The Tax Institute

Tax Update

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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 S.N.A. Group	The Full Federal Court has held that group license fees were not incurred as there were no contracts between the entities under which it was agreed that the license fees would be paid. The Court held that, while a contract can be inferred by conduct, there insufficient evidence to infer that the entities had agreed for a "fair and reasonable fee" to be paid.	Page 7
Item 2.2 Masterton Homes	The Administrative Review Tribunal has held that constructions costs for model display homes were on revenue account as a marketing cost for which Masterton Homes did not receive an enduring advantage. The ATO had contended that the constructions costs were capital as constructions under Division 43.	Page 10
Item 2.6 Brisbane Club	The Federal Court has held that a deed entered into prior to 20 September 1985 and not a building agreement entered into after 20 September 1985 was a construction contract under which a building was construction on the land owned by the Brisbane Club. The effect of this is that the building was treated as not being a separate post-CGT asset.	Page 58
Items 7.11 NSW surcharge exemptions for PPoR	Revenue NSW has issued a Commissioner's Practice Note on the operation of the land tax surcharge provisions for permanent residents and New Zealand citizens, including when Revenue NSW will grant accept that there has been a temporary absence for exceptional circumstances.	Pages 70
Items 8.2 Tax Ombudsman Report on GIC remission	The Tax Ombudsman has issued a report on the ATO's approach to GIC remission, which also outlines the recent changes made by the ATO. The report notes that a little known option where a GIC remission is refused is to seek a re-consideration by ATO.	Pages 72

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2. Detailed case summaries

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

Facts

In 1996, Theo Peter Coronis acquired a real estate agency in Stafford, Queensland which later became the Coronis group. Theo's son, Andrew Coronis, joined the predecessor family real estate business in the late 1980s and went on to be sales manager of the real estate agency and later CEO.

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

In 2005, the Coronis group underwent a restructure, under which four entities were created:

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

SNA paid service fees to both PAC Realty (Emily Trust, rent roll) and CLAARS (Henry Trust, IP and key personnel), while APTR paid service fees to CLAARS for use of the Henry Trust's assets. The service fees were tied to rights granted under licensing agreements entered into in 2005 and 2006. In effect, these agreements provided that the two asset holding unit trusts would licence intangibles assets (e.g. the Coronis trademarks, goodwill, rent roll etc) to the operational entities for a service fee. The 2005 licence agreements set fees as a percentage of turnover.

Over time, the arrangements between the parties did not reflect the agreements and Andrew and Theo were more concerned with ensuring the fees set each year were 'fair and reasonable', rather than whether they were consistent with the prior agreements. Theo and Andrew aimed to generate a return for Henry Trust unitholders of no more than about 8% of the Coronis group's net assets, and this figure informed their thinking about what was 'fair and reasonable'.

On 30 November 2021, the Commissioner issued amended income tax and penalty assessments to APTR and SNA for the income years ending 30 June 2016 to 30 June 2019, in which Commissioner disallowed the claimed deductions for the service fees paid by APTR and SNA. The Commissioner also disallowed the objections lodged by APTR and SNA.

SNA and APTR appealed the objection decisions. The key issue in the appeal was whether SNA and APTR were entitled to deductions for the service fees under section 8-1 of the ITAA 1997.

The Commissioner argued that the 2005 and 2006 agreements had expired or lacked sufficient documentation to create a liability that was incurred. The Commissioner also challenged the reasonableness of the service fees claimed by SNA and APTR, suggesting that they were excessive or not genuinely reflective of services provided

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At first instance, the primary judge held that APTR and SNA's obligation to pay service fees did not arise from the outdated 2005-2006 licence agreements. Instead, because Theo and Andrew exercised effective control over all relevant entities, he found that the service fees were informally set each year, with APTR and SNA treating themselves as liable to pay them and PAC Realty and CLAARS treating themselves as entitled to receive them.

Justice Logan emphasised that the rent roll (owned by the Emily Trust via PAC Realty) and the Coronis intellectual property and key personnel (owned/employed by the Henry Trust via CLAARS) were valuable, income-producing assets essential to the operations of SNA and APTR. As owners of these assets, PAC Realty and CLAARS were entitled to a reasonable commercial return, capped at around 8%.

Overall, Logan J concluded that the service fees were fair, reasonable and necessary, as APTR and SNA needed to pay for the use of the assets and expertise that enabled them to generate income.

The Commissioner appealed to the Full Federal Court.

Issues

1. Was the primary judge correct to conclude that APTR and SNA entered into contracts with PAC Realty and CLAARS for use of trust assets upon payment of a fair and reasonable fee in each relevant year?
2. If so, was the primary judge correct to conclude that all the relevant amounts the taxpayers paid to the trustees were referrable to the inferred contracts?

Decision

The Full Federal Court noted that the test to determine whether a contract is formed and its terms is objective. Rather than examining the subjective intention of the parties to the contract, the question is what a reasonable person would have inferred from the words and conduct of the parties.

In this case, the primary judge already rejected that the service fees were incurred under the 2005 licence agreements. Therefore, it was necessary for APTR and SNA to prove that a contractual liability for the service fees could be objectively inferred by conduct of the parties.

The Full Federal Court held that a reasonable person, in the position of the parties, would not understand from the communication or conduct of the Andrew and Theo that there was a meeting of minds on the contract terms.

<u>Lack of contractual assent</u>

There was no direct evidence of any communications between the controllers of the individual entries for APTR and SNA to pay a fair and reasonable fee for use of the trust assets. The evidence provided by Theo and Andrew did not explain how the fees were calculated or whether any meeting or communication took place to discuss the fee. The Full Federal Court also found no evidence that the directors communicated any new or continuing agreement to key personnel such as the bookkeeper or the external accountant who prepared the financial statements. The evidence provided only showed subjective belief, and not objective evidence of contractual assent.

<u>Lack of consistency in 8% amount</u>

The Full Federal Court found that the evidence around the alleged 8% return was inconsistent, unclear, and incapable of supporting the primary judge's inference that the parties had agreed to pay a fair and reasonable fee capped at 8% of the value of the business. Andrew and Theo gave differing accounts of what the 8% represented, how it was derived, and how it was used in practice. Payments made to PAC Realty and CLAARS often did not align with the 8% return.

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Although expert evidence suggested the fees were within a reasonable arm's length range, the Full Federal Court held that commercial reasonableness by itself could not establish a contractual liability. The taxpayers still had to prove an objectively manifested agreement, which they failed to do.

Calculation of fees

The Full Federal Court held that the primary judge erred in treating Jim Bryant, the accountant for the Coronis group, as having calculated reasonable fees each year. The evidence did not show that the controller communicated with Jim of any new or varied service fee arrangement after 2015. Evidence demonstrated the Jim was only performing the ordinary function of a tax accountant, such as preparing financial statements and reconciling figures. Because Bryant's work depended on reconstructing accounts after year-end and on the assumption that the 2005 contracts continued, his involvement could not establish any outward communication of mutual assent to new service-fee agreements.

Conduct of the parties

The Full Court held that, where conduct of the parties is being relied upon for the existence of the contract, the parties' conduct must be capable of establishing all essential elements and terms of an express contract. Further, it is not sufficient that the conduct be consistent with the asserted contractual terms, the conduct must indicate that the parties considered themselves bound by the contract.

The books and records and financial statements were prepared on the mistaken assumption that the 2005 licence agreements remained binding and operative and that the payments were made in accordance with those agreements. There was no coherence or consistency in the payments made to PAC Realty and CLAARS and there was no explanation for the methodology used that could explain the lack of consistency. PAC Realty and CLAARS themselves issued no GST invoices for the purported service fees. Large parts of the amounts claimed as service fees were actually miscoded payments, including financing reimbursements, wage reimbursements and surplus-cash transfers.

Reasonable payment?

The Full Federal Court also explained why it could not treat the payments as deductible on any alternative basis, such as quantum meruit. In simple terms, quantum meruit is a principle that can require someone to pay a reasonable amount for a benefit they have received, even if there is no contract in place. However, the Court noted that SNA and APTR did not run their case on this basis, and the primary judge did not decide the matter on those grounds. Because the taxpayers relied solely on the existence of a contract, they had to prove that an actual contractual obligation to pay the service fees existed in each relevant year. Without evidence of any agreement or communication that could amount to a binding contract, they could not fall back on the idea that the payments were simply a reasonable contribution for the use of trust assets. In other words, the mere fact that the operating companies benefited from the assets did not, on its own, create a deductible obligation.

Conclusion

The Full Federal Court determined that SNA and APTR did **not** enter into any inferred contracts with the trustee companies requiring them to pay fair and reasonable service fees for the use of trust assets in the 2016 to 2019 income years. The Full Federal Court found that the primary judge had erred by inferring contractual obligations where there was no objective evidence of mutual assent between the operating companies and the trustees. As a result, the Full Federal Court allowed the Commissioner of Taxation's appeal and reinstated the amended assessments and penalties.

KEY TAKEAWAYS

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- Ensure that service-fee methodologies are clear, consistent and repeatable. If fees are meant to reflect a percentage of revenue or asset value, apply the method consistently each year and across entities, or document why it changes.
- Do not rely on bookkeeping codes, transaction narrations or journal entries as substitutes for contractual terms. The Court made clear that coding reflects internal assumptions, not the existence of agreements.
- Accountants should confirm whether they are being asked to calculate fees or simply record historic transactions. If the business wants advice on what is "fair and reasonable", this should be formalised, and the methodology agreed.

Citation *Commissioner of Taxation v S.N.A Group Pty Ltd* [2026] FCAFC 10 (Mcelwaine, Feutrill and Wheatley JJ, Brisbane)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCAFC/2026/10.html

2.2 Masterton – display homes deductible as marketing expenses

Facts

Masterton Corporation Holding Company Pty Ltd (**Masterton**) is a custom home building company. Masterton is the head entity of a tax consolidated group which includes Masterton Homes Pty Ltd (**Masterton Homes**) as a subsidiary that is the contract residential builder.

As part of Masterton's business model, Masterton Homes constructs model display homes for potential buyers to visit and view in designated 'display villages'. These display homes market the latest available products, and are demolished once the specific model is discontinued by Masterton. Each model may be available for between 4-7 years. The display homes are not designed to be lived in by potential buyers. They are not connected to water or electricity services, are constructed on a concrete slab on compacted ground, with all lighting in the homes centrally controlled by sensors and timers as suited to a 'showroom environment'.

The display homes were not intended to 'create' new business but rather to support sales in an existing and long-standing business of contract-building houses. Approximately 60% of sales in NSW are from buyers who visited the temporary display village at Warwick Farm.

From the early 1990s until 2022, Masterton had treated these display homes as depreciable assets under Division 40 of the ITAA 1997, which was accepted by the ATO in risk reviews of the Masterton group between 2006 and 2016.

In 2022, Masterton requested the ATO 's opinion on whether an instant tax write off was available for the 2022 income year under the temporary full expensing measures in Subdivision 40BB of the ITTP Act. These measures were available for certain depreciating assets under Division 40 of the ITAA 1997, but excluded Division 43 capital works. The ATO subsequently determined that the display homes should be treated as capital works under Division 43 of the ITAA 1997.

Masterton lodged an amended tax return in accordance with the ATO's revised view, and then lodged an objection to the notice of amended assessment. The ATO disallowed the objection, and Masterton applied to the ART. While Masterton's initial objection only claimed that temporary full expensing should be available and that the display homes should be taxed under Division 43, in the ART Masterton argued that the expenses on the display homes were deductible under section 8-1(1) of the ITAA 1997 on the basis that they were a revenue or operating expense.

Masterton argued that the cost of constructing its temporary display models was a revenue expense fully deductible under section 8-1. It said the structures were purely marketing tools, not homes, and were built only to promote existing design offerings. They were non-habitable, cheaply constructed, designed to last only for

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each product's sales cycle, and regularly demolished and replaced as consumer preferences changed. This meant the expenditure was recurrent and operational, similar to advertising, rather than a once-and-for-all outlay that created any enduring asset or enlarged the business's structure. Masterton also pointed out that the ATO had long accepted the models as "plant," and contended that reclassifying them as capital works did not reflect their temporary and disposable nature.

The ATO argued that the cost of constructing each temporary display model was a capital expense, not a revenue expense. He said each model represented a single, once-and-for-all outlay that created an enduring marketing asset for the full life of the product design it showcased. Although the models were not permanent buildings, the ATO maintained that they were intended to endure for several years and therefore provided a lasting advantage that formed part of Masterton's profit-yielding structure.

The ATO submitted that each model was integral to establishing and maintaining Masterton's market presence for a particular home design, functioning as a dedicated and tangible promotional aid over the product's lifecycle. He argued this was fundamentally different from short-term advertising because each model was used repeatedly, was not replaced mid-cycle and existed to promote a single product line for many years. On this view, the expenditure was part of Masterton's business structure, not its ordinary operating costs.

Finally, the ATO said that the correct tax treatment was under Division 43 as capital works because the display models were buildings, not plant. The ATO maintained that Masterton was not entitled to deductions under section 8-1 or to the temporary full expensing rules in Subdivision 40BB.

Issue

Is the cost of display model homes deductible under section 8-1 of the ITAA 1997?

Decision

The ART began by noting that the only live issue was whether the costs of constructing the temporary display models were capital or revenue in character. The ATO had already accepted that the expenditure was incurred in gaining or producing assessable income, that it was necessarily incurred in carrying on Masterton's business, and that none of the other exclusions in section 8-1 applied. The entire dispute therefore turned on paragraph 8-1(2)(a), that is, whether the expenditure was "of capital, or of a capital nature".

The ART referred to the decision in *Sun Newspapers Limited and Associated Newspapers Limited v Federal Commissioner of Taxation* (1938) (**Sun Newspapers**) which involved a payment by Sun Newspapers to a rival newspaper, structured as a lease, in order to prevent it from introducing a new competitor newspaper. The majority of the High Court determined that the payment was on capital account as the taxpayer achieved a lasting benefit. In *Sun Newspapers*, Justice Dixon formulated a test for determining whether an expense is incurred on revenue or capital account, based on the following factors:

1. the character of the advantage sought, including any 'lasting qualities';
2. the manner in which the advantage is used, relied upon, or enjoyed – and the 'recurrence' of the expense is relevant; and
3. the means adopted by the taxpayer to obtain the advantage – i.e. by providing a periodical payment or outlay to use it, or by making a final provision or payment to secure future use or enjoyment.

The ART disagreed with the ATO's characterisation of the display homes as capital outlays. The ART referred to the test and factors set out in *National Australia Bank Ltd v Commissioner of Taxation* [1997] FCA 1394 (**NAB**). *NAB* considered the deductibility of a single large payment made by NAB to the Commonwealth for the exclusive right, for a period of 15 years, to participate as lender under a scheme offering housing loan assistance to members of the defence forces. The Full Court held that NAB sought to expand its home loan customer base. While the payment made by NAB was a single outlay and not of a recurrent nature, this was not determinative, as it did not enlarge the framework within which NAB carried on its ordinary activities of

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borrowing and lending money. The payment made only operated to expand the bank's customer base and in the process of their ordinary lending activities. It was thus more appropriately characterised as a marketing expense, and deductible under section 8-1.

The ART applied this analysis to the Masterton display homes to determine that the expenditure was on revenue account:

1. Masterton incurred the expenditure to advertise its long-standing business of building and selling residential homes, similar to NAB's longstanding business of facilitating home loans;
2. Masterton incurred regular expenses of building and demolishing temporary display homes, which was consistent with its core business model of building residential homes;
3. the expenditure on the construction of the display homes is part of an existing framework of marketing and promoting Masterton's products – it does not alter or enlarge the business structure of Masterton such as by acquiring assets or entering a new market; and
4. Masterton's outlays had been recurrent and continuous over a significant time as part of their established business practice.

The ART also referred to *Case J39* (1977) 77 ATC 363, a Board of Review decision dealing with functional display homes that were habitable and ultimately sold. Even in that context, the majority had treated the sale of the display homes as part of the ordinary business operations, not the realisation of capital assets. The ART considered that Masterton's case was even stronger, because the Warwick Farm models were never capable of being sold as residences and were built from the outset to be demolished. As Masterton was only incurring expenses in relation to display homes, rather than display homes which were subsequently sold, this provided an authority for the expenses incurred by Masterton to be on revenue account and therefore deductible under section 8-1.

The ART determined that the expenditure incurred by Masterton in the construction of the temporary display homes was of revenue nature and deductible.

KEY TAKEAWAY

A single, once-off payment can still be deductible where, applying the *Sun Newspapers* test, the expenditure is properly viewed as part of the revenue-earning operations of the business rather than the profit-yielding structure itself. The fact that the payment is made only once does not determine its character. What matters is the nature and purpose of the payment: if it is directed at facilitating or improving the day-to-day conduct of the business, or at securing trading advantages within the existing business structure, it retains a revenue character even if it is non-recurring.

Citation *Masterton Corporation Holding Company Pty Ltd and Commissioner of Taxation (Taxation)* [2026] ARTA 160 (Deputy President G Lazanas, Sydney)
w http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/160.html

2.3 Removed

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2.4 Farley – work-related expense incurred too soon

Facts

On 9 June 2021, Jason Farley was sent an employment contract to commence work as a pilot with Bravo Airlines on 28 June 2021.

On 24 June 2021, before signing the contract, he informed the airline that his Australian medical clearance had been suspended.

On 1 July 2021, the Civil Aviation Safety Authority issued a formal notice suspending Jason's medical certificates due to physiological complications. On 29 July 2021 and 1 December 2021, CASA wrote to Jason again, outlining the steps he needed to take to regain his medical certificates, including consultations with medical examiners, various tests and specified treatment.

Jason incurred medical expenses for the examinations, specialists, tests and treatment required to regain the medical clearance necessary for holding an aviation licence. On 9 February 2022, after the period of medical suspension, he was offered a new employment contract with Alliance Airlines, which he accepted the following day, with a commencement date of 14 March 2022.

On 3 July 2023, Jason lodged his tax return for the year ended 30 June 2022, reporting salary and wages of $44,643 from his pilot role and claiming $22,942 in work-related expenses for medical costs. On 6 October 2023, the ATO issued an audit decision disallowing the deductions, and on 19 October 2023 issued an assessment confirming that the expenses were private in nature.

Jason lodged an objection stating that the medical costs were required to regain and maintain his pilot medical certificate. The ATO disallowed the objection and Jason applied to the ART for review.

Jason argued that the medical expenses were incurred solely so he could return to work as a pilot. The Commissioner maintained that the expenses were incurred too soon to be considered work-related and were, in any event, private.

Issue

Could Jason claim a deduction for the medical costs associated with regaining aviation medical clearance?

Decision

The ART noted that for an expense to be deductible, it must satisfy the positive limb of section 8-1 of the ITAA 1997, meaning it must be incurred in gaining or producing assessable income.

The ART explained that this requirement involves more than a causal link between the expense and future income. Drawing on authorities such as *Federal Commissioner of Taxation v Payne* [2001] HCA 3 and *Federal Commissioner of Taxation v Maddalena* (1971) 45 ALJR 426, the ART emphasised that an expense must be incurred in the course of earning income, not simply to place the taxpayer in a position to earn that income. Expenses that are incurred before the taxpayer commences income earning activities are considered to be incurred too soon.

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The ART accepted that Jason's pilot employment began on 14 March 2022 and that his medical expenses were incurred between July 2021 and May 2022. Even though some expenses fell after the formal employment commencement date, the ART found that all of the medical costs related to regaining the medical certification required to qualify for employment in the first place. The ART considered this decisive because the expenditure was directed at obtaining employment, not performing employment duties.

The ART also considered the ATO's website guidance, which draws a clear distinction between deductible expenses for maintaining or renewing an existing licence and non-deductible costs that relate to obtaining an initial licence or satisfying pre-employment medical requirements. Jason's expenses were in the latter category, because his medical certificate had been suspended and he could not hold a pilot licence at the time the expenses were incurred. The ART therefore viewed the expenses as facilitating the acquisition, rather than the renewal, of a licence.

As the ART found that the expenses did not satisfy the positive limb of section 8-1, it did not need to consider the Commissioner's alternative argument that the expenses were private in nature.

KEY TAKEAWAY

An expense incurred before a taxpayer has actually secured employment is generally not deductible because it is incurred too soon—that is, at a point where the taxpayer is not yet engaged in income-producing activities. Expenditure on seeking, obtaining, or qualifying for a job is considered to be directed toward establishing the income-earning position, not carrying on the activity from which income is derived. As a result, such costs lack the necessary nexus with the derivation of assessable income and instead relate to getting into a business or employment, rather than earning income from it.

Citation *Farley and Commissioner of Taxation (Taxation)* [2026] ARTA 255 (General Member M Burch, Adelaide)
w https://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/255.html

2.5 Halse – CGT cost base

Facts

On 20 October 1989, Robert Halse purchased a vacant block of land in South Australia, with the intention of eventually building a house to be his residence.

As a result of changing personal circumstances, Robert later decided to subdivide and sell the block. In 2019, Robert subdivided the land into two equal lots.

On 18 June 2021, Robert sold one lot for $310,000. He retained the other lot as a potential future home site.

For the income year ended 30 June 2021, Robert reported a total capital gain of $250,846, a net capital gain of $125,418 and a total taxable income of $199,376.

A few years later, when it became apparent he was not going to return to live in the area, Robert decided to sell the remaining lot. On 7 May 2024, Robert sold the second lot for $400,000.

For the income year ended 30 June 2024, Robert reported a total capital gain of $358,556, a net capital gain of $178,781 and a total taxable income of $269,114.

On 10 February 2025, Robert lodged objections to the 2021 and 2024 assessments.

In the objection, Robert sought to reduce the capital gain from $125,418 to $104,168 in the 2021 year for the sale of the first lot and $178,781 to $152,220 in the 2024 year for the sale of the second lot.

Section 110-25 of the ITAA 1997 sets out the five elements that make up the cost base of a CGT asset. Relevantly, the third element allows a taxpayer to include certain ownership costs in the cost base if the asset was acquired after 20 August 1991. These include interest on borrowings used to acquire or refinance the asset, costs of maintaining, repairing or insuring the asset, and rates and land tax for land.

Robert argued that the legislative requirements should be purposively interpreted and that he should be allowed to claim the rates and taxes as part of the cost base of the property, even though he acquired the property before 20 August 1991.

Robert argued that the purpose of the provision is to ensure that taxpayers are taxed on real economic gains and these unavoidable ownership expenses should count toward the third element of the cost base because they reflect the real economic cost of holding the land. Robert submitted that the statutory limitation tied to post-20 August 1991 acquisitions was arbitrary, produced unfair outcomes between taxpayers solely based on acquisition date, and was inconsistent with the legislative objective of accurately reflecting the cost of holding a CGT asset.

Issue

Was Robert entitled to include amounts forming part of his third element of cost base?

Decision

The ART began by examining section 110-25(4) of the ITAA 1997, noting that the third element of cost base only applies where a taxpayer *acquired* the relevant CGT asset after 20 August 1991. The ART observed that the statutory language was clear and unambiguous, so the inquiry had to begin and end with the text. The ART found that Robert acquired the land on 20 October 1989, and the later subdivision of the land into two lots did not alter that acquisition date. The costs Robert sought to claim were therefore automatically excluded by the legislation.

The ART considered Robert's purposive arguments, including his view that the provision produced arbitrary and unfair outcomes, but found that such policy concerns could not override clear statutory wording. The ART added that fairness-based submissions and criticisms of legislative design are matters for Parliament, not for merits review. The ART also rejected Robert's submission that his non-investment purpose or residential intentions affected the CGT outcome, noting that the property remained vacant land and was never used as a main residence.

Robert's appeal was dismissed.

KEY TAKEAWAYS

- Extrinsic materials such as explanatory memoranda have limited use where the statutory text is already clear. The ART reaffirmed that section 110-25(4) of the ITAA 1997 leaves no interpretive gap, so external aids cannot reshape or soften the acquisition date restriction. The decision serves as a reminder that purposive arguments cannot displace unambiguous drafting, even where the outcome may appear inequitable.
- For a cost to form part of a CGT asset's cost base, it must fall within one of the five statutory cost-base elements in Subdivision 110-A of the ITAA 1997. It is not enough that the taxpayer incurred a cost or that it is connected with the asset in a general sense. If the cost cannot be located within an express cost-base element—such as the acquisition cost, incidental costs, ownership costs, capital improvements, or costs to preserve or defend title—then it cannot be included in the cost base. The legislation is exhaustive, not illustrative: a cost either fits an element or it is simply excluded.

TIP – the third element of cost base does not apply to personal use assets or collectables: see sections 108-17 and 108-30 of the ITAA 1997.

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Citation *Halse and Commissioner of Taxation (Taxation)* [2026] ARTA 156, (General Member R Smith, Adelaide)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/156.html

2.6 Brisbane Club – CGT on post-CGT building on pre-CGT land

Facts

On 7 May 1985, Brisbane Club members met at an extraordinary general meeting to consider the redevelopment of the Club's land at 241 Adelaide Street, Brisbane, and to approve related documentation with a developer. On the following day, 8 May 1985, the Club and the developer executed a Deed that outlined the overall development arrangements for the site, including the future construction of a new tower.

On 10 January 1986, the Club and the developer entered into a Building Agreement, which gave operational effect to the construction obligations contemplated under the Deed.

On or after 14 February 1986, construction works commenced on the site.

On 18 June 1986, the Club granted a head lease over the land, including the incomplete building, to City Mutual Life Assurance Society, with the term commencing retrospectively from 27 March 1986. On the same day, City Mutual Life granted the Club two subleases over specific areas of the new building, each commencing on 1 September 1986. Between 9 April 1986 and 18 June 1986, the Club and City Mutual Life exchanged correspondence finalising the terms of the head lease and both subleases. The developer did not enter into any sublease arrangements with the Club or any other party.

On 24 June 1986, the developer and City Mutual Life executed a separate Development Agreement. On 4 February 1988, Brisbane City Council issued a Certificate of Classification for the completed tower, and on 12 February 1988 the building reached practical completion. The structure became known as the Brisbane Club Tower.

On 10 June 2021, the Club agreed to sell the land, the building and both subleases to CHAB Office Pty Ltd for $32 million (exclusive of GST). The Club nevertheless considered that any capital gain should be disregarded because each asset was acquired before 20 September 1985.

On 21 January 2021, the Club sought a pre-lodgment engagement with the ATO to confirm the CGT treatment of the proposed sale. Following meetings and correspondence, the Commissioner advised on 18 January 2022 that, while the land was a pre-CGT asset, the building and both subleases were post-CGT assets.

On 19 April 2023, the Club lodged its income tax return in accordance with the ATO's view, declaring a net capital gain of $13,526,818 and paying $1,801,633 in tax after losses and deductions.

On 30 May 2023, the Club objected to the assessment. On 25 October 2023, the Commissioner disallowed the objection. The Club appealed to the Federal Court.

Capital gains on assets acquired before 20 September 1985 are disregarded under section 104-10(5)(a) of the ITAA 1997. Division 108 defines CGT assets, including when interests in land and buildings are treated separately. Section 108-55 provides that a building on pre-CGT land will be treated as a separate, post-CGT asset ***if the taxpayer entered into a construction contract on or after 20 September 1985***. Division 109 sets the timing rules for when an asset is acquired, which for leases and subleases is generally when the lease contract is entered.

The Club argued that both the building and the two subleases were pre-CGT assets because their relevant acquisition dates traced back to arrangements made before 20 September 1985. The Club said the 8 May 1985

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Deed was the operative contract for constructing the building, so the building should not be treated as a separate post-CGT asset. It further argued that its rights to the two subleases originated under that same Deed, and in the case of the second sublease, through the exercise of an option in August 1985, meaning both subleases should also be treated as acquired before the CGT start date.

The Commissioner argued that the building and both subleases were post-CGT assets because the relevant legal rights were not created until after 20 September 1985. The Commissioner said the operative construction contract was the 1986 Building Agreement, not the 1985 Deed, so the building should be treated as a separate post-CGT asset. The Commissioner also maintained that each sublease was acquired when the Club entered into the actual lease contracts with City Mutual Life in June 1986, noting that the earlier Deed involved different parties and created no enforceable pre-CGT rights to the leases.

Issues

1. Was the Brisbane Club's building a pre-CGT asset, or did section 108-55 deem it a separate post CGT asset because the relevant construction contract was entered after 20 September 1985?
2. Were the Club's two subleases acquired before 20 September 1985, or were they post-CGT assets because the lease contracts were only entered in June 1986?

Decision

<u>Was the building a pre-CGT asset?</u>

The Court examined whether the 1985 Deed or the 1986 Building Agreement was the operative contract for constructing the Brisbane Club Tower. Section 108-55(2)(a) required identifying the contract that created the legal obligation to construct the building, rather than a later document that simply governed the mechanics of performing the works.

In resolving that question, the Court drew on the High Court's reasoning in *Commissioner of Taxation v Sara Lee Household & Body Care* (2000) 201 CLR 520, which emphasises that where multiple agreements exist, the relevant inquiry is which contract is the source of the obligation relevant to the statutory provision, and that a later agreement does not displace an earlier one unless the parties intended to rescind it. The Court adopted this approach to determine whether the Deed or the later Building Agreement supplied the operative construction obligation.

Applying those principles, the Court held that although the Deed alone was not, before the Building Agreement was executed, a contract *for the construction*, the Deed and the Building Agreement were intended to operate together as a unified contractual framework, with the Deed prevailing in any inconsistency. The Building Agreement did not replace the Deed; rather, it fulfilled a condition within it and became part of the same integrated contract once executed.

Because the Club entered into this unified construction contract when the Deed was executed on 8 May 1985, the relevant construction contract was entered before 20 September 1985. Section 108-55(2)(a) therefore did not separate the building from the pre-CGT land. The building was a pre-CGT asset.

<u>Were the subleases pre-CGT assets?</u>

For each sublease, the Court focused on when the Club actually acquired the relevant lease interest for the purposes of Div 109 and CGT event F1, which occurs when the lease contract is entered. The subleases were granted by City Mutual Life, not the developer, and the Club had no evidence of any pre-CGT agreement with City Mutual Life or of any assignment of rights from the developer.

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Even if the Deed contemplated sublease arrangements or the Club believed it exercised an option in 1985, those arrangements did not amount to a legally enforceable pre-CGT contract with City Mutual Life for the grant of either sublease. The only contracts creating the sublease rights were those executed on 18 June 1986.

Both subleases were acquired after 20 September 1985. Capital gains on their disposal were not disregarded.

KEY TAKEAWAY

The key principle from *Commissioner of Taxation v Sara Lee Household & Body Care (Aust) Pty Ltd* [2000] HCA 35 is that, for CGT purposes, the acquisition date is determined by the contract that actually gives rise to the binding and enforceable rights to acquire the asset. If there are multiple contracts, renegotiations, or variations, the relevant acquisition date is not automatically the date of the earliest document, nor is it the date of the final settlement. Instead, it is the date on which the parties enter the operative contract—that is, the contract that ultimately governs the acquisition because it contains the terms that are legally binding and performed.

TIP – where a building on pre-CGT land is treated as a separate post-CGT asset, unless the relevant contract provides for apportionment of the purchase price, it will be necessary to apportion the capital proceeds between the land and the building on a fair and reasonable basis.

Citation *Brisbane Club v Commissioner of Taxation* [2026] FCA 220 (Wheatley J, Queensland)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2026/220.html

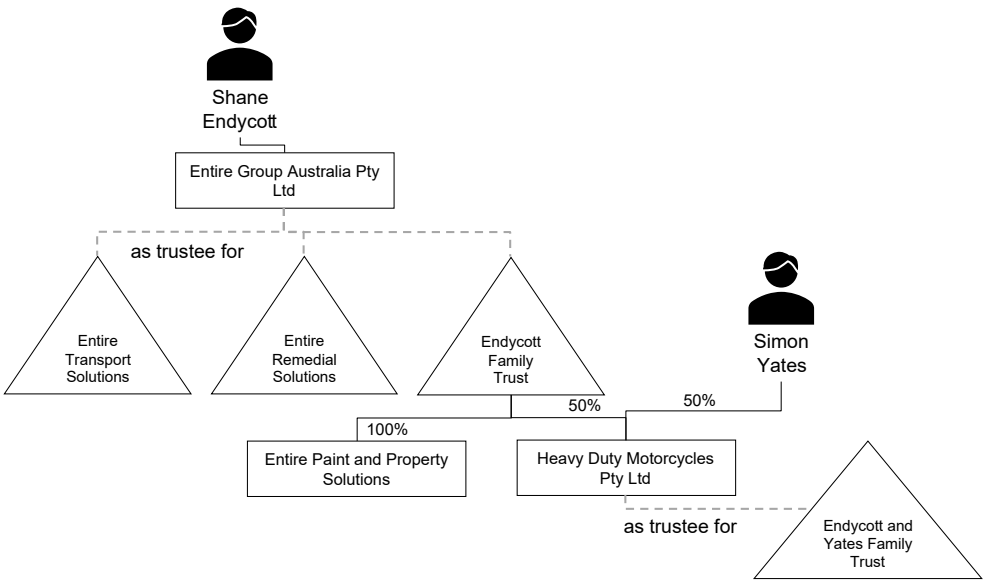
2.7 Endycott – substantiation of loans and penalty safe harbour

Facts

Shane Endycott is a painter by trade. He left school in Year 10, lives with dyslexia, and currently experiences several health issues. Between 1989 and 1991, he worked full-time in general labouring positions at sawmills around Grafton, New South Wales, before completing Years 11 and 12 in 1992.

From 1992 to 2000, Shane worked as a domestic painter and completed his apprenticeship. In late 1997, he moved to Armidale to undertake insurance-related painting work with a contractor.

From 2004 Shane established a substantial commercial painting enterprise through the Endycott Family Trust and related entities within a group. The diagram below depicts the group:



As director of the corporate trustee of the Endycott Family Trust, Shane exercises effective control over all of the group's operations.

The group operated two principal business streams:

1. painting, remedial works and transport business, conducted through the Endycott Family Trust and associated entities; and
2. a motorcycle sales and repair business, operated by Heavy Duty Motorcycles Pty Ltd as trustee of the Endycott & Yates Family Trust. This trust was established by Shane and his colleague, Simon Yates.

By the end of 2013, the business had grown to approximately 35 employees. Shane said the speed and scale of this growth overwhelmed him. To manage the workload, he:

1. employed his daughter, Samantha Endycott, first as receptionist and later as bookkeeper;
2. expanded the role of his accountant, Anthony Cullen, to include cash-flow reporting, financial planning, structural advice, and training Samantha in data entry;
3. promoted an employee, Steve Jones, to general manager; and
4. established an overdraft facility with the National Australia Bank.

The combined turnover of the businesses for the 2015 year exceeded $6.3 million. The business operations were marked by poor accounting practices, intermingled bank accounts, and fluid movement of funds between personal, trust and business accounts.

Mr Cullen prepared the 2015 financial statements and return for the Endycott Family Trust and calculated the trust's net income for that year as $63,310. On 26 June 2015, the corporate trustee of the Endycott Family Trust resolved to distribute that income by allocating $35,000 to the Endycott & Yates Family Trust, $15,000 to the ERS Trust, and the balance to Shane.

Shane lodged his 2015 income tax return on 31 May 2016. That return, prepared by Mr Cullen, disclosed $3 in bank interest and $13,170 as his share of the net income of the Endycott Family Trust.

On 27 June 2016, the trustee of the Endycott Family Trust resolved that trust had no distributable income for the 2016 year. Shane lodged his 2016 income tax return on 16 June 2017, again prepared by Mr Cullen, and reported trust income of $20,000.

In February 2018 the ATO commenced an audit of the group's affairs. In October 2018, the audit was finalised with the ATO concluded that the Endycott Family Trust

1. failed to report receipts from a Petrie Point project;
2. failed to report rental income received from related trusts; and
3. understated GST and lodged BASs containing errors.

As written resolutions were not produced for the trustee of the Endycott Family Trust, the ATO assessed the trustee under section 99A of the ITAA 1936 and issued amended assessments showing taxable income of $412,540 for the income year ended 30 June 2015 and $954,483 for the income year ended 30 June 2016. The ATO also imposed penalties of $141,038 for the 2015 year and $129,763 for the 2016 year. The penalties reflected that the ATO formed the view that there had been intentional disregard for the law and that a 20% uplift should be imposed for 2016. The ATO also amended the GST assessments for the Endycott Family Trust.

At objection, the primary assessment amounts were amended to nil for the income year ended 30 June 2015 (as a written resolution of the trustee was produced) and $924,680 for the income year ended 30 June 2016.

The ATO also treated numerous deposits into Shane's personal accounts as assessable income. The ATO issued amended assessments of $444,633 for the income year ended 30 June 2015 and $335,097 for the

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income year ended 30 June 2016, later revising these figures to $610,605 and $318,597 respectively. The ATO also imposed penalties for intentional disregard of taxation law.

Shane's new accountants lodged objections in 2019 and again in 2022. The objections included contentions that various receipts were loans or were reimbursement of business expenses. The objections included that the safe harbour should apply for penalties on the basis that Shane's accountant had all necessary information and had not been reckless.

On objection, the ATO:

1. allowed the Endycott Family Trust's objection for the 2015 year after receiving the previously missing trust-distribution resolution;
2. partially allowed the Endycott Family Trust's objection for the 2016 income year (income tax only);
3. disallowed Endycott Family Trust's objections concerning GST and penalties; and
4. disallowed all objections lodged by Shane.

The ATO maintained that both taxpayers intentionally disregarded the taxation laws and confirmed the 20% penalty uplift. The ATO rejected the safe harbour argument for penalties, concluding that reliance on Mr Cullen did not absolve either taxpayer from the obligation to ensure that lodged returns were accurate.

Shane and the trustee of the Endycott Family Trust then sought review in the ART. As part of the review, they obtained an independent report that supported amounts not being income. That independent report relied on information supplied by Shane. Shane and the trustee of the Endycott Family Trust attributed many of the reporting defects to the conduct of their former accountant, Mr Cullen.

Issues

1. Were the income tax and GST assessments issued to Shane Endycott and the Endycott Family Trust for the 2015 and 2016 periods excessive, and if so, what were their correct taxable incomes and net GST amounts?
2. Was there intentional disregard for the law and, if not, does the safe harbour apply for the penalty to be remitted?

Decision

<u>Loans, loan repayments and reimbursements</u>

There were various categories of income that the ART needed to consider. These included loans said to have been received by Shane or amounts said to be repayment of loans. In addition, some amounts were said to be reimbursement of expenses that Shane incurred for various entities. The ART emphasised that Shane and the Endycott Family Trust carried the burden of proving the assessments were excessive, which required them to establish the true character of each payment.

For the alleged loans, the ART noted that no evidence was put on from the lenders and there were no written loan agreements. Apart from two payments that could be traced to earlier advances, the ART was not satisfied that the remaining amounts were genuine loans rather than assessable income.

Shane also said that many deposits represented reimbursements of business expenses he had incurred personally. The ART found that explanations for these payments changed over time, that records were incomplete or inconsistent, and that there was insufficient evidence linking the claimed expenses to the deposits. As a result, the ART was not satisfied that the amounts were reimbursements.

The ART also scrutinised the expert evidence relied on by Shane and the trust. The expert had based his report on accounting records that were themselves inaccurate or incomplete, and many of the spreadsheets he

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prepared contained internal inconsistencies or unverified classifications. As a result, the ART placed little weight on his evidence.

Although the ART made some adjustments in favour of Shane and the trust, including limited reductions to GST and a recalculation of one penalty amount, it substantially upheld the ATO's assessments.

Intentional disregard for the law and safe harbour?

The ART explained that “intentional disregard” of a taxation law requires that a taxpayer has at least some understanding of the relevant law or its application to their affairs, and then deliberately chooses to disregard it. This mental element can be inferred from surrounding circumstances as well as direct evidence. It is the most serious category of conduct under the penalty regime and is qualitatively different from recklessness. As noted in *Russell v Commissioner of Taxation* [2009] FCA 1224, wilful blindness is usually treated as recklessness rather than intentional disregard.

Recklessness involves including information in a tax return knowing there is a real (not fanciful) risk it is incorrect or being grossly indifferent to its accuracy. It is more than mere negligence and amounts to gross carelessness, though the line between recklessness and dishonesty can be fine.

The ART did not accept that it must find Shane actually knew what he was doing was contrary to tax law before upholding a penalty for intentional disregard. The ART noted that, under section 14ZZK of the TAA, Shane and the trustee of the Endycott Family Trust bore the onus of proving the penalty assessments were excessive. They therefore had to show that the conduct did not amount to intentional disregard and, if relying on safe harbour, that it was not reckless. The ART noted that the safe harbour applies only where a taxpayer has merely failed to take reasonable care.

In relation to Endycott Family Trust, the ART found that its failure to report income from the Petrie Point project and rental income, while at the same time claiming deductions for the associated expenses, indicated that Shane, as the person directing the trustee’s decisions, understood the need to report income correctly. There was no basis to conclude that the penalty imposed on the Endycott Family Trust for either year was excessive.

For Shane personally, he had argued that he relied entirely on his accountant, Mr Cullen, did not understand the relevant tax laws, and had not intentionally disregarded the law. Shane contended his conduct amounted only to a failure to take reasonable care and that safe harbour should protect him. He also pointed to personal circumstances, including his brother’s death in 2016, which he said increased his reliance on Mr Cullen.

The ART did not agree. Although not an accountant, Shane was an experienced business operator running a group with a turnover exceeding $6 million and more than 35 employees. Shane adopted a complex corporate structure, signed tax returns and financial statements as correct, and received explicit advice to keep business and personal transactions separate.

Further, Shane and his staff frequently moved funds between entities, paid expenses from inappropriate accounts, and commingled business and personal funds. Shane oversaw all expenditure above $300, and instructed his inexperienced 19-year-old daughter as a bookkeeper.

These facts, amongst others, led the ART to conclude that he could not have been ignorant about whether his tax affairs were being correctly reported.

The ART acknowledged that some of his conduct might superficially resemble recklessness, such as his laxity in account usage and record-keeping. However, his repeated disregard of advice, his knowing treatment of income as non-assessable, his payment of personal expenses through the Endycott Family Trust, and his failure to maintain proper records pointed to deliberate and intentional disregard of his obligations. The ART therefore found that the base penalty of 75% was not excessive.

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Even if intentional disregard were not established, the ART considered the conduct clearly reckless, which would still preclude a penalty reduction to 25% for lack of reasonable care, and would also prevent safe harbour from applying. In any event, the safe harbour requirements could not be met because Shane's instructions to Mr Cullen were unclear, material information was not shown to have been disclosed, and Mr Cullen was not called to give evidence.

The ART upheld the penalty assessments apart from the need for them to be adjusted for its reduction of the primary assessments.

COMMENT – the "blame the former accountant" approach very rarely assists a taxpayer in obtaining a penalty reduction. This is because penalty culpability is based on the conduct of the taxpayer *or their agent*. Further, a blame the accountant approach will also mean that the safe harbour defence will not be capable of being made out as the safe harbour defence does not apply if the tax agent has been reckless.

Citation *Endycott and Commissioner of Taxation (Taxation)* [2026] ARTA 214 (Senior Member J Lye, Brisbane)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/214.html

2.8 Baya Casal – genuine redundancy

Facts

Florencia Baya Casal was employed by the Ivanhoe Grammar School as an early learning centre assistant. She was employed on a part-time basis for 34.56 hours per week.

On 5 October 2021, the school notified Florencia that the structure of the early learning centre was to be remodelled, with Florencia's part time hours to decrease and working days changed. The skills and duties for the remodelled roles were similar.

Florencia was advised that she was eligible to be redeployed to the remodelled early learning centre roles, or could take a redundancy. Had she accepted the role, her hours would have been reduced by 20% to 40% and her remuneration would have been reduced by approximately 20% to 40%. Florencia accepted redundancy, as the days and numbers of hours offered were not acceptable to her.

On or around 9 December 2021, Florencia received a payment of $15,327 from the school on termination of her employment. The school treated the payment to Florencia as an employment termination payment (**ETP**), rather than as a genuine redundancy payment.

Under section 83-175(1) of the ITAA 1997, a genuine redundancy payment is so much of a payment received by an employee who is dismissed from employment because the employee's position is 'genuinely redundant' as exceeds the amount that could reasonably be expected to be received by the employee in consequence of the voluntary termination of his or her employment at the time of the dismissal.

If the payment was a genuine redundancy payment, the entire amount would be non-assessable non-exempt income and excluded from Florencia's assessable income. ETPs are taxed differently from genuine redundancy payments and do not receive the same tax-free concession.

Florencia argued her position was genuinely redundant. In support of her argument, she referred to TR 2009/2, noting that where there is a reallocation of duties and functions from one position to another as part of an organisational restructure, the former position is redundant. Florencia also argued the alternative positions offered to her were not appropriate because they involved a material reduction in her hours and remuneration, and her working days changed. In support of her argument, she pointed to a series of cases brought under the

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Fair Work Act 2009 (Cth) which had held that a meaningful reduction in remuneration to be inherent in redundancy.

The ATO argued that there is only a genuine redundancy if an employee's position ceases to exist, and that if an employer still has a job that it wishes the employee to perform, particularly if the duties of that job are not too dissimilar from the existing one job, there may not be a genuine redundancy. The ATO claimed that Florencia could have performed one of the remodelled roles but chose not to do so. Therefore, the payment was not a genuine redundancy payment because Florencia's position was not genuinely redundant.

On 21 December 2021, Florencia applied to the ATO for a private ruling on the question of whether her payment ought to be treated, and taxed, as a genuine redundancy payment.

On 26 April 2022, the ATO ruled that the payment was an ETP and not a genuine redundancy payment. Florencia objected to the private ruling decision. On 1 December 2022, the ATO disallowed the objection.

Florencia applied to the Federal Court for review. The Federal Court held that Florencia's position was genuinely redundant due to the material reduction in hours and pay. The alternative roles offered were not merely reallocations of duties but fundamentally different positions. Since redundancy is concerned with whether the job in its original form continues to exist, and not just whether an employee's tasks persist in some altered capacity, Florencia's position was properly characterised as redundant.

The Commissioner appealed to the Full Federal Court.

The Commissioner argued that Florencia's role was not genuinely redundant because the restructure did not remove the underlying job. It maintained that the new positions involved skills and duties similar to her existing role, indicating that the work continued to be required. The Commissioner submitted that the primary judge placed excessive weight on reduced hours and remuneration, which it said were not central attributes of a position and could not determine redundancy. It contended that a reduction in hours did not mean the job itself had ceased, and criticised what it described as a mathematical focus on percentage reductions.

The Commissioner also argued that concepts such as the "appropriateness" of alternative roles were irrelevant to the statutory test and improperly shifted attention to Florencia's personal circumstances rather than to whether the position itself still existed.

Issue

Was Florencia's position genuinely redundant?

Decision

The Full Federal Court held that, based on the facts set out in the private ruling, Florencia's dismissal occurred because her former position had become genuinely redundant for the purposes of section 83-175 of the ITAA 1997. The Court emphasised that the assessment required a holistic inquiry into the attributes of the position, including not only the functions and duties performed but also the scale and scope of those duties as reflected in hours and remuneration.

It was accepted that Florencia was an hourly-paid part-time employee whose role required her to perform a defined set of tasks for 34.56 hours per week. The restructure reduced the new roles to between 21.5 and 28.5 hours per week. The Court found that this reduction, representing a material contraction in both hours and corresponding remuneration, materially changed the scope and scale of the position. Although the new positions involved similar skills and duties, the Court held that the significant diminution in working hours meant that Florencia's former role had ceased to exist in any real or practical sense.

The Court rejected the Commissioner's contention that remuneration and hours could not be central to the analysis, confirming that those elements are legitimate and sometimes critical attributes of a position,

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particularly where remuneration directly reflects hours worked. The Court also rejected the submission that the primary judge had applied a mathematical threshold. The percentage reductions were treated only as a way to illustrate the significance of the change.

Given the diminished scale of the position following the restructure, the Court found that Florencia's original position was no longer required to be performed by anyone. The termination therefore resulted from the genuine redundancy of her position within the meaning of section 83-175. As a result, the payment received by Florencia was a genuine redundancy payment to the extent provided by the legislation.

The appeal was dismissed and the Commissioner was ordered to pay costs.

COMMENT - When a redundancy qualifies as a genuine redundancy under section 83-175 of the ITAA 1997, part of the termination payment becomes completely tax-free. This amount does not form part of an ETP, is not subject to PAYG withholding (up to the limit), and is not included in assessable income. There is a cap on the amount that can be treated as the tax free amount genuine redundancy payment based on the years of service of the employee multiplied by a statutory base amount. For the 2025–26 financial year, the tax-free base amount for a genuine redundancy is $13,100, plus $6,552 for each completed year of service.

Citation *Commissioner of Taxation v Baya Casal* [2026] FCAFC 11 (Hespe, Button and Younan JJ)
w https://www7.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCAFC/2026/11.html

2.9 MXSN – FBT on Ferrari

Facts

MXSN is a company which provides accounting and taxation services from several offices in Perth, servicing thousands of clients at its peak. Mr Jones (a pseudonym) is an employee of MXSN, as well as the sole director, secretary, and shareholder of the company. Mr Jones was based in one of the northern suburbs offices of MXSN but also worked from his home office.

In October 2013, MXSN purchased a second-hand 2010 Ferrari California for Mr Jones to drive to and from work and for work-related travel between offices and client sites. The car cost $346,140, including luxury car tax, GST and on-road costs. The purchase was 100% financed through NAB, which entered into a commercial hire purchase agreement with MXSN. The Ferrari was kept at Mr Jones' home and used predominantly for commuting, with some additional personal use.

In November 2020, the Commissioner commenced a review of MXSN's taxation affairs, which escalated to a formal audit in March 2021.

MXSN was never registered for FBT, and its income tax returns for the income years ending 30 June 2014 to 30 June 2022 do not include income from any fringe benefit employee contributions (which would have reduced MXSN's liability for FBT).

In late October 2022, the Commissioner issued an audit position paper foreshadowing default fringe benefits tax assessments for multiple years.

A 'car' as defined in section 995-1 of the ITAA 1997 is a motor vehicle (except a motor cycle or similar vehicle) designed to carry a load of less than 1 tonne and fewer than 9 passengers. Section 7 of the FBT Act sets out the general rule that FBT is payable on a 'car benefit' i.e. where an employer provides a car to an employee. Section 8 of the FBT Act sets out the exemptions from this general rule.

A car benefit will be an 'exempt benefit' if:

1. the car is:
   (a) a panel van or utility truck, designed to carry a load of less than 1 tonne; or
   (b) used for taxi travel, designed to carry a load of less than 1 tonne, and not a limousine; or
   (c) any other road vehicle designed to carry a load of less than 1 tonne (other than a vehicle designed for the principal purpose of carrying passengers); and
2. there was no private use of the car during the year of tax and at a time when the benefit was provided other than:
   (a) work-related travel of the employee; and
   (b) other private use by the employee or an associate of the employee, being other use that was minor, infrequent and irregular.

On 3 April 2023, the Commissioner issued default assessments for each FBT year from 31 March 2014 to 31 March 2022, concluding that the private use and availability of the Ferrari constituted a taxable car fringe benefit. On 26 May 2023, penalty assessments were also issued.

In August 2023, MXSN lodged an objection to the default assessments, which the Commissioner disallowed in full. MXSN did not object to the penalty assessments.

On 7 September 2023, MXSN commenced proceedings in the ART seeking review of the objection decision.

For the car benefit to be exempt in this case, two conditions were required to be met as follows:

the vehicle must be of a type that is not designed for the principal purpose of carrying passengers; <u>and</u>
any private use must be limited to work-related travel and minor, infrequent, and irregular use.

MXSN argued that the Ferrari satisfied this exemption because it was not designed for the principal purpose of carrying passengers, asserting instead that it was fundamentally a racing-oriented vehicle based on its features, performance profile, and marketing materials. MXSN also contended that Mr Jones met the limited-private-use condition in section 8(2)(b), as he used the Ferrari almost exclusively for home-to-office travel, with any other private use being negligible and incidental, such as brief client visits or occasional non-work trips that did not amount to significant private use.

Mr Jones submitted 'log book' records for the car for the 2016 and 2019 years, presenting them as contemporaneous records of the kilometres travelled by Mr Jones. Subsequent cross-examination determined that the log books were not contemporaneous, as they were reconstructions of prior records. They were not accurate records of the travel Mr Jones had undertaken in the car as the distances and destinations often did not correlate.

MXSN also argued that a resulting trust arose when Mr Jones made the final balloon payment on the NAB hire purchase agreement in October 2018. A resulting trust is a legal presumption that if one person provides the money for an asset while another holds legal title, the beneficial ownership rests with the person who paid. MXSN said that because Mr Jones personally contributed funds to complete the payout, beneficial ownership of the Ferrari passed to him at that point, meaning the car ceased to be a company-held asset from 2018 onwards and should not have been subject to FBT for the 2019 to 2022 FBT years.

Mr Jones gave evidence that he had personally transferred funds to MXSN to satisfy payments under the hire purchase agreement. He also referred to his use of funds that his "dearly departed mother" had left him in her will to make payments in accordance with her wishes. Mr Jones also claimed that payments under the hire purchase agreement were being made instead of MXSN paying distributions to him as shareholder.

MXSN argued that the Commissioner had incorrectly included on-road costs in the cost base of the car. The Commissioner conceded this point.

Issues

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1. Was the car provided by MXSN to Mr Jones an exempt car benefit under section 8(2) of the FBT Act?
2. Did Mr Jones' payment of the final balloon payment on the hire purchase agreement in respect of the car in October 2018 result in his beneficial ownership of the car from that time, under a resulting trust?

Decision

Was the car an exempt benefit?

The ART considered whether the exemption under section 8(2)(a)(ii) of the FBT Act applied to the car. This involved a staged analysis of each element of the exemption:

1. whether the exemption applied to non-commercial vehicles;
2. whether the car was a vehicle designed for the 'principal purpose of carrying passengers'; and
3. whether the private use of the car, if any, was more than 'minor, infrequent, and irregular'.

The ART concluded, based on a review of the explanatory memorandum of the FBT Act, and the statutory purpose of the provisions, that the exemption was only intended to apply to commercial vehicles, which would not apply to the Ferrari purchase by MXSN for use by Mr Jones.

In the event that the exemption *did* apply to non-commercial vehicles, the ART considered whether the Ferrari was 'designed for the principal purpose of carrying passengers'. Despite evidence of an expert witness that the Ferrari was not predominantly designed for carrying passengers but rather an 'exclusive sports car', the ART concluded that it was designed for carrying passengers. This was determined by reference to marketing materials which emphasised the car's various uses, including transporting multiple people and for holiday trips. The car could not meet the exemption requirements under section 8(2)(a)(ii).

Finally, the ART evaluated Mr Jones' private use of the car and concluded that his use was more than 'minor, infrequent and irregular' by reference to his weekend trips to his personal properties and travelling with his girlfriend (which contradicted earlier evidence that he had never used the car to transport passengers). On this basis, all elements of the exemption were not available.

Did Mr Jones have beneficial ownership of the car under a resulting trust?

The ART found that the evidence of MXSN and Mr Jones did not support the existence of a resulting trust. Statements of intention made in 2024 and 2025, so long after the initial transaction of purchasing the car in 2013, could not be considered as relevant to prove a presumption of resulting trust. The ART was sceptical of Mr Jones' evidence on the basis that it was 'self-serving'. The ART considered that his statement regarding his mother's requests for his use of her money showed him to be "cynical and scheming". While Mr Jones had claimed to make payments in a personal capacity under the hire purchase agreement, this was found to be incorrect based on the ART's review of the bank statements.

Mr Jones had made payments from personal accounts to the bank accounts of MXSN on occasion – but the ART did not conclude that these demonstrate Mr Jones' intention to hold the car in his personal capacity. Rather, the ART concluded that in doing so, Mr Jones was acting in a manner consistent with his responsibilities as a company director and a registered tax agent to ensure that the company he controlled could meet the substantial debt it had incurred, noting his own potential liability as a company director if MXSN had failed to comply with its obligations under the hire purchase agreement. Mr Jones had given evidence that he had arranged for MXSN to purchase the car for 'asset protection reasons' which was inconsistent with his now stated intention for him to have always held the car beneficially. The ART therefore did not accept his argument that a resulting trust arose.

KEY TAKEAWAY

For the provision of a car to be exempt from FBT, it is not only necessary that the car have the physical characteristics required for the exemption, but also that any private use be minor, infrequent and irregular.

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TIP – where a car is provided to a person who is both an employee or a shareholder, there will be a question as to whether FBT or Division 7A applies. There is no tiebreaker rule between FBT and Division 7A for payments (which include the use of an asset) under section 109C of the ITAA 1936. By contrast, section 109ZB of the ITAA 1936 provides that Division 7A applies and not FBT in case of a loan or loan forgiveness. For a payment, it is question of characterisation. Was the payment made, or was the use of the asset provided, to the person in their capacity as an employee or as a shareholder? The ATO's views are set out in *Miscellaneous Taxation Ruling* MT 2019.

Citation *MXSN and Commissioner of Taxation (Taxation)* [2026] ARTA 186 (Deputy President Thompson SC, Perth)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/186.html

2.10 Kirk – liquidation clawback of payments to QRO

On 30 June 2019, ARG Workforce Pty Ltd and ARG Payroll Pty Ltd became insolvent. On 31 July 2019, the Victorian State Revenue Office wrote to the Queensland Revenue Office (**QRO**) under the Phoenix Taskforce programme, providing information that several entities within the wider ARG group had failed to register for payroll tax despite paying substantial wages across multiple states.

The QRO began reviewing both companies, placing ASIC alerts on them and gathering information, including bank statements obtained through section 87 notices. A section 87 notice is a formal demand that compels a bank or other third party to provide records that help the revenue authority assess liabilities or pursue recovery. As the review progressed, the QRO issued default payroll tax assessments to Workforce and Payroll in December 2019, followed by a long series of overdue notices, warning notices, and further assessments throughout 2020 and 2021 as liabilities remained unpaid.

Bank information gathered in late 2019 and again in mid-2021 showed that Workforce received large deposits described as Cash Flow Finance and carried significant fluctuations in its account balance, while Payroll held comparatively small balances. In mid-2021, Workforce and Payroll engaged an external accountant, Christopher White, who negotiated payment plans with the QRO. Under these arrangements, both companies made large initial payments followed by monthly instalments between July and December 2021, although new payroll tax liabilities continued to accrue and were not paid as they fell due.

By early January 2022, the QRO had notified the companies that several older assessment periods remained outstanding, and that deferred COVID-19 liabilities were also due. Additional payments were made later that month.

On 2 February 2022, Darryl Kirk was appointed as liquidator of Workforce and Payroll. In reviewing the companies' affairs, he identified the payments made to the QRO in the six months prior to his appointment as potential voidable unfair preferences and later commenced Federal Court proceedings seeking recovery of those amounts.

Under the *Corporations Act 2001* (Cth), when a company enters liquidation, the liquidator must review payments made in the months leading up to the insolvency to determine whether any creditors were paid in preference to others. Where payments have the effect of advantaging one creditor at a time when the company was insolvent, they can be clawed back as voidable unfair preferences.

The liquidator treated the payroll tax payments made to the QRO as falling within that category and commenced proceedings in the Federal Court seeking repayment of $2,474,375 paid to the QRO in respect of Workforce and $345,792 paid in respect of Payroll.

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Section 588FG provides a limited defence for recipients of such payments, allowing a creditor to retain the funds if they can demonstrate that:

1. they acted in good faith; and
2. they had no grounds to suspect that the payer was insolvent at the time, *and* that a reasonable person in their position would also have lacked such grounds; and
3. they provided valuable consideration under the transaction or have changed their position in reliance on the transaction.

This defence required the QRO to establish its actual state of mind and the reasonableness of that state of mind at the moment each payment was received.

The QRO accepted that the payments it received from Workforce and Payroll fell within the statutory definition of voidable unfair preferences, but argued that it was nevertheless entitled to retain the money under section 588FG of the Corporations Act. It contended that its officers had acted in good faith when dealing with the companies, that they did not suspect the companies were insolvent at the time the payments were made, and that there were no reasonable grounds on which a person in their position would have suspected insolvency. The QRO also relied on the fact that it had provided valuable consideration by discharging assessed payroll tax liabilities as each payment was processed, leaving the questions of good faith and the absence of reasonable grounds for suspicion as the central issues for the Court to determine.

Issues

1. Did the QRO act in good faith when it became a party to the transactions?
2. At the time of each payment, did the QRO have no reasonable grounds for suspecting that Workforce or Payroll was insolvent?

Decision

<u>Did the QRO act in good faith?</u>

The Court examined whether the QRO had proved that it acted in good faith at the time it received the payments. The defence required evidence of the actual state of mind of the officers involved, including whether they genuinely lacked any suspicion that either Workforce or Payroll was insolvent. The Court found that this evidentiary burden had not been met. Every witness called by the QRO stated that they had no recollection of the events and could only speak to documents on the file. This meant there was no direct evidence addressing what any officer actually believed at the time of each payment.

The problem was compounded by the absence of officer from the QRO most heavily involved in the debt recovery process. The documentary record also showed repeated warning notices, section 87 notices to banks, references to garnishee action, and internal acknowledgements of “risk to revenue”, all occurring alongside known phoenix indicators. These circumstances made it implausible that officers held no suspicion of insolvency. Because the QRO bore the onus of proof, the lack of evidence about state of mind and the presence of documents indicating concern meant the good faith limb of the defence could not be established.

<u>Did the QRO lack reasonable grounds for suspecting insolvency?</u>

The Court considered whether the QRO had no reasonable grounds for suspecting insolvency at the time of each payment. This required an objective assessment of what the officers actually knew and whether those facts would have caused a reasonable person in their position to suspect insolvency. The evidence showed a long history of unpaid liabilities, repeated overdue reminders, escalating warning notices, and further section 87 notices seeking bank information. The QRO had also been alerted to phoenix-risk indicators and had already issued large default assessments that remained unpaid for extended periods.

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The Court found that these circumstances provided clear, ongoing reasons to suspect insolvency. The onus required the revenue authority to prove the absence of reasonable grounds, yet the material demonstrated the opposite. Given the volume of unpaid tax, the extensive recovery activity, and the revenue authority's own internal acknowledgements of risk, the Court was not persuaded that reasonable grounds for suspicion were lacking.

The Court held that the QRO also failed to satisfy the requirement that it lacked reasonable grounds for suspecting insolvency.

The Court ultimately found that the QRO could not prove it acted in good faith and without grounds for suspicion, largely because its officers had no recollection of events and key evidence was missing. As a result, the payments had to be repaid to the liquidator.

COMMENT – for some Federal tax liabilities, the court or ASIC may make an order requiring the directors to indemnify the Commissioner of Taxation, where the payment is set aside under the voidable transaction provisions: see section 588FGA of the *Corporations Act 2001* (Cth). This includes PAYG amounts required to be remitted to the Commissioner and an estimate of unpaid superannuation guarantee charge.

TIP – the payroll tax laws contain grouping provisions, enabling the relevant Commissioner or Chief Commissioner to potentially recover unpaid payroll tax liabilities of companies in liquidation or administration from other entities that are grouped with the employing entities.

Citation *Kirk (in his capacity as liquidator of ARG Workforce Pty Ltd (in liq)) v Commissioner of State Revenue, in the matter of ARG Workforce Pty Ltd* [2026] FCA 192 (Goodman J, Brisbane)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2026/192.html

2.11 Campbelltown Central – declaration of trust

Facts

Between 17 December 2015 and 12 July 2017, four commercial properties located in Campbelltown, Lidcombe and Warwick Farm were acquired by special purpose companies within a property development group controlled by Antoine Bechara.

The group's financing entity, Al Maha Pty Ltd, contributed funds toward the acquisitions, whether by providing the purchase monies directly, reimbursing other group companies, or assuming liability for bank borrowings as needed.

On 24 June 2020, each land owning company entered into a confirmation deed with Al Maha. In each deed, the relevant land owning company and Al Maha "acknowledged and confirmed" that Al Maha held the beneficial interest in the property and had done so since settlement. The deeds also stated that the purchasing company entered the contract at Al Maha's direction, that Al Maha funded the deposit and balance of the price, and that the deeds were intended to record that Al Maha "has always held such beneficial ownership since" the settlement date.

The relevant terms of the confirmation deeds are as follows:

> *3.1 Each special purpose company acknowledges and confirms that:*
>
> *(a) Al Maha holds all of the beneficial interest in the property and has held such beneficial interest since the Date of Acquisition.*

(b) *Al Maha is entitled to be the registered proprietor of the Property and [each special purpose company] must, if requested by Al Maha, transfer the Property to Al Maha or a person or entity nominated by Al Maha.*

On 30 June 2020, the companies sought a private ruling from the Chief Commissioner to support a corporate restructure. They provided the confirmation deeds as part of their claim that Al Maha was the beneficial owner.

Section 8 of the *Duties Act 1997* (NSW) imposes duty on certain transactions involving dutiable property, including any declaration of trust. A declaration of trust is defined as a statement, other than a will, that property already vested in the person making the declaration is, or will be, held on trust for someone else. The provision focuses on whether a transaction changes legal or beneficial rights, rather than merely recording an existing arrangement. The Court of Appeal in *Chief Commissioner of State Revenue v Benidorm Pty Ltd* (2020) 104 NSWLR 232 noted that duty attaches only where the instrument effects a substantive alteration in rights. A document that simply acknowledges an existing beneficial ownership does not constitute a dutiable transaction unless new rights or obligations are created.

On 15 October 2021 the Chief Commissioner informed the companies that the confirmation deeds were considered declarations of trust for the purposes of the Duties Act.

On 3 November 2021 the Chief Commissioner issued four Duties Notices of Assessment imposing duty totalling $3,791,208 plus interest. The companies lodged objections on 14 December 2021, which the Chief Commissioner disallowed on 28 October 2022. The companies appealed to the Supreme Court.

The taxpayers argued that the Confirmation Deeds executed in June 2020 did not create any new trust. They said the deeds merely acknowledged that Al Maha had always been the beneficial owner of the properties, as Al Maha funded their acquisition and paid all associated costs. They emphasised the wording of the deeds, noting expressions such as “acknowledges and confirms”, “has held”, and “will continue”, which they said showed the documents recorded an existing state of affairs rather than establishing new rights. They relied on the background section of each deed, which incorporated the funding history and their long-standing understanding that Al Maha was the true beneficial owner. The companies also pointed to their financial statements and accounting treatment from early 2020, which already reflected Al Maha’s beneficial ownership. Overall, they submitted that the deeds were confirmatory in nature and could not be treated as declarations of trust.

The Chief Commissioner argued that the Confirmation Deeds executed in June 2020 were not mere acknowledgements but operated as declarations of trust for the purposes of the Duties Act. The Chief Commissioner said the deeds created, for the first time, a split between legal and beneficial ownership, because the wording granted Al Maha new rights, including an unconditional entitlement to be transferred the properties and a requirement that rent or sale proceeds be held for its benefit. The Chief Commissioner submitted that these clauses went beyond confirmation of past arrangements and instead evidenced a clear intention to establish a trust as at the date of the deeds.

Issues

Were the confirmation deeds declarations of trust within the meaning of section 8 of the Duties Act?

Decision

<u>Were the deeds declarations of trust?</u>

The Court examined the confirmation deeds in detail. Each deed stated that the purchasing company “acknowledges and confirms” that Al Maha held the beneficial interest in the property from the date of acquisition; that the purchasing company would follow Al Maha’s directions; and that any rental or sale proceeds would be held for Al Maha. The Background section of each deed also recorded that Al Maha wished

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to keep its identity confidential, directed the purchase, and funded both the deposit and balance. The deeds therefore set out a description of the past relationship between the parties before the date of execution.

The Court also considered the circumstances surrounding the deeds. In early 2020, financial statements were restated so that Al Maha was shown as beneficial owner from earlier years. By 24 June 2020, the date of the confirmation deeds, the parties were already treating Al Maha as beneficial owner in accounting records. The Court accepted that any trust relationship already existed (if at all) prior to 24 June 2020, and that the deeds were intended to memorialise that position rather than create new rights.

The Court held that the confirmation deeds were not declarations of trust. Justice Bennett concluded that the deeds did not manifest any intention to create a trust but instead reflected the parties' understanding of an existing relationship. The language "acknowledges and confirms" pointed to the past, and the deeds did not purport to alter rights or create a new equitable estate. The background clauses reinforced that the deeds were designed to confirm a state of affairs thought already to exist. Accordingly, there was no dutiable transaction under section 8 of the Duties Act, and the assessments were be revoked.

TRAP – in New South Wales, for transactions executed on or after 19 May 2022, section 8AA of the Duties Act significantly broadens the duty net. Any written acknowledgment that property is, or has been, held on trust can now trigger duty, even if the document merely records an existing arrangement and does not alter beneficial ownership. Confirmatory deeds, funding acknowledgments, or retrospective statements of beneficial entitlement now carry material duty risk. Advisers should therefore review all trust-related documentation carefully before execution to avoid unintended duty liabilities.

Citation *Campbelltown Central 2 Pty Ltd v Chief Commissioner of State Revenue* [2025] NSWSC 1568 (Bennett J, Sydney)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2025/1568.html

3. Cases in brief

3.1 RQA Accountants – Enterprise and entitlement to input tax credits

RQA Accountants Pty Ltd was incorporated in 2010, directed by Mr Surana and developed from a sole-trader accounting practice he had started in 2009. The practice initially operated commercially, maintained professional infrastructure and obtained bank finance from ANZ. After litigation between 2012 and 2014 concerning home, car and business loans, the Supreme Court of New South Wales ordered possession of the Surana family home and required RQA and the Suranas to pay ANZ's legal costs. By December 2014, ASIC had deregistered RQA, prompting the Commissioner to cancel its GST, ABN and related registrations. RQA was reinstated in October 2018 with retrospective effect, and the Commissioner reinstated its registrations from the original incorporation date. RQA then lodged BAS (and amendments) for periods from 2016 onward.

RQA's commercial activity between 1 July 2016 and 30 June 2020 was limited. Across those years, it reported only about $3,600 in GST-inclusive sales, all arising from seven invoices issued between December 2018 and June 2020 to Mr Surana's self-managed superannuation fund. No external clients were identified, and although RQA claimed to have provided services to a not-for-profit entity, it produced no records, invoices or evidence of any work or revenue.

In 2020, the Commissioner audited all BAS for the relevant periods and issued amended assessments in January 2021 denying input tax credits for legal costs arising from the ANZ litigation and miscellaneous expenses including fuel, telecommunications and software. RQA's 2024 objection argued that ANZ had withheld relevant invoices until 2022. The Commissioner disallowed the objection on the basis that RQA was not carrying on an enterprise.

RQA argued that it continued to operate as an accounting practice, emphasising Mr Surana's CPD activities, CPA membership, training in cloud-based accounting systems, and extensive time spent dealing with regulators, including ASIC, the ATO, the TPB, AFCA and the OAIC. It submitted that these activities were part of maintaining a professional practice, and that it had merely "downsized" due to financial constraints rather than ceased. Mr Surana said he worked 35-40 hours per week on regulatory and dispute-related matters.

The ART rejected these arguments. It held that extensive engagement with regulators, particularly where RQA or Mr Surana were the subject of compliance action, was not the conduct of an accounting enterprise. These were administrative or personal matters, not the provision of services to paying clients. Professional memberships, CPD, software subscriptions and intentions to resume trading did not demonstrate that an enterprise was being carried on. What mattered was the conduct of actual business activity, and on this there was effectively none.

RQA also claimed to hold intangible assets such as goodwill and a trademark. The ART found no evidence of goodwill: it was not recorded in RQA's accounts, had never been valued and was unsupported by any client base or revenue stream. The trademark had lapsed during deregistration and was never renewed. The ART regarded neither as indicating an active enterprise.

RQA argued that ASIC's retrospective reinstatement meant its enterprise continued uninterrupted. The ART agreed that reinstating the company brought it back into legal existence, but noted that this alone does not prove the business was actually operating. RQA had not demonstrated any genuine commercial operations.

Having found that RQA was not carrying on an enterprise, the ART held that no input tax credits were available for any claimed acquisitions. For completeness, it also found that the legal costs represented costs incurred by ANZ in litigation, later recovered from RQA, and therefore were not supplies to RQA. The miscellaneous expenses were inadequately substantiated and lacked sufficient nexus to the business.

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The ART affirmed the Commissioner's decision in full.

RQA Accountants Pty Ltd v Commissioner of Taxation [2026] ARTA 21 (17 February 2026) (General Member C Willis, Sydney)
w https://www7.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/210.html

3.2 RYJZ – shortfall penalties

On 26 and 27 January 2023, RYJZ lodged her income tax returns for the income years ended 30 June 2019 to 2022. Each return contained errors, including overstated deductions for rental properties and working-from-home expenses. RYJZ accepted the errors and explained that she had always relied on her husband to manage financial and tax matters.

From around 2020, RYZJ's husband's health deteriorated significantly. He developed a severe stutter, cognitive decline, memory deterioration, psychological distress and mobility issues. By 2021 or 2022, he was no longer capable of managing financial affairs. A computer virus also corrupted many of the electronic records used to prepare the returns, and he later lost both his phone and computer while overseas, confirming the loss of all remaining material.

When preparing the tax returns, RYZJ's husband adopted an "estimate approach", guessing rental income and expenses based on prior years. He lodged the returns through Tax Agent E, an online tax agent, mistakenly believing the agent would check the figures against evidence. No material was presented regarding Tax Agent E's role or scope of engagement.

On 14 February 2023, the Commissioner sought substantiation of the deductions. On 9 May 2023, following an audit, the Commissioner reduced income and disallowed all deductions for lack of evidence, imposing 50% shortfall penalties for recklessness.

On 12 February 2024, RYJZ, now assisted by a registered tax agent, lodged an objection covering the 2019, 2021 and 2022 income years, and, although not clearly recognised by the Commissioner, the 2020 penalty as well. On 31 July 2024, the Commissioner disallowed the objection for 2019, 2021 and 2022 but did not deal with the 2020 penalty, leaving it technically unresolved. Further objections were lodged in October 2024, including an objection specifically addressing the 2020 penalty.

On 5 February 2025, the Commissioner issued a second objection decision allowing some deductions but again disallowing the objection to the 2020 penalty.

The Commissioner confirmed that all objections, including those relating to the 2020 penalty, had been accepted as in time and disallowed.

Throughout 2020 to 2025, RYJZ was under considerable personal pressure. She and her husband had separated but continued living together due to his health needs, she became his primary carer, lost both parents in close succession, cared for her injured son, and became the sole income-earner. Despite these difficulties, she attempted to reconstruct missing records, filed amended returns, corresponded extensively with the Commissioner, and entered payment arrangements.

The ART found that RYJZ was liable to the shortfall penalties. The returns contained false or misleading statements in material particulars, and she had not taken reasonable care. Her husband's estimate-based approach, his obvious cognitive decline, his request for her assistance, and her complete failure to review or even obtain copies of the returns meant she was "grossly indifferent" to the risk that the returns were wrong. It was not reasonable to rely on her husband in those circumstances, and it was also unreasonable to rely on Tax Agent E, who had no substantiating records and no ability to test the deductions claimed.

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While the ART upheld the Commissioner's finding of recklessness, it identified deficiencies in the Commissioner's approach to penalty remission. The objection decisions had failed to consider relevant mitigating factors, including the loss of records through no fault of the taxpayer, the absence of any intention to mislead, RYJZ's prompt corrective efforts, and the significant health and family challenges she faced at the time the returns were prepared and lodged. The ART found that maintaining the 50% penalty was unjust. Balancing the seriousness of the conduct with the mitigating circumstances, the ART remitted the penalties to 40% for each year. All other aspects of the Commissioner's decisions were affirmed.

COMMENT – recklessness does not require dishonesty. Indifference to an obvious risk is sufficient, and reliance on another person, particularly where cognitive impairment is evident, or on a tax agent who has no substantiating records will not amount to reasonable care. Significant personal hardship may be relevant to remission, but it does not displace the obligation to ensure that tax returns are accurate.

COMMENT – the ART delivered a pointed warning about the use of AI in litigation. Member Dunne noted that two authorities cited by the applicant did not say what she asserted and, in fact, did not even exist. The ART suspected AI-generated research and repeated its earlier caution from *Smith and Commissioner of Taxation* [2026] ARTA 25: if AI is used, cases must be verified on public databases and actually read before being put to the ART. Otherwise, the ART said, its *"time and scarce resources are being wasted, as the Tribunal must look for cases that do not exist and read cases that have no relevance at all"*. Verification is mandatory, not optional, particularly for professionals subject to standards imposed by the TPB, law societies and the courts.

Citation *RYJZ and Commissioner of Taxation (Taxation)* [2026] ARTA 182 (General Member J Dunne, Sydney)
w https://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/182.html

3.3 KES – Victorian vacant residential land tax and habitability

In 1988, KES bought a property in West Footscray. She lived there with her children until the early 2000s, when domestic violence forced her to relocate. In the years that followed, KES leased the property intermittently. She said that in 2010 the house was severely damaged by "black market tenants" and had been uninhabitable ever since, apart from occasional use as storage. From late 2020, one of her adult children stayed at the property for a period despite what she described as harsh living conditions.

The Commissioner of State Revenue in Victoria assessed KES for vacant residential land tax for the 2018, 2019, 2020 and 2022 land tax years. Penalty tax was imposed but later remitted in full.

Vacant residential land tax applies to residential land which is vacant. Under the *Land Tax Act 2005* (Vic), land is 'residential land' if it is capable of being used solely or primarily for residential purposes, and it is 'vacant' if it is not used or occupied for more than six months in the relevant preceding year as a principal place of residence or under a genuine lease.

KES objected to the assessments. She said the property was not capable of residential use for the 2018 - 2020 years, and that for the 2022 year it was not vacant because her son lived in it.

KES provided a lengthy witness statement about her personal circumstances, together with photographs taken in 2011 and 2022, and utility records. She said her mental health, caring responsibilities and fear of returning to the property stopped her from documenting the damage or performing repairs. For the 2022 land tax year, KES relied on her memory of how her son managed daily activities such as washing, showering and cooking.

The Victorian Revenue Office (**VRO**) maintained that the limited photographic evidence contradicted KES's core claim. The 2011 photographs showed a furnished living room, kitchen and bedroom and did not support the assertion that the house had become uninhabitable. The 2022 photographs showed that, although there

was no hot water and some parts of the house were damaged, it remained capable of being lived in. For the 2022 land tax year, the VRO pointed to extremely low water and electricity usage and the absence of any official address records or independent evidence from the son.

The VCAT found that, although the conditions were poor, the property was capable of being used for residential purposes for the 2018, 2019, 2020 and 2022 land tax years. The VCAT also found that the property was vacant for the 2018, 2019 and 2020 years and the claim that the house was uninhabitable failed. For the 2022 land tax year, the VCAT was not satisfied that KES's son lived in the house.

The VCAT also noted that it had no power to waive the tax on hardship grounds and could not give effect to KES' concerns about fairness or her difficult personal circumstances.

The VCAT confirmed the vacant residential land tax assessments for the 2018, 2019, 2020 and 2022 land tax years.

COMMENT – Vacant residential land tax turns on evidence. Owners must demonstrate that a property was genuinely uninhabitable or genuinely occupied. Bare assertions are not enough. Photographs, utility data, repair reports and official records carry far more weight than personal recollections.

Citation *KES v Commissioner of State Revenue (General Review)* [2026] VCAT 75 (Deputy President R Tang AM, Melbourne)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2026/75.html

3.4 Su – NSW duty on declaration of trust

On 10 September 2024, Zhao Hui Su made a statutory declaration stating his intention to purchase property from his parents in his own name for the benefit of his children, identifying his children specifically and stating that he would act as trustee for them in all dealings with the property.

On 24 September 2024, Zhao and his parents executed a deed providing for the sale and transfer of the property to Zhao for a stated amount, with the deed recording that Zhao would hold the property on trust for his children.

On 25 September 2024, Zhao's solicitor lodged the statutory declaration with the Chief Commissioner for assessment.

On 16 October 2024, the Chief Commissioner assessed ad valorem duty on the statutory declaration.

On 26 October 2024 Zhao objected to the assessment. Zhao argued that no duty should be payable on the statutory declaration. On 15 March 2025 Chief Commissioner disallowed the objection, concluding that the declaration constituted a declaration of trust within the meaning of the Duties Act and was therefore subject to duty.

On 18 March 2025, the Chief Commissioner assessed ad valorem duty on the deed as an agreement for sale or transfer of the property.

Zhao applied to the NCAT for review of the objection decision concerning the assessment of the statutory declaration.

The NCAT considered whether the declaration constituted a "declaration of trust" under the Duties Act. The NCAT found that the declaration did more than merely record evidence of the trust, it set out the terms of a trust that would apply to the property once Zhao acquired it. At the time the declaration was made, there was no

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other document evidencing the trust, meaning the statutory declaration was the first instrument establishing the trust arrangement.

The NCAT distinguished the circumstances of Zhao's case from *Chief Commissioner of State Revenue v Benidorm Pty Ltd* [2020] NSWCA 285. The NCAT found that in *Benidorm* the trust already existed and the later document merely recorded its terms. In contrast, there was no evidence of any pre-existing trust before Zhao made the statutory declaration. The statutory declaration was the first document that set out the trust arrangement and the terms upon which Zhao would hold the property for his children once it was acquired. Accordingly, Zhao's statutory declaration created a new equitable arrangement and therefore constituted a dutiable declaration of trust.

The NCAT rejected Zhao's argument that the declaration could not be a declaration of trust because it did not create enforceable legal obligations at the time it was made. Relying on authority from the High Court and the New South Wales Court of Appeal interpreting equivalent provisions in earlier legislation, the NCAT held that the relevant statutory wording does not require the property to already be vested in the declarant. Instead, it is sufficient that the property is "to be vested" in the future, meaning that mere futurity is enough. Accordingly, the declaration could fall within the statutory definition even though Zhao did not yet own the property when he made it.

The NCAT concluded that the statutory declaration constituted a declaration of trust over property "to be vested" in Zhao and fell within the definition of a dutiable transaction under the Duties Act.

The NCAT also indicated that the statutory provisions preventing double duty did not operate to reduce the duty payable on the statutory declaration. Section 18(6) of the Duties Act allows a declaration of trust to be stamped with fixed duty where it declares the same trusts as those upon which the property was transferred to the person declaring the trust, provided ad valorem duty has already been paid on the transfer. The NCAT accepted the Chief Commissioner's submission that this provision applies only where the declaration of trust is made after the transfer has already occurred. Because Zhao's statutory declaration was made before the transfer of the property, section 18(6) could not apply. Importantly, the Duties Act prevents the incidence of double duty only in the circumstances prescribed in the Duties Act.

Citation *Su v Chief Commissioner of State Revenue* [2026] NSWCATAD 55 (Senior Member EA MacIntyre)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCATAD/2026/55.html

3.5 Appeal Updates

Aitkin

The Full Federal Court has dismissed Michael Aitken's appeal concerning the tax treatment of his forestry interests in the AgriWealth 2011 Softwood Timber Project. The appeal challenged an amended assessment that included $4.718 million in assessable income under the forestry scheme CGT provisions in the ITAA 1997.

A summary of the original decision can be found in our June 2025 Tax Training Notes.

Citation *Aitken v Commissioner of Taxation* [2026] FCAFC 18 (Perram, Downes and Needham JJ, Sydney)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCAFC/2026/18.html

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Shaw

The Federal Court dismissed the Commissioner's appeal and upheld the ART's decision allowing a long-haul truck driver to deduct his meal expenses. At first instance, the ART had accepted that the driver had incurred expenses while working away from home, and that the substantiation exception for travel allowances applied. It held that the ART did not reverse the onus of proof and did not apply an incorrect "reasonableness" standard.

A summary of the original decision can be found in our April 2025 Tax Training Notes.

Citation *Commissioner of Taxation v Shaw* [2026] FCA 197 (Colvin J, Perth)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2026/197.html

3.6 Other tax and super related cases published from 11 Feb 2026 to 10 March 2026

Citation	Date	Headnote	Link
S Hill Invest Co Pty Ltd ATF Hill Family Trust v Chief Commissioner of State Revenue [2026] NSWCATAD 41	16 February 2026	TAXES AND DUTIES – surcharge land tax – whether amendment to the terms of the discretionary trust deed satisfied the requirements in s 5D of the Land Tax Act 1956 (NSW) – no discretion to relieve liability arising under statutory provisions	https://www.caselaw.nsw.gov.au/decision/19c53e7a120e4b429173766d
R.C. Land Management Pty Ltd v Commissioner of State Revenue [2026] VSC 49	18 February 2026	TAXATION — Land Tax — Whether land held by one trustee for two discretionary trusts be assessed on aggregate basis – Operation of land tax legislative regime and trust provisions — Whether land tax to be assessed on the whole of the land subject to the trust as if the land were only land owned by the trustee — Purported unit trust scheme — Purported fixed trust — Purported joint owners — Land Tax Act 2005, ss 3, 7–10, 18, 36, 38, 46A, 46C, 46F, 46G, 46J, sch 1 — CPT Custodian v Commissioner of State Revenue [2005] HCA 53; (2005) 224 CLR 98.	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2026/49.html
Lewis and Commissioner of Taxation (Taxation) [2026] ARTA 256	25 February 2026	TAXATION – capital gains tax – sale of shares by family trust – applicant beneficiary of trust – distribution of proceeds of sale of shares to applicant – capital gain – intention when disposing of assets – provisions to disregard capital gain – discretion of Tribunal – decision affirmed	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/256.html
*Karago.1 Pty Ltd v Chief Commissioner of State Revenue [*2026] NSWCATAD 59	25 February 2026	TAXATION AND REVENUE – Parking space levy – whether exemption applied for "unleased tenant's parking space"	https://www.caselaw.nsw.gov.au/decision/19c8c87bed6344e53866aa99
Commissioner of Taxation v Hicks (No 2)	2 March 2026	COSTS – orders sought under r 25.14 of the Federal Court Rules 2011 (Cth)	https://www.austlii.edu.au/cgi

Citation	Date	Headnote	Link
[2026] FCAFC 14		granting indemnity costs in respect of an appeal – where respondents made offers to settle appeal – where appeal was ultimately dismissed – whether appellant unreasonably failed to accept the offers – orders refused	- bin/viewdoc/au/cases/cth/FCAFC/2026/14.html
Min v Chief Commissioner of State Revenue [2026] NSWCATAD 64	3 March 2026	TAXES AND DUTIES – Surcharge purchaser duty – Principal place of residence exemption not available – Interest – Penalty tax	https://www.caselaw.nsw.gov.au/decisioinn/19cab7a6ee12d3b9ff3bdb25
Deputy Commissioner of Taxation v Dabboussi [2026] NSWSC 148	3 March 2026	CIVIL PROCEDURE – hearings – adjournment – where service of statement of claim in issue – where service processor unavailable to give evidence due to medical exigency – where parties agree hearing of motion cannot proceed without witness	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2026/148.html
Kid Kickstart Investment Group Pty Ltd v Commissioner of State Revenue (Corrected) [2026] VCAT 156	4 March 2026	Duties Act 2000 (Vic), Ch 3 – Whether landholder duty applies to transfer of shares in applicant company from its sole director to her three sisters and the subsequent transfer back of those shares – Statutory presumption as to ownership of shares based on the register of members – Whether failure by sisters to comply with condition in share sale agreement requiring them to contribute shareholder loans to the company rebuts statutory presumption – Whether penalty tax should be remitted where transfers are suggested to be a 'mistake'.	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2026/156.html
Yuen and Commissioner of Taxation (Taxation) [2026] ARTA 279	4 March 2026	TAXATION – administrative penalties – income tax shortfall amount arising from failure to report assessable income - penalty for false or misleading statement – use of electronic sales suppression tool (ESST) in business run by company of which applicant had been director or manager – ESST penalties imposed on company – ESST penalties also imposed on applicant on basis that she aided or abetted activities relating to ESST – whether discretion to remit penalties wholly or in part should be exercised – factors to be taken into account – applicant's personal circumstances including lack of formal education, limited English proficiency and medical conditions – financial hardship of applicant – involvement of applicant's former husband – objection decision set aside and remitted to remit penalties in part	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/279.html

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Citation	Date	Headnote	Link
Kim Investments GC Pty Ltd v Commissioner of State Revenue (No 2) [2026] QSC 25	4 March 2026	PROCEDURE — COSTS — GENERAL RULE: COSTS FOLLOW EVENT — GENERAL PRINCIPLES AND EXERCISE OF DISCRETION — where the Court delivered judgment in this matter on 23 January 2026 answering separate questions pursuant to r 483 of the Uniform Civil Procedure Rules 1999 (Qld) — where the issue raised by those separate questions was whether at the time the appellant filed its appeal from the Commissioner's objection decision, it had paid the whole of the amount of the tax payment interest payable under the Assessment as required by s 69(1)(b) of the Taxation Administration Act 2001 (Qld) (TA Act) – where the Court determined that the appellant had not satisfied the requirement in s 69(1)(b) of the TA Act and did not enliven the right to appeal the Commissioner's objection decision – where the Commissioner sought final orders that the appeal be dismissed, and that appellant be ordered to pay the costs of the appeal on the standard basis – where the appellant submits that there should be no order as to costs because, in answering the separate questions, the court was considering whether it had jurisdiction under the TA Act to hear and determine the appeal against the Commissioner's objection decision – whether the determination of the separate questions is an "event" for the purposes of r 681 – whether costs should be ordered in accordance with the general rule under r 681(1) of the UCPR	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QSC/2026/25.html
Dattani v Chief Commissioner of State Revenue [2026] NSWCATAD 65	5 March 2026	ADMINISTRATIVE LAW - administrative review - assessment - objection - review by Civil and Administrative Tribunal STATE TAXES - interest - market rate - premium rate – penalty tax - remission - discretion	https://www.caselaw.nsw.gov.au/decision/19cb618d948ea524006a1bc8

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4. Legislation

4.1 Progress of legislation

Title	Introduced House	Passed House	Introduced Senate	Passed Senate	Assented
Treasury Laws Amendment (Supporting Choice in Superannuation and Other Measures) Bill 2025	26/11	2/3	3/3		
Treasury Laws Amendment (Building a Stronger and Fairer Super System) Bill 2026	11/02	05/03	10/03	10/03	

4.2 Superannuation amendments and increase to LISTO threshold

The Government has introduced the Treasury Laws Amendment (Building a Stronger and Fairer Super System) Bill 2026 and the companion Superannuation (Building a Stronger and Fairer Super System) Imposition Bill 2026. The Bills implement a major redesign of tax concessions for individuals with very large total superannuation balances and update the low-income superannuation tax offset (**LISTO**).

Division 296 tax

A summary of the Division 296 changes was provided in our February 2026 Tax Training Notes.

Changes to LISTO

Schedule 4 to the Superannuation (Building a Stronger and Fairer Super System) Imposition Bill updates the LISTO to maintain alignment with the broader tax system.

From 1 July 2027, the LISTO threshold will increase from $37,000 to $45,000, tied to the top of the second personal income tax bracket. The LISTO amount will also be recalculated using a formula linked to the superannuation guarantee rate, the revised income threshold and the standard 15% contributions tax, resulting in a maximum LISTO of $810 for 2027–28.

Treasury Laws Amendment (Building a Stronger and Fairer Super System) Bill 2026
w https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7437
Superannuation (Building a Stronger and Fairer Super System) Imposition Bill 2026
w https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7435

4.3 Regulations implementing Payday Super framework

The Government has made the *Treasury Laws Amendment (Payday Superannuation) Regulations 2026* to support the commencement of Payday Super from 1 July 2026. The Regulations amend the *Superannuation Guarantee (Administration) Regulations 2018*, the *Superannuation Industry (Supervision) Regulations 1994*, the *Bankruptcy Regulations 2021* and the *Superannuation (CSS) (Superannuation Guarantee) Regulations 2008* to align terminology, processes and transitional rules with the new framework.

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The Regulations:

1. introduce methods for reducing the administrative uplift amount within the recalibrated superannuation guarantee charge. Reductions apply where employers maintain a clean compliance history or lodge voluntary disclosure statements within prescribed timeframes.
2. consolidate exclusions from “qualifying earnings”, including parental leave payments, certain community service and Defence absences, fringe benefits and specified temporary visa holder categories;
3. prescribe "exceptional circumstances" for the Commissioner’s power to extend contribution timeframes. These circumstances include natural disasters and widespread technology outages; and
4. update defined benefit provisions, including the treatment of benefit certificates.

Amendments to the SIS Regulations streamline the allocation and refund of contributions by imposing a uniform three-business-day deadline for trustees to allocate or return contributions (excluding SMSFs), and by reducing validation request timeframes from three business days to two business days. The SMSF allocation rules remain unchanged.

Consequential amendments to the Bankruptcy Regulations and the CSS SG Regulations ensure definitions, contribution calculations and transitional rules operate consistently under the Payday Super framework from 1 July 2026

Treasury Laws Amendment (Payday Superannuation) Regulations 2026
w https://www.legislation.gov.au/F2026L00133/asmade/text

Senate committee recommends passage of super choice and tax measures Bill

On 4 March 2026, the Senate Economics Legislation Committee released its report on the Treasury Laws Amendment (Supporting Choice in Superannuation and Other Measures) Bill 2025, recommending that the Bill be passed.

The Bill contains six schedules, including amendments to the employee choice-of-fund process (Schedule 1) and a prohibition on advertising certain superannuation products to employees during onboarding (Schedule 2). It also includes measures relating to income tax and withholding tax exemptions for the men’s and women’s Rugby World Cups (Schedule 3), implementation of the Portuguese double tax agreement (Schedule 4), DGR specific listings (Schedule 5) and an increase to the wine equalisation tax producer rebate (Schedule 6).

Coalition Senators issued a dissenting report recommending that Schedules 3 - 6 be separated from the superannuation-related measures to allow their prompt passage. They argued that Schedules 1 and 2 present unresolved structural and operational risks, warning that the reforms could reduce meaningful consumer engagement, distort competition and weaken insurance safeguards, particularly where stapled fund retrieval is unreliable or where workers in high-risk sectors may be linked to funds with inadequate insurance.

w https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/TLABChoiceinSuper/Report

4.4 GST attribution instruments for key industries

On 5 March 2026, the Commissioner finalised three legislative instruments that update and continue GST attribution rules for certain supplies previously subject to determinations scheduled to sunset on 1 April 2026.

The *A New Tax System (Goods and Services Tax) (Attribution Rules – Certain Motor Vehicle Incentive Payments made to Motor Vehicle Dealers) Determination 2026* (F2026L00190) updates the attribution rules in Division 29 of the GST Act for motor vehicle supplies where dealers receive incentive payments. GST is attributable to the tax period in which the dealer knows the total consideration for the supply, where incentive

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payments have been received or invoiced earlier but the full amount is not yet known. The instrument commenced on 6 March 2026, finalises draft LI 2025/D19 and repeals the 2015 determination.

The *A New Tax System (Goods and Services Tax) (Attribution Rules – Prepayment for a Telecommunication Supply) Determination 2026* (F2026L00189) updates attribution rules for certain prepaid telecommunications supplies. For non-cash-basis suppliers, GST is attributed to the earlier of the period in which an invoice is issued, or would have been issued had the prepayment not occurred. The instrument commenced on 5 March 2026, finalises draft LI 2025/D20 and repeals the 2016 determination.

The *A New Tax System (Goods and Services Tax) (Attribution Rules – Supplies of Electricity Distribution Services) Determination 2026* (F2026L00194) provides that GST on electricity distribution services is attributable to the tax period in which the supplier receives from its billing agent all information required to determine the total consideration. Adjustments are similarly attributed to the period in which the supplier receives information needed to calculate the adjustment amount. The instrument commenced on 5 March 2026, finalises draft LI 2025/D21 and repeals the 2016 determination.

A New Tax System (Goods and Services Tax) (Attribution Rules – Certain Motor Vehicle Incentive Payments made to Motor Vehicle Dealers) Determination 2026
w https://www.legislation.gov.au/F2026L00190/asmade/text
A New Tax System (Goods and Services Tax) (Attribution Rules – Prepayment for a Telecommunication Supply) Determination 2026
w https://www.legislation.gov.au/F2026L00189/asmade/text
A New Tax System (Goods and Services Tax) (Attribution Rules – Supplies of Electricity Distribution Services) Determination 2026
w https://www.legislation.gov.au/F2026L00194/asmade/text

4.5 GST instrument on input-taxed treatment of fund-raising events

A legislative instrument has been finalised to support the operation of section 40-160 of the GST Act, which allows an endorsed charity, gift-deductible entity or government school to choose to treat all supplies made in connection with a fund-raising event as input taxed, provided the statutory requirements are met. Where this choice is made, the entity is not required to remit GST on supplies for that event and is not entitled to input tax credits for related acquisitions.

The new *A New Tax System (Goods and Services Tax) (Frequency of Fund-raising Events) Determination 2026* confirms that the concession is only available where an entity holds 15 or fewer like or similar fund-raising events in its prescribed accounting year. Entities that hold 16 or more such events in that period are precluded from treating any of those events as input taxed and must apply the normal GST rules to all supplies made in relation to them, including the first 15.

The Determination adopts the concept of a prescribed accounting year, being the 12-month period to which the entity balances its accounts, recognising that charities, DGR entities and government schools may not operate on a standard financial year.

The instrument finalises draft LI 2025/D22, repeals the 2016 Determination, and commences on 4 March 2026.

A New Tax System (Goods and Services Tax) (Frequency of Fund-raising Events) Determination 2026
w https://www.legislation.gov.au/F2026L00187/asmade/text

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4.6 Community charity trusts DGR framework

A legislative instrument has expanded the class of entities eligible for endorsement as community charity DGRs under Division 426 of Schedule 1 to the TAA 1953. That framework, introduced in 2024, allows community charity trusts and community charity corporations to seek DGR endorsement only where they are specifically named in a Ministerial declaration.

The *Taxation Administration (Community Charity Trusts and Corporations) Amendment (2026 Measures No. 1) Declaration 2026* adds 34 additional entities to the list of prescribed community charities. To obtain DGR status, these entities must still satisfy all legislative requirements, including ACNC registration and compliance with the *Taxation Administration (Community Charity) Guidelines 2025*.

The Declaration commenced on 26 February 2026, broadening access to DGR endorsement for place-based organisations engaged in community development, education, environmental sustainability, social inclusion, disaster recovery and other locally focused initiatives.

Taxation Administration (Community Charity Trusts and Corporations) Amendment (2026 Measures No. 1) Declaration 2026
w https://www.legislation.gov.au/F2026L00160/asmade/text

4.7 Proposed technical amendments to global minimum tax regime

Treasury has released exposure draft amendments to Australia's global and domestic minimum tax rules to align them with updated OECD Administrative Guidance under Pillar Two.

Australia enacted a 15% global minimum corporate tax for large multinational enterprises in 2024, with the domestic minimum tax operating as a top-up tax under Chapter 2 of the *Taxation (Multinational—Global and Domestic Minimum Tax) Rules 2024*.

The exposure draft proposes a series of administrative refinements to support effective implementation of the regime. Key proposed amendments include:

1. clarifying the treatment of stateless entities with an Australian nexus;
2. refining the interaction between the domestic minimum tax and consolidation rules;
3. aligning allocation of covered taxes with the GloBE income allocation for certain entities;
4. ensuring appropriate functioning of the domestic minimum tax framework, including interpretive and administrative adjustments; and
5. introducing a foreign currency translation rule to support consistent calculation of GloBE income and top-up tax liabilities.

The proposed amendments are intended to apply retrospectively from 1 January 2024.

Consultation is open on Treasury's website until 13 March 2026.

w https://consult.treasury.gov.au/c2026-742070

4.8 Strengthening MIS governance and ASIC oversight

Treasury has released a consultation paper seeking feedback on proposed reforms to strengthen the governance, compliance and regulatory oversight of registered managed investment schemes (**MISs**), particularly those marketed to retail investors.

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Proposed reforms

The following are the proposals for consultation:

1. strengthening compliance frameworks. Proposals include stricter compliance plan requirements, amendments to the liability framework for compliance plans, mandatory audit and assurance standards for compliance plan auditors, and mandatory notification to ASIC of the appointment, removal or resignation of compliance committee members;
2. governance reform. Registered MISs would be required to have a majority of external directors, with the option of using a mandatory compliance committee removed;
3. related-party transactions. Responsible entities would be prohibited from engaging in related-party transactions, subject to limited exceptions;
4. financial requirements. Treasury proposes refinements to the financial requirements applying to responsible entities, including more prescriptive settings; and
5. ASIC data powers. ASIC's data collection powers for the retail MIS sector would be expanded.

Alerts to ASIC about superannuation switching

A key component of the consultation paper is a proposed mandatory alerts regime requiring superannuation trustees to report "high-risk switching" (rollover) activity to ASIC.

High-risk switching behaviour includes:

1. cookie-cutter advice that funnels members into particular products;
2. balance erosion through excessive fees;
3. rollovers from lower-risk products into higher-risk MIS investments; and
4. rollovers from APRA-regulated funds to SMSFs in circumstances involving heightened risk.

Although trustees already process rollovers and advice fee deductions and therefore have access to relevant data, they are not currently required to report patterns that may suggest misconduct by another AFSL holder.

The proposed reform would require trustees to report behaviour they reasonably consider could place members at risk of significant detriment, increasing obligations for trustees and potentially prompting earlier ASIC intervention affecting advisers and MIS operators.

w https://consult.treasury.gov.au/c2026-736025

4.9 WA Bill to increase land tax relief for build-to-rent developments

On 19 February 2026, the *Land Tax Assessment Amendment (Build-to-Rent) Bill 2026* was introduced into the Western Australian Parliament.

The Bill will increase the land tax exemption for eligible build-to-rent developments from 50% to 75% where a development becomes capable of lawful occupation on or after 1 July 2025 and before 1 July 2030.

The enhanced 75% exemption will apply for the first 10 assessment years following completion of an eligible development, after which the exemption reverts to the existing 50% rate for a further 10 years.

To access the increased concession, developments must continue to satisfy the current eligibility criteria, including providing at least 40 self-contained dwellings available for three-year residential leases. Expansions of existing build-to-rent projects completed within the eligibility window may also qualify, with the expanded portion treated separately for exemption purposes.

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The measures apply from 1 July 2025, enabling the higher exemption to take effect for the 2025–26 assessment year.

Land Tax Assessment Amendment (Build-to-Rent) Bill 2026
w
https://www.parliament.wa.gov.au/parliament/bills.nsf/BillProgressPopup?openForm&ParentUNID=CB31F100AF59348C48258DA1001F7C6C

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5. Rulings

5.1 GST treatment of formula products

On 25 February 2026, the ATO issued Goods and Services Tax Determination GSTD 2026/1, which provides guidance on when a supply of a formula product is GST-free under section 38-2 of the GST Act. This was previously published as *Goods and Services Tax Determination* GSTD 2025/D1.

Under section 38-2 of the GST Act, certain food products are GST-free. However, paragraph 38-3(1)(d) states that beverages or ingredients for beverages are not GST-free unless listed in the third column of the table in clause 1 of Schedule 2.

Table item 13 in Schedule 2 provides that beverages or ingredients for beverages are GST-free if they are of a kind marketed principally as food for infants.

The Determination explains the ATO's view on:

1. which formula products qualify as GST-free under table item 13;
2. the meaning of relevant legislative terms such as 'infants', 'beverages', 'ingredients for beverages', 'of a kind', and 'marketed principally'.

In determining whether a formula product is "of a kind" that qualifies for GST-free treatment under table item 13, the Commissioner considers that that attributes include**:**

1. **Formula Preparation**: products must be powdered or ready-to-drink preparations mixed with water to create a drinkable, nourishing liquid intended for infants.
2. **Beverages**: 'beverage' in this context means a "drink of any kind". A drinkable, nourishing liquid is a beverage.
3. **Infant:** the meaning of 'infants' in the context of table item 13 is its ordinary meaning, being a child aged up to 12 months.
4. **Marketing**: distinguishing features of formula products of a kind marketed principally as food for infants include labelled as Stage 1 or Stage 2, infant formula, and follow-on formula. It also contains a composition that complies with Standard 2.9.1 of the Food Standards Code for 'infant formula products'.

The Determination confirms that formula products will not be GST-free under tables items 1 and 2.

ATO Reference *GSTD 2026/1*
w https://www.ato.gov.au/law/view/document?docid=GSD/GSTD20261/NAT/ATO/00001

5.2 PAYGW variation for company directors

On 25 February 2026, the ATO issued *Taxation Administration (PAYG Withholding Variation for Company Directors and Certain Office Holders) Legislative Instrument 2026*.

The Instrument varies the amount to be withheld from payments to certain directors and office holders to nil, where the office holder is required to remit the full amount on to another entity of which they are a director, partner or employee.

It also exempts the payer from the requirement of single touch payroll reporting and payment summary obligations.

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The instrument replaces PAYG Withholding Variation: Company Directors and Office Holders (2016 instrument), which would otherwise sunset on 1 April 2026.

ATO Reference *LI 2026/8*
w https://www.ato.gov.au/law/view/document?docid=OPS/LI20268/00001

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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 Variation to FTE due to family law breakdown

Facts

A trust was established with Person A and Person B as the principal beneficiaries. Person A and Person B were married at the time, though they have since separated. Person A and Person B were also directors and equal shareholders of the trustee company.

Person A has acted as the appointer of the trust from settlement, and the trust deed contains a clause granting the appointer the power to remove the trustee.

In the year of settlement, the trust made a family trust election (FTE) naming Person B as the test individual. In a subsequent income year, an interposed entity election (IEE) was made for another trust (Trust D), for which Person C, who is a sibling of Person A's parent, was the test individual.

As part of their divorce, Person A and Person B entered into a financial agreement under the *Family Law Act 1975* (Cth) dealing with spousal maintenance, property division, and financial matters. Orders were made affecting control of both the trustee and the trust. These orders required Person B to resign as director of the trustee, transfer their shares in the corporate trustee to Person A, assign any loan accounts to Person A, and relinquish all claims and entitlements in relation to the trust and the trustee. Person A was required to indemnify Person B for all trust-related liabilities and provide proof of release from any guarantees or loans. Person B also agreed to be removed as a beneficiary by signing a deed poll to that effect.

In accordance with these orders, Person B resigned as director, transferred their shares to Person A, removed themselves as a beneficiary, and agreed that any trust entitlements vested in Person A. The trust has not yet lodged its income tax return for the relevant income year.

Questions

1. Can the trustee vary the FTE under section 272-80(5C) of Schedule 2F to the ITAA 1936 so that the test individual becomes Person A rather than Person B?
2. If the variation is permitted, can the FTE variation be made in the trust's income tax return for the relevant year that has not yet been lodged?

Ruling

<u>Can the FTE be varied?</u>

The ATO began by outlining the rules governing FTEs in section 272-80 of Schedule 2F to the ITAA 1936, including the requirement that an FTE must specify a test individual whose family group defines the trust's distribution boundaries.

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Ordinarily, a test individual can be varied once only under section 272-80(5A)–(5B), but a separate pathway exists under section 272-80(5C) for variations arising from a marriage breakdown. This provision allows the trustee to change the test individual where:

1. an agreement or court order reflecting a marriage breakdown transfers control of the trust to the new individual or that individual's family group; and
2. the order or agreement is of the type mentioned in section 126-5(1) of the ITAA 1997.

The ATO assessed whether Person A obtained control of the trust following the family-law financial agreement and court orders.

From the orders made:

1. Person B resigned as director of the corporate trustee and transferred their shares to Person A;
2. Person B relinquished all entitlements and claims in relation to the trust; and
3. Person A became the sole director and shareholder of the trustee.

These facts meant that, for the purposes of section 272-87(2), a group consisting of Person A and their family now controlled the application of the trust's income and capital, satisfying the control test relevant to section 272-80(5C).

The ATO confirmed that the Federal Court orders made in connection with the marital breakdown fell within the types of marriage-breakdown instruments listed in section 126-5(1) of the ITAA 1997.

The ATO concluded that the conditions for varying the FTE under section 272-80(5C) were met.

Can the variation be made in the next tax return?

Any variation under section 272-80(5A) or section 272-80(5C) must be made in the trust's return of income for the income year from which the variation is intended to apply. Since the return has not yet been lodged, the trustee still has the opportunity to include the FTE variation within that return.

COMMENT – section 272-80(8) of Schedule 2F to the ITAA 1936 states that, "*To vary or revoke an election under subsection (5A), (5C) or (6A), the variation or revocation must be made in the trust's return of income for the income year from which the variation or revocation is to be effective*." There is an exception if the trustee is not required to give a return for the income year, which allows the variation or revocation to be made in writing in the approved form on or before 2 months after the end of that income year or such later time as the Commissioner allows.

The provision does not address the situation where the tax return for the relevant income year has already been lodged. In practice, this creates difficulty because an FTE election (or its variation) generally does not affect the assessment and therefore is not something that can ordinarily be amended through the standard amendment process. Given that we amend assessments rather than returns themselves, it appears that a variation cannot be made once the return for that year has already been lodged. One solution may be to apply the variation from the next income year for which a tax return has not yet been lodged, but any court orders should be drafted with this timing constraint in mind.

ATO Reference *Edited Private Advice Authorisation No.* 1052484261309
w https://www.ato.gov.au/law/view/document?docid=EV/1052484261309

6.2 Pre/post CGT timing and CGT event B1

Facts

The taxpayers jointly own a parcel of farmland. The land was originally owned by Individual A and was subsequently gifted to the taxpayers. After the gift, the taxpayers leased the farmland back to Individual A so that Individual A could continue using it, and a sub-lease agreement was executed for this purpose.

The sub-lease agreement was dated before 19 September 1985 but was not signed or witnessed until after that date. The agreement provided for Individual A to hold and use the farmland for a fixed term, subject to obtaining consent from the mortgagee and approval from the Minister for Lands. Under the arrangement, Individual A would continue to use the property for business and residential purposes and would pay all rates, while the taxpayers would be responsible for Crown rentals.

The agreement received required consents and stamping after 20 September 1985, and the state's Department of Lands received and registered the dealing after that date. Historical title records show that the taxpayers were recorded as tenants in common only after corrections made post-1985, and that the sub-lease and new certificate of title were registered after that same date.

Additional material supplied by the taxpayers included legal correspondence regarding the proposed transfer, mortgage-related communications requiring the taxpayers to assume the existing debt, and a bank letter approving a loan after 20 September 1985 to partly discharge the existing debt and fund the farmland purchase. Title searches also confirmed that the sub-lease and ownership updates were recorded after 20 September 1985.

The taxpayers are now proposing to sell the farmland.

Question

Will the proposed sale of the farmland be exempt from CGT on the basis that the asset was acquired before 20 September 1985?

Ruling

The ATO considered whether the taxpayers acquired the farmland before 20 September 1985 for the purposes of paragraph 104-10(5)(a) of the ITAA 1997. Under section 104-10, a capital gain is disregarded if the asset was acquired before that date.

For the purposes of determining whether an asset was acquired before 20 September 1985, the acquisition date is generally the date on which the legal ownership of the asset was obtained. In the case of real property, this is usually the settlement date when title is transferred. However, if a binding contract to acquire the property was entered into before 20 September 1985, the acquisition date is taken to be the date a binding contract was formed, even if settlement occurred after that date. In some circumstances, ownership for CGT purposes may also be determined by beneficial interest.

There is no evidence that a written agreement was executed to formalise the transfer of the farmland as a gift from Individual A to the taxpayers. The ATO had to consider whether the taxpayers' evidence is sufficient to show that they entered a contract to acquire the farmland before 20 September 1985.

Case law such as *Gardiner v FCT* (2000) 44 ATR 1065 and *McDonald v FCT* (1998) 38 ATR 563 explains when a contract is formed. These authorities confirm that a contract exists only when the parties reach binding agreement with the intention to create legal relations. The ATO also relied on *Corin v Patton* (1990) 169 CLR 540, where the High Court held that a transfer of real property is not effective unless the transferor has completed all steps necessary to place the transferee in a position to obtain registration.

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Evidence relating to the timing of acquisition

The taxpayers asserted that they acquired the farmland before 20 September 1985 because they had engaged solicitors before that date and the sub-lease document was dated before that date. However, the ATO noted that the steps required to establish ownership occurred after 20 September 1985.

Although the sub-lease was dated before the introduction of CGT, it was signed, witnessed, stamped, consented to by the mortgagee and registered only after 20 September 1985. Because the land was mortgaged, the bank's consent was required before ownership could transfer. The bank only approved the Taxpayers' assumption of the debt after 20 September 1985, so control could not have passed earlier. Approval from the Minister for Lands was also received after 20 September 1985. Title records did not show any change of ownership to the Taxpayers before the critical date, and there was no evidence that beneficial ownership had passed before that time.

Applying the principles in *Corin v Patton*, the ATO concluded that Individual A had not completed all steps required to transfer ownership before 20 September 1985. As a result, the taxpayers did not acquire either legal or beneficial ownership before 20 September 1985.

Consideration of CGT event B1

The taxpayers proposed that CGT event B1 applied, because Individual A had gifted them the farmland and they claimed to have had use and enjoyment of it. Under section 104-15, CGT event B1 arises where use and enjoyment of an asset pass to another entity under an agreement and where title will or may pass at or before the end of that agreement.

The ATO determined that CGT event B1 did not occur. Individual A remained in possession of the farmland and continued to run the farming business. The taxpayers did not receive rent or any economic benefits prior to 20 September 1985. There was no agreement satisfying the requirements of section 104-15. The sub-lease could not amount to a CGT event B1 agreement because it granted continued possession to Individual A instead of providing use and enjoyment to the taxpayers.

Conclusion

The ATO concluded that the farmland was acquired after 20 September 1985 because neither legal nor beneficial ownership passed before that date. Paragraph 104-10(5)(a) of the ITAA 1997 does not apply and the farmland is a post-CGT asset. CGT event B1 did not occur and cannot be used to support pre-CGT treatment. Any capital gain on the sale of the farmland will therefore be subject to the CGT provisions in Part 3-1 of the ITAA 1997.

COMMENT – a binding agreement can be formed before any written instrument is signed. The key question is whether the parties actually reached agreement and intended to be legally bound at that time. Execution simply evidences the contract; it does not determine when it was made.

It is also important to remember that backdating a document does not change the true date on which agreement was reached.

ATO Reference *Edited Private Advice Authorisation No. 1052457112266*
w https://www.ato.gov.au/law/view/document?docid=EV/1052457112266

6.3 Crypto not a personal use asset

Facts

The taxpayer is an Australian resident for tax purposes. They began researching cryptocurrency and subsequently made their first acquisition of Coin A. Over the following years, the taxpayer continued to acquire additional Coin A with the stated intention of using it as a medium of exchange rather than as an investment asset.

The taxpayer obtained an EFTPOS card issued by Company 1, which enabled indirect use of Coin A for day-to-day purchases. From that time, the taxpayer regularly used the Company 1 card for everyday expenses such as groceries, fuel and bill payments.

On two separate occasions, the taxpayer converted larger amounts of Coin A to Australian dollars in order to fund significant one-off expenses. These included prepayment of private school fees, a residential house deposit, and the purchase of several motor vehicles. The taxpayer's transaction history shows ongoing deposits, withdrawals and purchases via the Company 1 platform.

The taxpayer acquired Coin A through a series of modest purchases, rather than large lump sums. Coin A was only ever converted to Australian dollars for immediate expenditure or for the significant one-off transactions described.

The Company 1 card operates as a prepaid debit Mastercard. When used, Coin A held in the taxpayer's Company 1 account is instantly converted to Australian dollars at the prevailing exchange rate plus a conversion fee. The converted amount is then used to settle the Mastercard transaction. Company 1 is an Australian-based digital asset exchange and wallet provider.

Questions

1. Is the Coin A used for everyday purchases and payments via the Company 1 EFTPOS card considered a "personal use asset" for the purposes of section 108-20 of the ITAA 1997?
2. Can the Coin A acquired and continually added to with the intent of using it as currency, be treated as a personal use asset and therefore not give rise to a CGT event upon disposal?
3. Do the conversions of Coin A to Australian dollars to prepay education fees, fund a house deposit and purchase vehicles constitute CGT events, or can those disposals be treated as disposals of personal use assets exempt from CGT?
4. Is the disposal of Coin A for Australian dollars to pay school fees, a house deposit and vehicle purchases considered a disposal of personal use assets and therefore disregarded for CGT purposes?

Ruling

<u>Everyday purchases</u>

The ATO considered whether Coin A used for everyday purchases through the Company 1 EFTPOS card was a "personal use asset" under section 108-20 of the ITAA 1997. A personal use asset is a CGT asset used or kept mainly for personal use or enjoyment. Whether a crypto asset qualifies depends on its main use at the time of disposal, not merely the taxpayer's original intention. Under section 118-10 of the ITAA 1997, capital gains on personal use assets costing less than the statutory threshold may be disregarded, but only if the asset actually meets the definition of a personal use asset.

ATO website guidance (QC 69954) provides that crypto held only briefly before being used directly to purchase items for personal use may be a personal use asset, whereas crypto held for a longer period or used only in small amounts is unlikely to qualify. Because the taxpayer held Coin A for several years, during which its value rose significantly, this indicated that its main use was as a speculative investment rather than as a personal use asset. The ATO also considered that the taxpayer did not use Coin A directly to make purchases. Instead, Coin A was exchanged into Australian dollars via Company 1 at the time of each transaction. This conversion step is generally inconsistent with personal use because it shows that the crypto was acquired and held for a purpose other than direct personal consumption.

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The ATO concluded that Coin A used through the Company 1 card was **not** a personal use asset at the relevant time of disposal.

Ongoing holdings

When considering whether Coin A still held by the taxpayer could be characterised as a personal use asset on future disposal, the ATO reiterated that classification occurs only at disposal, and not at acquisition. The taxpayer had argued that their intention had always been to use Coin A as currency. However, the ATO stated that intention is not determinative. Instead, actual behaviour over the ownership period is the key indicator.

The ruling analysed the pattern of conduct: long-term holding, significant increases in asset value over time, conversion to Australian dollars to fund major expenses, and the absence of direct spending of Coin A itself. These factors all pointed to Coin A functioning more like an investment or speculative holding, consistent with TD 2014/26, which notes that cryptocurrency is typically used either for exchange or as a speculative investment. Because the taxpayer had repeatedly held Coin A for extended periods prior to disposal and used it indirectly (not directly) for consumption, the ATO found it unlikely that future disposals would be considered personal use assets.

Conversions into AUD

The ATO examined whether converting Coin A into Australian dollars to pay school fees, a house deposit and to purchase motor vehicles constituted capital gains tax events. Under section 104-10 of the ITAA 1997, CGT event A1 occurs when a taxpayer disposes of a CGT asset, which includes cryptocurrency. Disposal occurs when ownership changes, which in the context of crypto includes conversion into fiat currency.

The ATO ruled that every conversion of Coin A to Australian dollars, including conversions made incidentally when using the Company 1 card, constituted a CGT event A1. Capital proceeds are measured under section 116-20 of the ITAA 1997 and equal the money received on disposal, while cost base is determined under section 110-25. Since the taxpayer exchanged Coin A into Australian dollars before making the personal purchases, the ATO concluded that the disposal occurred at the moment of conversion. These events therefore triggered capital gains tax consequences, regardless of the personal nature of the underlying expenditures.

Exemption not available

The final question concerned whether disposals of Coin A used for major personal expenses (school fees, a house deposit, vehicles) could be exempt from CGT as disposals of personal use assets. The ATO reiterated that Coin A was not a personal use asset for the reasons discussed earlier.

ATO Reference *Edited Private Advice Authorisation No. 1052443568121*
w https://www.ato.gov.au/law/view/document?docid=EV/1052443568121

6.4 In-specie property distribution by liquidator

Facts

A company incorporated in the late 1990s entered members' voluntary liquidation. A liquidator was appointed and tax clearance was subsequently granted. The ATO lodged a proof of debt for pre-appointment liabilities, and the company declared and paid a dividend to unsecured creditors.

The liquidator, with external accounting assistance, began preparing the final distribution to members. The calculation deducted the expected tax liability for the liquidation period, including tax relating to an in-specie transfer of land. Most members received only cash, while one member received a mix of cash, an in-specie

assignment of a loan receivable, and an in-specie transfer of land. All distributions were partially franked to the same franking percentage, with franking credits reflecting expected tax payable during the liquidation period.

Funds required to meet the taxpayer's liquidation-period tax liability were withheld by the liquidator. Cash and the loan receivable were distributed, and distribution statements were issued specifying the distributor, the distribution date, the distribution amounts, and the associated franking credits.

For the in-specie land transfer, the liquidator engaged a law firm to prepare transfer documents and manage interactions with the relevant state authorities. Multiple rounds of lodgment, valuation updates, information requests, document corrections, and re-execution of forms occurred before the transfer was eventually processed.

Following completion of the land transfer, an external accountant prepared the taxpayer's outstanding tax returns for several tax periods, but these were not lodged due to uncertainties regarding land valuation acceptance, timing of assessment, and the timing of recognition of a capital gain arising from the land transfer.

When preparing the draft tax returns, the accountant identified concerns regarding the franking account position and the potential requirement to pay franking deficit tax on the final distribution. This arose because the anticipated tax liabilities had not yet been recorded in the franking account, as the outstanding returns were still unlodged and unpaid. As a result, there was uncertainty about the correct franking account balance and whether the franking deficit tax offset would be available.

Questions

1. Did CGT event A1 occur when the company distributed the property?
2. Did a franking debit arise in the company's franking account as a result of the distributions?

Ruling

<u>CGT event A1 and timing of disposal</u>

The ATO examined whether CGT event A1 occurred under section 104-10 of the ITAA 1997 when the in-specie land distribution was made, and specifically when the disposal was taken to occur. CGT event A1 occurs on disposal of a CGT asset, which happens when beneficial ownership changes, even if legal title changes later. Because the land was distributed as part of a liquidation rather than a sale, there was no contract, so under section 104-10 the timing turns on when beneficial ownership passed.

The ATO referred to *Taxation Ruling* TR 2024/2, which deals with when a corporate limited partnership "credits" an amount to a partner. The Ruling examines how economic and beneficial rights can pass independently of legal formalities and emphasises substance over form when determining when ownership or entitlements shift

The ATO identified several indicators that beneficial ownership had passed to the shareholder at the time the distribution was made, even though title was not changed until a later financial year. These included the company ceasing to report rental income and expenses, the shareholder commencing to report that income, and the absence of consideration flowing to the company. Although administrative issues significantly delayed registration of title, the ATO emphasised that registration is not determinative of beneficial ownership.

The ATO concluded that the change in beneficial ownership, and therefore CGT event A1, occurred at the time of the in-specie distribution, despite registration of title not occurring until later.

<u>Did a franking debit arise?</u>

The ATO considered whether making a partially franked distribution caused a franking debit under section 205-30 of the ITAA 1997. A franking debit normally arises when a validly franked distribution is made. However, for a distribution to be treated as franked, it must be accompanied by a valid distribution statement that satisfies

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all requirements of section 202-80 of the ITAA 1997. These include identification of the distributing entity, the distribution date, the distribution amount, the franking credit amount, the franking percentage, and any withholding tax amount.

The ATO found that the company's distribution statements were deficient, as they did not include the franking percentage. Because the statements omitted mandatory information, they were not valid under section 202-80. Section 202-60 provides that the franking credit attached to a distribution is the amount stated in the valid distribution statement; where there is no valid statement, the distribution is not treated as franked.

Accordingly, the ATO concluded that the distributions made in the relevant income year were not franked, and therefore no franking debit arose under section 205-30. As a result, the taxpayer's franking account did not go into deficit under section 205-40, and no franking deficit tax was payable under section 205-45. This also meant that provisions relating to the franking deficit tax offset or the ATO's discretion under section 205-70 did not apply.

TRAP – Without a valid distribution statement that meets all requirements in section 202-80 of the ITAA 1997, a distribution is treated as unfranked. Failure to provide a valid distribution statement to the recipient of the distribution can result in unintended unfranked distributions, franking account errors, franking deficit tax exposure, and incorrect tax return disclosures. For a private company, the statement must be given to the recipient by the later of:

- four months after the end of the income year in which the distribution is made; or
- the time specified in a written determination by the Commissioner.

ATO Reference *Edited Private Advice Authorisation No. 1052484179097*
w https://www.ato.gov.au/law/view/document?docid=EV/1052484179097

6.5 Main residence exemption - multiple dwellings on single title

Facts

The taxpayer, together with their spouse and another couple in their family (Persons G and H), purchased Property B as tenants in common.

Property B was rented out before being demolished for construction of a duplex. There was no written agreement between the four owners regarding the acquisition, demolition, or construction of replacement dwellings (Properties C and D). The only written contract was with the builder.

The original loan to acquire Property B, and later the construction loan, were taken out jointly by all four owners.

The taxpayer resided exclusively in Property D as their main residence, while Persons G and H lived separately in Property C. The two dwellings were physically separated, and the families did not live communally.

The land remained a single legal lot, with no subdivision. Each owner retained a legal ownership interest over the whole lot, including both dwellings.

When Person G encountered financial difficulties, the taxpayer agreed to assist. A second mortgage was entered into, under which the borrower was Company A as trustee for Family Trust A, and the secured parties were Persons X and Y and Company B. All four property owners acted as guarantors, although the taxpayer did not personally receive any funds from this loan.

Person G and H had legal and debt problems. Person G failed to have the second mortgage removed, leading to freezing orders over their assets. The second mortgagee then commenced enforcement action, ultimately taking possession of the entire property (including the newly constructed dwellings). As guarantors, the taxpayer and their co-owner were compelled to vacate their residence.

A deed of partition had previously been agreed in principle but could not be completed due to the freezing orders preventing lodgment of the required transfers. The lender later arranged for the legal subdivision of the land, creating two separate titles for Properties C and D. Both dwellings were then sold under a mortgagee sale, and the outstanding loan balance was applied against the sale proceeds.

The taxpayer had not claimed a main residence exemption on any other property during the relevant ownership period and did not use their dwelling to produce assessable income.

Question

Will the forced sale of the taxpayer's half of a duplex property, occupied by the taxpayer as their main residence, qualify for the partial main residence exemption?

Ruling

The taxpayer and the co-owners purchased the original property jointly, meaning each held a 25% ownership interest in the entire title from acquisition until sale.

The main residence exemption in section 118-110 of the ITAA 1997 applies where a dwelling is the taxpayer's main residence. Where a dwelling is the main residence for only part of the ownership period, the exemption is partial under section 118-185. Because none of the four owners lived in the original dwelling before its demolition, when it was instead used to earn rental income, the original home was ineligible for any main residence exemption. Demolition and subsequent construction of the duplex began later, with the taxpayer ultimately residing only in one of the new dwellings.

Whether two dwellings can form one "main residence"

The term "dwelling" is defined in section 118-115 and can include more than one unit of accommodation if they are used together as a single place of residence. This principle is supported by *Campbell v O'Sullivan* [1947] SASR 195, which states that a dwelling is premises used for sleeping and daily domestic life. TD 1999/69 outlines relevant factors such as shared occupation, proximity, common facilities and integration of daily activities. The taxpayer and the other couple lived separately in physically distinct units and did not share their residential activities. As a result, the duplex could not be considered a single dwelling for main residence purposes.

Effect of joint title on the exemption

Because the land was not subdivided and there were no transfers of ownership interests between the couples, each person maintained a 25% interest in both dwellings. Under section 118-145, a taxpayer may treat only one property as their main residence at any time, subject to limited overlap rules. The taxpayer therefore could claim the exemption only in respect of their share of the dwelling they occupied.

Impact of the second mortgage and forced sale

A second mortgage was created due to another co-owner's financial issues. Although the taxpayer received no funds, they were a guarantor and were required to vacate when the mortgagee took possession. Before the sale, the lender subdivided the land, creating two separate CGT assets. From the time of subdivision, the taxpayer held a 25% interest in each distinct property. The mortgagee sale therefore resulted in two separate disposals for CGT purposes.

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Calculation of the partial exemption and CGT discount

The taxpayer's dwelling was not their main residence for the entire ownership period because the original house produced income before demolition. The taxable portion of the gain is calculated by applying the ratio of non-main residence days to total ownership days, as required by section 118-185. Because the taxpayer held their interests for more than twelve months, the 50% CGT discount applies. No main residence exemption applies to the other dwelling because the taxpayer never lived in it, although the CGT discount is still available.

ATO Reference *Edited Private Advice Authorisation No.* 1052477078821
w https://www.ato.gov.au/law/view/document?docid=EV/1052477078821

6.6 GST and cars

Facts

The taxpayer operates a mechanical and auto-electrical business specialising in custom vehicle builds, including high-end modifications and second-stage manufacturing. The taxpayer is registered for GST.

The taxpayer acquired a vehicle for business purposes, specifically to market endorsed products, showcase the workmanship of the business, and support operational activities such as parts and accessories delivery and collection, transporting vehicles for sublet work, staff transport, product display, and road testing.

The vehicle underwent substantial modifications, including custom electrical battery systems, mechanical upgrades, Second Stage of Manufacture (SSM) Suspension approvals and Gross Vehicle Mass (GVM) upgrades, upgraded wheels and tyres, cooling system improvements, sub-fuel tanks, air boxes, snorkels, and model-specific custom accessories. A new compliance plate was issued under the SSM process, which overrides the original manufacturer's plate. The taxpayer used stock and parts from its own business to complete the modifications.

The vehicle is not primarily used for transporting passengers. Its dominant use is for demonstrating endorsed products and custom builds, conducting road tests, showing clients how modifications function, delivering and collecting specialised parts and fittings, and serving as a marketing and advertising tool. Any staff or client transport is minor and incidental.

The taxpayer confirmed the vehicle is held and used wholly for business purposes. Marketing events and field trips undertaken with the vehicle are work-related and not private in nature. A log book is maintained at the workshop to record vehicle use.

An assumption for the ruling is that the vehicle is not provided to an employee; therefore, no Fringe Benefits Tax obligations arise.

Questions

1. Is the taxpayer entitled to a full GST credit for the GST paid on the acquisition of the vehicle under section 11-5 of the GST Act?
2. Is the taxpayer entitled to claim full GST credits for the modification costs and ongoing expenses of the vehicle under section 11-5 of the GST Act?
3. Is the taxpayer entitled to deduct the running costs of the vehicle under section 8-1 of the ITAA 1997?

Ruling

GST credit on acquisition of the vehicle

The ATO assessed whether the taxpayer made a creditable acquisition under section 11-5 of the GST Act. For an acquisition to be creditable, it must be made for a creditable purpose, be a taxable supply, involve consideration, and the acquirer must be registered or required to be registered for GST. The ATO accepted that these requirements were met because the vehicle was acquired wholly for use in the taxpayer's enterprise, the dealer's supply was taxable, consideration was paid, and the taxpayer was registered for GST.

However, even where an acquisition is creditable, the available input tax credit may be limited by the "car limit" under section 69-10 of the GST Act. The ATO applied the definitions in section 995-1 of the ITAA 1997 to determine that the vehicle met the statutory meaning of a "car" (i.e., designed to carry fewer than nine passengers and under one tonne of load). Because the vehicle's GST-inclusive value exceeded the applicable car limit, the GST credit was capped at one-eleventh of that limit.

The ATO also considered whether the exclusion in section 69-10(4) would prevent the car-limit restriction from applying. This exclusion is available where the vehicle is not a "luxury car" for Luxury Car Tax (LCT) purposes. The ATO reviewed the tax invoice, which showed LCT applied, confirming the vehicle was a luxury car under section 25-1(2) of the *Luxury Car Tax Act 1999* (Cth). Because of this, the limitation applied in full, and the taxpayer was not entitled to a full GST credit for the acquisition.

GST credits for modification costs and ongoing expenses

The ATO considered whether the taxpayer was entitled to GST credits for the modification costs and ongoing operating expenses. These costs were treated as separate acquisitions that each needed to satisfy section 11-5 of the GST Act. The ATO concluded that each item was acquired for a creditable purpose because the modifications and operating costs related wholly to carrying on the enterprise and were not private or connected to input-taxed activities. Each supply, including modification services, accessories and maintenance, was or would be a taxable supply, consideration would be provided and the taxpayer was registered for GST. The car limit restriction applies only to the acquisition of a car and does not affect later modifications. As a result, the ATO confirmed that the taxpayer could claim full GST credits for these costs under section 11-20 of the GST Act.

Deductibility of running costs

The ATO considered the operation of section 8-1 of the ITAA 1997, which allows a deduction for losses and outgoings incurred in gaining or producing assessable income or is necessarily incurred in carrying on a business for that purpose. The ATO applied established principles that an outgoing must be incidental and relevant to income-producing activities and that its occasion must arise from what generates, or would reasonably be expected to generate, assessable income, as articulated in *Ronpibon Tin NL v Commissioner of Taxation* (Cth) [1949] HCA 15. The ATO also had regard to the second positive limb, which requires that an outgoing form part of the cost of trading operations and be reasonably capable of being regarded as appropriate or desirable in pursuing the business's income-earning objectives, consistent with *John Fairfax & Sons Pty Ltd v Federal Commissioner of Taxation* (1959) 101 CLR 30.

The ATO then considered the exclusions in subsection 8-1(2), which deny deductions for expenditure of a capital, private or domestic nature, or expenditure related to exempt or non-assessable non-exempt income.

In this case, the vehicle was acquired and modified as a core marketing asset and was used exclusively in the business to demonstrate endorsed products and custom builds, conduct road testing, show clients how modifications function, transport specialised parts and act as a continuous advertising tool. These activities were central to producing assessable income and formed part of the taxpayer's ordinary trading operations. The running costs, such as fuel, maintenance, insurance and registration, arose directly from carrying on the business and were clearly appropriate and adapted to its commercial purposes. The ATO concluded that the

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expenses satisfied the positive limbs of section 8-1, and none of the exclusions applied, meaning the running costs were deductible.

ATO Reference *Edited Private Advice Authorisation No.* 1052477964077
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6.7 Office holder income

Facts

The taxpayer is a long-established professional operating a specialist sole-trader practice. In addition to providing services to the public, the taxpayer performs independent assessment work for a statutory body on a fee-for-service basis.

The nature of the assessment services is similar to the services the taxpayer provides to other clients within the specialist practice. The taxpayer uses their existing business facilities and employees to carry out the assessment work and must maintain appropriate registration and indemnity arrangements to perform these assessments. The taxpayer issues tax invoices to the statutory body and is registered for GST, lodging business activity statements on a quarterly basis.

This assessment activity constitutes holding an office under paragraph 12-45(b) of Schedule 1 to the TAA 1953, although the taxpayer is not an employee of the statutory body. The statutory body withholds tax from payments made to the taxpayer for this assessment work.

Question

Can the taxpayer deduct expenses incurred in carrying on their business for the purpose of gaining or producing office-holder income as an independent assessor for a statutory body under the ITAA 1997?

Ruling

Under section 8-1 of the ITAA 1997, a taxpayer may deduct a loss or outgoing if it satisfies one of the two "positive limbs." The first limb allows a deduction where an expense is incurred in gaining or producing assessable income. The second limb allows a deduction where the expense is necessarily incurred in carrying on a business for the purpose of producing assessable income. In both cases, a sufficient connection must exist between the outgoing and the derivation of assessable income. Expenses of a capital, private or domestic nature are excluded even if they otherwise meet a positive limb.

The taxpayer undertakes assessment work for a statutory body on a fee-for-service basis and treats the resulting income as part of their specialist business. They incur expenses in operating that business, including the cost of rooms used in providing services and support staff. The Commissioner accepts that where these expenses are incurred either directly in earning the office-holder income or necessarily in carrying on the specialist business for that purpose, they are deductible under section 8-1 to the extent they are not capital, private or domestic.

The office-holder income must be returned in the salary and wages section of the tax return. Deductions relating to that income must be reasonably apportioned and shown separately from other business expenses.

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6.8 Income source

Facts

The taxpayer is solely a citizen of Country A, but previously lived and worked in Australia.

While physically present in Australia, the taxpayer signed an employment agreement with Company A, a NSW-based entity carrying out residential construction, project management subcontractor coordination, procurement, administration and related building industry functions.

After signing the contract, the taxpayer relocated to Country A and has lived there on an ongoing basis. The taxpayer was employed as a remote worker, with all duties required to be performed from the taxpayer's home in Country A. The contract specified that the taxpayer could only perform work from Country A and was not permitted or required to work from any other location, including Australia.

Company A has no overseas offices, branches or clients and undertakes residential construction-related services solely within NSW. The taxpayer's duties include job scheduling, raising purchase orders, coordinating communications between site and office staff, and procurement functions. These tasks are carried out entirely from a designated workspace in the taxpayer's home in Country A, using online meetings, emails and internal system processes. The taxpayer does not have a desk or workspace in Company A's NSW office.

The taxpayer is employed full-time, paid a fixed salary in Australian dollars into a nominated bank account, and works standard hours. Although not covered by an Australian modern award due to performing all duties offshore, the employer uses the Building and Construction General In-Site Award 2020 as guidance for minimum employment conditions.

Question

Is the taxpayer's employment income considered Australian-sourced for the purposes of section 6-5 of the ITAA 1997?

Ruling

The ATO applied the principle that the source of income is a factual question, as established in *Nathan v FCT* (1918) 25 CLR 183. It therefore examined the taxpayer's circumstances by considering the judicial factors relevant to determining the source of personal services income.

The ATO referred to the principal personal services source cases. These include *Commissioner of Taxation v Cam & Sons Ltd* (1936) 36 SR (NSW) 544, *Federal Commissioner of Taxation v French* (1957) 98 CLR 398 and *Federal Commissioner of Taxation v Efstathakis (1979)* 9 ATR 867; 79 ATC 4256. These authorities demonstrate that courts commonly examine three factors:

where the employment contract is entered into;
where remuneration is paid; and
where the services giving rise to the income are performed.

In *Cam*, the Court held that the place where the work was done was the dominant factor in determining the source of the fisherman's wages. In *French*, the portion of income that related to services performed in New Zealand was considered to have a New Zealand source. In *Efstathakis*, despite administrative and payment arrangements occurring in Greece, the income was held to have an Australian source because the work itself was performed in Australia.

The ATO also noted that there are limited situations where the place of performance may not be the primary determinant. One example is *Federal Commissioner of Taxation v Mitchum* (1965) 113 CLR 401, where the

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High Court recognised that for individuals with specialised or creative skills, factors such as contract negotiation and the nature of the remuneration may be more significant. However, these circumstances did not apply to the taxpayer.

The ATO applied the three recognised factors to the taxpayer's situation. The taxpayer entered into the contract while in Australia, although contract formation was considered a secondary element in the context of personal services income. The taxpayer's remuneration was paid in Australian dollars into an Australian bank account, although the ATO regarded this as an administrative choice rather than a substantive indicator of source. The most important factor was that the taxpayer performed all employment duties from a home in Country A and was contractually required to do so.

Although the employer operated solely within Australia and the results of the taxpayer's work supported the employer's Australian business activities, the ATO highlighted that the critical issue is the location of the taxpayer's personal exertion. The ATO distinguished the facts from *Cam*, *French* and *Efstathakis*, noting that in those cases the location of the services, the place where the work took effect and the residence of the employee were aligned within the same jurisdiction. In contrast, the taxpayer's services in this ruling were performed entirely offshore, even though the employer was based in Australia.

The ATO concluded that the taxpayer's income has a source in Country A because all work that generated the income occurred there. Under section 6-5 of the ITAA 1997, a foreign resident is assessed only on ordinary income that has an Australian source. Because the taxpayer's income was not sourced in Australia, it is not assessable in Australia.

ATO Reference *Edited Private Advice Authorisation No. 1052495238963*
w https://www.ato.gov.au/law/view/document?docid=EV/1052495238963

6.9 Indemnity payment

Facts

The taxpayer entered into an agreement to provide business services to an unrelated company. Under that agreement, the taxpayer was required to indemnify the company for any claims or damages arising directly from the performance of those services.

The company separately entered into an arrangement with an unrelated third party to hire equipment for use by both the taxpayer and the company in connection with the taxpayer's service activities. The equipment remained owned by the third party.

While the taxpayer was performing services, the equipment was damaged. The equipment was subsequently assessed both locally and overseas to determine whether repair, rebuilding, or replacement was most appropriate. After obtaining quotes, the taxpayer and the company agreed that replacement was the more suitable option.

The company advised the taxpayer in writing that its insurance policies would not cover the replacement cost. The third party issued an invoice to the company for the replacement, and the company in turn issued an invoice to the taxpayer.

Question

Is the taxpayer's indemnity payment, made to cover the cost of replacing damaged equipment, deductible?

Ruling

The ATO examined whether the indemnity payment was deductible under section 8-1 of the ITAA 1997. The analysis focused on whether the outgoing was incurred in the course of producing assessable income and whether its character was revenue rather than capital. The taxpayer had agreed to indemnify the company for losses arising from the performance of the taxpayer's services. Although the relevant equipment was a capital asset, the ATO viewed the indemnity payment as a normal incident of carrying on the taxpayer's business, rather than expenditure that creates or enhances a capital asset for the taxpayer.

In determining the timing of when the outgoing was incurred, the ATO considered *Taxation Ruling* TR 97/7, which explains that an outgoing is incurred when there is a present, enforceable obligation to pay. The ATO concluded that the taxpayer incurred the expense when the company issued the invoice under the indemnity clause, because this created a binding obligation requiring the taxpayer to pay the replacement cost.

The ATO concluded that the indemnity payment was revenue in nature and deductible under section 8-1.

ATO Reference *Edited Private Advice Authorisation No. 5010120649810*
w https://www.ato.gov.au/law/view/document?docid=EV/5010120649810

7. ATO and other materials

7.1 ATO ID on CGT and stockbroker's mistake withdrawn

The ATO has withdrawn ATO ID 2010/124, which originally addressed whether CGT event C1 could occur when a stockbroker mistakenly sold a taxpayer's shares without the taxpayer's consent. The interpretative decision previously stated that where a taxpayer was involuntarily and permanently deprived of shares due to such a mistake, the shares were considered 'lost', triggering CGT event C1. It also concluded that the taxpayer might have been eligible for roll-over relief under Subdivision 124-B where replacement shares were provided.

The ATO has changed its position. As of 27 February 2026, the ATO considers that only CGT event A1 applies when shares are sold, even if the sale occurs without the owner's consent. Because CGT event C1 is no longer regarded as happening in these circumstances, the previously suggested roll-over relief is not available.

The ATO ID has been withdrawn as it no longer reflects the current ATO position.

w https://www.ato.gov.au/law/view/document?docid=AID/AID2010124/00001

7.2 Transfer balance cap – increase to $2.1 million (2026–27)

The general transfer balance cap (TBC) will increase from $2 million to $2.1 million for the 2026–27 income year. The defined benefit income cap will increase from $125,000 to $131,250.

The TBC limits the amount that can be transferred into the retirement phase environment. The defined benefit income cap is calculated as the general TBC divided by 16.

The general TBC is indexed annually in $100,000 increments in line with CPI, in accordance with s 960-285 ITAA 1997.

w https://www.ato.gov.au/businesses-and-organisations/corporate-tax-measures-and-assurance/privately-owned-and-wealthy-groups/what-attracts-our-attention/private-company-benefits-including

7.3 SuperStream –Withholding Payer Number (WPN) holders

On 20 February 2026, the ATO confirmed that a WPN can be used to meet SuperStream requirements, and super funds must be able to process contributions made using a WPN in place of an ABN.

Some employers, such as school canteens, sporting clubs and embassies, are not eligible for an ABN and instead hold a WPN. At present, employers with a WPN can use the ATO's Small Business Super Clearing House to make super guarantee contributions. However, the clearing house will close permanently from 1 July 2026, and these employers will need to use an alternative SuperStream-compliant option from that date.

Super funds are encouraged to ensure their systems can accept WPN-based contributions and to work with these employers to explain how to provide their WPN correctly, identify an appropriate contribution channel and confirm that any clearing houses or service providers involved are able to support contributions made using a WPN.

w https://www.ato.gov.au/tax-and-super-professionals/for-superannuation-professionals/super-funds-newsroom/supporting-wpn-holders-or-employers-with-a-wpn

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7.4 SuperStream – New Payments Platform (NPP) update

On 20 February 2026, the ATO updated *Schedule 3 – Payment Methods* and *Guidance Note 51* to clarify how the NPP will apply to SuperStream payments from 1 July 2026.

From 1 July 2026, the use of the NPP for rollover payments will be optional. Super funds and other receiving solutions may choose whether to accept rollovers made through the NPP, giving flexibility as the system adjusts to the introduction of Payday Super.

In contrast, all super funds must be able to receive employer contributions through the NPP from 1 July 2026. This requirement has not changed.

The ATO has also published an updated SuperStream NPP register, which lists funds that have opted in early to receive contributions or rollovers via the NPP.

w https://www.ato.gov.au/tax-and-super-professionals/for-superannuation-professionals/super-funds-newsroom/superstream-npp-update-rollover-payments-from-1-july-2026

7.5 Late payment offset to be discontinued with introduction of Payday Super

On 23 February 2026, the ATO announced that the late payment offset will no longer be available after the quarter ending 31 March 2026. Employers may still claim the offset for the March 2026 quarter when lodging a SGC statement for late super guarantee payments made up to and including 30 June 2026. Super guarantee for the March quarter is due by 28 April 2026.

From 1 July 2026, Payday Super will commence and employers will be required to pay super each payday. Where there is a shortfall for the June 2026 quarter, super guarantee payments made between 1 and 28 July 2026 will first be applied to reduce that shortfall before they are applied to Payday Super obligations.

w https://www.ato.gov.au/tax-and-super-professionals/for-tax-professionals/tax-professionals-newsroom/late-payment-offset-will-no-longer-be-available

7.6 Payday Super webinar recording released

On 26 February 2026, the ATO released a recording of its Payday Super webinar from 16 February.

The webinar covers the key changes that super funds and SMSFs must implement, practical steps taxpayers can take to support the transition to Payday Super, and updates to SuperStream.

All super funds that receive super guarantee contributions from unrelated employers are expected to ensure their systems and processes comply with the updated requirements by 1 July 2026.

w https://www.ato.gov.au/individuals-and-families/super-for-individuals-and-families/self-managed-super-funds-smsf/smsf-newsroom/payday-super-webinar-recording-is-now-available

7.7 Updated guidance on completing the SGC statement

On 25 February 2026, the ATO released updated guidance on completing the SGC statement for quarterly super guarantee periods up to 30 June 2026, ahead of the introduction of Payday Super on 1 July 2026.

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Employers must lodge the statement and pay the charge within one month after each quarterly super guarantee due date.

The charge generally includes the employee's super guarantee shortfall, nominal interest at 10% per year calculated from the first day of the quarter, and an administration fee for each employee. The form calculates these amounts automatically when the lodgment date and employee details are completed, and a separate spreadsheet must be lodged for each quarter being reported.

Employers must provide full details for every affected employee and ensure the spreadsheet is saved in the correct file format.

The guidance also explains how to claim the late payment offset for quarters up to 31 March 2026, how to report a choice-of-fund liability where applicable, and how to lodge statements through the ATO's online services.

This guide applies only to quarters ending before the start of Payday Super, after which employers will be required to pay super guarantee on each payday.

w https://www.ato.gov.au/forms-and-instructions/guide-to-completing-the-super-guarantee-charge-statement

7.8 New ATO form for SMSF contribution reserve adjustments

On 24 February 2026, the ATO released a form that allows members of self-managed super funds to notify the ATO when concessional contributions are made in one financial year but are not allocated to the member until the following financial year. This adjustment request is necessary because the fund must report contributions in the year they are received, even if they are held in a reserve and allocated later.

This process commonly arises where the fund's trust deed allows the use of contribution reserves. In these cases, a contribution is received in year 1 but is intentionally not allocated to the member until year 2. The ATO notes that this strategy may be valid if all relevant legal requirements are satisfied, consistent with the approach outlined in *Taxation Determination* TD 2013/22. It is generally used to manage timing differences between deductibility for income-tax purposes and the application of the concessional contributions cap.

The form enables the ATO to adjust the member's concessional contributions by reducing the amount counted in year 1 and increasing the amount counted in year 2. This ensures the concessional contributions cap is applied to each year in line with when the contribution is actually allocated.

The guidance also explains how trustees should record the contribution in the SMSF annual return, including how to report amounts held in a reserve and how to avoid inconsistencies between the form and the annual return.

The ATO recommends lodging the form before or at the same time as both the fund's annual return and the member's income-tax return to minimise the risk of incorrect assessments.

The instructions also set out the records trustees must keep, including trustee resolutions, evidence of receipt and allocation, and any notices and acknowledgements for deductible personal contributions.

w https://www.ato.gov.au/forms-and-instructions/self-managed-superannuation-fund-request-to-adjust-concessional-contributions

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7.9 Minimum distribution rates for ancillary funds to increase

On 26 February 2026, the Commonwealth Government announced reforms to strengthen philanthropic giving by increasing the minimum annual distribution rate for public and private ancillary funds and providing greater flexibility in how these funds meet their distribution obligations.

Both public and private ancillary funds allow donors to receive an up-front tax deduction for gifts to the fund, with the capital then invested to support long-term charitable outcomes. In return for this favourable tax treatment, ancillary funds must distribute a minimum proportion of their net assets to deductible gift recipient charities each year.

The minimum annual distribution rate for both public and private ancillary funds will be set at 6% of net assets, replacing the current 5% requirement. Treasury analysis indicates that a fund receiving market-based investment returns and distributing 6% annually could continue to operate for several decades even without further contributions. Recent patterns also show that around two-thirds of public ancillary funds and about half of private ancillary funds have already been distributing more than 6% of their net assets.

The reforms will also allow funds to smooth their distributions over a three-year period. This will give ancillary funds greater flexibility to support larger charitable projects without making abrupt or excessive reductions to their invested capital.

The new 6% rate will apply from the first financial year after amendments to the ancillary fund guidelines are made, and existing funds will have a two-year transitional period before the higher minimum applies

w https://ministers.treasury.gov.au/ministers/andrew-leigh-2025/media-releases/boosting-support-australian-charities

7.10 ACNC expands guidance through updated registration summaries

The ACNC has updated its library of charity registration summaries, expanding the range of examples that illustrate how the regulator assesses applications for charity registration. Each summary is drawn from a real application previously considered by the ACNC, with all identifying details removed to protect applicant privacy.

The summaries explain the steps the ACNC takes when assessing an application, including the questions it asks, the information it requests from applicants and how it communicates with organisations during the registration process. They offer practical insight into the ACNC's decision-making framework and the types of issues that commonly arise when determining whether an organisation is eligible for registration.

The examples cover a broad range of matters, including organisations undertaking activities overseas, managing conflicts of interest, addressing concerns about private benefit, and selecting the correct charity subtype. Other summaries explore incidental or ancillary purposes, compliance with the External Conduct Standards, working with vulnerable people overseas, partnering with other organisations and demonstrating both purpose and activities.

The ACNC has indicated that further summaries and resources will be published over time

w https://www.acnc.gov.au/media/news/new-summaries-provide-insights-acncs-registration-work

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7.11 NSW surcharge land tax and principal place of residence

On 6 March 2026, Revenue NSW has issued *Commissioner's Practice Note* CPN 039, which provides updated guidance on how sections 5A and 5B of the Land Tax Act 1956 apply to permanent residents who may otherwise be subject to surcharge land tax.

From the 2017 land tax year, surcharge land tax applies to foreign persons who own residential land in New South Wales. A permanent resident is treated as a foreign person unless they satisfy the ordinarily resident test, which requires at least 200 days in Australia during the prior 12-month period. The key distinction is that the 200 days under section 5A need not be continuous.

Section 5B, introduced in 2018 and amended in 2022, gives permanent residents who fail the ordinarily resident test a second chance by allowing a surcharge land tax exemption for their principal place of residence (**PPR**), provided they meet a stricter continuous 200-day residence requirement in the land tax year. This requirement can be waived if a brief physical absence is due to exceptional circumstances.

Section 5A – Ordinarily resident test

Section 5A applies at the taxing date, which is midnight on 31 December. Under this provision, an individual will only be regarded as ordinarily resident if they have been physically present in Australia for at least 200 days during the previous twelve months. These days do not need to be consecutive, and the person may travel in and out of Australia during the period.

Section 5B – PPR exemption for permanent residents

A permanent resident who is not ordinarily resident may still claim an exemption if they:

were a permanent resident at the taxing date;
intend to use and occupy the land as their PPR for a continuous 200-day period in the land tax year;
intend to be physically present in Australia for that continuous period; and
lodge the required declaration and land tax return.

Failure to meet the residence requirement results in surcharge land tax being reassessed as if the exemption never applied.

The exemption may apply even if the property is not the PPR at the taxing date, such as when the owner moves into a newly purchased home early in the year.

<u>Exceptional circumstances</u>

The Chief Commissioner may waive the continuous-presence requirement where a physical absence is brief (generally up to 21 days) and caused by exceptional circumstances such as attending a funeral, caring for a dying relative, or a similar urgent family event. The absence must be no longer than necessary. Work travel does not qualify.

<u>Illustrative examples of exemption</u>

The Practice Note includes detailed scenarios:

1. a permanent resident returning from overseas who meets the PPR and physical presence tests (exemption allowed);
2. individuals travelling overseas briefly due to a bereavement or emergency (exemption allowed due to exceptional circumstances); and
3. cases failing the 200-day continuous presence requirement where absences are too long or unrelated to exceptional circumstances (exemption denied).

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Revocation of exemption

If a taxpayer declares they intend to meet the continuous 200-day requirement but ultimately does not, the exemption is revoked, surcharge land tax is imposed as if the exemption never applied, and interest and penalty tax may apply.

Revenue NSW Reference *CPN 039*
w https://www.revenue.nsw.gov.au/help-centre/resources-library/cpn/cpn-039-surcharge-land-tax-sections-5a-and-5b-principal-place-of-residence

7.12 WA build-to-rent land tax exemption

On 18 February 2026, the Western Australian Government released further detail on its plan to increase the land tax exemption for build-to-rent developments, confirming that the measure remains subject to legislation.

The exemption for eligible developments will rise from 50% to 75%, applying for 10 years after completion, with the existing 50% exemption continuing for the following 10 assessment years. The revised qualifying period will cover developments completed between the 2025–26 and 2029–30 financial years.

The update also clarifies that expansions of existing build-to-rent projects may access the increased exemption where the expansion is completed before the 2029–30 year. Eligibility criteria remain unchanged, including the requirement to provide at least 40 self-contained dwellings available for three-year residential leases.

w https://www.wa.gov.au/government/media-statements/Cook%20Labor%20Government/Land-tax-exemption-to-help-more-Western-Australians-have-a-home-20260218
w https://www.wa.gov.au/government/announcements/build-rent-land-tax-exemption

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8. Tax Professionals

8.1 TPB reinforces duty of full and accurate disclosure

The TPB has issued a reminder about the importance of full and accurate disclosure when applying for registration or renewal. The update follows the conviction of a former tax agent, Kai Kang, who pleaded guilty in January 2026 to making a false and misleading statement in a material particular in his renewal application. In that application, lodged in October 2024, he stated that neither he nor any entity under his control had overdue tax obligations, when several associated entities in fact had outstanding lodgements.

The TPB noted that tax practitioners must declare that all information provided during renewal is true and correct, and that providing false or misleading information is an offence under tax law. Accurate disclosure is essential because it enables the TPB to assess whether a practitioner continues to meet the requirements for registration. While most practitioners comply, the TPB acknowledged that some may fall behind with their own obligations during periods of hardship. Even so, it stressed that practitioners must be open and honest so the TPB can work with them to resolve any issues.

TPB Chair Peter de Cure AM emphasised that integrity in dealings with the regulator is essential. He noted that tax practitioners are expected to meet appropriate professional and ethical standards, including compliance with their own tax obligations, and that the TPB will act where false or misleading information is provided. The public can confirm whether a practitioner is registered by searching the TPB register.

The TPB has released a statement reminding tax practitioners of the importance of making a full disclosure when registering or renewing their registration.

The TPB used the example of a former agent's conviction for an offence under section 8K(1)(a) of the TAA 1953 for making a false and misleading statement in a material particular in their renewal application. In agent's TPB application, the agent responded “No” to a question asking whether he or any associated entities over which he had direct or indirect control, had overdue tax obligations. This statement proved to be false as, at the time of lodgement, multiple entities associated with the agent recorded outstanding tax lodgements.

As part of the renewal process, applicants are to declare that the information provided is true and correct. Under section 8K(1)(a) of the TAA 1953, providing a false statement in a material particular is an offence.

TPB Chair Peter de Cure AM said the case reinforces the importance of integrity in dealings with the regulator, stating that "registered tax practitioners are expected to meet appropriate standards of professional and ethical conduct, including complying with their own tax obligations…The TPB will take action where false or misleading information is provided in support of registration or renewal".

w https://www.tpb.gov.au/tpb-reinforces-importance-full-disclosure-during-registration

8.2 Tax Ombudsman report on ATO’s management of GIC remission

On 2 March 2026, the Tax Ombudsman released a report titled *"In the interest of fairness: A review into the ATO’s management of remission of general interest charge"*. The review examined how the ATO makes decisions about interest remission and the extent to which those decisions align with fairness and good administration.

This report followed growing concern from taxpayers, advisers and community organisations about inconsistent outcomes, limited communication from the ATO and the financial burden created by compounding interest.

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GIC has grown significantly in recent years. Between 2019 and 2025, the balance of interest owed increased by 185% compared with a 94% increase in uncontested tax debt. Of the $55 billion in uncontested tax owed, 18% now consists of interest, up from 13% in 2019.

In the 2025 financial year, the ATO received 126,000 requests for remission and refused 30,000 of them, meaning the approval rate fell to 76% from 88% the previous year.

The review concluded that:

1. remission decisions have often been inconsistent, with similar cases producing different outcomes. This inconsistency was attributed to unclear internal guidance and varied interpretations among ATO officers
2. decision letters were frequently generic and lacked meaningful explanation, which made it difficult for taxpayers to understand why remission had been refused or what further information might have supported a different outcome; and
3. many taxpayers were also unaware of their limited avenues for reconsideration and review, as these pathways were not clearly set out in ATO correspondence.

The report also highlighted the compounding nature of general interest charge. For some taxpayers, particularly small businesses and households under financial pressure, interest can grow faster than repayments, sometimes becoming larger than the original tax debt. The Ombudsman noted that this dynamic can trap taxpayers in long-term debt, discourage engagement with the ATO and contribute to a broader loss of confidence in the tax system.

Recommendations

The Tax Ombudsman made four recommendations:

1. the ATO should conduct a post-implementation review of the changes introduced in late 2025 and early 2026 within 12 months of their completion. This includes reviewing updates to guidance, website material and the new centralised function for remission decisions;
2. the ATO should strengthen its proposed centralised penalty and interest function by improving guidance and training for officers, encouraging greater use of partial remission and publishing the factors relevant to those decisions, and exploring upfront agreement of full or partial remission for taxpayers who enter into and maintain payment plans;
3. the ATO should improve consistency in decision-making by holding regular calibration sessions for complex applications, clarifying when officers should request additional information and prompting officers to identify potential special circumstances, such as serious hardship or vulnerability, at the earliest stage possible; and
4. the ATO should improve the clarity and quality of its decision letters by including fuller explanations of how remission decisions were reached, updating templates to better reflect individual circumstances and improving the visibility of reconsideration and review options.

ATO response to the Tax Ombudsman's review

The ATO has agreed to all four recommendations and noted that many improvements were already underway, including:

1. enhanced website guidance to provide clearer information on how to request GIC remission, with practical examples of circumstances where remission is likely or unlikely to be approved;
2. new GIC remission application forms that help taxpayers and their advisers provide the information and evidence needed for timely and well-informed decisions;
3. a cap of $2,500 on the value of GIC remission that can be approved over the phone, reducing the risk of inconsistent decision making; and

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4. the establishment of a dedicated review team to consider GIC remission requests over $2,500, strengthening the quality and consistency of decisions.

w https://taxombudsman.gov.au/wp-content/uploads/2026/02/In-the-interest-of-fairness-A-review-into-GIC-remission-Tax-Ombudsman-March-2026.pdf
w https://www.ato.gov.au/media-centre/ato-response-to-tax-ombudsmans-review-of-atos-management-of-gic-remission
w https://taxombudsman.gov.au/wp-content/uploads/2026/02/Media-release-Tax-Ombudsman-calls-for-fairer-interest-charge-relief-2-March-2026.pdf

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