buildings and townhouses. The last date for concession has been extended to 30 June 2026. The changes are set out below:

Pre-construction contracts

Value	Duty Concession	Change
<$750,000	100%	Threshold was previously $650,000
$750,000 - $850,000	Between 100% and 50% of the duty paid or payable. The 100% concession reduces at a rate of 0.05% for every $100 in dutiable value that exceeds $750,000	Threshold was previously $650,000 and $750,000
>$850,000	50%	Threshold was previously $750,000

Under-construction contracts

Value	Duty Concession	Change
<$750,000	75%	Threshold was previously $600,000
$750,000 - $850,000	Between 75% and 37.5% of the duty paid or payable. The 75% concession reduces at a rate of 0.0375% for every $100 in dutiable value that exceeds $750,000	Threshold was previously $650,000 and $750,000
>$850,000	37.5%	Threshold was previously $750,000

In addition, the concession is expanded to off-the-plan purchases of townhouses and villas, not just multi-tiered schemes.

w https://www.wa.gov.au/government/media-statements/Cook%20Labor%20Government/WA-Labor-Government-making-home-ownership-more-affordable-20250324
w https://www.wa.gov.au/government/announcements/changes-the-first-home-owner-rate-of-duty-and-the-the-plan-duty-concession

6. Rulings

6.1 Life interests in property

On 12 March 2025, the ATO published an addendum to Taxation Ruling TR 2006/14, which is about CGT consequences of creating life and remainder interests in property, and of any subsequent dealings in those interests.

The addendum amends TR 2006/14, among other accessibility and readability changes, makes two minor changes.

Granny flats

Before the introduction of Division 137 of the ITAA 1997, the ATO viewed the creation of a right to reside as a CGT event, usually CGT event D1, which involves the creation of a contractual or other legal right. Since the CGT event did not involve the disposal of an interest in the taxpayer's main residence, the main residence exemption was not available.

Division 137 was introduced with effect from 1 July 2021. It provides a targeted CGT exemption for granny flat arrangements, provided that they are documented in a formal written agreement and meet certain conditions. Specifically, the exemption applies where the arrangement involves a family member granting an occupancy right to another family member who is elderly or disabled, and where the right is either for life or for a defined period.

Where these conditions are met, CGT event D1 does not occur, and no CGT liability arises from the creation, variation or termination of the granny flat arrangement.

The ATO has updated paragraph [105] of TR 2006/14, which now directs readers to consider whether Division 137 applies before concluding that CGT event D1 has occurred.

Updates for withdrawn guidance

Paragraphs 16 to 18 of Taxation Ruling IT 2561 *Income tax: capital gains: grants of easements, profits a prendre and licences* (now withdrawn) provided that certain interests in real property are to be treated as created interests for CGT purposes. While IT 2561 has now been withdrawn to form part of the consolidated *Taxation Determination* TD 2018/15, the ATO view has not changed and these paragraphs remain relevant (noting that the section references are to the ITAA 1936).

ATO reference *TR 2006/14A2*
w https://www.ato.gov.au/law/view/document?docid=TXR/TR200614A2/NAT/ATO/00001

6.2 GST-free export supplies

The ATO has proposed changes to two GST rulings concerning the operation of section 38-190 of the GST Act. Section 38-190 provides that supplies of things, other than goods and real property, are GST-free when, in effect, they are for consumption outside the indirect tax zone.

Notably, the draft updates are not due to recent law changes and **do not change the ATO's existing view**. Instead, the draft rulings will reflect past legislative amendments in relation to the "connected with Australia" rules under the *Tax and Superannuation Laws Amendment (2016 Measures No 1) Act 2016* (Cth). In addition, the structure of each of the draft rulings is to be altered through the removal of duplicated content and by reducing the number of examples.

GSTR 2005/6DC

GSTR 2005/6DC is about the operation of section 38-190(3) of the GST Act. Section 38-190(3) essentially negates the GST-free status that would otherwise apply to a supply covered by table item 2 of subsection 38-190(1), where the supply is being made to a non-resident but the supply is to be provided to an entity in the indirect tax zone and the entity in the indirect tax zone is not acquiring the thing wholly for a creditable purpose.

GSTR 2007/2DC

GSTR 2007/2DC examines the circumstances in which the effective use of a supply takes place outside Australia for the purposes of paragraph (b) of Item 3 of the Table in section 38-190(1) of the GST Act. A supply is GST free under Item 3, except where it relates to goods or real property in the indirect tax zone, where the supply it is made to a recipient who is not in the indirect tax zone when the thing supplied is done and the effective use or enjoyment of which takes place outside the indirect tax zone.

The ATO is accepting comments in relation to both rulings until 9 May 2025.

ATO reference *GSTR 2005/6DC*
w https://www.ato.gov.au/law/view/document?docid=DGC/GSTR20056DC1/NAT/ATO/00001
ATO reference *GSTR 2007/2DC1*
w https://www.ato.gov.au/law/view/document?DocID=DGC/GSTR20072DC1/NAT/ATO/00001

6.3 GST margin scheme

On 19 March 2025, ATO has published an addendum to Goods and Services Tax Ruling GSTR 2006/6A3, which is about the meaning of the phrase 'improvements on the land' for the purposes of Subdivision 38-N and Division 75 of the GST Act.

The addendum amends GSTR 2006/6 to reflect the decision of the Full Federal Court in *Commissioner of Taxation v Landcom* [2022] FCAFC 204. In *Landcom*, the Court held that the margin scheme provisions in the GST Act applied separately to each individual interest, even if several freehold interests are supplied as a single parcel of land.

GSTR 2006/6 has three examples. Each example has been amended.

Example 1 now provides as follows:

Example 1 – supply of land comprising separately titled freehold lots used as a single site

47E. Land described in 10 certificates of freehold title has been held by a state entity since before 1 July 2000 and has been used as a school site. The land on 7 of the freehold interests is cleared, with the school buildings being constructed across 5 of these freehold interests and the school oval and facilities established on the other 2 freehold interests. The remaining 3 freehold interests are in their natural state. The entire school site is marketed for sale as the XYZ School. A single contract for sale is drawn up in which the land is described as XYZ School. The contract specifies a single price for XYZ School.

47F. Although the sale of the entire school site is for a single price under a single contract, each of the 10 freehold interests must be considered separately when applying section 38-445. The 3 freehold interests that remain in their natural state are each separate freehold interests in land on which there *are no improvements at the time of sale and are GST-free under section 38-445. The other 7 freehold interests are land on which there are improvements and would not be GST-free under section 38-445. The state entity may use any fair and reasonable method to apportion the consideration across each of the 10 freehold interests being sold.*

Example 2 now provides as follows:

Example 2 – supply of land by way of long-term lease in the ACT

47I. An ACT government entity enters into a single contract for the long-term lease of land in the ACT to another entity. The contract describes the subject land with reference to the Deposited Plan, comprising 15 separate blocks within the same division and section. Each block has a distinguishing block reference number. The contract specifies that 10 of the blocks are to be supplied by way of 10 separate long-term Crown leases. The remaining 5 blocks are to be supplied together under a single long-term Crown lease to facilitate the combined development of that land.

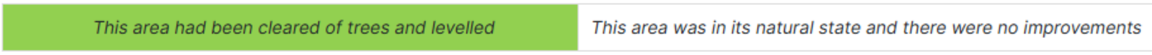
47J. For the purposes of applying Division 75 and sections 38-445 and 38-450 to the supply of the land by way of long-term lease, each of the 11 long-term Crown leases are to be considered separately when determining whether the land contains any improvements at the relevant time.

Example 3 now provides as follows:

Example 3 – land subdivided from land with improvements on the land at 1 July 2000

51B. At 1 July 2000, a state entity held a freehold interest in a large rural block that was in part cleared and levelled and in part remained in its natural state.

Diagram 1: The rural block as at 1 July 2000



51C. After 1 July 2000, the rural block was subdivided into 3 freehold lots to be sold separately. The state entity cleared the rest of the original block and constructed new premises on each lot. Each lot is sold under the margin scheme.

Diagram 2: The rural block as at the time of sale after 1 July 2000

51D. Lots 1 and 2 are land on which there were improvements as at 1 July 2000. Lot 3 is land on which there were no improvements as at 1 July 2000. The state entity may work out the margin for the supply of each of the lots based on obtaining an approved valuation as mentioned in subsection 75-10(3). For the supply of lots 1 and 2, the relevant valuation date is set out in table item 3 of subsection 75-10(3).[7] For the supply of lot 3, the relevant valuation date is set out in table item 4 of subsection 75-10(3).

51E. The same conclusion applies even if lots 1, 2 and 3 were sold as a single parcel of land, for a single price. However, the state entity would need to use a fair and reasonable method of apportionment to ascertain the consideration for each of the 3 freehold interests supplied.

ATO reference *GSTR 2006/6A3*
w https://www.ato.gov.au/law/view/document?docid=GST/GSTR20066A3/NAT/ATO/00001

6.4 FBT – cents per kilometre rate 2026

Taxation Determination TD 2025/1 outlines the FBT rates to be applied on a cents per kilometre basis when calculating the taxable value of a fringe benefit from private use of a motor vehicle other than a car. These rates apply for the FBT year commencing 1 April 2025, and reflect adjustments for inflation based on the Consumer Price Index.

The rates for the FBT year commencing 1 April 2025 are as follows:

Engine Capacity	Rate per km
0 – 2500 cc	69 cents
Over 2500 cc	80 cents
Motorcycles	20 cents

ATO reference *TD 2025/1*
w https://www.ato.gov.au/law/view/document?docid=TXD/TD20251/NAT/ATO/00001

6.5 FBT – reasonable amounts for food and drink allowances 2026

Taxation Determination TD 2025/2 sets out the reasonable amounts for food and drink expenses incurred by employees receiving a living-away-from-home allowance (LAFHA) fringe benefit for the FBT year commencing 1 April 2025. If an employee's expenses are within these amounts, substantiation is not required; otherwise, full substantiation must be provided to treat the food component as exempt from FBT. The reasonable amounts differ based on whether the employee is within Australia or overseas, with adjustments based on family size and location cost group.

ATO reference *TD 2025/2*
w https://www.ato.gov.au/law/view/document?docid=TXD/TD20252/NAT/ATO/00001

6.6 VIC – Application of regional payroll tax rate

On 20 March 2025, the Commissioner of State Revenue published Revenue Ruling PTA-042 to clarify the eligibility requirements for the reduced payroll tax rate available to regional employers under clause 2 of Schedule 2 of the *Payroll Tax Act 2007* (Vic). The ruling primarily addresses how the terms "regional employee" and "regional employer" should be interpreted, particularly in the context of remote and hybrid working arrangements.

Under section 3A(2) of the Payroll Tax Act, an employer qualifies as a regional employer if at least 85% of its total taxable wages for a financial year are paid to regional employees. Meeting this annual threshold removes the need to satisfy the same percentage test in each individual month. Importantly, the location of the employer's registered office or principal place of business has no bearing on eligibility for the reduced rate. The definition of a regional employee, provided in section 3(1), requires that more than 50% of the services performed by an employee during a given month occur in regional Victoria, as defined in section 18(8) of the *First Home Owner Grant and Home Buyer Schemes Act 2000* (Cth). In remote working scenarios, the physical location of the employee while working, typically their home, determines whether their work qualifies as being performed in regional Victoria.

The ruling outlines a two-step process to determine eligibility for the reduced rate: first, an assessment of whether an employee is a regional employee in a given month; and second, an evaluation of whether 85% or more of the employer's taxable wages for the month or the financial year are paid to such employees. The 85% threshold is strictly applied, with no allowance for marginal cases.

Employers claiming the reduced regional rate must maintain comprehensive records that substantiate their claim, in line with Part 8 of the *Taxation Administration Act 1997* (Vic). Acceptable evidence includes documents specifying work locations and responsibilities, payroll reports with detailed wage breakdowns, employment contracts, hybrid work agreements, logbooks, GPS data, access card records, and, depending on the industry, appointment calendars or Telehealth billing records. The ruling makes clear that vague, backdated, or imprecise records will not be accepted.

Several examples illustrate the ruling's application. In one, an employer based in Geelong with employees working predominantly from homes in metropolitan Melbourne was found ineligible because only 35% of wages were paid to regional employees. Another example involving a Melbourne-based psychology practice delivering Telehealth services to regional clients was similarly ineligible, as the services were physically performed from non-regional locations. In contrast, a logistics business with regional operations met the 85% wage threshold and qualified for the reduced rate.

w https://www.sro.vic.gov.au/legislation/application-regional-rate

6.7 QLD – payroll tax and duties public rulings and practice direction updates

On 3 March 2025, Chief Commissioner of Queensland State Revenue updated the following public rulings and practice directions:

1. Public Ruling DA085.1.11 *Concession for homes and first homes—occupancy requirements*. This ruling was updated to insert a new example to illustrate a circumstance that will result in partial loss of the concession;
2. Public Ruling PTAQ000.6.5 *Relevant contracts—medical centres*. This updated ruling acknowledged Public Ruling PTAQ014.1, which outlines the terms of an administrative arrangement under which wages paid or payable by a medical practice to a general practitioner on and from 1 December 2024 are not liable to payroll tax and a mental health levy. However, the updated ruling confirms that the application of this administrative arrangement is limited by the definition of "medical practice" and "medical practitioner" under the *Payroll Tax Act* and therefore does not extend to wages paid or payable by other types of medical centre businesses (e.g. a dental clinic or physiotherapy practice). This administrative arrangement also does not extend to payments to other types of health practitioners (e.g. a dentist or physiotherapist);
3. Public Ruling DA000.18.4 *Concessions for homes and AFAD exemption for specified foreign retirees—disposal and partial renting between 10 September and 5 December 2024.* This ruling was updated by amending Example 1, which relates to a lease of a part of the property where liability arose before 1 September 2024 and the lease ended after 5 December 2024, and Example 3, which relates to multiple leases;
4. Public ruling DA000.20.3 *Concessions for homes—disposal and partial renting on or after 6 December 2024.* This ruling withdraws Public Ruling DA000.20.2, which previously set out the terms of an administrative arrangement that from 6 December 2024 allowed a recipient of a home concession to lease or grant exclusive possession of part of the property during the occupation period and retain the full benefit of the concession;
5. Public Ruling PTAQ014.1.2 *Payroll tax exemption for wages paid to general practitioners*. This ruling withdraws Public Ruling PTAQ014.1.1, which previously set out the terms of an administrative arrangement that allowed for wages paid or payable by a medical practice to a general practitioner to be exempt from payroll tax and the mental health levy; and

6. Practice Direction DA000.1.5 *Reassessment of transfer duty—home concessions—where not all taxpayers comply with the conditions.* This direction replaces Practice Direction DA000.1.4. It explains the Commissioner's practice in identifying the taxpayer to whom a reassessment under section 153 or section 154 of the *Duties Act 2001* is issued where all the following apply:
   (a) a number of taxpayers have purchased residential land or vacant land;
   (b) an assessment of transfer duty has been made based on at least one taxpayer receiving a concession under Chapter 2, Part 9 of the Duties Act;
   (c) that assessment has been paid;
   (d) at least one of the taxpayers who received a concession failed to satisfy the occupancy requirements; and
   (e) the reassessment was required under section 153 or section 154 of the Duties Act.

w https://qro.qld.gov.au/2025/03/payroll-tax-and-duties-public-rulings-and-practice-direction-updates/

7. Private rulings

Taxpayers cannot rely on private rulings obtained by other taxpayers. Private rulings are not binding on the Commissioner in relation to taxpayers other than the rulee(s) and provide no protection (including from any underpaid tax, penalty, or interest). Additionally, private rulings are not an authority for the purposes of establishing a reasonably arguable position for taxpayers to apply to their own circumstances. For more information on the status of edited versions of private advice and the reasons the ATO publishes them, refer to PS LA 2008/4.

7.1 GST residential premises – light industrial zoned property

Facts

The taxpayer is registered for GST as a partnership and has been since July of an unspecified year. The taxpayer owns two properties, referred to as Property A and Property B. Property A was purchased in an unspecified year and has been used for commercial purposes. The taxpayer entered into a contract to sell Property A in April 2024, with settlement scheduled for July 2024.

Property B was also purchased in an unspecified year and has been used as the taxpayer's primary residence. In April 2024, the taxpayer entered into a contract to sell Property B, with settlement also scheduled for July 2024.

Property B is a four-bedroom house with two bathrooms, a fully functioning kitchen (including a gas stove, exhaust, and oven), a communal living area, and a garage situated at the rear of the property with a driveway along the side. The taxpayer has lived in Property B with their two children since purchasing it. The taxpayer has also claimed a land tax exemption for Property B on the basis that it is their principal place of residence.

Both Property A and Property B are zoned as light industrial use. The purchaser of Property B has paid the GST component of the purchase price into the taxpayer's solicitor's trust account, in accordance with the sales contract. These funds have not been disbursed.

Question

Is the taxpayer making a taxable supply for the sale of Property B?

Ruling

<u>Is the sale of Property B a taxable supply?</u>

Under section 9-5 of the A New Tax System (Goods and Services Tax) Act 1999* (GST Act), a supply is a taxable supply if it is made for consideration, in the course or furtherance of an enterprise carried on by the supplier, is connected with Australia, and the supplier is registered or required to be registered for GST. However, a supply is not a taxable supply to the extent that it is GST-free or input taxed.

In this case, the taxpayer meets the requirements of section 9-5(a) and (c), as the sale of Property B is for consideration and is connected with Australia. However, the sale is not GST-free under any provision of the GST Act. The remaining issue is whether the sale is input taxed.

<u>Is the sale of Property B an input taxed supply?</u>

Under section 40-65(1) of the GST Act, the sale of residential premises is input taxed to the extent that the premises are used predominantly for residential accommodation, regardless of the term of occupation. Property

B meets this definition, as it has the physical characteristics necessary for residential accommodation and has been occupied by the taxpayer and their children as a primary residence.

However, section 40-65(2) provides that a sale is not input taxed if the residential premises are either commercial residential premises or new residential premises.

Is Property B commercial residential premises?

The definition of commercial residential premises in section 195-1 of the GST Act includes hotels, motels, inns, hostels, boarding houses, or similar types of accommodation. Property B does not fall within this definition and is, therefore, not considered commercial residential premises.

Is Property B new residential premises ?

Under section 40-75(1) of the GST Act, residential premises are considered new residential premises if they have not previously been sold as residential premises (excluding commercial residential premises), have not been subject to a long-term lease, have been created through substantial renovations, or have been built to replace demolished premises on the same land.

In this case, the house situated on Property B is not new residential premises, as it has not undergone substantial renovations and was not built to replace a demolished building. Accordingly, Property B does not meet any of the criteria for new residential premises under section 40-75(1).

Conclusion

As Property B is neither commercial residential premises nor new residential premises, its sale is input taxed under section 40-65(1). Consequently, the sale is not a taxable supply, as it does not meet all the requirements of section 9-5. Therefore, the taxpayer is not liable to pay GST on the sale of Property B.

ATO reference *Edited Private Advice Authorisation No. 1052340072866*
w https://www.ato.gov.au/law/view/document?docid=EV/1052340072866

7.2 GST residential premises – short term accommodation

Facts

The taxpayer operates a leasing enterprise and is not registered for GST. The taxpayer's sole director and shareholder is an individual employed in another occupation. The business leases multiple apartments from third parties under a standard Residential Tenancy Agreement, which are then sublet to short-term occupants.

Each apartment includes standard residential facilities such as bedrooms, bathrooms, a kitchen, and living areas. The apartments are rented out for various durations, with a minimum lease period of one week. The taxpayer does not provide additional services such as daily cleaning, linen, or meals; instead, occupants are required to maintain their own supplies. A refundable holding deposit is collected at the beginning of each tenancy, and rent is paid via bank transfer.

Accommodation pricing is determined based on market rates, and the taxpayer retains discretion over rent adjustments. The apartments are let in their existing physical condition, and tenants are expected to vacate them in the same state. The primary source of the taxpayer’s income arises from leasing these apartments.

Questions

1. Is the taxpayer making taxable supplies under section 9-5 of the GST Act when supplying short-term residential accommodation in the leased apartments?

2. Is the taxpayer required to be registered for GST under section 23-5 of the GST Act, given that their income is derived solely from input-taxed supplies of residential accommodation?

Ruling

Are the apartments 'residential premises'?

The ATO noted that section 195-1 provides that premises are residential premises if they are actually used for residential accommodation, regardless of the term of occupation, or if they are designed, built or modified to be suitable for residential use.

In ascertaining whether premises are residential premises, the determination is based on physical characteristics, not the subjective intent of the user or owner.

To be residential premises, the premises must provide shelter and basic living facilities such as a bathroom, toilet, laundry, bedroom, living area and a kitchen

Applying this to the apartments, the ATO note that they provide shelter and basic living facilities and have the physical characteristics of residential premises. Accordingly, the apartments are suitable and capable of being used for residential accommodation.

As a result, the apartments are residential premises under section 195-1 and the supply of them by way of lease will be input taxed unless they are considered commercial residential premises.

Are the apartments commercial residential premises?

The ATO noted that under section 195-1 of the GST Act, commercial residential premises include:

> *(a) hotel, motel, inn, hostel, or boarding house;*
>
> *…*
>
> *(f) anything similar to residential premises described in paragraph (a) to (e).*

The ATO referred to the public ruling GSTR 2012/6 and commented as follows

The terms "hotel", "motel", "inn", "hostel", and "boarding house" take their ordinary dictionary meanings and they share a common attribute of providing short-term accommodation for guests

Premises are more likely to be commercial residential if they:

1. operate on a commercial basis;
2. accommodate multiple unrelated guests;
3. are available to the public;
4. have centralised management;
5. provide services (e.g. cleaning, meals); and
6. do not grant exclusive tenancy rights.

The ATO noted that, ultimately, the classification must be based on overall impression, weighing physical characteristics and operational facts.

Applying this to the apartments, the ATO noted the following factors supporting the classification as commercial residential premises":

1. operated commercially, with profit intention;
2. advertised to the public;

3. accommodates multiple unrelated guests;
4. off-site central management;
5. provides basic furniture, utilities, and Wi-Fi; and
6. occupants are usually travellers, not permanent residents.

However, the following factors weighed against the apartments being commercial residential premises:

1. no significant commercial infrastructure (e.g. reception, dining or meeting areas, gyms, or bars);
2. no food, cleaning, linen, or room services provided;
3. guests are expected to clean and maintain the premises themselves; and
4. no on-site supervision or provision of board.

The ATO concluded that the absence of essential services and infrastructure usually associated with hotels, motels, etc., outweighs the commercial and operational elements. Therefore, the apartments are not commercial residential premises.

As a result, the supply of accommodation in the apartments is input taxed residential premises under section 40-35(1).

Required to be registered for GST?

The ATO also concluded that the taxpayer is not required to register for GST under section 23-5 of the GST Act. Since the taxpayer's only income is derived from input-taxed residential premises, it is excluded from the calculation of their GST turnover.

As GST turnover of the Taxpayer does not meet the registration threshold, they are not required to be registered for GST.

ATO reference *Edited Private Advice Authorisation No. 1052341213289*
w https://www.ato.gov.au/law/view/document?docid=EV/1052341213289

7.3 GST residential premises – sale

Facts

The Taxpayer is registered for GST.

The Taxpayer purchased a Property as an investment.

The Property consists of:

1. a house with a kitchen, living/dining area, laundry, bedrooms, bathroom and a garage, and,
2. an attached self-contained unit.

The Property was leased as two separate dwellings.

Improvements have been made to the Property and the Taxpayer lodged a subdivision application. The subdivision was approved.

The Taxpayer is contemplating selling one or both of the units.

Questions

1. Will the sale of either of the units be a taxable supply pursuant to section 9-5 of the GST Act?

2. Will the Taxpayer be required to give written notice under section 14-255 of Schedule 1 to the TAA 1953 to the purchaser, advising that they must make a payment under section 14-250 of Schedule 1 to the TAA 1953?

Ruling

Sale of the units a taxable supply?

The ATO noted that section 9-5 of the GST Act outlines the four key elements that must be satisfied for a supply to be considered taxable: it must be made for consideration, in the course or furtherance of an enterprise, connected with Australia, and the supplier must be registered or required to be registered for GST. However, even if these criteria are met, a supply will not be taxable if it is either GST-free or input taxed.

In this case, the sale of Units meets most of the criteria—it is made for consideration, in the course of a leasing enterprise, and is connected with Australia. However, the supplier is not registered for GST. Additionally, the question is whether the sale of the units is input taxed.

Under section 40-65(1), the sale of residential premises is input taxed if the premises are to be used predominantly for residential accommodation. However, section 40-65(2) excludes a supply new residential premises from being input taxed (unless they have been used for residential accommodation since before 2 December 1998).

The next issue is whether the units qualify as new residential premises under section 40-75. According to this provision, new residential premises include:

1. premises not previously sold or leased as residential premises and have not previously been the subject of a long-term lease;
2. premises created through substantial renovations of a building; and
3. premises built to replace demolished premises on the same land.

The ATO noted that the subdivision of the building into strata-titled units, in itself, does not create new residential premises unless accompanied by substantial renovations. According to GSTR 2003/3, substantial renovations must affect the building as a whole, and must involve the removal or replacement of all or substantially all of the building's structural or non-structural components. Merely cosmetic upgrades—such as painting, replacing fittings, or sanding floors—do not meet this threshold.

The ATO noted that, although extensive renovation work was carried out, the renovations did not result in the removal or replacement of substantially all of the building, nor did they affect most rooms. The building, when considered in its entirety, was not transformed in a way that satisfies the definition of substantial renovations under section 195-1. Therefore, the units do not qualify as new residential premises under section 40-75(1)(b).

Consequently, the sale of either of the Units would be an input taxed supply of residential premises.

Withholding notice

The ATO noted that paragraph [15] of *Law Companion Ruling* 2018/4 lists the circumstances where a vendor is not making a taxable supply as follows:

> *A purchaser only has a GST withholding obligation when a vendor is making a taxable supply. A vendor will not be making a taxable supply in situations including:*
>
> - *where the vendor is not registered for GST and not required to be registered for GST as the sale is not in the course or furtherance of an enterprise*
> - *the sale of residential premises is input taxed because they are not 'new residential premises' (refer to paragraph 18 of this Ruling), or*

- *the sale is a GST-free supply, for example as part of a GST-free supply of a going concern or GST-free farmland.*

A vendor is required to give a notice to the purchaser which must state whether the purchaser is required to make a payment under section 14-250 in relation to the supply. Paragraph [59] of LCR 2018/4 states that if the vendor is not registered or required to be registered for GST, they simply state that the purchaser is not required to make a payment.

ATO reference *Edited Private Advice Authorisation No. 1052351350099*
w https://www.ato.gov.au/law/view/document?docid=EV/1052351350099

7.4 GST and export sales

Facts

The taxpayer is registered for GST and operates a business in music composition and production.

The business involves composing, producing, and managing musical compositions from a home studio in Australia.

The taxpayer has entered into agreements with several non-resident entities located outside Australia, supplying both rights related to their music content and the production and recording of musical compositions. These non-resident entities are not registered or required to be registered for GST.

The taxpayer receives consideration from these entities for the supplies provided.

Questions

1. Is the production and recording of a musical composition supplied to a non-resident entity a GST-free supply under section 38-190 of the GST Act?
2. Is the supply of rights related to music content to various non-resident entities under agreement a GST-free supply under section 38-190 of the GST Act?

Ruling

The ATO ruled that both the production and recording of musical compositions and the supply of rights related to music content to non-resident entities are GST-free supplies under section 38-190 of the GST Act.

Under section 9-5 of the GST Act, a supply is taxable if it is made for consideration, in the course of an enterprise, connected with Australia, and the supplier is registered for GST. However, a supply is not taxable to the extent that it is GST-free or input-taxed. Section 38-190(1) provides that certain supplies of things, other than goods or real property, are GST-free if they are supplied for consumption outside Australia.

The ATO determined that the production and recording of music qualified as a GST-free supply under Item 2 of the table in section 38-190(1). The supply was neither a service performed on goods in Australia nor connected with real property. Since the non-resident entity receiving the supply was not in Australia when the supply was made, it met the GST-free criteria.

Similarly, the supply of rights related to music content was ruled GST-free under Item 4 of section 38-190(1). The taxpayer had entered into agreements with non-resident entities for the use, distribution, and licensing of their music content. Under the GST Act, such supplies are GST-free if made to a non-resident entity that is outside Australia at the time the supply is made.

Since both supplies satisfied the conditions for GST-free treatment, they were not subject to GST.

ATO reference *Edited Private Advice Authorisation No. 1052319184124*
w https://www.ato.gov.au/law/view/document?docid=EV/1052319184124

7.5 Work-related expenses

Facts

The taxpayer works as a sole trader contractor.

Travel

As part of the taxpayer's duties, the taxpayer is required to travel to clients' homes.

The taxpayer carries two boxes with dimensions of approximately XX x XX x XX cm and they each weigh less than X kg.

The taxpayer spends XX days per week primarily on the taxpayer's duties which requires travelling from client to client. The taxpayer primarily works at the office on the remaining days.

Interest

The taxpayer has a home loan for the taxpayer's main residence.

The taxpayer intends to split an amount from the loan and immediately repay the amount from savings.

When the taxpayer is required to pay business expenses, the taxpayer redraws funds from the home loan and organises a transfer to directly pay for these expenses.

Any repayments of the principal amounts will be applied proportionately to the home and business loan balances.

Questions

1. Is the taxpayer entitled to a deduction for transport expenses when:
   (a) travelling between home and work on the days the taxpayer visits multiple clients as part of the taxpayer's activities?
   (b) travelling between home and work on the days the taxpayer primarily works at the office?
2. Is the taxpayer entitled to a deduction for travel when travelling between workplaces?
3. Is the interest on the loan used to pay business expenses deductible?

Ruling

Deduction for transport expenses

Expenses incurred travelling between home and a place of work are generally not deductible as these expenses are of a private nature. However, there are certain circumstances where it has been accepted that the cost of travelling between home and a regular place of work is deductible, such as:

1. where the taxpayer is required to carry bulky equipment;
2. where the home can be regarded as a base of operations; or
3. where the taxpayer's work is itinerant.

In this case, the ATO considered the items that the taxpayer transports are not considered to be sufficiently cumbersome or heavy to be considered bulky, unlike in the case of *FC of T v Vogt* 75 ATC 4073, 5 ATR 274 where Vogt was a professional musician who used his vehicle to transport bulky musical instruments and associated equipment from his home to his places of employment.

While the taxpayer sometimes works from home, the work does not commence until the taxpayer arrives at the location, and it is not considered that the taxpayer's home is a base of operations.

The ATO also considered that on the days the taxpayer is required to work primarily from the office, the taxpayer is not required to travel continually for work purposes and does not have a web of workplaces. Therefore, the taxpayer was not engaged in itinerant work and the travel is normal travel to and from a regular place of work.

The ATO ruled that these expenses are not deductible under section 8-1 of the ITAA 1997.

Deduction for travel when travelling between workplaces

The ATO ruled that the expenses incurred for this travel are deductible under section 8-1 of the ITAA 1997. This is because, as part of the taxpayer's duties, the taxpayer travels between two related places of work. Such a position is supported by *Taxation Ruling* IT 2199, which states that a deduction is allowable for the cost of travelling directly between two places of employment, two places of business or a place of employment and a place of business, provided the travel is undertaken for the purpose of engaging in income-producing activities.

Is the interest deductible?

As outlined in paragraph [3] of TR 95/25, for interest expenses to be deductible, there must be a sufficient connection between the interest expense and the activities which produce assessable income. This 'use' test, established in the High Court case of *Federal Commissioner of Taxation v Munro* (1926) 38 CLR 153, looks at the application of the borrowed funds as the main criterion.

Paragraph [11] of TR 2000/2 provides that where a taxpayer uses redrawn funds for different purposes, the loan account becomes a mixed purpose account, in which case the interest must be apportioned between the income producing and non-income producing purposes.

The ATO ruled that the interest incurred on the redrawn amount will be an allowable deduction as the redrawn funds were used to pay for business related expenses.

ATO reference *Edited Private Advice Authorisation No. 1052365963659*
w https://www.ato.gov.au/law/view/document?docid=EV/1052365963659

7.6 Rental property deductions

Facts

In May 20XX, the taxpayer purchased and is the sole owner of a property.

When the taxpayer acquired the property, it was not a newly constructed dwelling and has been continually used for income producing purposes.

During the 20XX income year, the tenants raised concerns with the real-estate manager regarding the shower. The shower had continued to deteriorate and was becoming dangerous for the family to use.

The real-estate manager also confirmed the rotting sub-frame of the shower tray and commenced requesting repair quotes on behalf of the taxpayer to rectify the issue.

The tradesperson confirmed the shower base needed to be repaired, and the following repairs were conducted:

1. the shower tray was removed along with the removal of asbestos walls;
2. the area was water-proofed and the shower floor was retiled; and
3. the remaining floor, bathtub, vanity and walls were not altered.

Question

Is the taxpayer entitled to claim a deduction for bathroom repairs to the rental property?

Ruling

The ATO ruled that the taxpayer can claim a deduction for the bathroom repairs under section 25-10 of the ITAA 1997. This is because the bathroom repairs were conducted to remediate the damage and deterioration to the shower, the repairs did not improve or change the bathroom in its entirety, and the property is solely used for the purpose of producing assessable income.

ATO reference *Edited Private Advice Authorisation No. 1052352925623*
w https://www.ato.gov.au/law/view/document?docid=EV/1052352925623

7.7 Legal expense deductions

Facts

The taxpayer commenced employment with Employer A.

The taxpayer was later notified by the employer that the taxpayer was going to be put on a performance improvement plan (**PIP**). The taxpayer asked the employer to provide reasons why they were required to go on the PIP, however the employer did not provide the reasons.

The taxpayer contacted Lawyer A for their advice on the PIP and made a payment to Lawyer A for the advice received.

For a month, the taxpayer went on sick leave with pay. This postponed the PIP.

The taxpayer received subsequent advice from Lawyer A and made another payment to Lawyer A for this subsequent advice.

The employer implemented the PIP after the taxpayer returned to work.

The taxpayer eventually notified the employer that they were resigning from their role.

The taxpayer has now ceased working for Employer A and will not incur further legal expenses relating to this matter.

Question

Are the legal expenses incurred regarding the PIP tax deductible?

Ruling

The ATO ruled that the legal expenses are deductible. This is because the legal expenses directly relate to safeguarding the taxpayer's employment and a matter that was directly related to performing the taxpayer's daily work duties, from which the taxpayer derived assessable income.

The legal expenses follow the advantage sought and, in this case, the ATO considered they have the necessary connection with the taxpayer's employment and are neither capital nor private in nature.

ATO reference *Edited Private Advice Authorisation No. 1052347558074*
w https://www.ato.gov.au/law/view/document?docid=EV/1052347558074

7.8 CGT – cost base market value substitution

Facts

Company X is a resident private company wholly owned by Trust Y and directed by Person A. It was incorporated for the specific purpose of acquiring assets in connection with a planned arrangement involving Person A and their parents.

Trust Y is a resident discretionary trust with Person A acting as its trustee. The trust nominates Person A's children as specified beneficiaries, while Person A is the general beneficiary.

Trust Z, another resident discretionary trust, is controlled by Person A's parents. This trust previously operated a successful wholesale business, which was subsequently sold to Company X.

The purchase price of the business was determined by the value of its assets as outlined in the purchase deed. Company X paid for the business partly by assuming a vendor loan and partly by receiving the remainder of the purchase price as a gift. The vendor loan was repaid a few months after the transaction was finalised.

It is assumed that the asset values stated in the purchase deed accurately reflect market value for the purposes of section 112-20 of the ITAA 1997.

Question

Does section 112-20 of the ITAA 1997 apply to substitute the cost base with the market value of the business acquired by Company X?

Ruling

Company X acquired various assets under a Purchase Deed, which are all classified as CGT assets under paragraph 108-5(1)(a) of the ITAA 1997. Ordinarily, the cost base would be determined by the amount Company X was required to pay under a vendor loan, in accordance with paragraph 110-25(2)(a). However, as part of the value was effectively treated as a discount and not paid, that discounted portion would not ordinarily form part of the cost base.

The market value substitution rule in section 112-20 of the *ITAA 1997* becomes relevant due to the non-arm's length nature of the transaction between Company X and Trust Z. The ATO concluded that the parties were not dealing at arm's length for two key reasons:

1. **Control and relationship**: Company X was controlled by Person A, while Trust Z was controlled by Person A's parents, indicating a familial and potentially aligned interest structure.
2. **Substantial discount**: The business was sold at a significant discount relative to its market value, and this discount was characterised as a gift, reinforcing the conclusion that the transaction was not conducted on arm's length terms.

As a result, paragraph 112-20(c) applies because the business was acquired in a transaction where the parties did not deal at arm's length. The exception in subsection 112-20(2) is not applicable because CGT Event A1 occurred upon the sale of the business by Trust Z, as per section 104-10 of the ITAA 1997.

Therefore, under section 112-20, the first element of the cost base of the business assets for Company X is substituted with the market value of those assets at the time of acquisition.

ATO reference *Edited Private Advice Authorisation No. 1052341294902*
w https://www.ato.gov.au/law/view/document?docid=EV/1052341294902

7.9 Income estimates for non-commercial loss rules

Facts

The Taxpayer engaged in a peer-to-peer rental activity for a six-month period during the relevant financial year. Prior to commencing, the Taxpayer prepared a detailed business plan which included strategic analysis, insights from prior experience using peer-to-peer platforms, and an evaluation of commercial viability. Initial research encompassed attending multiple workshops and networking events hosted by relevant platforms.

Strategic and financial planning

The Taxpayer believed the activity could be profitable, supported by research indicating increasing demand, the scalability of the rental offering, efficiency of asset use, and user preferences. The business plan incorporated projections for asset acquisition, reinvestment strategies, and scalability without overextending resources.

At the commencement of the activity, the Taxpayer obtained legal advice regarding platform terms, liability, and regulatory obligations, as well as further advice from insurance providers and platform operators. The Taxpayer also conducted online research into booking and logistics tools, and market analysis, including platform data and user behaviour insights.

In assessing capital requirements, the Taxpayer considered acquisition, insurance, maintenance, fees, technology, and local market demand. By a date in the relevant year, the Taxpayer held several assets, including one acquired more than five years prior for personal use, and had purchased additional second-hand assets. The initial financing came from personal savings, with supplementary contributions from family.

Operational engagement

During the first six months of operation, the Taxpayer dedicated approximately a set number of hours weekly to the business, mostly for asset cleaning. In the following financial year, time invested increased to over a larger number of hours weekly across all days, covering asset maintenance, communication, pricing, bookings, administration, marketing, and customer service.

Each listing was individually prepared, and bookings were managed based on availability. Payment processing occurred through the platforms, inclusive of fees and deposits. Clients were bound by platform terms, and the Taxpayer handled post-rental inspections, disputes, and ratings. Standard rental agreements were used, and the platforms charged fees as a percentage of the rental fee, adjusted based on the insurance selected.

The Taxpayer complied with all relevant terms, communicated those terms to clients, and consistently achieved strong booking rates, positive reviews, and growing revenue. Total income for the relevant year was under $20,000, due to limited months of activity and a small fleet of rentable assets.

Record keeping and growth

Financial records were initially managed using a spreadsheet and are in the process of being transitioned to the Xero platform for improved accuracy and efficiency. These records were used to assess asset performance, manage tax compliance, and identify ways to reduce costs and increase returns. The Taxpayer incurred a loss in the relevant year but planned to expand the asset base in the following year.

The Taxpayer believed the business differed from casual platform users due to operational scale, asset availability, professional presentation, responsive communication, strategic asset management, and regular maintenance. Income projections were made annually, with conservative long-term forecasts due to market volatility. Nonetheless, tentative projections showed expected profitability in the two years following the relevant period.

Income and bookings

Gross income from the six-month rental period in the relevant financial year exceeded $5,000. During this period, the Taxpayer averaged a set number of bookings per month with one asset, each averaging a specific number of days. In the first half of the following financial year, the Taxpayer managed more bookings monthly across a greater number of assets, with average payments under $250 and similar rental durations.

Anticipated bookings for additional leased and second-hand assets were projected at consistent monthly rates, with average payments under $200. Platform fee structures changed in the following year to lower-cost options with reduced insurance, and dynamic pricing tools were adopted to optimise pricing during fluctuating demand.

Employment status

The Taxpayer increased time spent on the rental activity due to growing confidence and resource commitment. While employed full-time during the relevant financial year, the Taxpayer subsequently reduced hours to part-time to accommodate business demands, and is currently considering transitioning to full-time engagement in the rental activity.

Other income in the relevant year was less than $250,000.

Non-commercial loss rules

Section 35-30 of the ITAA 1997 allows a taxpayer to use a reasonable estimate of income from a business activity in a current year to meet the assessable income test, where actual income is not yet available. This can help avoid deferral of business losses under the non-commercial loss rules, provided the estimate is based on sound, objective, and commercially realistic grounds reflective of the activity as intended for that year.

Question

Can the Taxpayer use their estimated income from asset rental activity in the 2020–21 financial year as a reasonable estimate of earnings for the 2021–22 financial year for the purposes of the assessable income test in section 35-30 of the ITAA 1997?

Ruling

The ATO noted that the Taxpayer had sought a ruling on the application of Division 35 of ITAA 1997 to losses incurred from a peer-to-peer rental activity. Division 35 limits an individual taxpayer's ability to offset losses from non-commercial business activities against other income unless one of three exceptions applies:

1. the taxpayer meets the income requirement and passes one of four specific tests;
2. an exception under subsection 35-10(4) applies; or
3. the Commissioner exercises discretion under subsection 35-55(1).

One of the tests, the assessable income test, allows the use of a reasonable estimate of income where the activity was not conducted for a full year. However, for Division 35 to apply at all, the Taxpayer must be carrying on a business. Subsection 35-5(2) makes it clear that Division 35 does not apply to activities that do not amount to the carrying on of a business.

The Commissioner applied the indicators listed in *Taxation Ruling* TR 97/11 to assess whether the Taxpayer's peer-to-peer rental activity constituted a business. Although the Taxpayer had undertaken market research, sought expert advice, and drafted a business plan, the activity during the relevant financial year was not considered commercially significant. The rental activity involved only one asset, rented for a limited portion of the year, and the volume of bookings did not reflect a substantial commercial operation.

While there was some activity, such as listing a personal asset and briefly listing a second asset, there was insufficient evidence that the Taxpayer intended to commit the necessary resources to expand the scale of the business. The intention to engage in business was deemed questionable, particularly in the absence of further asset acquisition during the relevant year.

Although the Taxpayer reported a loss in the year and believed future income would increase, the profit projections were tentative and unreliable. The dynamic pricing environment and decreased income per rental day contributed to the uncertainty around profitability. As a result, the activity was found to lack a reliable prospect of profit.

The activity was also not conducted with sufficient regularity or repetition. The Taxpayer reported only a few hours per week spent on the activity and generated minimal income. Although the Taxpayer complied with the terms and processes of established peer-to-peer platforms, the nature and scale of the activity resembled the casual use of otherwise idle assets, rather than a business carried on in a commercially organised and systematic way.

The Taxpayer’s use of a single asset, limited time commitment, and low scale of operations did not meet the threshold for carrying on a business. The activity, although not a hobby or recreational in nature, lacked the commercial significance and business-like operation required to satisfy the business indicators.

In conclusion, the Taxpayer was not carrying on a business during the relevant financial year. As a result, Division 35 of the ITAA 1997 did not apply. Accordingly, the estimated annual income from the rental activity had no impact on the Taxpayer's tax obligations for that year.

COMMENT – the effect of Division 35 of the ITAA 1997 not applying was that the losses from the activities of the taxpayer were not quarantined. While the activities were not a business, as confirmed by the ATO's statement that the activities were not a hobby or recreational in nature, the losses were still incurred in gaining or producing assessable income and, therefore, deductible in the year they were made.

TIP – as the Commissioner ruled, for the non-commercial loss rules to apply to quarantine the losses made by an individual from business activities, the activities must amount to the carrying on of a business. Whether a business is being carried on should be the starting question in determining whether losses are quarantined under the non-commercial loss rules.

ATO reference *Edited Private Advice Authorisation No. 1052355211604*
w https://www.ato.gov.au/law/view/document?docid=EV/1052355211604

7.10 PAYG instalment franking credit

Facts

A Company lodged its business activity statement (BAS), which reported a PAYG instalment payable, a refund in respect of goods and services tax, and a net amount payable (the BAS payment).

Although sufficient funds to pay the PAYG instalment had been available for over six months prior to the due date, the payment process was delayed for various reasons.

At some time after 30 June 2024, an amount was received by the ATO and credited to the Company's Integrated Client Account on the date of receipt.

Question

For the purpose of subsection 205-15(1) of the ITAA 1997, was the PAYG instalment payment made by the Company on or before 30 June 2024?

Ruling

Subsection 205-15(1) of the ITAA 1997 concerns the timing of franking credits arising from tax payments. For a franking credit to be attributed to a franking account by 30 June 2024, the associated tax payment (such as a PAYG instalment) must have been made by that date. As the payment was received after this cut-off, it could not be counted for that income year.

ATO reference *Edited Private Advice Authorisation No. 1052366415972*
w https://www.ato.gov.au/law/view/document?docid=EV/1052366415972

8. ATO and other materials

8.1 ATO Decision Impact Statement – Bendel

The ATO has published an interim decision impact statement in relation to *Commissioner of Taxation v Bendel* [2025] FCAFC 15 (see our March 2025 Tax Training Notes).

The Commissioner has lodged a special leave application with the High Court, indicating that the matter remains unresolved at the highest judicial level. In the meantime, the ATO has stated that it will not revise its existing view, particularly as expressed in Taxation Determination TD 2022/11. This determination relates to when an unpaid present entitlement or sub-trust amount becomes a provision of "financial accommodation", and thereby constitutes a Division 7A loan.

The ATO further clarified that although the Full Federal Court did not accept that UPEs automatically constitute loans under subsection 109D(3), this will not prompt any immediate change in the ATO's approach. Administrative practices will continue as previously outlined, and decisions hinging on whether a UPE is a Division 7A loan will generally be deferred until the appeal process concludes. The ATO will defer objection decisions, private rulings, and amending assessments where the characterisation of a UPE as a Division 7A loan is central, unless required by time limits or taxpayer request. Any necessary decisions will be made based on the current ATO interpretation.

The updated statement also reiterates the ATO's stance on section 100A of the ITAA 1936, especially concerning the "ordinary commercial dealing" exception. The ATO references *PCG 2022/2*, which outlines its compliance approach. It confirms that where a corporate beneficiary is entitled to trust income, and those funds are retained by the trustee under a loan on commercial terms (such as a Division 7A-compliant loan), section 100A is unlikely to be applied. However, arrangements that do not reflect such commercial terms fall outside the ATO's compliance "green zone", and may trigger further scrutiny.

w https://www.ato.gov.au/law/view/document?docid=LIT/ICD/VID903of2023/00001

8.2 Revenue NSW surcharge purchaser duty tool

Revenue NSW has introduced a 'Surcharge purchaser duty tool'. The tool offers an easy-to-follow series of questions to determine if a purchaser or transferee is a 'foreign person' and liable to pay surcharge purchaser duty, being an additional surcharge on the dutiable value of the interest being acquired.

w https://www.decisiontrees.revenue.nsw.gov.au/surchargepurchaserduty

8.3 Updated guidance on foreign investment framework

On 14 March 2025, the Treasury announced that it updated guidance materials following the recent changes to the foreign investment framework.

The updated guidance material now includes information about:

1. the ban on foreign purchases of established dwellings, which was announced on 16 February 2025;
2. foreign investment in new and established Build to Rent developments;
3. partial refunds of application fees for unsuccessful proposals in competitive bid processes; and
4. tax arrangements that will attract greater scrutiny in the foreign investment assessment process.

w https://foreigninvestment.gov.au/news-and-reports/news/updates-guidance-material

8.4 Announced clarification to MIT rules

On 13 March 2025, the Government announced that it will amend the income tax laws to ensure legitimate foreign based widely-held investors, such as pension funds, can continue to access concessional withholding tax rates in Australia in respect of eligible distributions through managed investment trusts (**MITs**).

The current industry practice and understanding of the operation of the managed investment trust pooling requirements under Division 275 of the ITAA 1997 will be maintained.

This measure will complement recently released TA 2025/1. The amendments will not affect the ATO's power to take action using the GAAR in Part IVA of the ITAA 1936 where 'captive MITs' involve other characteristics of the kind set out in TA 2025/1.

The amendments, once enacted, will apply from 13 March 2025.

w https://ministers.treasury.gov.au/ministers/stephen-jones-2022/media-releases/clarifying-tax-arrangements-managed-investment-trusts

8.5 Lawyers in ATO compliance spotlight

On 21 March 2025, the ATO announced it is focusing on compliance in the legal profession and what lawyers must do to meet their tax obligations. This announcement has come after reviews by the ATO of over 250 lawyers showed that 85% did not lodge returns, including some lawyers with multiple years overdue.

To "help" lawyers fulfill their tax obligations, the ATO has undertaken compliance actions including, reviews and audits, default assessments, garnishees, payment arrangements, and prosecutions.

The compliance actions addressed the following two examples:

> *A lawyer who hadn't lodged returns for several years and assigned income to related entities that also didn't lodge returns. Our review of their group identified $8.6 million in liabilities which have been partially paid with the balance under a payment arrangement.*
>
> *A lawyer who didn't declare income received as director's fees. Our review found this income was related to services the lawyer personally performed and the failure to declare them led to $400,000 in liabilities, including penalties.*

To avoid compliance actions, the ATO has advised people to:

1. make sure lodgments are up to date, including income tax, GST, FBT, super and any other obligations;
2. check trust and partnership distributions are recorded and lodged correctly;
3. account for all income;
4. lodge on time, every time;
5. voluntarily disclose any missed tax obligations; and
6. ensure compliance with PCG 2021/4, regarding allocation of professional firm profits.

w https://www.ato.gov.au/businesses-and-organisations/business-bulletins-newsroom/lawyers-in-our-compliance-spotlight

8.6 Top 500 – changes to program

From April 2025, the ATO will implement significant changes to its Top 500 private groups program. These changes relate to group inclusion criteria, the introduction of new categories, and enhancements to the ATO's engagement and assurance approach.

Updated inclusion criteria

The Top 500 program will no longer include private groups with turnover exceeding $250 million, regardless of their net asset value. In addition, for private groups with net assets over $250 million, the turnover threshold for inclusion has increased from $100 million to $200 million. Groups that no longer meet the revised criteria will undergo an exit process once current matters under enquiry are resolved and the ATO has obtained the required level of assurance. However, these groups may choose to remain in the program if they are in, or close to achieving, a justified trust position.

New group categorisations

The ATO will introduce two new categories within the Top 500 program: 'significant' and 'general'. Groups in the general category that achieve full tax assurance will benefit from a one-year monitoring and maintenance period and streamlined future engagement. The ATO will advise groups of their classification following the conclusion of their current engagements.

Expansion of provisional justified trust

The ATO's provisional justified trust framework, which was previously limited to groups that are predominantly passive investors, will be expanded to include all groups that attain full tax assurance. This broader application is subject to necessary modifications.

Tailored engagement approach

The ATO's approach to engagement with Top 500 groups is intended to remain tailored and proportionate to each group's business and tax complexity, level of transparency, long-term commitment to tax compliance, and the strength of their tax governance. Direct engagement is intended to help the ATO better understand a group's operations and risk profile, allowing for continuous monitoring and issue resolution.

The ATO will continue to focus on confirming that the correct amount of tax has been paid (consistent with the justified trust framework), identifying opportunities for collaboration, and resolving issues in real time before lodgement. Groups impacted by these changes will be contacted by the ATO to discuss next steps.

w https://www.ato.gov.au/businesses-and-organisations/corporate-tax-measures-and-assurance/privately-owned-and-wealthy-groups/what-you-should-know/tax-performance-programs-for-private-groups/top-500-private-groups-tax-performance-program
w https://www.ato.gov.au/businesses-and-organisations/business-bulletins-newsroom/key-changes-for-top-500-private-groups

8.7 ASIC – FAQs: virtual meetings for companies and registered schemes

ASIC published a webpage to address concerns regarding the amendments to the *Corporations Act 2001* (Cth), which allows for hybrid and entirely virtual meetings. ASIC has also released Information Sheet 151 entitled "*ASIC's approach to enforcement*" (INFO 151), in addition to the FAQs.

A "virtual-only meeting" occurs where the meeting is held entirely using a virtual meeting technology, such that members are unable to attend the meeting at a physical location. A virtual-only meeting can only be held if the entity's constitution expressly permits or requires virtual-only meetings, for both registered schemes and companies.

A "hybrid meeting" occurs where the members can elect to attend at either a physical location, or via virtual technology. A hybrid meeting can be held by all companies and registered schemes under section 249R(b) and section 252P(b) of the Corporations Act.

The list of 21 FAQs covers a range of requirements in regard to virtual meetings. Amongst these, members as a whole must have a reasonable opportunity to participate, and the meeting must be held at a reasonable time. Where a virtual meeting is held, the meeting is deemed to be held at the time at the place of the registered office of the entity.

w https://asic.gov.au/regulatory-resources/corporate-governance/shareholder-engagement/faqs-virtual-meetings-for-companies-and-registered-schemes/

8.8 Next 5,000 – avoid common CGT errors

On 24 March 2025, the ATO published guidance related to its engagement with Next 5,000 privately owned and wealthy groups. The ATO highlighted that mistakes related to Next 5,000 entities commonly result from poor record keeping, and include cost base errors, incorrect characterisation of ordinary income as capital income, and unsubstantiated carried forward capital losses. Such mistakes can lead to audits and amendments, which are time consuming and expensive.

The ATO published a simple example. A Next 5,000 group incorrectly characterised a sale as capital income, rather than ordinary income. Here, the group acquired a property while it was being subdivided and developed. The ATO concluded the property sale was not the mere realisation of an asset but part of a profit-making undertaking, due to the timing of the purchase. As a result, the group's tax liability increased by over $5 million, and the group was liable for penalties and interest exceeding $1 million.

To ensure compliance in relation to CGT reporting, the ATO suggests taking following steps:

1. understand the nature of the transaction and asset;
2. keep records of everything which may be relevant to working out a capital gain or loss; and
3. obtain professional valuations.

w https://www.ato.gov.au/businesses-and-organisations/business-bulletins-newsroom/next-5000-avoid-common-cgt-errors

8.9 Review of ATO letters and written communications

The Inspector-General of Taxation (**IGTO**) is undertaking a review of the ATO's written communication drafting process. The purpose of the review is to ensure the ATO adheres to the IGTO's core principle of "clear and effective communication," which includes ensuring written communications are written in accessible language, which can be easily understood by the ordinary taxpayer. The review is a result of feedback from taxpayers that the ATO's standard letters are not easy to understand.

The IGTO will examine a small sample of recent compliance program communications. The review will determine whether the ATO communications are accessible and easy for the taxpayer to understand. In addition, the IGTO will review whether the ATO has adequate processes to prepare accurate and readable letters, as well as looking at whether and how the ATO uses data and feedback to reduce uncertainty in its written communications. The IGTO will not review custom letters, web guidance or public/private rulings.

Submissions to the IGTO closed on 3 April 2025, and the IGTO expects to publish a report of its findings in June 2025.

w https://www.igt.gov.au/current-investigation-reports/review-of-ato-letters-and-written-communications/

8.10 Debt deduction creation rules

The ATO has released detailed website guidance on the Debt Deduction Creation Rules (**DDCR**), which disallow certain debt deductions arising from related party financing arrangements. The DDCR applies to income years commencing on or after 1 July 2024 and impacts a range of entities, including general class investors, outward investing financial entities (non-ADI), and inward investing financial entities (non-ADI). However, some entities are excluded, such as authorised deposit-taking institutions (ADIs), entities with debt deductions under $2 million, Australian plantation forestry entities, securitisation vehicles, and certain special purpose entities.

The guidance outlines two key types of arrangements where the DDCR may apply:

1. the Acquisition Case disallows debt deductions where financing is used to acquire CGT assets or obligations from an associate pair; and
2. the Payment or Distribution Case disallows debt deductions where related party financing is used to fund prescribed payments or distributions to an associate pair.

The guidance includes examples to illustrate these scenarios, covering direct and indirect acquisitions, as well as refinancing arrangements.

The specific anti-avoidance rule is also discussed, which allows the Commissioner to apply the DDCR where a scheme is entered into with the principal purpose of avoiding its application. The interaction of the DDCR with other rules, such as thin capitalisation and Division 7A, is covered. The guidance notes that deductions for interest on Division 7A loans can be denied under the DDCR even when placed on complying terms.

The guidance also provides information on reporting obligations, including requirements under the International Dealings Schedule (IDS) and the Reportable Tax Position (RTP) schedule. Additional details are provided on key concepts and definitions, including the meaning of “associate pairs” and modified definitions for unit trusts and Australian entities.

w https://www.ato.gov.au/businesses-and-organisations/corporate-tax-measures-and-assurance/understanding-the-debt-deduction-creation-rules

8.11 Superannuation guidance – advice under development

The ATO is developing advice and guidance on the following issues:

1. foreign superannuation fund and applicable fund earnings;
2. advice fees paid by superannuation funds;
3. expenditure incurred under a non-arm’s length arrangement and superannuation contributions; and
4. administration of penalties that apply where employers or superannuation funds fail to comply with event-based reporting obligations.

w https://www.ato.gov.au/about-ato/ato-advice-and-guidance/advice-under-development-program/advice-under-development-superannuation-issues

8.12 Victoria – landholder duty voluntary disclosures about capital raisings

The Victorian State Revenue Office has extended the penalty tax amnesty program related to capital raisings until 30 June 2025. This follows the decision in *Oliver Hume Property Funds (Broad Gully Rd) Diamond Creek Pty Ltd v Commissioner of State Revenue [2024] VSCA 175* handed down in August 2024, which prompted the Commissioner to offer an amnesty on penalty tax for voluntary disclosures and ruling requests concerning landholder liabilities arising from capital raisings.

Initially launched in October 2024, the program was expanded in November 2024 to include requests for rulings. It was originally scheduled to end on 31 March 2025, but due to industry feedback, the amnesty has been extended by a further three months.

w https://www.sro.vic.gov.au/news/penalty-tax-amnesty-following-oliver-hume-decision-extended-30-june-2025

8.13 Natural Disaster Relief

The ATO and the Queensland Government have announced support for people affected by Tropical Cyclone Alfred.

ATO

The ATO has stated that taxpayers in NSW and Queensland affected by Ex-Tropical Cyclone Alfred may receive lodgment extensions to 11 April 2025 if they are in an eligible Local Government Area. These extensions are:

1. where a taxpayer is unable to lodge their Monthly BAS originally due 21 March 2025; and
2. for income tax returns for individuals, trusts, and small businesses originally due 31 March 2025.

Tax Agents can check if a client qualifies for late lodgment without penalty by running an 'On-Demand Outstanding Lodgment Report' in Online Services for agents or through their practice management software.

Queensland Government

The Queensland Government has advised that it aims to help people by extending lodgment deadlines for documents and returns, extending payment deadlines (without charging interest) and offering payment plans to allow debts to be paid in instalments

Those experiencing disaster-related hardship are encouraged to contact the State Penalties Enforcement Registry for assistance.

w https://www.ato.gov.au/tax-and-super-professionals/for-tax-professionals/tax-professionals-newsroom/support-for-those-affected-by-tropical-cyclone-alfred
w https://qro.qld.gov.au/2025/03/cyclone-alfred/
w https://qro.qld.gov.au/about-qro/hardship/

8.14 Review of the tax treatment of digital assets and transactions in Australia

The Board of Taxation has released its report on the tax treatment of digital assets and transactions in Australia.

The report presents four main conclusions, being:

1. Australia's existing taxation laws can generally accommodate the taxation of crypto assets and transactions;
2. there is no need to introduce new legislation to address the taxation of crypto asset transactions at this time;
3. any current uncertainties regarding how taxation laws apply to crypto assets and transactions should be managed administratively, with taxpayers and the ATO working collaboratively within the existing legal framework; and
4. in certain areas, taxpayers need more detailed information and guidance from the ATO, including examples and case studies, to ensure their tax disclosures are acceptable.

In response to the report, the ATO has agreed to form a crypto working group which will consult with the industry and tax professionals to develop a package of publicly available crypto tax advice.

w https://taxboard.gov.au/review/digital-assets-transactions-aus

8.15 Record-keeping requirements for not-for-profits

On 21 March 2025, the ATO updated its website guidance on the record keeping requirements of not-for-profit entities.

Generally, for tax purposes, entities must keep their records in an accessible form, either printed or electronic, for 5 years.

Basic records

Not-for-profit entities need to keep the following records:

1. governing documents, such as constitution, articles of association, and trust deeds;
2. financial reports, such as financial statements, annual budgets, reconciliations, audit reports, accounts payable and receivable;
3. cash book records of daily receipts and payments;
4. tax invoices, income tax records, stocktake records, motor vehicle expenses, debtor and creditor lists;
5. employee-related records, such as TFN declarations, PAYG withholding, superannuation, and fringe benefits records;
6. records of payments withheld from suppliers who do not quote an ABN;
7. banking records, such as bank statements, deposit and cheque books, and bank reconciliations;
8. grant documentation;
9. registration, certificates and accompanying documents from the ATO, ACNC, and state regulators;
10. contracts and agreements, such as cleaning, maintenance, and insurance contracts, finance or lease agreements;
11. copies of reviews of entitlement to tax concessions; and
12. records to help prepare tax statements and returns.

Charities

Charities registered with the ACNC must hold certain financial and operational records explaining the charity's position and activities for 7 years to comply with ACNC requirements.

Deductible Gift Recipient (DGR)

Organisations with DGR status must maintain records of all gifts and deductible contributions for their principal purpose and keep records for at least five years in English or an easily convertible format.

The penalty for not keeping proper records is 20 penalty units.

GST

To claim a GST credit, businesses must have a valid tax invoice for purchases over $82.50 (including GST). If an invoice is incomplete, or containing incorrect details, it is not a valid tax invoice.

Reconstructing lost or damaged records

If records are damaged, lost, or destroyed, organisations must reconstruct them to ensure they have accurately calculated their taxable income and comply with general record keeping requirements.

w https://www.ato.gov.au/businesses-and-organisations/not-for-profit-organisations/your-organisation/record-keeping-for-not-for-profits

8.16 Adoption of eInvoicing

The ATO has released updated website guidance on eInvoicing, encouraging businesses to adopt this method of invoicing through the Peppol network.

eInvoicing enables invoices to be sent and received directly between the supplier's and buyer's accounting software, without the need for emails or PDFs. This method is designed to improve processing speed, reduce manual handling, and lower the risk of fraud.

The ATO has identified a range of benefits associated with eInvoicing. These include faster invoice delivery and payment, fewer errors due to automation, stronger protection against invoice fraud, and estimated cost savings of approximately $20 per invoice. As at February 2024, more than 23,000 Australian businesses had joined the Peppol network.

The Commonwealth Government has mandated that all federal government agencies must be capable of receiving eInvoices through the Peppol network. In addition to this, the Government is encouraging large businesses to adopt eInvoicing and is considering whether to mandate its use more broadly in business-to-business transactions.

Businesses that wish to begin using eInvoicing can do so by enabling the feature in their accounting software, provided the software is connected to the Peppol network. Alternatively, they can connect by engaging a certified Peppol access point provider. The ATO has published a list of participating software products and access point providers on its website.

w https://www.ato.gov.au/businesses-and-organisations/einvoicing/einvoicing-for-businesses

9. Tax Professionals

9.1 Top 3 questions before requesting lodgment deferrals

On 17 March 2025, the ATO published guidelines to assist tax professionals determine the circumstances when they should request additional time to lodge a client's obligations. The ATO set out three questions:

1. **Are the circumstances exceptional or unforeseen?** Such circumstances do not include where the client has failed to provide information to the tax professional with adequate time prior to lodging;
2. **Does your client have a 15 May due date?** If clients are eligible for the 5 June concession date, there is no need to request a deferral for tax returns due on 15 May; and
3. **Do you need tailored support?** If the problems with lodging on-time are affecting the professional's entire practice, the ATO suggests requesting a supported lodgment program.

w https://www.ato.gov.au/tax-and-super-professionals/for-tax-professionals/tax-professionals-newsroom/top-3-questions-before-requesting-lodgment-deferrals

9.2 TPB bi-annual survey results

The TPB has published the results of its 10th bi-annual survey, conducted in October 2024. The survey, which has been conducted every six months since 2019, collects feedback from both consumers and tax practitioners. It is designed to assess trust in registered tax practitioners, usage of the public register, awareness of the TPB's role as a regulator, and the usefulness of the TPB's guidance products.

The October 2024 survey revealed several positive trends and areas for continued focus. Key findings include:

1. 87% of consumers expressed complete trust in their tax practitioner, indicating high levels of confidence in the profession;
2. 34% of consumers who use a tax practitioner reported engaging their services more than once per year;
3. 65% of consumers stated they have used the same tax practitioner for five years or more, which is the highest figure reported across all surveys conducted to date;
4. 85% of consumers were aware that their tax practitioner is registered with the TPB, although 14.5% of consumers said they were unsure; and
5. more than 90% of tax practitioners reported accessing the TPB's advice and guidance products, and the majority found them relevant to their professional work.

The next round of the TPB survey is scheduled for April 2025, with results expected to be published in July 2025. The TPB thanks those who have participated in previous surveys and encourages all tax practitioners who receive the upcoming survey to take part.

w https://www.tpb.gov.au/tpb-bi-annual-survey-results