The Tax Institute

Tax Update

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Contents

1. Tax Update Pitstop 5

2. Detailed case summaries 7

2.1 Goldenville – invalid trust resolutions and character of interest 7

2.2 Infomatix Solutions – tax debt winding up 9

2.3 Victory International – landholder duty and hybrid trusts 10

2.4 Big Ben Holdings – duties corporate reconstruction concession 14

2.5 Doublebar and Bloodfinch – 'associated persons' for duties 17

2.6 Montessori Children's Foundation – meaning of 'institution' 19

2.7 Caldwell v Caldwell – family trust and divorce 21

3. Cases in brief 24

3.1 Wannberg – deductibility of medical expenses 24

3.2 ZKSM – margin scheme and valuation of consideration 24

3.3 Barth Family Trust – time limit to claim ITCs 26

3.4 IB Quadrant Trust – land tax exemption for home in QLD 27

3.5 Other tax and super related cases published from 13 Aug to 10 Sept 2025 28

4. Legislation 30

4.1 Progress of legislation 30

4.2 Determination to specify Pillar Two qualified GloBE taxes 30

4.3 GST determination – representatives of incapacitated entities 30

4.4 Amendments to Administrative Review Tribunal procedures 31

4.5 Global and domestic minimum tax lodgment obligations 31

4.6 Instant asset write off $20,000 limit and DPN service rules 31

4.7 Payroll tax relief extended in Tasmania 32

5. Rulings 33

5.1 Queensland ruling on penalty tax 33

5.2 Addenda to ATO rulings on penalties 34

5.3 Addendum to ruling on GST-free export supplies 34

5.4 Division 7A – application of section 109R to notional loans 35

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6. Private rulings 36

6.1 Small business CGT concessions elections 36

6.2 Capital loss on loan 37

6.3 Trust distributions 38

6.4 Main residence in trust 40

6.5 Holding costs and interest deductions while renovating rental property 42

6.6 Interest deductions for construction loan for rental property 43

7. ATO and other materials 45

7.1 Fact sheet on changes to denying deductions for ATO interest 45

7.2 ATO spotlight on family trust distributions tax 45

7.3 Employees incorrectly treated as independent contractors 46

7.4 Small business superannuation clearing house closing 46

7.5 Stapled superannuation funds for employers 47

7.6 ATO corporate plan for super funds 48

7.7 SGC and ordinary time earnings 48

7.8 MWB Accountants - ATO recovery of overpayments due to fraud 49

7.9 Tips when clients dispose of shares 49

7.10 Tips on applying the main residence exemption 50

7.11 Livestock valuation guidance updated 50

7.12 Bitcoin and 'foreign currency' 50

7.13 GST and vouchers 51

7.14 Landcom updated decision impact statement 51

7.15 Compliance focus on Next 5,000 groups 52

7.16 Recent developments in large business tax administration 52

7.17 Compliance approach on thin cap and debt deduction creation rules finalised 53

7.18 ATO penalty administration practice statements 54

7.19 ASIC increases focus on lodgment of financial reports 54

7.20 NSW evidentiary requirements of ‘original’ documents 55

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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 Goldenville	The ATO successfully challenged the validity of trust distribution resolutions based on metadata analysis. The resolutions were found to be backdated and not made before 30 June, resulting in default beneficiaries being assessed. The case demonstrates the lengths to which the ATO will go to verify compliance and the importance of contemporaneous documentation. Tax agents should ensure resolutions are made and recorded properly before year-end.	Page 6
Item 2.3 Victoria International	The decision of the Supreme Court of Victoria in *Victory International Pty Ltd v Commissioner of State Revenue* [2025] VSC 484 decision highlights that even routine restructures can trigger landholder duty. In this case, the transfer of units in a hybrid trust after signing a contract to acquire land resulted in duty liability. Had the restructure occurred before the contract was signed, duty would not have applied. The case underscores the importance of timing and being aware of the “relevant acquisition” rules.	Page 9
Item 3.3 Barth Family Trust	The ART has found that input tax credits could be claimed as the 4 year had passed the time when the taxpayer could first include the credits in calculating its net amount for a period. This rule has the potential to cause considerable unfairness given the Commissioner may still be able to assess the taxpayer for the supplies made in the same period.	Page 26
Return disclosures Items 6.1, 7.9 and 7.10	The ATO has issued reminders about the importance of correctly disclosing disposals of shares and applying the CGT main residence exemption when completing tax returns. Labels should be filled out and the relevant disclosures made to indicate that an exemption or roll-over applies. More broadly, different tax provisions have different requirements for making a “choice”. Some, like the small business CGT retirement exemption, GST margin scheme and going concern exemption, and certain roll-overs, require a written choice — tax return disclosure alone is not sufficient. Others, such as the 50% active asset reduction in the small business CGT concessions, may be made by preparing the return in a particular way (section 103-25 of the ITAA 1997), and once lodged, the choice generally cannot be changed by seeking an amendment. A recent private ruling confirmed that the ATO has no discretion to override such elections. Choices often have timing requirements as well. Unless there is a discretion for the Commissioner to extend the time to make a choice, taxpayers may be caught by an incorrect tax return disclosure. This highlights the importance of accurate disclosures and understanding the form and timing requirements before lodgement.	Pages 35, 48 and 49

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Item 6.6 and 6.6 Vacant land measures and interest deductions	Two private rulings confirm that interest on construction loans is not considered a “holding cost” under section 26-102. This means such interest remains deductible, assuming it is otherwise deductible, even where the land is not lawfully available for rent during construction.	Page 41

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2. Detailed case summaries

2.1 Goldenville – invalid trust resolutions and character of interest

Facts

On 24 March 2009, the Goldenville Family Trust was settled, with Goldenville Pty Ltd appointed as trustee. At that time, Luan Xiang (**Harry**) Huang was the sole director, secretary, and shareholder of Goldenville. In January 2013, his wife, Li Fang Huang, replaced him as sole director and shareholder, while Harry continued to manage the trust's affairs as a shadow director. The default beneficiaries named in the trust deed were Harry, Li Fang, and their son, Qiu Yi Huang.

Under clause 5.4 of the trust deed, if the trustee fails to make a valid distribution resolution by 30 June, the trust income is automatically set aside for the default beneficiaries, being Harry, Li Fang and Qiu Yi.

On 4 and 5 May 2011, members of the Huang family and the trust advanced $1 million to a company in the JQZ Group, for use in a building development. Over the following years, further funds were advanced and repaid through various JQZ Group entities. Some repayments exceeded the amounts invested, and these excess payments were recorded as "interest" by the trust.

Harry worked in the construction industry and, between 2015 and 2017, was employed by SPC Building Construction Pty Ltd, which is part of the JQZ Group of companies controlled by Jianqiu Zhang, a Chinese-born property developer

On 24 June 2015, an entity in the JQZ Group repaid $2.31 million in principal and $2.83 million in "interest" to the Trust. The next day, on 25 June 2015, the Trust invested $5.1 million with North Parramatta No 1 Pty Ltd. Later, on 5 April 2017, North Parramatta No 1 Pty Ltd returned $5.1 million in principal and $4.31 million in "interest," which the trust reinvested in another entity in the JQZ Group on 6 April 2017 by subscribing for units in a unit trust.

For the 2015, 2016, and 2017 income years, the accountant for the trust, Ming-Cheng Hung, prepared minutes that purported to distribute most the Trust's "interest income" to Harry's sister, Xiangming Huang, who resided in China, with small amounts distributed to Li Fang. Xiangming was not an Australian tax resident.

The distribution of the interest income to Xiangming, a non-Australian tax resident would have resulted in the income being subject to withholding tax at 10% and not otherwise taxed. However, the Commissioner concluded that the resolutions were invalid and that the default beneficiaries, being Harry, Li Fang and their son, were instead entitled to the income.

Between July 2019 and May 2021, the Commissioner of Taxation audited the trust's affairs. In July 2020, the Commissioner issued a position paper, and in May 2021 finalised the audit findings, issuing income tax assessments and penalties to the trust and family members.

On 27 January 2022, the Commissioner disallowed all objections lodged against the assessments.

On 19 March 2022, the trustees and family members filed applications for review with the AAT (now the ART).

Issues

1. Were the trust resolutions made in the 2015, 2016, and 2017 income years valid resolutions of the Goldenville Family Trust?

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2. If the resolutions were valid, was the income received by the trust in those years properly characterised as interest income?

Decision

Were the trust resolutions valid?

The ART examined the validity of the resolutions. In each year, the minutes were not created until many months after year-end: the 2015 resolution was prepared in March 2016, the 2016 resolution was shown by metadata to have been drafted in May 2017, and the 2017 resolution was created in March 2018. In each case, the evidence established that the resolutions were backdated documents prepared by the accountant after reviewing the Trust's accounts and finalising the tax returns. The ART rejected the suggestion that the documents merely "memorialised" earlier trustee decisions, finding no evidence of any actual determination of income distribution before 30 June in any of the relevant years.

The ART found that Li Fang, as the sole director of the trustee, did not exercise independent judgment. Instead, the ART considered Li Fang's role was limited to signing documents placed before her by Harry at his direction, and that she was a nominal director only, with Harry acting as the controlling mind of the trustee. On this basis, the purported resolutions could not be treated as valid exercises of trustee discretion.

Under clause 5.4 of the trust deed, if the trustee fails to make a valid distribution resolution by 30 June, the trust income is automatically set aside for the default beneficiaries, being Harry, Li Fang and Qiu Yi. Because the resolutions were invalid, the default beneficiaries became presently entitled to the trust income in equal shares for each of the 2015, 2016 and 2017 income years.

Were the receipts from the JQZ entities "interest"?

The ART also considered whether the receipts from JQZ entities could properly be characterised as "interest" for the purposes of the concessional withholding tax rate in Division 11A of the ITAA 1936. There were no loan agreements, no reliable financial records, and the trust's accounts did not show loans until 2014 (despite earlier advances). The pattern of repayments and reinvestments was more consistent with a profit-share or equity-style return than genuine debt with interest.

The ART found evidence on the "loan/interest" characterisation to be unreliable. Harry gave shifting accounts about whether funds were repayable on demand or only at project completion, while Jianqiu spoke in vague terms about his "general practice" rather than any concrete agreement with the trust. The accountant's records also did not corroborate the claim that loans existed. Against this background, the ART considered the returns said to have been interest, turning $1.66 million of "new" funds into $9.4 million within six years, to be implausible for unsecured advances. It held that the "loan/interest" narrative was a reconstruction adopted only once the tax benefits of it being interest were understood. Accordingly, the payments could not be treated as interest for the purposes of withholding tax and tax was not limited to the 10% interest withholding tax rate.

The Commissioner's position was confirmed.

COMMENT – this case is a reminder that trustee resolutions must record genuine contemporaneous decisions made before 30 June and be properly documented.

Citation The Trustee for Goldenville Family Trust A/C Xiangming Huang and Commissioner of Taxation (Taxation) [2025] ARTA 1355 (Deputy President Thompson SC, Perth)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2025/1355.html

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2.2 Infomatix Solutions – tax debt winding up

Facts

On 17 March 2025, Infomatix Solutions Pty Ltd owed $266,910 in tax debts. The ATO issued a statutory demand for this amount was issued on the same day but was not complied with.

On 7 May 2025, the Deputy Commissioner referred the matter to solicitors to commence winding up proceedings under section 459P of the *Corporations Act 2001* (Cth). The application was formally filed on 14 May 2025 and served on Infomatix.

On 19 May 2025, the company's sole director contacted the ATO's Frontline Compliance Department, expressing a desire to avoid liquidation. He was advised to propose a payment arrangement.

On 5 June 2025, the company's tax agent, submitted a payment plan proposal to the ATO. The proposal included an upfront payment of $30,000 and monthly instalments of $15,000 over 21 months, totalling $321,329. ATO staff accepted the plan over the phone, and formal documentation confirming the arrangement was issued the same day. However, the officer who agreed to the plan was unaware of the pending winding up proceedings, contrary to usual ATO policy.

On 12 June 2025, Infomatix failed to lodge its 2024 income tax return, breaching the terms of the payment plan. Nonetheless, on 18 June 2025, the company made the initial $30,000 payment under the plan.

On 9 July 2025, the Deputy Commissioner's legal representatives were instructed to proceed with the winding up application, unaware of the payment arrangement or the received payment.

On 11 July 2025, the Federal Court Registrar ordered Infomatix to be wound up in insolvency. Cor Cordis partners were appointed as liquidators. Infomatix did not attend the hearing, mistakenly believing the matter had been resolved through the payment arrangement.

On 4 August 2025, Broadside Lawyers, acting for Infomatix's director, informed the Deputy Commissioner's solicitors about the payment plan. On 8 August 2025, the Deputy Commissioner responded, noting that Infomatix had breached the plan due to the late lodgment of its tax return. On 13 August 2025, Broadside Lawyers disputed this, claiming Infomatix was unaware of any default.

The Deputy Commissioner acknowledged that Infomatix had not been notified of any default at the time the winding up order was obtained, and that the payment plan had not been formally terminated. Consequently, on 25 August 2025, the Deputy Commissioner filed an application to the Federal Court to set aside the winding up orders.

Issue

Should the Court terminate the winding up of Infomatix Solutions and set aside the winding up orders made on 11 July 2025, given the existence of a payment plan and the circumstances surrounding its implementation and breach?

Decision

Justice Beach accepted that a valid payment plan had been entered into between Infomatix and the ATO before the court hearing. The company had made the initial $30,000 payment as agreed, and this indicated genuine efforts to resolve its tax debt.

However, the officer at the ATO who accepted the payment plan was unaware that a winding up application had already been filed. Similarly, the Deputy Commissioner's legal team did not know about the payment plan

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when they proceeded to seek the winding up orders. Infomatix, believing the matter was resolved, did not attend the hearing, and the order to wind up the company was made in its absence.

Although the company failed to lodge its 2024 tax return by the extended due date, which technically breached the payment plan, the ATO had not formally notified Infomatix of any default or cancelled the arrangement. Importantly, the Deputy Commissioner did not rely on that breach to justify the continuation of the winding up.

Justice Beach made the following observations concerning the usual practice for winding up a company for taxation debts:

> 11. *Now in the normal course where a winding up application has been filed, the ATO policy is for the taxpayer to be directed to the law firm that has carriage of the winding up application to submit any payment arrangement proposal rather than corresponding directly with ATO officers. But this did not occur in this matter.*
>
> …
>
> 14. *Now in the normal course where a payment arrangement is agreed between the parties after a winding up application has been commenced, the parties would usually reach a position with respect to the future conduct of the proceeding which would generally include seeking an order to dismiss or adjourn the winding up proceeding following receipt of an initial up-front payment and for the defendant to pay the plaintiff's costs of the proceeding.*
>
> 15. *But on 9 July 2025, K&L Gates was instructed by the plaintiff's representative to seek a winding up order at the return of the application which was listed for hearing on 11 July 2025. Apparently, when providing these instructions to K&L Gates, the person giving the instructions was not aware that a payment plan had been entered into with the defendant with the first payment made thereunder.*

The Court found that Infomatix was not hopelessly insolvent. Financial documents showed a positive net asset position, and the Deputy Commissioner, as the main creditor, supported terminating the liquidation. Justice Beach noted that while full proof of solvency is not always necessary, a company must at least show it is not in a dire financial position.

Exercising the discretion under section 482(1) of the *Corporations Act*, the Court concluded that the winding up should be terminated.

Citation *Deputy Commissioner of Taxation v Infomatix Solutions Pty Ltd* [2025] FCA 1094 (Beach J)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2025/1094.html

2.3 Victory International – landholder duty and hybrid trusts

Facts

On 18 August 2009, ZJF Investments Pty Ltd was incorporated and established the ZJF Investments Trust. Jiefu Zheng was a beneficiary of this trust.

On 27 September 2011, Victory International Pty Ltd was incorporated and the Victory Hybrid Unit Trust was established, with Victory International appointed as trustee. Kathryn Yang held 51 shares and Ningjun Liu held 49 shares in Victory. They also held an equal number of units across four classes (A, B, C, and D) in the unit trust.

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According to clause 3.26.4(c) of the trust deed for the Victory Hybrid Unit Trust, the holders of C Class units are entitled to a return of capital paid on such a unit and a distribution of "capitalised earnings" from the Victory Hybrid Unit Trust in proportion to the number of capital units held as at the date of distribution.

Under clause 17.1 of the Deed, from the termination date of the Victory Hybrid Unit Trust, the trustee of the Victory Hybrid Unit Trust is to hold the trust fund for the holders of capital units, subject to any distribution of "capitalised earnings" to any one or more beneficiaries.

On 21 November 2011, a contract of sale for the property was signed in the name of Kathryn Yang “and/or nominee.” The purchaser was later nominated to be Victory International as trustee for the Victory Hybrid Unit Trust.

In accordance with a Memorandum of Understanding signed on 29 September 2011, on 10 October 2012, Kathryn and Ningjun transferred all of their shares in Victory International and units in the Victory Hybrid Unit Trust to three corporate trustees:

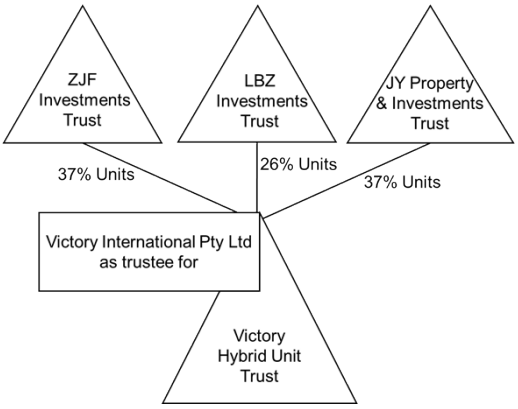
Kathryn transferred 37 shares and units to JY Property Pty Ltd (for the JYPI Trust) and 14 to ZJF Investments Pty Ltd (for the ZJF Investments Trust); and

3. Ningjun transferred 37 shares and units to LBZ Pty Ltd (for the LBZ Investment Trust) and 12 to ZJF Investments Pty Ltd (for the ZJF Investments Trust).

This transaction resulted in JY Property Pty Ltd and LBZ Pty Ltd each holding 37% and ZJF Investments Pty Ltd holding 26% of the shares and units. The change in the structure of the entities before and after the Transactions are illustrated below:

Before the Transactions:

After the Transactions:



On 28 February 2013, the property purchase settled and the land was transferred to Victory International as trustee. Transfer duty was paid at this point.

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On 4 April 2013, Victory International became the registered proprietor of the land.

On 30 September 2020, following an investigation, the Commissioner of State Revenue assessed Victory International for landholder duty, on the basis that that the transactions on 10 October 2012 constituted "relevant acquisitions" under the *Duties Act 2000* (Vic), attracting duty, penalty tax, and interest. The assessments totalled $666,102 across the three acquiring entities.

Section 78(1)(a)(i) of the Duties Act provides that person makes a "relevant acquisition" if the person acquires an "interest" in a landholder that is a "significant interest" in the landholder or that amounts to a significant interest in the landholder when aggregated with other interests in the landholder acquired by the person or an associated person or any other person in an associated transaction.

A person has an "interest" in a landholder if the person has an entitlement to a distribution of property from the landholder on a winding up of the landholder (section 79(1) of the Duties Act).

A person has a "significant interest" in the landholder that is a private unit trust scheme if, immediately after acquisition, the person would be entitled to 20% or more of the property upon a winding up of the landholder (section 79(2)(b) of the Duties Act).

The Chief Commissioner took the view that the Victory Hybrid Unit Trust constituted a 'unit trust scheme' and was a landholder and that JYP, ZLF and LBZ each acquired an "interest" in the Victory Hybrid Unit Trust. JYP, ZLF and LBZ acquired a "significant interest" when they received, individually or in aggregate, the C class units in the Victory Hybrid Unit Trust and were entitled to more than 20% of the Victory Hybrid Unit Trust's property.

On 4 November 2020, Victory International lodged an objection to the Assessments. On objection, Victory International argued that the Assessments were incorrect and excessive, as, having regard to clause 17.1 of the Deed, all distributions of trust property on a winding up were always subject to the discretion of the trustee. Accordingly, JYP, ZLF and LBZ did not acquire an "interest" and therefore a "significant interest" in the Victory Hybrid Unit Trust.

On 29 August 2023, the Chief Commissioner issued a Notice of Determination disallowing the objection. The Chief Commissioner did not accept argument of Victory International that, due to the trustee's discretion to distribute the trust property to beneficiaries on winding up, none of the acquirers had an entitlement to a distribution of property on winding up and, therefore, an "interest". This is because a person's entitlement to a distribution of property is to be made on a notional winding up of the landholder, rather than what a person would actually receive. On a notional wind up, the trust fund is deemed to be held for the acquirers as the holders of C Class capital units in the Victory Hybrid Unit Trust.

As to whether that "interest" was a "significant interest", the Chief Commissioner applied the 'Maximisation of Entitlements Provision' in section 89H of the Duties Act. This was because the Note to the definition of 'winding up' in section 79(3) of the Duties Act expressly stated that section 89H was relevant to ascertaining a person's entitlements on a distribution of property on a winding up of a landholder that is a "unit trust scheme".

Section 89H of the Duties Act requires a comparison of the following two results:

1. a distribution carried out in accordance with the constitution or trust deed of the landholder and any law relevant to the distribution; and
2. a distribution carried out after the interested person, and an associated person, has exercised all powers and discretions exercisable by them in such a manner as would maximise the value of the person's entitlement.

Whichever of the above was greater becomes the entitlement of the acquirers, unless the outcome would be inequitable and the Chief Commissioner makes such a determination. Under both steps, the Chief Commissioner took the view that each of JYP, ZLF and LBZ had acquired a 'significant interest'.

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Victory International appealed the decision of the Chief Commissioner to the Supreme Court of Victoria. Victory International argued again that the Victory Hybrid Unit Trust is a 'hybrid' trust and, having regard to clause 17.1 of the Deed, Victory International has discretions as to how to distribute the trust property on a winding up of the trust such that none of the beneficiaries have an entitlement to a distribution to the trust property on a winding up.

The Chief Commissioner noted that section 89H of the Duties Act was critical to understanding the liability of Victory International for duty. The Chief Commissioner argued that each of JYP, ZLF and LBZ was entitled to 100% of the land if the procedure in section 89H was followed. Once the section 89H procedure was applied, the rights of each of JYP, ZLF and LBZ acquired in the landholder entailed a "relevant acquisition", because each of them, as holders of C Class Units, acquired an "interest" that was a "significant interest" in the landholder.

In response, Victory International argued that section 89H is predicated on a person already having an entitlement. JYP, ZLF and LBZ did not hold any entitlement and section 89H could not apply to maximise an entitlement.

During the proceedings, in an aide-memoire, the Chief Commissioner admitted that a total entitlement of 300% would be an "inequitable outcome", that he would "determine otherwise" under section 89H(4) and charge duty on the basis of the acquisition of a 100% interest only.

Issues

1. Did each of JYP, ZLF and LBZ acquire an "interest" in the Victory Hybrid Unit Trust?
2. Was that interest a "significant interest" in the Victory Hybrid Unit Trust?

Decision

Did each of JYP, ZLF and LBZ acquire an "interest" in the Victory Hybrid Unit Trust?

Under s 79(1) of the Duties Act, a person has an "interest" in a landholder if the person has an entitlement to a distribution of property from the landholder on a winding up of the landholder.

When the Court read the definition of 'unit' in the Duties Act with the Explanatory Memorandum, it was clear to the Court that, in order to determine whether unitholder in a private unit trust scheme has an interest in a landholder, it was necessary to consider whether the units conferred on the holder a right or interest to participate in a distribution of the property of the trust on vesting, that is, the units conferred a right to the capital of the Victory Hybrid Unit Trust.

It was also clear to the Court that the reference to the "winding up" of the landholder in section 79 was not a reference to actual winding up but rather a reference to a hypothetical vesting event.

The concept of "entitlement" was not defined in the Duties Act. However, for the purpose of determining whether there was an entitlement, the Court held that the focus was on whether the units that the unitholder held were units with a right to participate proportionately with other unit holders in a distribution of the property of the Victory Hybrid Unit Trust on its vesting.

The Court did not accept argument of Victory International that none of JYP, ZLF and LBZ acquired an "interest" when they acquired their units in the Victory Hybrid Unit Trust. The Court held that the posited distribution of property must take place immediately following the Transactions. At that point, no directions were given by the unitholder that held voting rights under cl 17.8 of the Deed, and additionally, the trustee did not exercise any discretions. In those circumstances, the Court turned to clause 17.1 of the Deed, which provided that, on termination day, the trustee holds the trust fund for the holders of the capital units.

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As each of JYP, ZLF and LBZ were holders of C Class Units, which were capital units that effectively entitled the holder to participate proportionately in a distribution of the property of the Victory Hybrid Unit Trust on its vesting, each of them had the requisite "entitlement" to a distribution of property from the landholder on a winding up of the landholder and an "interest" in the landholder for the purposes of s 79(1) of the Duties Act.

Did each of JYP, ZLF and LBZ acquire a "significant interest" in the Trust?

As each of JYP, ZLF and LBZ had an interest in a landholder, the next step is to ask whether each of them had a 'significant interest' in a landholder immediately after the interest was acquired. That is, whether in the event of such a distribution of all of the property of the landholder each of them 'would be entitled to' 20% or more of the property distributed.

The Court held that section 89H required two calculations. Firstly, based on the rights under the trust deed. Secondly, based on the relevant persons exercising all of their powers and discretions to effect an alteration to the constitution, and to vary the rights conferred by the units in the trust, and to effect or compel the substitution of units in the trust with other units, to maximise the value of the entitlement of the interested person, particularly where there were unexercised winding-up rights. This process reflected the anti-avoidance nature of the provision.

The Court agreed with the Chief Commissioner's calculation of the entitlement of each of JYP, ZLF and LBZ in accordance with section 89H. The Trust Deed produced an entitlement for JYP of 37%, for LBZ of 37% and for ZLF of 26%. Accordingly, as each of the Transferees had acquired more than 20% of the units in the Victory Hybrid Unit Trust, each interest was a 'significant interest' under s 79(2). Further, the secondary calculation then produces a 100% interest for each of them, being an aggregate of 300%.

Given the Chief Commissioner had accepted that it would be inequitable to charge duty on 300% of the value of the land in an aide-memoir after the Assessments were issued, the Court considered it appropriate to remit the Assessments to the Chief Commissioner to be re-determined.

COMMENT – this case demonstrates the importance of timing for landholder duty. If the unit transfers had occurred prior to the contract to purchase land being entered into, when the initial agreement between the parties was made, there would not have been a second round of landholder duty in this case.

TRAP – in many States and Territories, an entity will be deemed to hold land that is subject to an uncompleted contract for purchase, even though the entity is not yet the registered proprietor of the land. The value of the land, and not the value of the contractual right, is then included to determine whether the entity is a landholder and, if so, in calculating the duty payable.

TIP – in many States and Territories, it is not just the acquirer that is liable for landholder duty when a relevant acquisition is made, but also the landholder and other persons who had interests aggregated with the acquirer. This is something for which regard should be had by the other parties when a person is acquiring an interest in a landholder.

Citation *Victory International Pty Ltd v Commissioner of State Revenue* [2025] VSC 484 (Sloss J, Victoria)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2025/484.html

2.4 Big Ben Holdings – duties corporate reconstruction concession

Facts

Big Ben Holdings is the head company of the Bloomfield Group, a tax-consolidated group that includes Bloomfield Collieries Pty Ltd (**BCPL**), which operates an open-cut coal mine near Newcastle.

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The mine's coal is transported via a rail loop that passes over land owned by SRI Corporation Pty Ltd (a Bloomfield Group member) and two unrelated entities, Philcant Nominees Pty Ltd and Dudley Project Pty Ltd, under a co-ownership and partnership arrangement known as the Dudley Farm Partnership.

Under the Dudley Farm Partnership, no party was entitled to transfer its interest in the land without the approval of the other parties and the other parties had a right of first refusal in respect of the interest of any party wishing to sell.

The land was leased to BCPL, with the leases expiring in December 2028 following an exercised renewal option. This limited lease term created a commercial risk for the Bloomfield Group, which had approvals to operate the mine until at least 2030 and possibly 2035, thus giving the external co-owners potential leverage to negotiate higher future access costs.

Big Ben Holdings had expressed an interest in acquiring the land since at least 2018, but initial proposals were not accepted. Negotiations were revived in 2023, including a draft memorandum of understanding for a land swap. This was later replaced with a direct sale offer in December 2023 from Philcant and Dudley to sell their respective one-third interests for $12 million each. Big Ben Holdings counter-offered $10 million per interest, which was accepted. Management of the Bloomfield Group determined that Big Ben Holdings would acquire all three interests, including the interest owned by SRI, to consolidate ownership of the land and eliminate commercial risk.

While there were initial considerations of structuring the transaction as separate purchases to achieve certain duty reliefs (e.g. corporate reconstruction and partition duty), it was ultimately decided that a single transaction would best support a GST-free supply of a going concern.

On 17 January 2024, Big Ben Holdings' shareholders resolved to proceed with the $30 million purchase ($10 million per co-owner), and the land sale contract was executed on 25 January 2024 and completed on 31 October 2024.

On 25 January 2024, a single contract was executed under which SRI, Philcant, and Dudley agreed to sell their respective one-third interests in three lots of land to BBH for a total of $30 million, described as a GST-free supply of a going concern.

A duty concession is available for a corporate reconstruction transaction if two conditions are met: firstly, the transaction is a corporate reconstruction transaction (satisfying section 273B(1)(a) of the Duties Act), and secondly, it is undertaken to change the holding of assets within a corporate group (satisfying section 273B(1)(b) of the Duties Act).

For eligible transactions before 1 February 2024, no duty was payable where corporate reconstruction relief applied. For eligible transactions that occur on or after 1 February 2024, duty is payable, but the duty is reduced to 10% of the full duty that would otherwise be payable.

On 7 August 2024, the Chief Commissioner of State Revenue issued a Duties Notice of Assessment for the transaction (**Assessment**), treating it as a single dutiable transfer and denying corporate reconstruction relief.

While it was accepted that Big Ben Holdings and SRI were in the same corporate group, the Chief Commissioner of State Revenue concluded that the January 2024 transaction was a single, dutiable transaction involving the entire land, rather than separate sales of proportional interests and relied on the case of *Nullagine Investments Pty Ltd v The Western Australian Club Incorporated* [1993] HCA 45. The Chief Commissioner contended that since Philcant and Dudley were unrelated to Big Ben Holdings, the acquisition of SRI’s one-third interest could not qualify as a corporate reconstruction.

The Chief Commissioner also argued that the transaction was not undertaken for the purpose of changing the holding of assets within a corporate group, but rather to resolve commercial issues faced by the Bloomfield

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Group, particularly the risk of high rents or loss of access to critical rail infrastructure. The Commissioner submitted that SRI's inclusion in the contract was incidental to the broader commercial objective and not for the purpose of internal asset realignment between group entities. The Chief Commissioner contended that this failed the purpose test under section 273B(1)(b) of the Duties Act and prevented corporate reconstruction relief from applying.

On 31 October 2024, the transaction was completed, and Big Ben Holdings paid $1,633,065 in duty upon lodging an acquisition statement.

Big Ben Holdings applied to the Supreme Court of New South Wales to set aside the assessment.

Issues

1. Was the sale of SRI's one-third interest to Big Ben Holdings a separate dutiable transaction eligible for corporate reconstruction relief, or part of a single transaction with non-group members, disqualifying it?
2. Was the purpose of transferring SRI's interest to Big Ben Holdings to change the holding of assets within the group, or was it incidental to Big Ben Holdings acquiring the third-party interests?

Decision

Was the transaction eligible for corporate reconstruction relief?

The Court clarified that *Nullagine Investments* does not support the idea that co-owners acting together own or can dispose of the entire fee simple in the whole land. Rather, each co-owner owns a distinct, undivided share in the land (an estate in fee simple in a portion), and can only transfer that individual interest. Accordingly, the Court found that the 25 January 2024 agreement involved three separate transfers of one-third interests in the land, and thus three separate dutiable transactions. The transfer of SRI's interest to its wholly-owned subsidiary, Big Ben Holdings, was therefore a distinct transaction and subject to its own duty treatment.

Once the Court recognised the sale of SRI's one-third interest as a separate transaction, it had no difficulty finding that this transfer satisfied the definition of a corporate reconstruction transaction under section 273C of the Duties Act. It was a transaction between two entities within the same corporate group, and thus eligible for the duty exemption provided certain conditions were met.

The Chief Commissioner resisted this conclusion by arguing that treating the sale of fractional interests differently from the sale of full ownership could lead to inconsistent duty outcomes. The Court rejected this logic, emphasising that the nature of the interest being transferred is different in each case; an interest in the whole fee simple is not the same as fractional co-ownership shares being transferred individually.

What was the purpose of the transaction?

The Court found that while securing full ownership and dissolving the partnership were important goals, another clear and independent purpose was to move SRI's interest to Big Ben Holdings.

Contemporaneous internal documents and correspondence made it evident that management always intended for Big Ben Holdings to ultimately own the land. The decision to consolidate the transaction into a single contract was made for GST efficiency, not to change the substantive purpose of internal asset reallocation. Therefore, the transaction was indeed undertaken for the purpose of changing the holding of assets within the corporate group.

The Court revoked the assessment of duty on the transaction and ordered the Chief Commissioner to issue an amended assessment. The Chief Commissioner was also ordered to pay the legal costs of Big Ben Holdings.

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TRAP – the corporate restructure duty concessions are highly technical and have a number of conditions and limitations. It is important that a corporate restructure transaction for which relief is to be sought be undertaken with care.

Citation *Big Ben Holdings Pty Limited v Chief Commissioner of State Revenue* [2025] NSWSC 984 (Hmelnitsky J, New South Wales)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2025/984.html

2.5 Doublebar and Bloodfinch – 'associated persons' for duties

Facts

In mid-2018, two adjoining properties at 4 and 6 Lyell Street in Fyshwick, Australian Capital Territory, were owned by separate trustee companies: 4 Lyell Street Pty Ltd as trustee for the 4 Lyell Street Trust and 6 Lyell Street Pty Ltd as trustee for the 6 Lyell Street Trust, respectively.

Both companies were experiencing financial difficulties after being grouped for payroll tax purposes, which resulted in a payroll tax liability of more than $4.6 million. This led to litigation between the companies and the Commissioner for ACT Revenue.

To fund their operations, the companies obtained loans from three non-bank lenders, Marginata Securities, Reliance Financial Services and Accolade Advisory, who secured their lending with mortgages over the Lyell Street properties. Until 1 July 2019, the sole director and sole shareholder of Marginata was Stefan Morvillo.

By August 2018, the companies had defaulted under these loan agreements, placing the lenders' security at risk. Marginata, Reliance and Accolade were concerned that they would lose the benefit of their secured interests in the properties.

On 6 August 2018, steps were taken to restructure the ownership of the properties. Two new companies, 6 Doublebar Pty Ltd and 4 Bloodfinch Pty Ltd, were incorporated and appointed as trustees of newly created discretionary trusts, the Doublebar Trust and the Bloodfinch Trust. The property at 4 Lyell Street was transferred to Doublebar for $450,000, while 6 Lyell Street was transferred to Bloodfinch for $1,050,000. No cash changed hands, instead, the new trustees assumed the existing liabilities to the lenders. The consideration for each lot expressed in the transfers of the properties was below the minimum consideration which would trigger an obligation to pay duty on each sale.

Following these transactions, the original trustee companies were placed into liquidation. Both new trusts were discretionary, with broad classes of beneficiaries. In the case of the Bloodfinch Trust, the beneficiaries included Maria Cassaniti, grandmother of Stefan, who was also the sole director and shareholder of the new trustee companies.

The Commissioner subsequently issued investigation notices and required independent valuations for duty purposes. The taxpayers submitted valuations of $1.28 million for 4 Lyell Street and $520,000 for 6 Lyell Street, while the ACT Valuation Office valued them significantly higher at $1.9 million and $600,000, respectively. Relying on these higher valuations, the Commissioner issued duty assessments in July 2019, aggregating the two transactions and assessing conveyance duty of just under $140,000 for Doublebar and just over $44,000 for Bloodfinch, inclusive of penalty tax and interest.

The taxpayers objected to these assessments, disputing both the valuation figures and the Commissioner's decision to treat the transfers as a single aggregated transaction. Their objections were disallowed and the taxpayers applied to the ACT Civil and Administrative Tribunal (**ACAT**) for merits review.

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At first instance, the ACAT framed the aggregation question into three sub-questions: whether the transferees were “associated” or “related” persons within the Duties Act definition, whether the two transfers together amounted to “one arrangement” for section 24(1)(c) purposes, and whether it would be just and reasonable to aggregate under the exception in section 24(2)(d).

Trustees are 'associated persons' if any person is a beneficiary common to the trusts of which they are trustees. The Commissioner claimed Stefan was a beneficiary of the Bloodfinch Trust due to his familial relationship with Maria Cassaniti. At first instance, the ACAT rejected this, relying on *Cypjayne Pty Ltd v Rodskog* [2009] NSWSC 301, where it was held that objects of a discretionary trust are not beneficiaries in the strict legal sense. They do not have a proprietary or equitable interest in trust property but are merely potential beneficiaries.

Consistent with *Cypjayne*, the ACAT held that objects of discretionary trusts are not beneficiaries in the proprietary sense and, therefore, the Commissioner could not rely on trustee-beneficiary arguments to determine that the Bloodfinch Trust and the Doublebar Trust were 'associated persons'.

The Commissioner also attempted to rely on section 82 of the Duties Act, which addresses constructive ownership in discretionary trusts. Section 82 deems certain objects of a trust to be beneficiaries and implies ownership of trust property. However, the ACAT rejected this as section 82 applied for the purpose of the landholder duty provisions only.

Private companies are 'associated persons' if common shareholders have a significant interest in each private company. The Commissioner argued that because the discretionary beneficiaries were not true beneficiaries, the beneficial interest rested with the trustee companies and they were 'associated persons' as Stefan was the sole shareholder of each trustee company. This argument was not accepted by ACAT at first instance.

In respect of the “one arrangement” issue, the ACAT looked at the factual matrix and concluded the transfers did not, taken together, form or arise from a single, substantially unified arrangement. Finally, the ACAT found that even if aggregation were arguable, the Commissioner should have been satisfied it would not be just and reasonable to aggregate the transactions.

The Commissioner appealed the ACAT's decision to an appellate member of the ACAT.

Issues

1. Did the ACAT fail to properly apply the burden of proof of the taxpayer?
2. Were the trustee companies “associated persons” under section 24 of the Duties Act?
3. Did the transactions formed, evidenced, gave effect to, or arose from substantially one arrangement under section 24(1)(c) of the Duties Act?

Decision

Burden of proof

The Commissioner’s primary contention was that section 101(3) of the TAA (ACT), which places the burden of proof on taxpayers to show their objection should be upheld, applies to ACAT proceedings and had not been properly applied. The appellate member found no error in how the ACAT applied section 101(3). The ACAT had correctly stated that the burden of proof lay with the taxpayers and acknowledged its role as standing in the Commissioner’s shoes to make a fresh decision based on the evidence.

The Commissioner argued that section 101(3) created a "gateway". That is, the ACAT must first decide whether the taxpayer has met the burden before considering what the correct or preferable decision would be.

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The appellate member rejected this interpretation holding that the two tasks, determining whether the taxpayer met the burden and deciding the correct outcome, can be performed concurrently.

Were the trustee companies associated persons?

The Commissioner submitted that the ACAT did not address two alternative association lines: treating discretionary beneficiaries as owners via section 82 or treating the trustee companies as beneficial owners and relying on common shareholding/significant interest.

In respect of the latter, private companies will be associated persons if common shareholders have a significant interest in each private company. The Commissioner claimed Stefan would be entitled to 100% of the property on winding up since he owned the companies.

The appellate member found that the ACAT had in fact considered all of these arguments and gave principled reasons for rejecting them.

The appeal was dismissed and the original decision from the ACAT was upheld.

Did two property transfers form, evidence, gave effect to, or arise from "substantially one arrangement"?

The Commissioner argued the ACAT erred in law by failing to find the transfers were substantially one arrangement. The appellate l member observed that the Commissioner pointed mostly to factual material rather than identifying a legal error, and the Commissioner had not shown the ACAT's reasons were inadequate or its factual conclusion unsafe.

The appellate member also noted the ACAT's independent finding that aggregation would not be just and reasonable, a finding that was not appealed, further undermined the Commissioner's case.

COMMENT – the conclusion that the transfers did not give effect to substantially one arrangement seems generous when regard is had to prior cases that dealt with restructuring of landholdings or interests in landholders.

TIP – the 'associated persons' and 'related persons' definitions for duties varies significantly between jurisdictions and also differs significantly from the definition of 'associate' in section 318 of the ITAA 1936.

Citation *Commissioner for ACT Revenue v 6 Doublebar Pty Ltd as trustee for the 6 Doublebar Trust*; *Commissioner for ACT Revenue v 4 Bloodfinch Pty Ltd as trustee for the 4 Bloodfinch Trust* [2025] ACAT 53 (Acting Presidential Member G Curtin SC)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/act/ACAT/2025/53.html

2.6 Montessori Children's Foundation – meaning of 'institution'

Facts

On 1 July 1991, Leslie Charles Masterman died, leaving a will that established a charitable trust to further the education of Aboriginal children in the Weipa area using the Montessori method. However, no deed existed to implement this at the time of his death, prompting litigation in the Supreme Court of Queensland.

On 8 June 2005, following court orders, Montessori Children's Foundation was established and registered as a public company limited by guarantee to act as trustee of the charitable trust. Later that year, on or around 31 December 2005, the Masterman Montessori Indigenous Children's Trust (**Trust**) was formally established, with the Foundation as its trustee.

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From 2005 to 2009, the trustee developed Montessori early childhood classrooms across various Torres Strait Islands, training local facilitators. Between 2005 and 2013, it also supported Montessori-style programs throughout Cape York and funded an early childhood centre in Lockhart River.

At the end of 2019, the trustee shifted towards directly delivering Montessori programs and engaged a leading Montessori trainer to help develop a curriculum.

In mid-2020, the trustee resolved to acquire properties in Cairns to serve as a base for operations and as income-generating assets. On 14 October 2020, it entered into contracts to purchase three Cairns properties.

On 26 October 2020, the Trust Deed was amended to clarify winding-up provisions in line with statutory requirements.

On 2 November 2020, the trustee applied for registration as a charitable institution under the *Taxation Administration Act 2001* (Qld) (**QLD TAA**), citing its public benevolent activities aimed at advancing the education of Indigenous children in Cape York.

On 24 November 2020, the trustee signed the transfer documents for the Cairns properties. This became the "Relevant Date" for assessing eligibility under the QLD TAA.

On 8 March 2021, the Commissioner of State Revenue refused the registration application, arguing the trustee could not be characterised as an “institution” under the QLD TAA.

On 27 June 2022, the trustee objected to this decision. That objection was disallowed on 20 December 2022, with the Commissioner reiterating that the Trust lacked the organisational features of an “institution”.

On 17 February 2023, the trustee applied to the Queensland Civil and Administrative Tribunal (**QCAT**) for review of the objection decision.

On 17 February 2025, the QCAT set aside the Commissioner’s decision, finding the trustee to be more than a mere trust and therefore an “institution” under the QLD TAA. The QCAT ordered the trustee and the trust to be registered as charitable institutions with a registration date of 26 October 2020.

The Commissioner appealed to the Court of Appeal.

Issues

Is the trustee entitled to be registered as 'charitable institution' under the QLD TAA?

Decision

Meaning of "institution"

The Commissioner argued that the term "institution" should be interpreted using a narrow, technical legal meaning derived from prior case law in the context of taxation legislation. According to this view, an "institution" must be a structured body with a formal membership and organisational features beyond those of a trust. The Court rejected this submission, finding that the term should be given its ordinary meaning within the statutory context of Part 11A of the QLD TAA. The Court considered that the Commissioner’s approach wrongly treated judicial observations in specific factual settings as though they were universal legal definitions. Instead, the proper construction of "institution" must be drawn from the legislative text, context, and purpose. The Court agreed with Gibbs J in *Stratton v Simpson* (1970) 125 CLR 138, who described an institution as an organisation or undertaking formed to promote a defined purpose, particularly one of public utility. Therefore, the Court concluded that the judicial member did not err in law and correctly applied the ordinary meaning of "institution".

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Relevant considerations

The Commissioner claimed the judicial member failed to properly assess the structure and operations of the trust prior to 24 November 2020, the "Relevant Date" for registration. However, the Court found that the QCAT member had carefully considered the trustee's activities leading up to that date. These included its curriculum development, engagement of a specialist Montessori trainer, acquisition of real estate for program delivery, and direct provision of a free community playgroup for Indigenous families. The Court noted that these activities showed a clear transition from merely funding external programs to delivering educational services directly. The trustee was actively using trust property to implement charitable objectives. As such, the judicial member's decision that the trustee qualified as an 'institution' based on its pre-Relevant Date activities was well supported. There was no failure to consider relevant facts.

Misapplication of the term "institution"

The Commissioner alternatively argued that the judicial member had misapplied the legal test by finding that the trustee's actions met the threshold for being an institution. The Court rejected this argument. It reiterated that the trustee had applied for registration in its capacity as trustee of a specifically constituted charitable trust. Both the Trust Deed and the trustee's constitution required that all property be applied solely to further the trust's charitable purposes. The trustee had taken direct, purposeful steps to deliver those services, including program creation, administration, and operation. The Court emphasised that the trustee was not acting passively, nor simply distributing funds. It was engaged in meaningful, ongoing activity aligned with the charitable objectives of the trust. Therefore, the judicial member's conclusion that the trustee was an 'institution' under the QLD TAA was appropriately grounded in both fact and law.

Activities after relevant date

Finally, the Commissioner alleged that the judicial member had impermissibly relied on activities occurring after the Relevant Date in reaching the conclusion that the trustee was an "institution". The Court acknowledged that the judicial member did refer to post-Relevant Date activities. However, it found that these references were used only to contextualise the nature and trajectory of the trustee's ongoing operations. The judicial member clearly grounded the registration decision in activities occurring before the Relevant Date, including property acquisition, program development, and community engagement. The activities after the relevant date merely confirmed and illustrated the trustee's active pursuit of the charitable objectives of the Trust. Consequently, there was no legal error in taking those matters into account in a limited, confirmatory way.

Citation *Commissioner of State Revenue v Montessori Children's Foundation* [2025] QCA 153
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QCA/2025/153.html

2.7 Caldwell v Caldwell – family trust and divorce

Facts

The Caldwell family business was established in the 1900s by Mr Caldwell's great-grandfather. It was subsequently operated by successive generations, including Mr Caldwell's grandfather and then his father, Mr K. Over time, this business evolved into a group of related companies and trusts, including B Pty Ltd, C Pty Ltd, and D Pty Ltd.

On 1 October 1982, the C Trust was established by Mr K. Its main asset became a property in Brisbane acquired that same year. The trust deed stated that the trust existed for the exclusive benefit of Mr K's direct lineal descendants. Mr Caldwell and his siblings were named as primary beneficiaries. Mr K was the sole principal until his death.

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On 19 June 1993, the D Trust was established. Like the C Trust, it was structured to benefit Mr K's direct descendants. Its corporate trustee was D Pty Ltd, and its main asset became a 75% stake in the E Trust, which owned another Brisbane property purchased in March 1997.

On 15 September 2016, the B Trust was created, again with Mr K as appointor and primary beneficiary. Mr Caldwell was named as the sole secondary beneficiary. The trust deed permitted broad discretionary distributions, including to Mr Caldwell. The trustee was B Pty Ltd.

On 19 June 2019, all three trust deeds (B, C, and D) were amended to exclude any person who was not a direct lineal descendant of Mr K as a potential beneficiary. This amendment explicitly excluded Ms Caldwell, who had previously been an eligible beneficiary as Mr Caldwell's spouse.

On 30 April 2021, further variations were made to each trust deed. Upon Mr K's death, Mr Caldwell, along with his sons Mr G and Mr H, would become joint appointors or principals. Importantly, Mr Caldwell was given unilateral power to remove his sons from these roles and appoint replacements without giving reasons.

In early 2022, Mr and Ms Caldwell separated after about 30 years of marriage. They later divorced in 2023. The couple have three adult children, including Mr G and Mr H.

In July 2024, the C Trust provided Mr Caldwell with a $1 million loan facility to fund legal expenses. On the same date, Mr Caldwell, Mr G, and Mr H entered into a side agreement confirming that:

1. Mr G and Mr H would only sign the loan agreement on the condition that a clause allowing their removal as appointors be deleted; and
2. Mr Caldwell agreed to the removal of that clause, and all parties confirmed that matters concerning the divorce settlement and loans would be dealt with separately.

On 28 October 2024, Ms Caldwell applied to the Federal Circuit and Family Court of Australia (Division 1) for property settlement orders under section 79 of the *Family Law Act 1975* (Cth).

Ms Caldwell sought a declaration from the Family Court that the B, C, and D Trusts and/or their assets were "property of the parties to the marriage or either of them" within the meaning of section 79 of the *Family Law Act*. 'Property of the parties to the marriage' refers to any assets or interests that either or both spouses are legally or beneficially entitled to, which can be adjusted between them under section 79 of the *Family Law Act*. This concept is significant because only assets classified as 'property' can be directly divided by the Court in a financial settlement following separation or divorce.

Ms Caldwell contended that Mr Caldwell had effective control of the trusts such that the trusts or their assets could be treated as his property. Mr Caldwell contended that control was shared with his sons and could only be exercised unanimously, meaning he did not have sole control.

If Mr Caldwell had control, Ms Caldwell argued that the control and benefits received meant the trusts/assets should be treated as property of Mr Caldwell. Mr Caldwell argued that the trusts were separate legal entities and that any control or benefit was insufficient to characterise them as property, and at most, they were a financial resource, not 'property'.

In addition to the declaration, Ms Caldwell sought significant relief, including:

4. removal of her sons, Mr G and Mr H, as appointers or trust guardians;
5. restraints on Mr Caldwell from altering trust appointments until settlement was paid;
6. an order requiring Mr Caldwell to appoint a replacement trustee and cause a distribution of 35 percent of the net trust assets to himself; and
7. an order requiring him to then transfer that sum to her as part of the matrimonial property division.

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Issue

Were the B Trust, C Trust and D Trust (or assets held by these trusts) 'property' of the parties to the marriage or either of them under section 79 of the *Family Law Act 1975* (Cth)?

Decision

The Court reiterated that trust assets may only be regarded as property if a party has effective control and power to benefit from the trust. It referred to *Kennon v Spry (2008)* 238 CLR 366, distinguishing that case as one with highly unusual circumstances, including a long history of trust use for family benefit, a direct link between the trust assets and the matrimonial home, and Mr Caldwell's complete control. Those facts did not exist here. Instead, the Caldwell trusts were intergenerational family structures, established and controlled by Mr K, without significant involvement or contribution from Mr Caldwell or Ms Caldwell.

Each of the three trusts was structured to benefit only the direct lineal descendants of Mr K. The trust deeds expressly excluded anyone who was not a direct descendant, including Ms Caldwell, and prohibited the distribution of any benefit, directly or indirectly, to her. Mr Caldwell did not receive any distributions from the trusts during the marriage or after separation. Although he gained powers such as the ability to remove or appoint directors or appointors after Mr K's death in 2022, he had not exercised these powers. The Court accepted the side agreement in relation to the July 2024 loan as evidence that Mr Caldwell had no present intention to exercise his powers to remove his sons, which supported the argument that he was not actively using trust powers for personal or matrimonial advantage.

Furthermore, the Court concluded that Mr Caldwell's powers under the trust deeds were constrained by the specific purposes of the trusts: to manage the Caldwell family business for the benefit of Mr K's direct descendants. Any use of these powers to benefit the Ms Caldwell, even indirectly, would breach the proper purpose of the trusts and fiduciary obligations. While Mr Caldwell's control was broad, it was not absolute and could not be validly exercised outside the intended purpose of the trusts. The assets of the trusts were not the result of contributions made by Mr Caldwell or Ms Caldwell during their marriage but were built over four generations by the Caldwell family. Mr Caldwell was appropriately remunerated for his work in the family business, and the couple had accumulated substantial wealth outside the trusts.

The Court concluded that compelling Mr Caldwell to use trust assets to satisfy a property settlement would conflict with the express terms and purpose of the trusts, particularly given Ms Caldwell's exclusion as a beneficiary. Such an outcome would also prejudice the interests of other potential beneficiaries, especially their children, Mr G and Mr H. Although the assets of the trusts were not property of the marriage, Mr Caldwell conceded they constituted a financial resource under section 79. Given all these factors, the Court dismissed Ms Caldwell's application to have the trusts or their assets declared as property of the marriage.

COMMENT - In family law, a trust may be treated either as "property" of the marriage, which can be divided between spouses, or as a "financial resource", which the Court considers when determining how to fairly divide the actual property. A financial resource is something a person can reasonably expect to draw income or support from in future, even if they do not have a legal or ownership interest in it. For example, if one spouse is a beneficiary of a trust and regularly receives distributions, the trust assets may not be divided as property, but the Court may still take those expected benefits into account when allocating other assets.

Citation *Caldwell v Caldwell* [2025] FedCFamC1F 506 (Carew J, Brisbane)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FedCFamC1F/2025/506.html

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3. Cases in brief

3.1 Wannberg – deductibility of medical expenses

Jan Wannberg applied to the ATO for a private ruling in relation to the deductibility of medical expenses incurred in the year ended 30 June 2024, totalling approximately $100,000. Jan' assessable income was entirely made up of his Total and Permanent Disablement (TPD) pension. He claimed his medical expenses were deductible under section 8-1 of the ITAA 1997 as they were necessary for managing his health condition that made him eligible to receive his TPD pension and were therefore incurred in gaining or producing assessable income.

The Commissioner disallowed the deduction. Jan objected to the ATO's private ruling decision which was subsequently disallowed. On 4 June 2024, Jan applied to the ART seeking a review of the decision.

Section 8-1 of the ITAA 1997 allows deductions for losses or outgoings incurred in gaining or producing assessable income, unless they are of a private or domestic nature. Consistent with the High Court decision in *Commissioner of Taxation v Payne* [2001] HCA 3, the language in section 8-1 does not create a test of whether outgoings are incurred 'in connection with' the derivation of assessable income but require an analysis of whether the outgoing is incurred 'in' gaining assessable income.

The ART referred to the High Court's decision in *Federal Commissioner of Taxation v Anstis* [2010] HCA 40, which involved a full-time student in receipt of the youth allowance, who was permitted to deduct self-education expenses because the youth allowance was gained or produced by the student' entitlement to that payment was consequent on the fact that she qualified for the payment. The ART held that Jan's position was not analogous to *Anstis* because the medical expenses assisted Jan with his medical condition, and not to gain or maintain his eligibility to the TPD pension.

The ART determined that Jan's TPD pension was passive income which arose from his prior disablement, rather than any current activity. The ART held that Jan's medical expenses did not produce his medical condition or produce the TPD pension. Therefore, the medical expenses were not incurred in gaining or producing assessable income.

Separately, the ART also held that the medical expenses were private or domestic in nature, and therefore not allowable deductions. For example, this included psychotherapy sessions at a cost of $11,000 and dental repairs at a cost of $5,000, which the ART held were personal in nature and relate to Jan taking care of his mental and dental health.

The Commissioner's decision was affirmed.

Citation *Wannberg v Commissioner of Taxation (Taxation)* [2025] ARTA 1561 (Deputy President G Lazanas, Perth)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2025/1561.html

3.2 ZKSM – margin scheme and valuation of consideration

ZKSM, a trustee company engaged in land development in the ACT, entered into development lease arrangements with the ACT Government's Suburban Land Agency (**SLA**) in 2015 and 2017. Under those arrangements, ZKSM paid substantial monetary amounts and also undertook development works at its own cost, including the design and construction of roads, 2,000 residential properties, a school, landscaping and other infrastructure. In return, ZKSM was granted short-term holding leases during the construction period and,

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upon satisfactory completion of the works, received 99-year leases over the subdivided residential lots which it then sold to end purchasers.

To apply the margin scheme under Division 75 of the GST Act, ZKSM was required to establish the acquisition cost of the land, which included both the monetary payments and the non-monetary consideration in the form of development works. Rather than attempting to value the development services directly, for example by costing the works or obtaining an independent valuation of the services themselves, ZKSM adopted a 'deductive' approach. It commissioned professional valuers to prepare retail, lot-by-lot valuations of the long-term leases which it was ultimately entitled to receive upon completion of the works. From the aggregate market value of those retail leases, it deducted the amount of monetary consideration it had already paid to the SLA. The residual figure was then treated as representing the GST-inclusive market value of the development works provided as non-monetary consideration.

ZKSM issued tax invoices to the SLA as each stage of development was completed, calculating the GST payable on the development services according to the residual methodology. The SLA paid those invoices, leaving itself in a GST-neutral position by claiming input tax credits for the amounts remitted. In turn, ZKSM included the invoiced GST in its BAS reporting and, when on-selling the subdivided lots to end purchasers, applied the margin scheme using its calculated acquisition cost (monetary payments plus the residual value attributed to the development works).

The Commissioner considered the approach taken by ZKSM to be unreasonable. In the Commissioner's view, ZKSM had acquired englobo land subject to significant development obligations, not finished retail lots. Accordingly, the proper valuation of the non-monetary consideration required a methodology reflecting wholesale or “in one line” market value principles, such as a hypothetical development or residual approach which accounted for the risks, costs and profit margins associated with large-scale developments. The Commissioner raised amended assessments for 30 BAS periods, increasing GST by over $1 million.

The ART agreed with the Commissioner’s position and rejected the methodology advanced by ZKSM. In doing so, the ART reiterated that, for GST purposes, “consideration” is not confined to the amounts of money paid, but also encompasses non-monetary obligations such as development works carried out under a contractual arrangement. Accordingly, ZKSM’s acquisition cost necessarily included both the monetary sums remitted to the SLA and the GST-inclusive market value of the development services.

Although the parties had chosen a deductive method of valuation (i.e. starting from the value of the land acquired and then subtracting the monetary payments), the ART stressed that such an approach must still produce a reasonable figure for the non-monetary component. In this case, ZKSM’s reliance on lot-by-lot retail valuations of the long-term leases failed that standard. Those valuations treated the land as though it comprised a bundle of completed subdivided lots available for sale to individual purchasers in the retail market. However, what ZKSM in fact acquired from the SLA was an englobo parcel of undeveloped land, conditional on its undertaking significant development obligations before long-term leases would issue.

The ART considered the method taken overstated the value of the land side of the transaction and correspondingly understated the value of the development services. By contrast, a reasonable valuation methodology needed to reflect the commercial reality of what was exchanged, being undeveloped englobo land subject to development obligations, and therefore to adopt wholesale valuation techniques appropriate to that asset. Examples included residual or “hypothetical development” analyses, which start with the projected end value of a completed project but make appropriate deductions for risks, financing, profit and other development costs. Such approaches recognise that a purchaser of an englobo parcel would never pay a price equivalent to the aggregate of retail lot values; rather, they would factor in the uncertainties and costs of bringing the development to fruition.

As ZKSM failed to demonstrate that the Commissioner’s amended assessments were excessive, the ART affirmed the assessments in full.

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COMMENT – the decision highlights that non-monetary consideration must be measured in a way that reflects its substance, usually by wholesale methods that recognise risks, costs and profit margins. Developers relying on the margin scheme must ensure their valuations of non-monetary consideration reflect the commercial reality of what was given, not the retail value of what was ultimately created.

Citation *ZKSM and Commissioner of Taxation (Taxation)* [2025] ARTA 1298 (General Member M Abood, Sydney)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2025/1298.html

3.3 Barth Family Trust – time limit to claim ITCs

The Barth Family Trust operates a swimming pool construction business and has been registered for GST since 1 July 2000, accounting for GST on a cash basis and lodging quarterly business activity statements.

The Trust did not lodge BASs for 2012 and 2013 until March 2018, by which time 4-5 years had passed since the required lodgment date.

Ronny Barth was the sole director of the trustee. His wife, Janet Barth, gave evidence that she managed administrative tasks of the business such as attending tax obligations. Janet gave evidence that their computer was stolen in late 2011 or early 2012, and once they purchased a new computer their existing AUSKEY, apparently required for ATO lodgments, was no longer compatible.

There were attempts made to obtain BAS paper forms, but these were sent to the wrong post office box. Janet attempted to lodge returns electronically on 20 February 2024 but without success. In April 2015, an ATO officer followed up the outstanding returns which was followed by an email.

Once a new computer was acquired in March 2018, and another AUSKEY was obtained, the returns were lodged.

On review, the ATO disallowed income tax credits claimed in those returns on the basis that the BASs were not lodged within the required time under section 93-5 of the GST Act.

The ART determined that section 93-5 of the GST Act unambiguously extinguished a taxpayer's entitlement to claim ITCs if they were not claimed in an assessment lodged within 4 years of the due date. The ART noted that it would be a "curious outcome" where a taxpayer who failed to lodge returns by the due date could effectively claim ITC's many years later by lodging an objection against an amended assessment or deemed assessment. The statutory provision unequivocally states that the taxpayer will cease to be entitled to claim and ITC where it has not been claimed in the 4 years period after the time for the lodgment of the return.

The ART found no evidence that the ATO communications amounted to an extension or deferral. The ART noted that the returns were overdue and that the trustee had agreed to lodge the overdue BAS by 30 June 2015. The ART noted that "it would be surprising" if the Commissioner were to retrospectively allow further time without expressing the decision in cleat terms or recording its reasons for what would be a substantial departure from the legislative provisions. In any event, the Trust's further delay in lodgment undermined its claim that the due dates had been extended.

The Commissioner's decision was affirmed.

Citation *The Trustee for the Barth Family Trust v Commissioner of Taxation (Taxation)* [2025] ARTA 1558 (Senior Member R Olding, Brisbane)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2025/1558.html

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3.4 IB Quadrant Trust – land tax exemption for home in QLD

In 2004, the IB Quadrant Trust was established. The trust was a discretionary trust. Naka Chan Investments Pty Ltd was included among the beneficiaries of the trust and had received distributions of trust income.

Andrew Wright, as trustee of the IB Quadrant Trust, owned a residential property at Paradise Point, Queensland. During the 2021–22 and 2022–23 land tax years, Andrew and his two children lived in the property as their home.

Under section 6 of the *Land Tax Act 2010* (Qld), land tax is imposed on all taxable land in Queensland, with the liability to pay tax falling on the owner of that land. Land used as a home is exempt from land tax under section 35 of the Land Tax Act. Where the owner is a trustee, the "home exemption" requires that all beneficiaries of the trust use the land as their home.

Schedule 4 of the Land Tax Act defines a 'beneficiary' as a person entitled to a beneficial interest in land or income derived from that land, and section 24 of the Land Tax Act extends this definition, in the case of discretionary trusts, to include any person in whose favour a power of appointment has been exercised in the 12 months prior to an assessment.

The Commissioner assessed the property for land tax and denied the "home exemption" on the basis that not all beneficiaries of the IB Quadrant Trust used the property as their home. In particular, the Commissioner considered that Naka, as a corporate beneficiary, could not physically reside at the property. Andrew objected to the assessments, relying on a 2017 deed of variation of the trust which prevented companies from having any legal or beneficial interest in, or receiving income from, the Paradise Point property. Andrew argued that the only relevant beneficiaries of the trust, therefore, were himself and his two children, all of whom occupied the property.

The Commissioner disallowed the objection in March 2024, and Andrew sought review in the QCAT

The QCAT found that, because the trust was a discretionary trust, section 24 of the Land Tax Act was determinative. While the 2017 deed of variation excluded companies from having an interest in the Paradise Point property, it did not remove Naka from the class of beneficiaries. Accordingly, as the trustee had exercised the power of appointment in favour of Naka during the relevant land tax years, albeit with respect to other trust assets, Naka was a beneficiary of the trust. As a company, Naka could not physically use the property as a home, meaning the requirement for the "home exemption" that all beneficiaries use the land as a home was not met.

Accordingly, the QCAT confirmed the Commissioner's objection decision and dismissed Andrew's application. The property remained taxable land, and the land tax assessments were upheld.

COMMENT – This case highlights the strict operation of the "home exemption" rules in Queensland where a property is held by a discretionary trust. Even if a deed variation restricts a company beneficiary from having any interest in the particular property, the exercise of a power of appointment in the Company's favour in the prior 12 months means it remains a beneficiary for land tax purposes in Queensland. Because a company cannot physically reside in a home, its inclusion as a beneficiary will generally deny the exemption.

Citation *Wright ATF IB Quadrant Trust v Commissioner of State Revenue* [2025] QCAT 301 (Senior Member Traves and Member Wilson, Brisbane)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QCAT/2025/301.html

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3.5 Other tax and super related cases published from 13 Aug to 10 Sept 2025

Citation	Date	Headnote	Link
MXSN v Commissioner of Taxation [2025] ARTA 1399	15 August 2025	PRACTICE AND PROCEDURE - TAXATION – application to vacate substantive hearing – further application to expand the grounds of review – Applicant permitted to argue additional submissions	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2025/1399.html
Meniscus Pty Ltd ATF The Meniscus Trust v Chief Commissioner of State Revenue [2025] NSWCATAD 209	21 August 2025	TAXES AND DUTIES – surcharge land tax – discretionary trust not amended to exclude foreign beneficiaries before 31 December 2020 – extension of time to object to notices of assessment	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCATAD/2025/209.html
Zappia v Chief Commissioner of State Revenue [2025] NSWCATAD 210	22 August 2025	TAXATION AND REVENUE – land tax – exemption for land used for primary production – maintenance of greyhounds for the purpose of their sale or sale of their natural increase – onus of proof not satisfied	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCATAD/2025/210.html
Dempsey v Commissioner of State Revenue [2025] QCAT 326	27 August 2025	General administrative review matters – Application to review a decision land is not exempt land – Application to strike out the review application – Whether the applicant has complied with section 69 of the Taxation Administration Act 2001 (Qld) – Non-payment of tax – jurisdiction of Tribunal to hear and decide the application	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QCAT/2025/326.html
Pennisi & Pennisi v Commissioner of State Revenue [2025] QCAT 327	28 August 2025	ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – whether the applicant was entitled to the HomeBuilder Grant	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QCAT/2025/327.html
Nguyen and Commissioner of Taxation (Practice and procedure) [2025] ARTA 1662	3 September 2025	Refusal of request for extension of time to lodge objection – factors relevant to exercise of discretion to extend time for lodgement – arguable case – no reasonable prospects for success – decision refusing request for extension of time affirmed.	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2025/1662.html
Deputy Commissioner of Taxation v Bundaberg Indoor Sports Pty Ltd [2025] FCA 1104	5 September 2025	TAXATION – ex parte application for freezing orders – where applicant was issuing notices of amended assessments to respondents – where notices of amended assessments would result in significant tax-related liabilities – consideration of limbs for issuance of freezing orders – where applicant had a good arguable case in relation to tax-	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2025/1104.html

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Citation	Date	Headnote	Link
		related liabilities – where there was a real risk of dissipation of assets – where balance of convenience favoured grant of freezing orders – orders made.	
Roen v Chief Commissioner of State Revenue [2025] NSWCATAD 226	9 September 2025	TAXES AND DUTIES — penalties and interest imposed on a surcharge purchaser duty assessment — amendments made to Applicant's declaration without her knowledge	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCATAD/2025/226.html

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4. Legislation

4.1 Progress of legislation

Title	Introduced House	Passed House	Introduced Senate	Passed Senate	Assented
Treasury Laws Amendment (Payments System Modernisation) Bill 2025	30/7	2/9	4/9	4/9	
Treasury Laws Amendment (Strengthening Financial Systems and Other Measures) Bill 2025	4/9				
Universities Accord (Cutting Student Debt by 20 Per Cent) Bill 2025	23/07	29/07	29/07	31/07	02/08

4.2 Determination to specify Pillar Two qualified GloBE taxes

The Government has registered a new legislative instrument, the *Taxation (Multinational—Global and Domestic Minimum Tax) (Qualified GloBE Taxes) Determination 2025*, to specify when a jurisdiction has qualified taxes under the Global Anti-Base Erosion (GloBE) Rules.

The GloBE Rules form part of the OECD/G20 Pillar Two framework, which introduces a global minimum tax of 15% for large multinational enterprises. These rules are designed to curb profit shifting to low-tax jurisdictions and ensure that a minimum level of tax is paid regardless of where profits are booked. Australia implemented these rules domestically through the *Global and Domestic Minimum Tax Acts 2024*.

The determination clarifies when a jurisdiction has a Qualified Income Inclusion Rule (IIR) or a Qualified Domestic Minimum Top-up Tax (**QDMTT**). It also specifies when the Minister is satisfied that a jurisdiction has QDMTT safe harbour status for a fiscal year. The status of a jurisdiction is critical, as it affects the agreed “rule order” under the GloBE framework ensuring tax is collected in the correct jurisdiction and avoiding double taxation or disputes between countries.

Importantly, the determination applies retrospectively, consistent with the GloBE policy framework, which allows jurisdictions to adopt the rules from 31 December 2023. The ATO has noted that the list of jurisdictions with qualified GloBE taxes will be updated as necessary to reflect international developments.

w https://www.legislation.gov.au/F2025L00985/asmade/text

4.3 GST determination – representatives of incapacitated entities

The GST determination allows representatives of incapacitated entities to account for GST on a cash basis under section 29-40 of the GST Act. This determination replaces the previous instrument (No 39, 2015) and has the same effect.

Representatives no longer need permission from the Commissioner to choose this method, regardless of the entity's previous accounting approach.

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The instrument takes effect on 14 August 2025.

w https://www.legislation.gov.au/F2025L00929/asmade/text

4.4 Amendments to Administrative Review Tribunal procedures

On 3 September 2025, the *Administrative Review Tribunal and Other Legislation Amendment Bill 2025* was introduced to Parliament.

The Bill proposes to expand the circumstances where the ART may decide a matter without holding a hearing. The new discretion will apply where the issues can be adequately resolved on the papers, it is reasonable to do so, and parties have been given a chance to make submissions which the ART has considered.

w https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7365

4.5 Global and domestic minimum tax lodgment obligations

The ATO has published a draft LI 2025/D17 *Taxation Administration (Exemptions from Requirement to Lodge Australian IIR/UTPR tax return and Australian DMT tax return) Determination 2025,* regarding lodgment obligations for entities impacted by the Pillar Two global and domestic minimum tax rules. The Australian global and domestic minimum tax regime applies to constituent entities that are members of a multinational enterprise group (**MNE group**) with annual revenue of 750 million Euros or more in the consolidated financial statements of the ultimate parent entity.

The draft legislative instrument LI 2025/D17 is intended to provide relief from certain lodgment obligations for these in-scope MNE groups in circumstances where top-up tax amounts will always be nil.

Consultation on the draft legislative instrument is open until 24 September 2025.

w https://www.ato.gov.au/law/view/document?DocID=OPS/LI2025D17/00001&PiT=99991231235958

4.6 Instant asset write off $20,000 limit and DPN service rules

Instant asset write off

The Treasury Laws Amendment (Strengthening Financial Systems and Other Measures) Bill 2025 proposes to extend the $20,000 instant asset write-off for small businesses through to 30 June 2026. Small business entities (turnover under $10 million) will be able to immediately deduct the full cost of eligible assets costing less than $20,000 that are first used or installed ready for use before that date.

The $20,000 threshold will also apply to low-value pool balances, allowing a deduction where the closing pool balance falls below this amount.

In addition, the Bill continues the suspension of the five-year lock-out rule until 30 June 2026, meaning businesses that previously opted out of simplified depreciation can re-enter and take advantage of the concession without waiting out the restriction period.

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DPN service

The Bill clarifies that, from 1 July 2024, the ATO can validly serve a DPN using address information held by ASIC, rather than relying on the (now defunct) Modernising Business Registers framework.

This amendment effectively restores the long-standing position that a DPN sent to the director's residential or business address as recorded with ASIC is valid service.

Other measures

The Bill also introduces a range of other measures, including minor GST fixes, stronger corporate disclosure obligations for listed entities and derivative holdings, and expanded ACNC transparency powers that may affect not-for-profit clients.

w https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7367

4.7 Payroll tax relief extended in Tasmania

The *Taxation and Related Legislation (First Home Owner and Payroll Relief) Bill 2025* has been introduced into Tasmanian Parliament to amend the *First Home Owner Grant Act 2000 (TAS)* and the *Payroll Tax Rebate (Apprentices, Trainees and Youth Employees) Act 2017* (TAS).

Namely, the Bill:

1. extends the Payroll Tax Rebate Scheme for eligible apprentices from 1 July 2025 to 30 June 2026;
2. delays the repeal date of the Payroll Act from 30 June 2028 to 30 June 2029;
3. increases the First Home Owner Grant to $30,000 for eligible transactions commencing between 1 July 2025 and 30 June 2026 provided completion occurs within 24 months; and
4. allows retrospective recognition of $30,000 payments made in anticipation of the Bill's assent and tops up earlier $10,000 grants with an additional $20,000.

The amendments commence retrospectively from 30 June 2025 and are set to be repealed one year after Royal Assent.

w https://www.parliament.tas.gov.au/bills/bills2025/taxation-and-related-legislation-first-home-owner-and-payroll-relief-bill-2025-43-of-2025

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5. Rulings

5.1 Queensland ruling on penalty tax

The Queensland Revenue Office has updated its guidance on the imposition and remission of penalty tax under the QLD TAA. *Public Ruling* TAA060.2.7 (replacing TAA060.2.6) clarifies when penalty tax is imposed, including three circumstances where a 75% rate applies (e.g. default assessments and reassessments).

The Commissioner's approach to penalty tax remission is based on a set of general principles and categorised criteria. A taxpayer seeking remission must make a written request to the Commissioner, stating the grounds and relevant remission category. However, the Commissioner may remit penalty tax on its own initiative when there's sufficient information available, such as following an investigation. Decisions are made on a case-by-case basis, considering factors like the taxpayer's culpability, the complexity of the issue, their attempts to comply, compliance systems in place, voluntary disclosures, prior non-compliance, and cooperation during investigations.

There are three main categories for remission:

1. Category 1 – Full Remission: This applies where non-compliance was due to circumstances beyond the taxpayer's control (e.g., illness, natural disasters), or where the taxpayer took reasonable care but still made an error. Reasonable care includes keeping proper records, seeking expert advice, and acting honestly. However, financial inability alone or ignorance of the law does not qualify. If expert advice was relied upon, specific criteria must be met, including written confirmation of advice and full disclosure to the adviser;
2. Category 2 – Partial Remission (penalty tax reduced to 25%): This applies where taxpayers failed to meet obligations due to carelessness or recklessness, or where exemptions or concessions under the Duties Act were lost due to non-compliance with conditions, without intentional disregard of the law. Recklessness includes ignoring foreseeable consequences, and ignorance of the law can be enough to fall into this category; and
3. Category 3 – No Remission: Penalty tax will not be remitted if there was a deliberate tax default (e.g. fraud, evasion, intentional disregard), or the taxpayer entered into avoidance arrangements. This category overrides the others if it applies and includes knowingly misleading the Commissioner or omitting important information.

Voluntary disclosures may result in additional penalty tax remissions, depending on when the disclosure is made. Full remission applies if disclosure is made before an investigation or within 30 days of a prompt. If made later, the remission is partial (60% to 80%). If made after an investigation has started, only 20% remission may apply. However, this additional remission is discretionary and can be denied if the taxpayer's overall conduct does not support leniency.

In cases where tax was mistakenly paid to another jurisdiction but later corrected, the Commissioner may remit related penalties, taking into account the type of tax, timing, and whether the correct amount was paid.

Queensland Revenue Office reference *TAA060.2.7*
w https://qro.qld.gov.au/resource/taa060-2/

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5.2 Addenda to ATO rulings on penalties

On 20 August 2025, the ATO released addenda to three miscellaneous taxation rulings as follows:

1. shortfall penalties: voluntary disclosures (MT 2012/3): This addendum includes provisions for the global and domestic minimum tax and to address minor accessibility and editorial issues. In addition, it notes:
   (a) where an entity voluntarily discloses to the Commissioner in the approved form a shortfall amount, a scheme shortfall amount or the false or misleading nature of a statement before the earlier of the day the entity is informed by the Commissioner that an examination is to be conducted or the day by which the Commissioner, in a public statement, requests a voluntary disclosure to be made about a particular scheme or transaction that applies to the entity's affairs; the base penalty amount will be reduced by 80%, unless the disclosure relates to a shortfall amount that is less than $1,000 or a false or misleading statement that does not result in a shortfall amount, in which case it is reduced to nil; and
   (b) where an entity or their representative lodges an application for a private ruling, which the Commissioner must deal with and is not prompted by ATO action, either through the notification of an examination or the issue of a public statement inviting voluntary disclosures, the application will be considered to be a voluntary disclosure, subject to the considerations about whether it is made voluntarily and the time at which it is made;
2. penalty relating to statements: meaning of reasonable care, recklessness and intentional disregard (MT 2008/1): This addendum updates references, incorporates information on the global and domestic minimum tax, and address minor accessibility and formatting issues; and
3. administrative penalties: administrative penalty for taking a position that is not reasonably arguable (MT 2012/3): This addendum incorporates information about the global and domestic minimum tax and makes minor formatting and accessibility improvements.

The addendums apply from 1 January 2024

ATO reference *MT 2008/2A7 – Addendum, MT 2008/1A4 – Addendum and MT 2012/3A4 – Addendum*
w https://www.ato.gov.au/law/view/document?docid=MXR/MT20082A7/NAT/ATO/00001
https://www.ato.gov.au/law/view/document?docid=MXR/MT20081A4/NAT/ATO/00001
https://www.ato.gov.au/law/view/document?docid=MXR/MT20123A4/NAT/ATO/00001

5.3 Addendum to ruling on GST-free export supplies

On 13 August 2025, the ATO released an addendum to GSTD 2012/7, which concerns when supplies of interconnection services made by an Australian resident telecommunication supplier GST-free under item 2 in the table in subsection 38-190(1) of the GST Act.

The addendum updates legislative references, terminology, and examples, particularly in light of the *Treasury Legislation Amendment (Repeal Day) Act 2015* (Cth) and the introduction of the term "indirect tax zone" (replacing "Australia" in GST law from 1 July 2015).

The ruling reiterates that supplies are not GST-free under item 2 if:

1. the supply is under an agreement with a non-resident;
2. it is provided (or required to be provided) to another entity in Australia;
3. certain exceptions do not apply (e.g., Australian-based business recipient conditions).

A new paragraph clearly restates the three-part test under section 38-190(3) for when GST-free treatment is excluded. The addendum adds 10 revised and captioned diagrams to illustrate common scenarios.

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This addendum applies both before and after its date of issue, ensuring consistent application of the law.

ATO reference *GSTD 2012/7A2 – Addendum*
w https://www.ato.gov.au/law/view/document?docid=GSD/GSTD20127A2/NAT/ATO/00001

5.4 Division 7A – application of section 109R to notional loans

On 20 August 2025, the ATO issued *Taxation Determination* TD 2025/5, which finalises its view on the operation of section 109R of the ITAA 1936 in cases involving notional loans. This determination was previously released as a draft form as *Taxation Determination* TD 2025/D2 (see our March 2025 Tax Training Notes).

The Determination confirms that section 109R can apply to both actual and notional repayments where a private company is taken to have made a loan under the interposed entity rules in sections 109T and 109W. In particular, repayments that would otherwise reduce the balance of a notional loan may be disregarded for Division 7A purposes if they fall within the scope of section 109R. The Determination clarifies that this treatment extends to arrangements involving trusts, partnerships or individuals as interposed entities, and sits consistently alongside earlier ATO guidance in TD 2011/16, which addresses how the Commissioner determines the amount of a notional loan.

The ATO has updated its examples to illustrate how the distributable surplus of the lending company can limit any deemed dividends, and reiterated that section 109R is a specific integrity rule that will apply in the first instance before consideration of the general anti-avoidance provisions.

ATO reference *TD 2025/5*
w https://www.ato.gov.au/law/view/document?docid=TXD/TD20255/NAT/ATO/00001

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6. 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.

6.1 Small business CGT concessions elections

Facts

The taxpayer sold a business, which resulted in a capital gain. Details regarding the date of the sale and the amount of the gain were provided to the ATO.

Person A instructed the taxpayer's accountant to apply any available concessions in order to reduce the capital gain in the taxpayer's return to nil. In preparing the return, the accountant applied the small business rollover concession but did not consider the 50% active asset reduction.

The accountant did not explain the other available small business concessions to Person A. Person A has stated that he did not make an informed or educated decision to forgo the 50% active asset reduction.

The taxpayer also provided information on when the tax return was lodged and when a new accountant was appointed.

Question

Does the inclusion of an election to apply the small business rollover provisions in the 20XX tax return constitute the making of a choice under subsection 103-25(2) of the ITAA 1997 that cannot be later changed?

Ruling

In reaching this decision, the ATO relied on subsection 103-25(1) of the ITAA 1997, which requires that a choice under the capital gains tax provisions must be made by the time the relevant income tax return is lodged, or within a further time allowed by the Commissioner. Subsection 103-25(2) further provides that the preparation of an income tax return in a particular way constitutes sufficient evidence of having made such a choice.

The ATO referred to *Interpretative Decision ATO ID 2003/103*, which affirms that a choice made in relation to small business CGT concessions, once made in the course of preparing and lodging a tax return, cannot subsequently be changed.

In the taxpayer's case, the accountant applied the small business rollover in the lodged return, which the ATO considers as the making of a choice under subsection 103-25(2). As such, the Taxpayer is bound by this choice and cannot now elect to apply a different concession, such as the 50% active asset reduction.

While the ATO expressed sympathy for the taxpayer's circumstances, it concluded that there is no provision in the ITAA 1997 allowing the Commissioner to override or reverse the effect of a validly made choice.

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The ATO determined that the taxpayer is not permitted to amend their tax return to change the choice of small business CGT concession originally applied.

ATO reference *Edited Private Advice Authorisation No. 1052405067174*
w https://www.ato.gov.au/law/view/document?docid=EV/1052405067174

6.2 Capital loss on loan

Facts

The taxpayer and Person A were directors and equal shareholders of Company X, a privately held company established to operate a business. Over several income years, the taxpayer and Person A lent funds to Company X, with these loans being recorded in the company's balance sheets.

The primary purpose of these loans was to support the company's operations, including the acquisition of equipment such as a truck, excavator and bobcat, as well as to cover running costs. These included expenses such as materials, wages and payments to subcontractors, particularly at times when the company had suffered financial losses due to other businesses becoming insolvent.

The loans were provided on an interest-free basis. The taxpayer anticipated receiving dividends from Company X's future profits and expected that the loans would be repaid from either the company's business growth and profitability or from the proceeds of a future sale.

Company X ceased trading some time after its registration. In the income year following cessation of trade, the taxpayer executed a Deed of Loan Forgiveness, formally relinquishing the loan agreement for a specified amount. This deed confirmed that the debt was extinguished and that neither party would have further claims against the other. In the subsequent income year, Company X was deregistered.

Questions

1. Did a capital gains tax event C2 occur when the Deed of Loan Forgiveness was signed?
2. Is any capital gain or capital loss made as a result of forgiveness of the debt disregarded?

Ruling

CGT event C2

Under section 108-5 of the ITAA 1997, a debt is considered a CGT asset. When the taxpayer forgave the loan, ownership of the CGT asset (the debt) ended. This constitutes a CGT event C2 under subsection 104-25(1) of the ITAA 1997, as the debt was effectively abandoned. The CGT implications depend on whether the capital proceeds exceed or fall short of the asset's cost base or reduced cost base, resulting in a capital gain or loss respectively.

The ATO determined that a CGT event C2 occurred when the taxpayer signed the Deed of Loan Forgiveness.

Capital gain or loss

While subsection 108-20(1) of the ITAA 1997 provides that capital losses from personal use assets are disregarded, the debt in this case did not qualify as a personal use asset. Under paragraph 108-20(2)(d), a personal use asset includes debts that arise outside the course of producing assessable income. However, because the taxpayer lent funds to Company X with the expectation of receiving dividends as a return on investment, the debt was linked to an income-producing purpose. Therefore, the capital gain or loss from the CGT event is not disregarded.

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ATO reference *Edited Private Advice Authorisation No.* 1052414565705
w https://www.ato.gov.au/law/view/document?docid=EV/1052414565705

6.3 Trust distributions

Facts

Individual A and Individual B, who are Australian tax residents and spouses, have one child, Individual C. Individual C relocated overseas in 20XX with no intention of returning but resumed Australian tax residency upon their return in a subsequent income year. At all relevant times, A and B remained Australian residents.

The XX Trust was established in 19XX with Company A, an Australian company, as trustee. A and B were originally the joint Appointors, with B and C now holding those roles. The Trust has always been an Australian resident trust.

The Trust Deed provides a broad class of beneficiaries, including A, B, C and extended family members, along with entities associated with them. It also allows the trustee discretion in determining distributable income and provides powers to accumulate income or capital. The Trust Deed aligns the definition of 'Net Gain' with section 102-5 of the ITAA 1997.

In the income year ending 30 June 20XX, the Trust disposed of capital assets and derived a discounted net capital gain. A trustee resolution that year aligned the distributable income with taxable net income, allocating specific proportions of interest income, capital gains, and other income among A, B, and C. The discounted portion of the capital gain was retained within the Trust as corpus, consistent with the Trust Deed.

Beneficiaries reported their respective trust entitlements in their income tax returns. The financial statements of the Trust recorded half the capital gain as income and the remainder as an accretion to the trust corpus. The Trustee used prior entitlements to meet tax obligations.

In a subsequent year, the Trustee made partial distributions of the previously retained discount component of the capital gain to A, B, and C in their original proportions. A and B allowed C to draw down their full entitlement first. A portion of the discount component remained unpaid and undistributed.

In a streamlined assurance review, the ATO raised concerns about the classification of the discount component as corpus, suggesting it could represent a re-characterisation of trust income with implications under section 100A of the ITAA 1936 and *PCG 2022/2*. Nonetheless, the Commissioner decided not to pursue the matter further due to its historical nature.

Following the death of Individual A, whose Estate has yet to be finalised, the Trustee now proposes to distribute the remaining unpaid discount capital gain equally to B and A's Estate. The Trustee argues there are no new tax consequences, as the income was already assessed and reported, and this payment represents the release of a previously recognised entitlement, thus forming part of the trust corpus.

Questions

1. Will the proposed payments be regarded as assessable income of the beneficiaries under to section 6-5 of the ITAA 1997?
2. Will section 100A of the ITAA 1936 apply to the proposed payments such that the beneficiaries will be deemed not to be, and never to have been, presently entitled to trust income?
3. If the answer to Question 2 is yes, will section 99A apply to the Trust such that the trustee shall be assessed and liable to pay tax on the net income of the Trust?

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Ruling

Income under section 6-5

Section 6-5 of the ITAA 1997 includes in assessable income any amount that is income according to ordinary concepts, commonly referred to as "ordinary income". Case law has established that for a receipt to be characterised as ordinary income, it should typically exhibit features such as regularity, derivation from personal exertion or investment, or substitution for income. Examples include salary, dividends, and business profits.

However, not every monetary receipt constitutes ordinary income. Receipts that are capital in nature do not fall within the ambit of section 6-5 and are instead dealt with under statutory income provisions, particularly the capital gains tax regime in Part 3-1 of the ITAA 1997. Under section 102-5, a net capital gain is included in a taxpayer's assessable income. Division 115 of the ITAA 1997 provides for a discount on capital gains for eligible entities, including trusts, with the discounted portion not being separately assessable but forming part of the net capital gain that is included.

In this case, the Trust disposed of capital assets during the income year ended 30 June 20XX and derived a capital gain. After applying the 50% general discount under Division 115, the net capital gain was included in the assessable income of the trust and distributed accordingly. The discounted component of the gain was retained within the Trust and accounted for as an accretion to the capital of the Trust Fund, consistent with the operation of the relevant clause of the Trust Deed which provides that amounts not included in assessable income are treated as capital.

The Trustee now proposes to distribute this retained, previously undistributed discount component to the beneficiaries. These amounts do not possess the characteristics of ordinary income: they are not periodic, not earned through services or investment, and not derived with a profit-making intention. Rather, they are a delayed payment of trust corpus to which the beneficiaries were previously entitled but which was not physically distributed.

Application of section 100A

Section 100A of the ITAA 1936 operates to deny a beneficiary's present entitlement to trust income where that entitlement arises out of a "reimbursement agreement". This term is defined broadly under subsections 100A(7) to (13) and captures arrangements where a person other than the beneficiary receives a benefit, and the arrangement has the purpose of reducing tax. However, the definition expressly excludes arrangements that arise in the course of ordinary family or commercial dealings.

For section 100A to apply, two elements must be satisfied. First, the beneficiary must be presently entitled to income of the trust estate. Second, that entitlement must have arisen by reason of or in connection with a reimbursement agreement. Importantly, "present entitlement" refers to a legal right to demand payment of trust income, which must be vested in interest and possession.

In this case, the proposed distribution is of corpus, not income. The beneficiaries became presently entitled to their respective shares of trust income in the income year the capital gain was made, and those entitlements were reported for tax purposes at that time. The subsequent distribution of the retained discount component does not give rise to a new entitlement to income. Moreover, there is no evidence of a reimbursement agreement or of any tax avoidance purpose. The arrangement aligns with ordinary family dealings and simply reflects the delayed release of trust capital to beneficiaries who were already taxed on their full share of the income in the relevant year.

The ATO determined that section 100A does not apply to the proposed arrangement because the payments do not relate to a present entitlement to trust income and were not made under or in connection with a reimbursement agreement.

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Section 99A

Section 99A of the ITAA 1936 imposes tax at the highest marginal rate on trust income where no beneficiary is presently entitled. This typically applies where the beneficiary's entitlement has been disregarded under section 100A.

The operation of section 99A is contingent on section 100A applying. If a beneficiary is deemed not to be presently entitled under section 100A, the trustee becomes liable to pay tax under section 99A on the relevant share of net income.

Given that section 100A has been found not to apply to the proposed payments, the necessary precondition for the application of section 99A is not satisfied.

COMMENT – there is a question as to whether A's estate would be an eligible beneficiary of the trust. This will depend on the wording of the trust deed. If the trust has made a family trust election, consideration should also be given to whether a distribution of trust capital to A's estate could trigger family trust distribution tax, as the estate of a deceased beneficiary is not generally within the definition of "family group", unless all other family group members are also deceased.

ATO reference *Edited Private Advice Authorisation No.* 1052419710644
w https://www.ato.gov.au/law/view/document?docid=EV/1052419710644

6.4 Main residence in trust

Facts

A discretionary trust was created with the intention of providing a fund for the benefit of certain eligible beneficiaries.

The primary beneficiary is identified as Person 1. Eligible beneficiaries included the primary beneficiary and their associates. Clause 2.5 of the trust deed specified "associate" in relation to the primary beneficiary to mean:

1. specified relatives of the primary beneficiary, including any parent, grandparent, brother, sister, spouse, widow, widower, child and grandchild of the primary beneficiary;
2. the trustee in its capacity as trustee of any sub trust for the primary beneficiary or any specified relative,
3. the executors or administrators or other legal personal representatives of a deceased primary beneficiary;
4. any company in which the primary beneficiary or any specified relative is an officeholder or shareholder; and
5. any "associate" of the primary beneficiary within the meaning of section 82KH(1) of the ITAA1936.

A deed of appointment dated 10 May 1993 records that Person 1 and Person 2 retired as trustees and were replaced by a corporate trustee. Person 1 became the appointer and secretary of the trustee company, and Person 2 its director.

The trust purchased a property which has since been used as the main residence of Person 1 and Person 2. The mortgage was obtained in the name of the corporate trustee.

At a later point, the trust deed was amended. The amendments included the deletion of clause 2.5.1 which included specified relatives as beneficiaries and certain references to specified relatives from clauses 2.5.2 to 2.5.5. Clause 2.20, which defined “specified relative,” was also deleted.

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Person 2 provided statements to the ATO confirming the intention to simplify the trust structure due to increasing land tax liabilities and the view that the trust no longer served its original purpose. Person 2 stated that the intention was not to sell the property but to enable Person 1 to claim absolute entitlement. It was also noted that the original trust structure had been recommended by an accountant whose services were no longer used.

Transfer duty was paid on all trust acquisitions, and it was confirmed that the trust was primarily established for the benefit of family members. It was also declared that the amendments did not form part of an arrangement to terminate the trust or avoid duty.

Questions

1. When amendments were made to the Trust deed, will Person 1 have absolute entitlement to the trust's asset for the purpose of Part 3-1 and Part 3-3 of the ITAA 1997?
2. If Person 1 has absolute entitlement to the trust asset, will a CGT event occur when the asset is transferred from the trust to Person 1?
3. When the trust asset is transferred to Person 1, are they eligible to apply the main residence exemption?

Ruling

Absolute entitlement

The ATO assessed whether the amendments to the trust deed gave Person 1, the primary beneficiary, absolute entitlement to the trust asset under Parts 3-1 and 3-3 of the ITAA 1997. This concept is critical because, under CGT provisions, only a beneficiary who is absolutely entitled to an asset as against the trustee is treated as the asset's owner for CGT purposes.

According to *Draft Taxation Ruling* TR 2004/D25, a beneficiary is absolutely entitled where they hold an unqualified and exclusive right to the asset, including the power to call for its transfer, without any competing interests from other beneficiaries. The ruling further clarifies that absolute entitlement cannot generally exist if the asset is non-fungible (such as land) and more than one beneficiary has an interest in it.

In this case, although amendments were made to the deed (specifically, the deletion of clause 2.5.1 and parts of clauses 2.5.2 to 2.5.5, as well as the removal of the definition of “specified relative”) these changes did not remove the trustee’s broad discretion to distribute income or capital. Additionally, clause 2.5.3 retained ambiguous references to “specified relatives,” even though that term was no longer defined, creating interpretive uncertainty.

The trust remained discretionary in nature, and the amended deed still allowed distributions to other associates and entities. This meant that Person 1 did not hold a secured, exclusive, and enforceable interest in the property. Accordingly, the ATO concluded that Person 1 was not absolutely entitled to the asset.

CGT event

As the ATO determined that absolute entitlement was not established, no change in beneficial ownership occurred and no CGT event was triggered. Therefore, the issue of whether a capital gain arose under CGT event A1 (general disposal under section 104-10) or CGT event E7 (distribution from trust under section 104-85) was not applicable.

Main residence exemption

The main residence exemption under section 118-110 of the ITAA 1997 allows an individual to disregard capital gains on a dwelling that was their main residence, provided certain conditions are met. However, the exemption

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applies only to individuals. A trustee cannot claim the exemption, even where the property is used as the main residence of the beneficiaries of the trust.

In this case, the property has been owned and held by the discretionary trust since acquisition. Despite being used as a residence by Person 1 and Person 2, this does not affect the legal ownership of the asset. Unless the property is transferred to an individual and that individual qualifies for the exemption in their own right, the trust cannot access the main residence exemption.

The ATO concluded that the main residence exemption is not available to the trust, and any future disposal of the property would trigger a CGT event without the benefit of the exemption.

ATO reference *Edited Private Advice Authorisation No.* 1052367909455
w https://www.ato.gov.au/law/view/document?docid=EV/1052367909455

6.5 Holding costs and interest deductions while renovating rental property

Facts

In September 20YY, the taxpayers jointly acquired the Property, with settlement occurring in November of the same year. Since acquisition, the Property has been continuously available for rent and has been tenanted throughout, without any period of vacancy or private use. The Property is managed by a real estate agent, with rental income set at market rates as determined by the agent.

The acquisition was financed through a variable interest mortgage, which has never been refinanced or used for any purpose other than purchasing the Property. The taxpayers have acquired the Property as an investment property, while residing in a separate principal place of residence.

Due to the need for significant structural works, the taxpayers intend to undertake renovations starting in April 20YY. The anticipated outcome of these works is a substantial increase in rental income once the Property returns to the market. A new construction loan for these works was approved by the bank on the basis of the projected higher rental return.

The current tenants will vacate the Property at the commencement of the works, which are expected to take several months to complete.

At the time of the private ruling application, development approval (DA) had been granted and a building approval (BA) had been submitted.

The taxpayers have provided a comprehensive estimate from the builder for the proposed construction, which includes documentation and levies, service connections, site and supervision costs, and a wide range of internal and external features. These works encompass a new in-ground swimming pool, termite protection, concreting, driveway finishes, structural elements, ducted air conditioning, solar energy systems, plumbing and electrical fittings, various appliances, and extensive landscaping. The renovations also include upgrades to flooring, cabinetry, tiling, painting, and installation of new doors, windows, and skylights, among other fixtures and accessories.

Question

Are the Taxpayers entitled to a deduction under section 8-1 of the ITAA 1997 for holding costs and interest incurred on the investment property's 'original loan' and 'construction loan' during the period in which the property is being substantially renovated and is unavailable for rent?

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Ruling

Section 8-1 of the ITAA 1997 provides a general deduction for losses or outgoings to the extent that they are incurred in gaining or producing assessable income or are necessarily incurred in carrying on a business for that purpose. However, this provision excludes amounts of capital, private or domestic nature, and more relevantly, it excludes any deductions expressly denied by other provisions of the Act.

Section 26-102 of the ITAA 1997 operates as a limiting provision in this context. Subsections 26-102(1) and 26-102(4) deny a deduction for any losses or outgoings that may otherwise be deductible under section 8-1 if they relate to the holding of residential premises that are either under construction or being substantially renovated, unless those premises are lawfully available for lease, hire or licence during that period, or are used in the course of carrying on a business.

In this case, the property is undergoing substantial renovations, and it has not been available for rent during this period. The works involve extensive construction, as evidenced by the comprehensive list of structural and cosmetic improvements provided. These works meet the statutory definition of "substantial renovations" under section 995-1 of the ITAA 1997, which adopts the definition from section 195-1 of the GST Act. That definition refers to renovations where all, or substantially all, of a building is removed or replaced, even if the core structural elements like foundations or external walls are not affected.

Additionally, the ATO notes that merely holding a residential rental property does not constitute carrying on a business. This position is supported by Example 1 of Taxation Ruling TR 93/32 *Income tax: rental property – division of net income or loss between co-owners*.

Because the property was not lawfully available for rent during the renovation period, and the activity does not qualify as a business, the requirements of the exception in section 26-102 are not met. Therefore, despite the general deductibility rule under section 8-1, the more specific rule in section 26-102 prevails and denies deductions for all holding costs and interest on both loans until the property is once again lawfully available for lease.

TIP – TR 2023/3 covers expenses associated with holding vacant land and example 4 is directly relevant to this scenario.

ATO reference *Edited Private Advice Authorisation No.* 1052413411917
w https://www.ato.gov.au/law/view/document?docid=EV/1052413411917

6.6 Interest deductions for construction loan for rental property

Facts

The taxpayer is an Australian resident for tax purposes who entered into an off-the-plan contract to purchase an apartment. According to the sale contract, the apartment will be leased to a company for a number of years under a minimum guaranteed leasing term. From the outset, the taxpayer's intention has been to derive rental income from the property, with no plans for personal use.

Construction of the apartment began several years ago. To fund the purchase, the taxpayer obtained a loan, which is used solely for the construction of the apartment. Completion of the apartment is expected within a few months.

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Question

Is the taxpayer entitled to a deduction for the loan interest on the construction of a rental property prior to it being available for rent?

Ruling

The taxpayer is entitled to a deduction for interest incurred on a loan used to construct a rental property, even where the property is not yet available for rent. Based on the information provided to the Commissioner, the apartment in question was purchased off the plan, and the associated loan was solely for the purpose of funding its construction.

The interest on this construction loan is deductible under section 8-1 of the ITAA 1997, as it relates to the production of future assessable income through rental. This deduction is available for the period from when the loan was taken out until the completion of construction, notwithstanding that the property is not yet rented or available for rent during that time.

Section 26-102 of the ITAA 1997 does not operate to deny a deduction for interest in this context. As a result, the taxpayer may include the interest amount in the rental schedule of their income tax return for the relevant income year.

COMMENT – Section 26-102 only denies deductions for costs associated with holding the land. According to paragraph 26 of TR 2023/3, the ATO does not consider the costs of repairing, renovating, or constructing a structure on the land, or any interest or borrowing costs (to the extent they are associated with repairs, renovation or construction), to be a loss or outgoing related to holding land. See also Example 6 in TR 2023/3.

ATO reference *Edited Private Advice Authorisation No.* 1052414903725
w https://www.ato.gov.au/law/view/document?docid=EV/1052414903725

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7. ATO and other materials

7.1 Fact sheet on changes to denying deductions for ATO interest

On 27 August 2025, the ATO published a fact sheet which provides information about the changes to the law to deny income tax deductions for general interest charge (GIC) and shortfall interest charge (SIC). The changes were effective on 1 July 2025.

The fact sheet includes 14 examples to help illustrate when GIC and SIC are incurred, and whether the GIC or SIC is deductible, or not. We include examples 1 and 9 below.

Example 1 – GIC on unpaid tax incurred daily

Zara has outstanding income tax liabilities totalling $2,500. GIC accrues daily on the unpaid amount. Zara pays her liability in full on 15 June 2025.

Any GIC incurred up to and including 15 June 2025 is deductible to Zara. This is because Zara incurred the GIC before 1 July 2025.

As she paid the liabilities in full, there is no further GIC that accrues or is incurred.

The outcome would be different if Zara had not paid her tax debt and GIC continued to accrue daily. Any GIC incurred on her unpaid debt on or after 1 July 2025 would not be deductible.

Example 9 – SIC incurred on service of the notice of assessment

Anthony requests an amendment within the period of review to his income tax assessment for the 2021–22 income year to include amounts of taxable income that were previously omitted. This results in a tax shortfall of $10,000. We receive Anthony's request on 5 July 2025 and serve a notice of amended assessment on Anthony on 25 July 2025.

As SIC is incurred when the notice of amended assessment is served (which is after 1 July 2025), the SIC imposed on the shortfall amount of $10,000 is not deductible.

w https://www.ato.gov.au/law/view/document?docid=AFS/deductions-for-ato-interest/00001

7.2 ATO spotlight on family trust distributions tax

The ATO Private Wealth Assistant Commissioner, Amy James-Velagic, has provided an update on current issues relating to family trust distributions tax (**FTDT**) and the ATO's approach to managing taxpayer compliance.

The ATO notes that there has been an increase in FTDT issues and risks due to:

1. poor record keeping;
2. inadequate succession planning;
3. growth of intergenerational private groups; and
4. the evolution of private group structures.

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The ATO is concerned that there is a lack of understanding by taxpayers and their advisers regarding how Family Trust Elections and Interposed Entity Elections can create future limitations, and how the cumulative effect of FTDT can result in significant liabilities for family groups.

To address these issues, the ATO is providing updated guidance and support to taxpayers:

1. updating their guidance on Family Trusts on the ATO website;
2. updating the TFE and IEE forms to clarify who can sign (the public officer or a director of a corporate trustee);
3. updating Online Services for agents to ensure that elections lodged from January 2020 onwards are now visible, where previously they were required to confirmed by phone.

The ATO update notes that the ATO's ability to offer administrative relief in relation to FTDT liability is limited:

1. FTDT liability is automatic. The ATO has no discretion to ignore the application of FTDT, even where a liability arose because of mistake or no deliberate 'mischief' on the part of the taxpayer or adviser;
2. the ATO review period for FTDT liability is not limited to the general 2 or 4 year period of review applying to income tax, and the ATO is unable to grant extra time to vary or revoke an election, or to reverse a distribution decision; and
3. the ATO's ability to remit applicable GIC is constrained. In limited cases, up to 80% GIC remission may be considered if the taxpayer proactively self-reviews and voluntarily lodges and pays the FTDT. Partial remission may be available for voluntary disclosures early in a review, but only on a case-by-case basis.

w https://www.ato.gov.au/businesses-and-organisations/business-bulletins-newsroom/spotlight-on-assistant-commissioner-amy-james-velagic

7.3 Employees incorrectly treated as independent contractors

The ATO is reminding taxpayers that businesses that misclassify employees as independent contractors may face significant penalties.

These include PAYG withholding penalties for not deducting tax, and the super guarantee charge (SGC), which exceeds the amount of super otherwise payable. The SGC comprises the shortfall amount, nominal interest, an administration fee, and may also attract additional penalties, including the Part 7 penalty of up to 200% under the *Superannuation Guarantee (Administration) Act 1992*. In addition, sham contracting is a contravention of the *Fair Work Act 2009*. Courts can impose penalties where a business represents an employee as a contractor.

w https://www.ato.gov.au/businesses-and-organisations/hiring-and-paying-your-workers/employee-or-independent-contractor/employees-incorrectly-treated-as-independent-contractors

7.4 Small business superannuation clearing house closing

As part of the Payday Super reforms, the ATO's Small Business Superannuation Clearing House will permanently close on 1 July 2026.

From 1 October 2025, new registrations for the Small Business Superannuation Clearing House will no longer be accepted. Access will be restricted to existing users only, who may continue using the service until 30 June 2026.

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Small businesses currently relying on the Small Business Superannuation Clearing House are encouraged to begin planning their transition to alternative arrangements ahead of the closure. Things to consider prior to transitioning include:

1. reviewing existing payroll or accounting software, many of which already incorporate superannuation clearing functionality;
2. engaging a commercial clearing house service; and
3. exploring solutions offered directly by superannuation funds.

w https://www.ato.gov.au/businesses-and-organisations/small-business-newsroom/the-small-business-superannuation-clearing-house-is-closing

7.5 Stapled superannuation funds for employers

Stapled super funds are part of the *Your Future, Your Super* reforms which took effect from 1 November 2021. This system ensures that when an employee does not choose a super fund, their existing super account (the "stapled" fund) follows them to their new job, reducing the need for new super accounts and minimising additional fees.

When to request stapled super fund details

Employers must request stapled super fund details from the ATO when:

1. super guarantee (SG) payments are required for a new employee;
2. the employee is eligible to choose a super fund but has not made a choice; and
3. the employee is an independent contractor who is treated as an employee for SG purposes.

Employers should make this request before defaulting contributions into their own nominated super fund.

What employers must do

Employers are required to request stapled super fund details from the ATO when a new employee does not choose a super fund. If an employee does not make a choice, employers must contribute to their stapled super fund. However, if the ATO does not provide a stapled fund for the employee, contributions should be made to the employer's nominated super fund.

If the employee later selects a super fund after the request has been made, employers have two months to start paying contributions into the chosen fund. During this period, any contributions made before the employee’s selection should align with the stapled super fund details provided by the ATO.

Eligibility for stapled fund request

Employers must request stapled super fund details when a new employee hasn’t chosen their super fund. This also applies to employees who are temporary residents or those covered by an enterprise agreement made before 1 January 2021, although this is limited.

Penalties for non-compliance

Employers who fail to request stapled super fund details when required may face both a choice shortfall penalty and a Super Guarantee Charge (SGC). In these cases, the employer must lodge an SGC statement and pay the SGC to the ATO. Prompt action is essential to minimise penalties and ensure compliance with super obligations.

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What happens if the stapled fund rejects the payment

A stapled super fund may reject an SG contribution. If this occurs, the employer must make the payment to an alternate super fund. If the ATO cannot identify a suitable alternate fund, the employer may make the contribution to their default super fund. Employers should ensure that any follow-up payments are made promptly to avoid late payment issues or additional charges.

w https://www.ato.gov.au/businesses-and-organisations/super-for-employers/setting-up-super-for-your-business/offer-employees-a-choice-of-super-fund/stapled-super-funds-for-employers

7.6 ATO corporate plan for super funds

Deputy Commissioner Emma Rosenzweig has outlined what the ATO's 2025-26 Corporate Plan for super funds, with implementation of the Payday Super reform identified as a key priority.

From 1 July 2026, employers will be required to pay superannuation guarantee (SG) contributions at the same time as salary and wages. Although this measure is not yet law, the ATO is preparing the SuperStream system.

Several important SuperStream updates being rolled out to super funds in readiness for Payday Super. These include:

1. fast payments via the New Payments Platform to enable near real-time transfer of contributions;
2. enhanced error messaging to provide clearer and more actionable information to employers to correct data issues quickly;
3. Member Verification Request (MVR) – a new function allowing employers to confirm an employee's fund details before making contributions; and
4. improved fund validation services – increasing visibility of changes or closures to Unique Super Identifiers (USIs).

Another significant change is the reduction in the timeframe for returning unallocated contributions from 20 days to 3 days. In processing an MVR, funds can reduce the likelihood of rejected contributions. If errors do occur, the enhanced messaging provides clearer, more actionable steps for employers to quickly resolve issues.

Technical and business specifications for these updates are now available on the ATO's Contribution Standard v3.0 page for software developers, with further guidance to follow.

w https://www.ato.gov.au/tax-and-super-professionals/for-superannuation-professionals/super-funds-newsroom/ato-corporate-plan-2025-26-key-priorities-for-super-funds

7.7 SGC and ordinary time earnings

On 25 August 2025, the ATO published a notice that its web content has been expanded with further details and examples to help employers calculate the correct amount of super to pay and to clarify what counts as ordinary time earnings. While the definition of ordinary time earnings has not changed, the ATO's updates are aimed at improving compliance and reducing errors.

The ATO also confirmed that further information will be released once the draft payday super legislation, expected to commence from 1 July 2026, becomes law. This legislation is expected to introduce a new concept of "qualifying earnings" for calculating superannuation entitlements, which will include ordinary time earnings.

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w https://www.ato.gov.au/businesses-and-organisations/business-bulletins-newsroom/updated-information-on-ordinary-time-earnings-for-employers

7.8 MWB Accountants - ATO recovery of overpayments due to fraud

The ATO has released a decision impact statement on the Victorian County Court decision in *Deputy Commissioner of Taxation v MWB Accountants Pty Ltd* [2019] VCC 1516. The case involved a tax agent, MWB, who lodged amended BASs without its client's knowledge, inflating credits and resulting in refunds being deposited into MWB's bank account (the client's nominated account for ATO payments). The Commissioner sought to recover the refunds from MWB as "administrative overpayments" under section 8AAZN of the TAA 1953.

Broadly, section 8AAZN allows the Commissioner to recover an amount that the Commissioner has paid to a person by mistake, being an amount which the person is not entitled.

The Court held that MWB was not the "recipient" of an administrative overpayment within the meaning of section 8AAZN. The Court found that the true recipient of the payments was the client, not MWB, and the Commissioner's allocation of the refunds to MWB's running balance account was an error. Although an appeal was initially lodged, it was later withdrawn.

In this decision impact statement, the ATO accepts that where funds are received by an entity in its capacity as a taxpayer's authorised representative, the taxpayer is taken to have received the money. Determining whether an entity acted with such authority requires consideration of all relevant circumstances. The ATO also notes the Full Federal Court's decision in *Commissioner of Taxation v Auctus Resources Pty Ltd* [2021] FCAFC 39, which confirmed that section 8AAZN applies broadly to overpayments, including where funds are paid to the wrong person.

The ATO has since withdrawn PS LA 2008/11 as well as its interim decision impact statement on *MWB*. It should be noted that recovery action under section 8AAZN will turn on the legal characterisation of the payment and the identity of the recipient under the TAA 1953, rather than the account into which funds were deposited.

w https://www.ato.gov.au/law/view/document?docid=LIT/ICD/CI-17-04907-2/00001

7.9 Tips when clients dispose of shares

On 29 August 2025, the ATO issued tips for when lodging a client's tax returns if the client has sold or disposed of shares. The tips are as follows:

1. check the report on Online Services for Agents for 'share and unit disposals';
2. cross-check the information with the client to make sure it is correct;
3. include pre-CGT disposals at the 'CGT exemptions and rollovers' question and select 'Capital gains disregarded as a result of the sale of a pre-CGT asset'; and
4. include any losses to be carried over in the year they occur.

w https://www.ato.gov.au/tax-and-super-professionals/for-tax-professionals/tax-professionals-newsroom/have-your-clients-disposed-of-shares

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7.10 Tips on applying the main residence exemption

On 20 August 2025, the ATO issued a tip sheet addressing common errors in reporting capital gains, losses and the main residence exemption when property is sold.

The ATO reminds practitioners to confirm whether clients have disposed of property during the income year and to ensure the exemption is correctly applied. The guidance emphasises that:

1. a property must have actually been used as a home to qualify;
2. that vacant land does not attract the exemption (even if the client intended to build);
3. the six-year absence rule applies only if the dwelling was first established as the client's residence before being rented out, and requires an election made in the tax return;
4. property can be treated as the main residence at a time (other than the permitted six-month overlap when moving); and
5. changes to residency status during ownership may affect eligibility.

The ATO has provided further examples and scenarios in a factsheet on CGT and the main residence exemption, included in the *2025 Tax time toolkit for investors*.

w https://www.ato.gov.au/tax-and-super-professionals/for-tax-professionals/tax-professionals-newsroom/tips-to-get-the-main-residence-exemption-right

7.11 Livestock valuation guidance updated

On 22 August 2025, the ATO updated its guidance on valuing livestock at year end for the purpose of calculating primary production income.

Taxpayers may choose to value livestock at cost, market-selling value or replacement value, with a further option available for certain horse breeding stock. The guidance confirms that while the method can change from year to year, the opening value in a new income year must be the same as the closing value in the previous year.

For small businesses, the guidance provides that simplified trading stock rules apply so that if the difference between opening and closing stock is $5,000 or less, no stocktake or adjustment is required.

The guidance confirms that goods taken from stock for personal use, such as livestock slaughtered for household consumption or provided as rations, are treated as disposals with the market value included in assessable income.

The guidance also outlines how to value livestock acquired through natural increase, confirms the special rules for oyster farmers to account for oysters on hand as trading stock, and allows beekeepers producing honey to adopt a simplified approach by valuing a live hive as a unit rather than individual bees.

w https://www.ato.gov.au/businesses-and-organisations/income-deductions-and-concessions/primary-producers/livestock-and-other-assets/valuing-livestock

7.12 Bitcoin and 'foreign currency'

On 3 September 2025, the ATO released an addendum to TD 2014/25 to reflect the amended definition of 'foreign currency' under Schedule 2 to the *Treasury Laws Amendment (2022 Measures No.4) Act 2023* (Cth).

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The Determination provides that bitcoin is not a 'foreign currency' for the purposes of Division 775 of the ITAA 1997. The Determination applies for all income years prior to 1 July 2021 but does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before 17 December 2014, being the date of issue of the Determination.

w https://www.ato.gov.au/law/view/document?docid=TXD/TD201425A1/NAT/ATO/00001

7.13 GST and vouchers

The ATO has released guidance on procedures in respect of accounting for and reporting GST on vouchers that are bought and sold by a business. There are separate GST accounting and reporting procedures for 'face value' vouchers (vouchers which can be redeemed for a range of goods and services, e.g. goods at supermarkets) and 'non-face value' vouchers (vouchers which may only be redeemed for specific goods and services, e.g. spa treatments).

The accounting and reporting procedures are as follows:

1. GST accounted for:
   (a) face value vouchers – on redemption;
   (b) non-face value vouchers – at sale (if redeemable as taxable supply);
2. GST credit claimed:
   (a) face value vouchers – on redemption;
   (b) non-face value vouchers – at purchase.

w https://www.ato.gov.au/businesses-and-organisations/gst-excise-and-indirect-taxes/gst/in-detail/rules-for-specific-transactions/gst-and-vouchers

7.14 Landcom updated decision impact statement

The ATO has updated its decision impact statement on the Full Federal Court decision in *Commissioner of Taxation v Landcom* [2022] FCA 510.

Landcom is a state-owned corporation which is registered for GST and defined as a 'State' for the purposes of the GST Act. Under a contract of sale, Landcom sold four freehold lots together as a single piece of land. The contract of sale provided that the margin scheme would be applied to determine the GST payable on any taxable supply of property.

Landcom requested a private ruling from the Commissioner to determine whether the sale of multiple freehold interests constituted a single supply of land, for the purposes of applying item 4 of the table in subsection 75-10(3) of the GST Act. Item 4 of the table provides that where a supplier is a 'State', the land has been owned since before 1 July 2000, and there were no improvements on the land as at 1 July 2000 or at the time of the taxable supply, the margin will be calculated as the difference between the sale price and the market value on the date on which the supply occurs (i.e. the margin is nil).

The ATO determined that the sale of the freehold interest in each of the lots would be a single supply. The ATO disallowed Landcom's objection, and Landcom appealed to the Federal Court. The Federal Court determined that the intended construction of Division 75, which regulates the sale of freehold land, is to apply the calculation of GST separately to the sale of each individual interest. This was the case even if supply of the interest formed part of a larger supply of land, as in *Landcom*. The Full Federal Court agreed with the Federal Court.

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The ATO's updated decision impact statement notes that it will administer the law in accordance with the Federal Court's decision regarding:

1. government entities are entitled to obtain private rulings on matters relating to their notional GST liabilities and have the same review rights in relation to such rulings as non-government entities do for other rulings relating to GST; and
2. the application of the margin scheme to supplies of land which consist of multiple interests.

The ATO notes that the Federal Court's decision regarding supplies of land consisting of multiple interests is based on the wording of the provisions in Subdivision 38-N and Division 75 and will likely not have broader relevance to the meaning of 'supply' outside of the GST Act.

The relevant ATO rulings and determinations impacted include:

1. GSTR 2006/6: Goods and services tax: improvements on the land for the purposes of Subdivision 38 N and Division 75 (an addendum to this ruling was published on 19 March 2025);
2. GSTR 2006/7: Goods and services tax: how the margin scheme applies to a supply of real property made on or after 1 December 2005 that was acquired or held before 1 July 2000; and
3. GSTR 2006/8: Goods and services tax: the margin scheme for supplies of real property acquired on or after 1 July 2000.

w https://www.ato.gov.au/law/view/document?docid=LIT/ICD/VID315of2022/00001

7.15 Compliance focus on Next 5,000 groups

On 22 August 2025, the ATO reiterated its compliance focus on the “Next 5,000” private groups. A key risk area is lodgment performance across income tax, SMSF annual returns, FBT returns and BAS. The ATO expects timely lodgment for all entities in these groups and has warned that late or outstanding returns will attract compliance action. Consequences include penalties for non-lodgment, audits, default assessments with administrative penalties of up to 75% of the liability, retention of funds until outstanding forms are lodged, and referral for prosecution with potential fines and imprisonment.

The ATO emphasised that registered agents play a critical role in ensuring group-wide compliance, particularly in complex structures, and that clearing outstanding lodgments should be the first step when taking on new clients.

w https://www.ato.gov.au/businesses-and-organisations/business-bulletins-newsroom/focus-on-next-5000-private-groups-lodgment-performance

7.16 Recent developments in large business tax administration

At the CPA Tax Forum 2025, ATO Deputy Commissioner Rebecca Saint addressed recent developments in tax administration, focusing on compliance trends, assurance programs, dispute activity, and transparency measures for large businesses.

Compliance and the tax gap

The ATO remains confident that most large corporates are meeting their obligations. For 2021-22, the large corporate tax gap was 6.8% on lodgment, reducing to 4.1% after compliance activity. The Deputy Commissioner credited the Tax Avoidance Task Force and developments in the law for driving voluntary compliance but cautioned that this progress could slip without sustained resourcing.

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Assurance and certainty

The ATO is reshaping its assurance programs to provide greater certainty before lodgment. Currently, 83% of Top 100 taxpayers are rated high or medium assurance. The new Supplementary Annual GST Return is intended to allow the ATO to monitor large businesses more efficiently, reducing the need for intensive reviews where compliance is strong.

Disputes and profit shifting

Profit shifting remains the ATO's largest source of disputes with large businesses, accounting for around 70% of audit activity, with particular focus on financing arrangements, global value chains and misuse of the multiple entry consolidated (MEC) rules. Recent cases have involved average capital gains of over $300 million, with $1.45 billion secured in protective assets. Offshore information-gathering powers, formal interviews, and enhanced local file reporting will be central tools in detecting and addressing these risks.

Tax certainty and engagement

The Deputy Commissioner emphasised that achieving tax certainty remains a priority. The Advance Pricing Arrangement program and international joint reviews under the International Compliance Assurance Program will continue to be key mechanisms. While private rulings and justified trust engagements provide bespoke support, the ATO recognises the importance of public rulings and litigation in establishing clarity and precedent for the broader system.

Transparency expectations

The ATO reinforced that transparency is now an expectation, not an option. Recent measures, including corporate tax transparency reports and general-purpose financial reporting, have expanded disclosure requirements. The introduction of public country-by-country reporting represents a significant shift, requiring multinationals to disclose jurisdiction-by-jurisdiction tax data. The ATO is consulting on exemptions but noted the threshold will be high. Two new publications, the Public Groups Findings report and the Corporate Tax Transparency Report, are expected to provide further insights into corporate tax compliance and contextualise entity-level data.

w https://www.ato.gov.au/media-centre/speech-at-the-cpa-tax-forum-2025

7.17 Compliance approach on thin cap and debt deduction creation rules finalised

The ATO has finalised *Practical Compliance Guideline* PCG 2025/2, which sets out its approach to restructures in response to the new thin capitalisation framework introduced by the *Treasury Laws Amendment (Making Multinationals Pay Their Fair Share—Integrity and Transparency) Act 2024* (Cth). The Guideline applies retrospectively to restructures from 22 June 2023 and replaces draft PCG 2024/D3.

PCG 2025/2 uses a four-zone risk assessment framework, being white, green, yellow and red, to indicate the ATO's likely compliance focus. Placement into a zone depends on the nature of the restructure, prior ATO engagement and whether examples in the Guideline are followed. The framework does not determine the application of the law but signals the intensity of ATO review.

The Guideline contains schedules providing worked examples and compliance insights, as follows:

1. Schedule 1 illustrates when the debt deduction creation rules may need to be considered;
2. Schedule 2 outlines compliance risks from restructures responding to those rules;

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3. Schedule 3 (still in draft) will address the third-party debt test, to be finalised alongside draft TR 2024/D3; and
4. Schedule 4 covers risks linked to restructures under the new thin capitalisation rules

The ATO has included new illustrations of refinancing arrangements, tracing and apportionment of debt, and the replacement of related-party debt with third-party debt in commercial circumstances. It also clarifies that while low or high-risk ratings guide compliance focus, they are not determinative of whether the provisions themselves apply.

ATO Reference *PCG 2025/2*
w https://www.ato.gov.au/law/view/document?docid=COG/PCG20252/NAT/ATO/00001

7.18 ATO penalty administration practice statements

On 20 August 2025, the ATO updated a suite of practice statements on administrative penalties.

Changes to PS LA 2011/15 and PS LA 2011/19 incorporate new lodgment obligations linked to the global and domestic minimum tax introduced by the *Taxation (Multinational – Global and Domestic Minimum Tax) Act 2024* (Cth). These now cover the lodgment of minimum tax returns and notifications, with due dates depending on the type of return. Importantly, PS LA 2011/19 introduces a rule that multiplies the base penalty amount by 500 for entities with minimum tax lodgment obligations, reflecting the significant compliance expectations for groups within scope.

The ATO also revised PS LA 2012/4 and PS LA 2012/5, which deal with false or misleading statement penalties. The amendments clarify how the base penalty amount is calculated and emphasise that the Commissioner determines the base penalty before applying penalty relief. The ATO has confirmed it will generally remit any uplift in the base penalty in most circumstances, ensuring that penalties better reflect culpability while avoiding disproportionate outcomes.

w https://www.ato.gov.au/law/view/document?docid=PSR/PS20124/NAT/ATO/00001
w https://www.ato.gov.au/law/view/document?docid=PSR/PS201119/NAT/ATO/00001
w https://www.ato.gov.au/law/view/document?docid=PSR/PS20125/NAT/ATO/00001
w https://www.ato.gov.au/law/view/document?docid=PSR/PS201115/NAT/ATO/00001

7.19 ASIC increases focus on lodgment of financial reports

Following significant non-compliance among entities that were previously exempt, ASIC has stepped up its scrutiny of financial report lodgments by large proprietary companies.

A review found that 755 out of 1,166 formerly grandfathered companies failed to lodge financial reports for the 2023-24 financial year, despite the removal of lodgment exemptions in 2022. Of 58 companies suspected to be large proprietary entities, 32 were confirmed to have breached their lodgment obligations.

Commissioner Kate O'Rourke highlighted the importance of timely reporting and indicated that regulatory action would be taken where necessary. She expressed concern over the lack of auditor notifications regarding these breaches. ASIC reminded companies to actively review their reporting obligations and urged auditors to report any suspected breaches, noting that it will use its full range of enforcement tools to ensure compliance.

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w https://www.asic.gov.au/about-asic/news-centre/find-a-media-release/2025-releases/25-169mr-asic-increases-its-focus-on-lodgement-of-financial-reports-after-finding-poor-compliance-by-grandfathered-companies/

7.20 NSW evidentiary requirements of 'original' documents

Revenue NSW has clarified the meaning of "original" documents for evidentiary purposes. The term now extends beyond hard copy originals to include:

1. electronically executed instruments (e.g. digitally signed documents);
2. electronic copies of documents; and
3. scanned copies of signed documents.

This update is aimed at reducing the administrative burden associated with requiring physical originals in many cases.

w https://www.revenue.nsw.gov.au/help-centre/resources-library/evidentiary/index

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