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TI The Tax
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Taxation *in* Australia

Mastering the small business CGT concessions

John Ioannou, CTA

Death, estates and navigating the ATO

Sally Preston, CTA

ATO debt: some key issues

Bruce Collins, CTA



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Invitation to write

We welcome original contributions that are of interest to tax professionals, lawyers, academics and students.

For details about submitting articles, see Guidelines for Publication on our website taxinstitute.com.au, or contact publications@taxinstitute.com.au.



Tax News – at a glance

by TaxCounsel Pty Ltd

March – what happened in tax?

The following points highlight important federal tax developments that occurred during March 2026. A selection of the developments is considered in more detail in the “Tax News – the details” column on page 494 (at the item number indicated).

Boosting support for Australian charities

In a media release on 26 February 2026, the Assistant Minister for Productivity, Competition, Charities and Treasury announced that the government will improve support for Australian charities by increasing the distribution rate for giving funds and expanding the number of organisations that can seek endorsement under the community charities deductible gift recipient category. **See item 1.**

GST: fund-raising events

A legislative instrument has been made which allows an endorsed charity, a gift-deductible entity or a government school to treat all supplies that it makes in relation to a fund-raising event as being input taxed where it holds 15 or fewer like or similar fund-fundraising events in a prescribed accounting year. **See item 2.**

CGT event C1

The Commissioner has withdrawn an interpretative decision on the operation of CGT event C1 with effect from 27 February 2026 on the basis that it no longer accords with the current ATO view (ID 2010/124). **See item 3.**

Genuine redundancy

The Full Federal Court has unanimously dismissed an appeal by the Commissioner from a decision of McEvoy J in which his Honour held that a payment made by an employer to a part-time employee (who had chosen not to accept a change in position which would have resulted in a reduction in hours worked and in the hourly payment rate) was a genuine redundancy payment and not an eligible termination payment (*DCT v Baya Casal* [2026] FCAFC 11). **See item 4.**

Display model homes

The Administrative Review Tribunal (ART) has held that expenditure incurred by a custom home building company (Masterton) in the construction of temporary display model homes on land at Warwick Farm was of a revenue, not capital, nature and, so, was deductible as a general deduction under s 8-1 of the *Income Tax Assessment Act 1997* (Cth) (*Masterton Corporation Holding Co Pty Ltd and FCT* [2026] ARTA 160). **See item 5.**

Fraud or evasion opinion

The Federal Court (Abraham J) has held that, where the Commissioner amends assessments of a taxpayer for more than one income year on the basis that he is of the opinion that there has been fraud or evasion, he is not required to form a separate opinion in respect of each income year (*Yadav v FCT* [2026] FCA 140). **See item 6.**

Informal contracts

As was noted in the Tax Tips [article](#) in the last issue of the journal, there is a growing jurisprudence arising out of recent Federal Court decisions on the issue of whether there may be an informal contract between entities that is relevant for the purposes of tax law. There is now a further decision of the Full Federal Court that is relevant to the issue (*FCT v SNA Group Pty Ltd* [2026] FCAFC 10). **See item 7.**

GIC interest charges

The Tax Ombudsman has completed a review into the ATO’s management of the remission of the general interest charge and has called for urgent improvements to the way that the ATO offers relief for people trying to do the right thing. The review found inconsistent decision-making, vague guidance and poor communication were leading to confusion and unfair outcomes for taxpayers.

Portugal DTA

On 30 November 2023, the Australian Government signed a double tax agreement with Portugal and amending legislation has been introduced into parliament to give the agreement the force of law in Australia.

Tax agent: stay refused

The ART has refused a stay of the Tax Practitioners Board’s decision to terminate a tax agent’s registration and impose a five-year ban on reapplying for reregistration for failure to meet the requirements of the tax agents legislation, including the fit and proper person requirement (*Kumar and Tax Practitioners Board* [2026] ARTA 232).



President's Report

by Tim Sandow, CTA

Tax reform means clarity, not tinkering

President Tim Sandow discusses the long list of tax measures stuck in limbo ahead of the Federal Budget 2026–27.

The Treasurer has indicated that productivity and tax reform will be at the heart of the Federal Budget 2026–27. This is good news – although we won't hold our breath to see if what he considers tax reform and what the Institute and its members consider tax reform are one and the same.

Tax reform, as we have said before, is not the same as tinkering at the edges of our system. The kind of tinkering and piecemeal change we've seen before is exactly what has left us with a long list of announced but unenacted measures that continue to create uncertainty, fuel anxiety, and increase compliance costs for taxpayers and practitioners.

Here are just some of the measures that The Tax Institute and its member volunteers continue to advocate on:

1. corporate tax residency reforms, announced in the Federal Budget 2020–21 following recommendations from the Board of Taxation, remain unlegislated;
2. the government's proposal to strengthen the foreign resident CGT regime, announced in the Federal Budget 2024–25, has also stalled, following a consultation paper released in July 2024;
3. proposed updates to Pt IVA of the *Income Tax Assessment Act 1936* (Cth) (ITAA36), announced in the Federal Budget 2023–24 and later deferred in the Federal Budget 2024–25, remain unlegislated;
4. a proposed new penalty regime for mischaracterised or undervalued royalties for large multinationals announced as part of the Federal Budget 2024–25, has not progressed. This is proposed to apply from 1 July 2026;
5. proposed amendments to the managed investment trust regime announced in March 2025 has not yet

been enacted, despite being proposed to apply to fund payments from 13 March 2025;

6. Div 7A ITAA36 – that old chestnut – continues to create uncertainty. Targeted amendments announced in the Federal Budget 2016–17 and consulted on in 2018 remain unresolved;
7. reforms to individual tax residency, announced in the Federal Budget 2021–22, have not progressed despite a 2023 consultation paper;
8. a proposal to allow deductions for education and training expenses unrelated to current employment in the Federal Budget 2020–21 has also stalled since the Treasury's 2020 consultation;
9. a \$1,000 instant tax deduction for work-related expenses, announced during the 2025 Federal election campaign, has not advanced beyond its initial announcement;
10. proposed changes to relax residency requirements for SMSFs, announced in the Federal Budget 2021–22 and deferred in the Federal Budget 2022–23, remain unimplemented;
11. the proposal in the March Federal Budget 2022–23 to enable monthly or quarterly electronic lodgement of TPRS data has not progressed; and
12. funding announced in the March Federal Budget 2022–23 to support data-sharing of single touch payroll information between the ATO and state and territory revenue offices has not advanced.

I hope that when the Treasurer talks about tax reform, he is at the very least planning to address several of these measures that have been stuck in limbo. In any case, The Tax Institute continues to advocate on these and other issues on your behalf.

For those of you passionate about the advocacy work that we do, don't hesitate to reach out to your state's Institute representative. We would love to hear from you, and always welcome volunteers to add their voice to our work.



CEO's Report

by Scott Treatt, CTA

Our hopes for the Federal Budget 2026–27

CEO Scott Treatt discusses the continued need for certainty as another Federal Budget nears.

With another Federal Budget announcement coming up next month, the team at The Tax Institute are continuing to advocate for our members on a range of tax technical fronts, alongside our dedicated technical committees.

The list of announced but unenacted measures yet to be addressed remains long and vexing. Some of these measures were announced during the last term of parliament, and others were announced many years ago. In some cases, there is little more than a media release, while in others, the government has released a consultation or discussion paper. What they all have in common is that no new law has been enacted, even though some measures have announced start dates that have already passed.

We continue to call for resolution and certainty on these measures in the near future, if not in the Budget. Whether each measure progresses, is abandoned or is reviewed further, tax practitioners and their clients need certainty so they are able to plan with confidence.

The positive news is that this year, tax reform has been put on the agenda in a way that shows the conversation has taken off and creates the opportunity for action. Whether we will see true reform or more tinkering remains to be seen, but I am hopeful that we may see more movement in 2026 than we have for a good long while.

As always, keep an eye on your inbox for our member-exclusive Federal Budget Report, where our team analyses the tax measures announced in the Budget to put you on the front foot from day one.

TTI and IPA proposal update

In March, we shared with our members some key insights to come out of the member consultation sessions. Chief among them were that, following the sessions, 89% of members in attendance were receptive to the proposal.

We asked those members in attendance how they felt about the proposal before and then after the session. There was a notable positive shift in sentiment following the sessions, which tells me that, when members are fully informed about the opportunity being explored, the majority recognise it as a positive move for our future.

The due diligence period is ongoing, and as we continue discussion, informed by member insights, we remain fully committed to transparency and keeping members up-to-date and engaged along the way.



Associate's Report

by Sumitha Krishnan,
FTI

An opportunity to address ABUMs

We consider the extensive list of announced but unenacted measures and what their outstanding status means for practitioners.

Announced but unenacted measures (ABUMs) have long been part of Australia's tax and superannuation landscape. These are government proposals that have been announced but never made it into law, often sitting for years as media releases, consultation papers or draft legislation. With every Federal Budget and election cycle, the list grows longer, while only a small number of measures are ever finalised or formally dropped. This ongoing uncertainty makes it harder for taxpayers and advisers to plan with confidence.

With productivity and tax reform indicated as priorities for the Federal Budget 2026–27, the government has an opportunity to bring clarity to this backlog. The Tax Institute's [Incoming Government Brief: June 2025](#) (the Brief) outlines the status of key tax and superannuation measures announced by previous governments that remain unenacted ahead of the commencement of the 48th parliament, and highlights those requiring prompt action. While tax reform is a long process, resolving the status of existing ABUMs would be a practical first step toward boosting productivity. This would give taxpayers, businesses and practitioners the certainty they need to manage their tax affairs more effectively.

How ABUMs affect taxpayers and practitioners

ABUMs cause practical difficulties for the people who have to work within the tax system every day. When measures are announced but not implemented, taxpayers are left unsure about what rules will apply to them in the future. This uncertainty is compounded when ABUMs are announced with proposed application dates, some of which are even retrospective, leaving taxpayers and advisers unsure whether to rely on the existing law or to prepare based on a future law that may never be enacted. This makes it harder to make decisions about investments, business structures or long-term planning. Practitioners face similar challenges. They are required to advise clients based on

rules that may change, be delayed or never come into effect at all. This uncertainty increases compliance costs, leads to more conservative decision-making, and can slow down commercial activity. It also puts pressure on advisers, who must constantly monitor proposals that may sit idle for years. Clarifying the status of ABUMs would ease much of this uncertainty and give taxpayers and practitioners a firmer basis for planning.

Key ABUMs

Below is a non-exhaustive list of some longstanding ABUMs that we consider should be progressed as a priority to improve clarity and reduce uncertainty.

Corporate and international tax

Corporate tax residency

Announced on 6 October 2020 as part of the [Federal Budget 2020–21](#), these proposed changes were welcomed by industry at the time, but have still not progressed. The current corporate tax residency rules contain significant complexity and uncertainty, and although the ATO recently updated its guidance (PCG 2018/9: *Central management and control test of residency: identifying where a company's central management and control is located*) on the application of the central management and control test, legislative amendments are still required.

Strengthening the foreign resident capital gains tax

In the [Federal Budget 2025–26](#), the government announced that it will defer the start of the strengthening the foreign resident CGT regime from 1 July 2025 to the later of 1 October 2025 or the first 1 January, 1 April, 1 July or 1 October after the enabling legislation receives royal assent. Although Treasury released a [consultation paper](#) in July 2024, no further progress has been made since the measure was first announced in the [Federal Budget 2024–25](#). The proposal would expand the range of assets subject to CGT for foreign residents, shift the principal asset test to a 365-day period, and require foreign residents disposing of interests over \$20 million to notify the ATO before completion.

Proposed updates to Pt IVA

As part of the [Federal Budget 2023–24](#), the government announced that it will improve the integrity of the tax system by expanding the scope of the general anti-avoidance rule under Pt IVA of the *Income Tax Assessment Act 1936* (Cth) (ITAA36) to apply to schemes that reduce Australian tax through lower withholding tax rates or that secure an Australian tax benefit even where the dominant purpose was to reduce foreign tax. Initially intended to apply from 1 July 2024, the [Federal Budget 2024–25](#) deferred its start date pending legislation, with no further progress to date.

Mischaracterised or undervalued dividends, interest and royalties

The government announced on 14 May 2024, as part of the [Federal Budget 2024–25](#), that it will introduce a

new penalty for taxpayers with more than \$1 billion in global turnover annually, who have mischaracterised or undervalued royalty payments to which withholding tax would normally apply. There has been no meaningful progress on this measure to date.

Fringe benefits tax

FBT car parking benefits

On 29 March 2022, the previous government [announced](#) that it would consult on FBT car parking benefits following the Full Federal Court's decision in *FCT v Qantas Airways Ltd*.¹ However, it remains uncertain whether the current government proposes to proceed with this consultation as announced.

Individuals

Individual tax residency

[Announced](#) on 11 May 2021 as part of the [Federal Budget 2021-22](#), the proposed reforms responded to the Board of Taxation's [recommendations](#) to modernise the individual tax residency rules. As part of this measure, the Treasury released a [consultation paper](#) for the new framework in July 2023; however, no further progress has been made.

Education and training expense deductions for individuals

As part of the [Federal Budget 2020-21](#), the government announced that it would consult on allowing individuals to deduct education and training expenses they incur, where the expense is not related to their current employment. This measure progressed to a Treasury [consultation](#) in December 2020 but has been stalled since then.

Instant tax deduction for work-related expenses

The government, as part of the 2025 Federal election campaign, [announced](#) that it would introduce a \$1,000 instant tax deduction from the 2026-27 income year for claiming individual work-related expenses. This measure has not advanced beyond its initial announcement.

Small businesses

Division 7A ITAA36 continues to be an area of significant confusion following around 25 legislative amendments and the issue of a similar number of ATO guidance products since its introduction on 4 December 1997:

- the government's announcement as part of the [Federal Budget 2016-17](#) to make targeted amendments to Div 7A, followed by the release of a [consultation paper](#) in October 2018, have only added to this confusion;
- The Tax Institute is of the view that the government should progress with the amendments proposed by the previous government after engaging in sufficient and meaningful consultation with key stakeholders. This will ensure that the changes are still appropriate in light of notable developments since 2017; and
- the current appeal of the Full Federal Court's decision in *FCT v Bendel*² to the High Court may ultimately result in legislative amendments, depending on the outcome

of the appeal. The ATO's [position on unpaid present entitlements](#) remains unchanged, as outlined in its [interim decision impact statement](#).

Superannuation

Relaxing residency requirements for SMSFs

Introduced as part of the [Federal Budget 2021-22](#) and deferred as part of the October [Federal Budget 2022-23](#), the government proposed to relax the residency requirements for SMSFs. The measure would extend the current rules to allow SMSF trustees to relocate overseas for a maximum of five years and remove the active member test for SMSFs and small APRA-regulated funds. This measure is yet to be implemented.

Tax Administration

Smarter reporting of taxable payments reporting system data

This measure was announced as part of the [Federal Budget 2022-23](#) and proposed allowing the taxable payments annual report to be lodged electronically on a monthly or quarterly basis. However, it has remained an announcement and no further progress has been made.

Enhancing the sharing of single touch payroll data

The government announced, as part of the March [Federal Budget 2022-23](#), that it proposes to commit funds to develop IT infrastructure to enable single touch payroll (STP) data to be shared between the ATO and state and territory revenue offices. The STP sharing system would aim to reduce compliance costs for taxpayers to the extent that it provides the state and territory revenue offices with correct and useful information. This measure has remained an announcement and has not progressed since.

Conclusion

A system in which measures are announced long before enactment risks creating two parallel rulebooks – the law passed by parliament and the law announced by the government. This leaves practitioners navigating a landscape where clients expect guidance on proposals that may be significantly amended or never proceed, adding unnecessary complexity to day-to-day advisory. If productivity is to be a genuine Federal Budget objective, resolving the ABUM backlog should be a priority for the government. The Brief offers a clear roadmap for action. Progressing priority reforms and abandoning outdated measures would restore certainty, reduce complexity, and strengthen long-term economic confidence.

References

- 1 [2014] FCAFC 168.
- 2 [2025] FCAFC 15.

Tax News – the details

by TaxCounsel Pty Ltd

March – what happened in tax?

The following points highlight important federal tax developments that occurred during March 2026.

Government initiatives

1. Boosting support for Australian charities

In a media release on 26 February 2026, the Assistant Minister for Productivity, Competition, Charities and Treasury announced that the government will improve support for Australian charities by increasing the distribution rate for giving funds and expanding the number of organisations that can seek endorsement under the community charities deductible gift recipient category.

Public giving funds were established in tax law in 1963, and private giving funds were introduced into tax law in 2000. Both kinds of giving funds play a valuable role in Australian philanthropy. They allow donors to receive an upfront tax deduction for their gifts, while allowing those gifts to be invested to increase the funds available for charities in the longer term. In return for this tax deduction, giving funds must make a minimum annual distribution to charities that are deductible gift recipients.

The government will set the minimum annual distribution rate for both private and public giving funds at 6% of net assets. This will ensure that more benefits flow to charities to help them to provide their services, while still allowing giving funds to invest and provide benefits into the future.

Treasury analysis shows that a fund receiving market returns that distributed 6% of its net assets each year could last for decades, even without further contributions to its assets. Of those giving funds that have made a distribution in recent years, around two-thirds of public giving funds and around half of private giving funds distributed more than 6% of net assets.

The government is also making changes that will allow giving funds to support large projects with charities without making excessive draw-downs on their capital, by allowing them to smooth distributions over a three-year period. This provides greater flexibility to giving funds in the type of charitable activity they support and helps to ensure that distributions can be maintained over time.

The new rate will apply from the first financial year following amendments to the giving fund guidelines, and existing

giving funds will not need to meet the new distribution rate for two years.

The government is also adding 34 organisations to the ministerial declaration for community charities, representing the biggest update to the community charity deductible gift recipient category since it was established in 2024. Declaring these entities as community charities will allow them to access deductible gift recipient status once they are endorsed by the ATO.

2. GST: fund-raising events

A legislative instrument has been made which allows an endorsed charity, a gift-deductible entity or a government school to treat all supplies that it makes in relation to a fund-raising event as being input taxed where it holds 15 or fewer like or similar fund-fundraising events in a prescribed accounting year.

Under s 40-160 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (GSTA99), an endorsed charity, a gift deductible entity or a government school (as defined) may be able to choose to treat all supplies that they make in connection with a fund-raising event (as defined) as input taxed, subject to other requirements in the section.

If an endorsed charity, a gift deductible entity or a government school has chosen to treat supplies made in connection with fund-raising events as being input taxed, they would not be required to remit GST on the supplies that they make in relation to that fund-raising event or be able to claim input tax credits on all of the acquisitions made in relation to the fund-raising event.

“Fund-raising event” is defined (in s 40-165(1) GSTA99) to mean an event that is conducted for the purpose of fund-raising. It includes a fete, ball, gala show, dinner, performance and other similar events. It includes an event involving the sale of goods where each sale does not exceed \$20 and the selling of that good is not part of the entity’s normal business. It also includes events determined by the Commissioner to be a fund-raising event for the purposes of s 40-165(1)(c). However, where these events form part of a series or regular run of like or similar events, they are excluded from the definition of “fund-raising event” in s 40-165(1).

Where a fund-raising event forms part of a series or regular run of like or similar events, the endorsed charity, gift deductible entity or government school cannot choose to treat supplies made in connection with any of the events held in that prescribed accounting year as input taxed.

Under s 40-165(4), the Commissioner has the power to determine the frequency with which fund-raising events may be held without forming any part of a series or regular run of like or similar events.

Section 6 of the legislative instrument provides that, for the purposes of s 40-165(1), the maximum number of fund-raising events that can be held by an entity before forming any part of a series or regular run of like or

similar events is 15 in any prescribed accounting year (the 12-month period ending on the date the entity balances its accounts).

Where the maximum number of like or similar fund-raising events is exceeded in a prescribed accounting year, the entity is not able to choose to treat supplies made in connection with any of the events held in that prescribed accounting year as being input taxed.

The legislative instrument is the *A New Tax System (Goods and Services Tax) (Frequency of Fund-raising Events) Determination 2026* and commenced on 4 March 2026.

The Commissioner's perspective

3. CGT event C1

The Commissioner has withdrawn an interpretative decision on the operation of CGT event C1 with effect from 27 February 2026 on the basis that it no longer accords with the current ATO view (ID 2010/124).

CGT event C1 happens if a CGT asset that a taxpayer owns is lost or destroyed. The time of the happening of CGT event C1 is the earlier of when the taxpayer first receives compensation for the loss or destruction or, if no compensation is received, when the loss is discovered or the destruction occurred (s 104-20 of the *Income Tax Assessment Act 1997* (Cth) (ITAA97)).

The facts that were considered in ID 2010/124 were that the taxpayer owned 10,000 shares in a company which they acquired post-CGT. The shares were held in a stockbroker's account. The taxpayer instructed the stockbroker to sell 1,000 of the shares. The stockbroker mistakenly sold all 10,000 of the shares to a third party. The third party was a bona fide purchaser of the shares for value and without notice of the taxpayer's lack of consent to the sale. The taxpayer received a cheque for the sale proceeds of all 10,000 shares. The sale of shares had settled by the time the stockbroker discovered the mistake. To rectify the mistake, the stockbroker purchased 9,000 shares in the same company on behalf of the taxpayer. The original cheque issued to the taxpayer was cancelled, and the taxpayer received a new cheque for the sale proceeds of 1,000 shares.

ID 2010/124 as issued took the view that, in all of the circumstances, the 9,000 shares were "lost" within the meaning of CGT event C1. The taxpayer was involuntarily and permanently deprived of ownership of the 9,000 shares as the result of the unauthorised sale by another party to a third party who was a bona fide purchaser of the 9,000 shares for value and without notice of the taxpayer's lack of consent to the sale of the shares.

As indicated, the Commissioner has withdrawn ID 2010/124 and, therefore, on the Commissioner's present view, CGT event A1 would happen on the facts.

It should be noted that the operation of CGT event C1 in the context of a mortgage of shares where the mortgagee exercises their power of sale is considered in ID 2010/116.

Recent case decisions

4. Genuine redundancy

The Full Federal Court has unanimously dismissed an appeal by the Commissioner from a decision of McEvoy J in which his Honour held that a payment made by an employer to a part-time employee (who had chosen not to accept a change in position which would have resulted in a reduction in hours worked and in the hourly payment rate) was a genuine redundancy payment and not an eligible termination payment (*DCT v Baya Casal*¹).

On or around 9 December 2021, the taxpayer received a payment of \$15,326 from her employer, the Ivanhoe Grammar School, on termination of her employment as an early learning centre assistant. This followed a restructure of the school's early learning centre, and advice from the school that the taxpayer would be eligible to move to a new role as a redeployment or that she could take a redundancy. The proposed redeployment would have involved a decrease in the taxpayer's existing part-time hours (34.56 hours per week) to a maximum of 28.5 hours per week, a change in working days and a reduction in remuneration. The taxpayer chose not to accept the new role and her position was terminated.

When making the payment to the taxpayer, the school treated the payment as an employment termination payment (ETP) within the meaning of s 83-130 ITAA97, rather than as a genuine redundancy payment within the meaning of s 83-175 ITAA97. ETPs and genuine redundancy payments are taxed in a different manner, ETPs having a less beneficial tax treatment.

Shortly after receiving the payment, the taxpayer applied to the Commissioner for a private ruling on the nature of the payment. The Commissioner ruled that the payment was an ETP and disallowed an objection by the taxpayer against the ruling. The taxpayer then appealed to the Federal Court against the Commissioner's objection decision and McEvoy J allowed the appeal. On the Commissioner's further appeal, the Full Federal Court has unanimously affirmed the decision of McEvoy J.

In a joint judgment, Hespe and Button JJ said that, although expressed as six separate grounds of appeal, the essential issue was whether McEvoy J was correct to conclude that the taxpayer's position was genuinely redundant for the purposes of s 83-175(1).

Their Honours said that the question of redundancy is a question of fact and degree, which was to be determined having regard to the particular circumstances. In the present case, the taxpayer was employed to perform duties and tasks as an assistant in an early learning centre. The taxpayer was not engaged to discharge responsibilities and perform a role for which she was paid a fixed salary. Having regard to the nature of an early learning centre, the running of such a centre will necessarily involve somebody performing tasks and duties relating to the care of children. The issue of whether the taxpayer was dismissed because her position had become redundant was not determined by whether other employees continued to perform similar

tasks involving similar skills to those of the taxpayer, or that the taxpayer would have continued to perform similar tasks involving similar skills had she accepted one of the alternative positions. Their Honours went on:

“48. In the circumstances of this case, the primary attributes of [the taxpayer’s] role were not limited to the precise tasks she was to carry out but extended to the scope and scale of her tasks and duties. [The taxpayer’s] position was to perform duties and tasks on an hourly basis and she was remunerated according to her hours worked. The changes made to [the taxpayer’s] role involved a reduction of 20% or 40% in her working hours. Contrary to the Commissioner’s criticisms, to refer, as we have, and as the primary judge did, to the reduction in hours (and, consequently, remuneration) in percentage terms is not to determine the question of redundancy by use of a mathematical formula but to illustrate the significance of the change. In [the taxpayer’s] case, the scope and scale of her role were significantly diminished. The issue of redundancy is a matter of fact and degree. Based on the description of the scheme, the Court is satisfied that the scope of [the taxpayer’s] part time role had diminished to a degree to which her position had become redundant.

49. This conclusion does not rest on the fact that [the taxpayer’s] remuneration would have been reduced had she accepted one of the new positions but the fact that, having regard to the nature of her employment, her total hours of work had diminished to a point where for practical purposes it may be said that the reason for her dismissal was because her position had become redundant. As a worker being remunerated based on hours worked, the reduction in [the taxpayer’s] remuneration flowed from a reduction in her working hours. The reduction in [the taxpayer’s] remuneration was not a consequence of the same job being performed at a lower cost to the employer, as may occur, for example if an employer terminated one employee and then engaged a replacement to perform the same tasks, functions and duties over the same hours at a lower hourly rate. Rather, the reduction in [the taxpayer’s] remuneration was a consequence of a reduction in the scope of her position to a point at which it is to be concluded that her former position had become redundant.”

Their Honours said that, in reaching this conclusion, they had had regard, as part of the holistic analysis, to the fact that the new positions offered to the taxpayer would have involved similar tasks that were necessarily associated with caring for children in an early learning centre. They also treated the fact that the scheme involved a change to the taxpayer’s working days as a neutral factor because the nature and extent of those changes were unknown. The nature of the taxpayer’s position, the reduction to her working hours (and, consequently, her remuneration) was such as showed that her former position had become redundant.

Younan J, the other member of the Full Court, delivered separate reasons for coming to the same conclusion as expressed in the joint judgment.

5. Display model homes

The Administrative Review Tribunal (ART) has held that expenditure incurred by a custom home building company (Masterton) in the construction of temporary display model homes on land at Warwick Farm was of a revenue, not capital, nature and, so, was deductible as a general deduction under s 8-1 ITAA97 (*Masterton Corporation Holding Co Pty Ltd and FCT*²).

The Commissioner’s position was that Masterton’s expenditure on the construction of the display model homes was on capital account and, so, was not deductible under s 8-1. Further, according to the Commissioner, the display model homes were “buildings” that were not “plant” and, therefore, Div 43 ITAA97 (capital works) applied to the expenditure on the construction of the display model homes, instead of Div 40 (capital allowances) and the temporary fully expensing measures in Subdiv 40-BB of the *Income Tax (Transitional Provisions) Act 1997* (Cth). If they were “plant”, the Commissioner conceded that Subdiv 40-BB would apply to allow an instant write-off.

The display model homes (which were referred to as “mock ups”) were temporary representations of designs of houses offered for sale by Masterton. They could not be lived in and were always intended to be destroyed and replaced with updated designs once the previous design was no longer marketable.

In its audited accounts, Masterton accounted for the fair value of the land at Warwick Farm (which was leased from a related entity in the Masterton group to Masterton Homes) on the basis of independent valuations that had been obtained. The valuations proceeded on the unchallenged assumptions that the mock-ups would need to be destroyed, or that the mock-ups were unlettable and vacant possession of the land was to be provided on termination of the lease. The land was zoned for general industrial use. The reason for the land value not including the mock-ups was because they were not considered to be improvements to the land.

In concluding that the expenditure was a marketing expense of a revenue nature, the ART said that the case which was most analogous to the present case (and which provided the most useful guidance) was the decision of the Full Federal Court in *National Australia Bank Ltd v FCT*.³ In that case, the Full Court considered the deductibility of a single large payment made by a bank to market certain types of home loans to a segment of a community. Applying the analysis in the Full Federal Court’s decision to Masterton’s factual matrix, the ART made the following points:

- the purpose or object of Masterton’s expenditure in constructing the temporary display model homes was to advertise and market Masterton’s longstanding business of building and selling residential homes. Accordingly, the marketing expense, even if large and even if one off, was prima facie on revenue account;
- Masterton incurred regular expenses of building and demolishing temporary display model homes, such that approximately 1.4 models per annum were demolished and rebuilt to promote updated designs for customers to

choose from in the eight years between 2014 and 2022. The products were not entirely different products such as the construction of other structures, for example, bridges. Masterton’s long-standing core business was as a contract builder of residential homes;

- each display model home was constructed as part of its existing framework of marketing and promoting sales of homes at the Warwick Farm display village which had been in existence for a considerable period, and which had successfully accounted for approximately 60% of all sales. Each display model home merely marketed the latest design to customers until it was replaced by a new design. People came, inspected and experienced the various models at the display village to find a design that suited them. The expenditure on construction of the display model homes did not enlarge the business structure of Masterton to build and sell homes. This was because Masterton did not alter or add to its structure or capacity, such as by acquiring assets or entering a new market. The display model home expenses were incurred as part of the continuous process by which Masterton operated to increase its ordinary sales and obtain regular returns by means of regular outlay, the difference between which represented profit or loss; and
- in the period before the 2022 income year, Masterton had replaced more than one old model with a newer model in each year, and its outlays had been recurrent and continuous over a significant time as part of an established business. The marketing outlays in terms of construction costs were, in other words, a gradual expense, over time, that had proved to be very successful as part of Masterton’s overall advertising and marketing strategy. The evidence established that not one display model home was made once and for all, but they were updated to meet a continuous demand. The outlay on display model homes was recurrent, repeated or continual over many decades.

6. Fraud or evasion opinion

The Federal Court (Abraham J) has held that, where the Commissioner amends assessments of a taxpayer for more than one income year on the basis that he is of the opinion that there has been fraud or evasion, he is not required to form a separate opinion in respect of each income year (*Yadav v FCT*⁴).

Under item 5 of the table in s 170(1) of the *Income Tax Assessment Act 1936* (Cth) (ITAA36), the Commissioner may amend an assessment at any time if they are of the opinion that there has been fraud or evasion. The *Yadav* case concerned objection decisions in relation to amended assessments that had been made by the Commissioner in reliance on item 5 of the table in respect of each of the eight annual tax periods from 1 July 2010 to 30 June 2018 and assessments of administrative penalties in respect of the same tax periods.

A preliminary question arose as to whether, in forming an opinion that there had been fraud or evasion (for the purposes of item 5 of the table in s 170(1)), the Commissioner was required to apply the procedures in

PS LA 2008/6 that a separate opinion of fraud or evasion be formed in respect of each income year. PS LA 2008/6 stated that a separate opinion of fraud or evasion must be formed by the Commissioner for each year or period of tax being amended outside the standard period of review.

The taxpayer’s case rested on the assertion that PS LA 2008/6 must be followed by the Commissioner in giving effect to s 170(1). The taxpayer accepted that PS LA 2008/6 had no statutory force. Abraham J said that, in that context, it was difficult to understand how it could be said that the practice statement created legally enforceable mandatory obligations, as contended by the taxpayer.

With respect, it is not at all clear on what basis the preliminary point in this case could have substance. It is submitted that, where the Commissioner is amending the assessments of a taxpayer for more than one income year in reliance on item 5 of the table in s 170(1), each income year must be considered separately. The opening words of the subsection are “[t]he Commissioner may amend an assessment as follows”, and there does not appear to be any basis for contending that, in the particular context, the singular “an assessment” should be read as including the plural “assessments”.

Abraham J also said that, factually, the taxpayer’s argument was based on the evasion opinion in this case and the reference on page 1 of that opinion under “Income years” to “2011–2018”. However, the document must be read as a whole. It was a pro forma document. The tax officer thereafter gave reasons leading to the conclusions. On the last page of the opinion, the question was posed: “Have you formed an opinion that the avoidance of tax was due to the evasion in relation to *each* income year or tax period?” to which the officer recorded “Yes” (emphasis in the original). Abraham J said that, on the evidence before her, and given the content of the document, there was no reason to interpret that other than as truthful. This was evidence that a separate opinion was in fact formed in relation to each income year from 2011 to 2018.

7. Informal contracts

As was noted in the Tax Tips [article](#) in the last issue of the journal, there is a growing jurisprudence arising out of recent Federal Court decisions on the issue of whether there may be an informal contract between entities that is relevant for the purposes of tax law. There is now a further decision of the Full Federal Court that is relevant to the issue (*FCT v SNA Group Pty Ltd*⁵).

The *SNA Group* case arose out of objections to amended assessments for the 2016 to 2019 income years in which the Commissioner had disallowed deductions that were claimed by the taxpayer company to be service fees paid under contracts for the use of related party trust assets. The contracts were not in writing and the taxpayer claimed that the contracts were to be inferred from conduct. At first instance, Logan J allowed the taxpayer company’s appeal from the Commissioner’s disallowance of its objections (*SNA Group Pty Ltd v FCT*⁶). The Full Federal Court (McElwaine,

Feutrill and Wheatley JJ) has now unanimously allowed the Commissioner’s appeal from the decision of Logan J.

The taxpayers were operating entities in the Coronis real estate group. The assets that the taxpayers used in conducting their businesses were owned by two trustee companies within the group which were held on trust for the unitholders of two unit trusts. Between 2005 and 2015, the taxpayers and the trustees had written agreements pursuant to which the taxpayers were obliged to pay the trustees certain fees calculated in accordance with the provisions of the agreements for the use of the trust assets.

In 2015, the written agreements came to an end, but thereafter the taxpayers continued using the trust assets and made certain payments to the trustees during the income tax years ending 30 June 2016 to 30 June 2019 (the relevant years). The taxpayers claimed deductions for the payments on the ground that they were “service fees” paid to the trustees for use of the trust assets. The Commissioner took a different view and disallowed the deductions, resulting in amended assessments of income tax and assessments of administrative penalty. The taxpayers objected to the assessments and, following the Commissioner’s decisions to disallow the objections, appealed to the Federal Court.

Before Logan J at first instance the taxpayers asserted that the payments were service fees made pursuant to agreements made partly by writing and partly by conduct. The taxpayers failed to prove the existence of the asserted agreements, but Logan J nonetheless found that the taxpayers were subject to a liability, contractual in nature, to pay the trustee’s service fees in each relevant year. Consequently, the taxpayers succeeded in proving that the Commissioner’s assessments were excessive. Logan J also concluded that all amounts that the taxpayers claimed as deductions were paid in accordance with the inferred contractual liability in each tax year.

In its joint judgment, the Full Court said:

”17. It is accepted that a contract may be inferred from the acts and conduct of the parties as well as or in the absence of their words. The question in cases of that nature is whether the conduct of the parties, viewed in light of the surrounding circumstances, shows a tacit understanding or agreement. However, in such a case, the conduct of the parties must be capable of proving all the essential elements and terms of an express contract ... But, it is not sufficient that the conduct be consistent with what is asserted was the existence and terms of a binding agreement. The evidence must positively indicate that both parties considered themselves bound by that agreement ...

18. The circumstances in which a contract will be inferred by conduct are rare. That is not a statement of a legal principle, but a reflection of the difficulty, in the absence of a communication of offer and acceptance, of demonstrating to the satisfaction of a court that reasonable people in the position of the parties would understand from their conduct that there was mutual assent to contract on clear identifiable terms ...”

In coming to a different view to Logan J, the Full Federal Court said that, having regard to the applicable principles, reasonable people in the position of the taxpayers and trustees would not understand from the communications and (or) conduct of natural persons attributable to each company that there was mutual assent to contract on identifiable terms.

The Full Court said⁷ that there were essentially four reasons why an agreement between each of the taxpayer companies and trustee companies could not be inferred from the undisputed facts. These reasons were:

1. there was no direct evidence of any communications between the natural persons, who were the directors of the taxpayers and trustees, of an accepted liability on the part of the taxpayers to pay a fair and reasonable fee for use of the trust assets;
2. likewise, there was no direct evidence of any communications of an accepted liability on the part of the taxpayers to pay up to an 8% return. Further, the evidence regarding “an 8% return” was inconsistent regarding the benchmark for the “return”;
3. there was no evidence that the directors of the taxpayers and trustees had communicated to Ms Hanlon, the Coronis real estate group internal bookkeeper, or Mr Bryant, the Coronis real estate group external tax accountant, that the taxpayers were subject to a liability to pay a reasonable fee for use of the trust assets or for other services. None of the entries in the books and records of the taxpayers and trustees was made and none of the financial statements of the taxpayers and trustees was prepared on the basis that the taxpayers were liable to pay the trustees a fair and reasonable fee for use of the trust assets or other services; and
4. the evidence of the conduct of the taxpayers and trustees that was contemporaneous with the transfer of amounts from the taxpayers to the trustees in each relevant year was not consistent with payment of “service fees” in accordance with a pre-existing agreement or understanding to pay a fair and reasonable fee for the use of the trust assets up to an 8% return. Nor was the evidence of conduct consistent with payment of “service fees” in the amounts claimed as deductions in each relevant year.

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References

- 1 [2026] FCAFC 11.
- 2 [2026] ARTA 160.
- 3 [1997] FCA 1394.
- 4 [2026] FCA 140.
- 5 [2026] FCAFC 10.
- 6 [2025] FCA 240.
- 7 [2026] FCAFC 10 at [32] and [33].



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Tax Tips

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CGT: commencement issues

In a recent decision, the Federal Court has considered several CGT issues that arose in relation to land that was acquired pre-CGT.

Background

The critical date for the commencement of CGT is 20 September 1985. Thus, to take a simple scenario, if an asset that was acquired by an individual taxpayer before that date (pre-CGT) is simply disposed of by the taxpayer on or after that date (post-CGT), this would not give rise to CGT issues, but if the asset was acquired post-CGT, its disposal would give rise to CGT issues, including whether an exception or concession applies in the circumstances.

The operation of the 20 September 1985 CGT commencement date is subject to a number of provisions that may apply, for example, where there is a change of majority underlying interests in a pre-CGT asset, where CGT roll-over relief applies, and where a building is constructed post-CGT on pre-CGT land. There are also provisions that can operate to deem a capital improvement to pre-CGT land to be a separate GGT asset.

It is also important to note that there are circumstances in which a transaction that happens post-CGT that affects a pre-CGT asset will give rise to CGT issues. This may be so, for example, where a lease is granted post-CGT over land that was acquired by the lessor pre-CGT, or an easement is granted post-CGT over land that was acquired by the grantor pre-CGT.

The recent decision of the Federal Court (Wheatley J) in *Brisbane Club v FCT*¹ raised some issues in relation to pre-CGT land. This article considers aspects of this decision.

What happened?

In the *Brisbane Club* case, the taxpayer (the Brisbane Club) was a public company limited by guarantee under the *Corporations Act 2001* (Cth). It owned land known as 241 Adelaide Street, Brisbane (the land), which it had acquired in 1963.

On 7 May 1985, the Brisbane Club held an extraordinary general meeting to consider resolutions regarding the re-development of the land and the entry into relevant documentation with FA Pidgeon & Sons Pty Ltd (the developer).

On 8 May 1985, the Brisbane Club entered into a deed (the deed) with the developer. On 10 January 1986, the Brisbane Club entered into a building agreement with the developer. Construction on the land commenced on or after 14 February 1986.

On 18 June 1986, the Brisbane Club (as lessor) granted a lease over the whole of the land (including the building) to City Mutual Life Assurance Society Ltd (CML) (as lessee), with the lease term commencing on 27 March 1986 (the head lease).

Also on 18 June 1986, CML (as lessor) and the Brisbane Club (as lessee) executed two subleases of parts of the building for terms commencing on 1 September 1986 (the first sublease and the second sublease).

The developer did not enter into any lease or sublease in relation to the land or the building, or any part thereof, with the Brisbane Club or any other person.

On 24 June 1986, the developer and CML entered into an agreement that was entitled “development agreement”.

The building (known as the Brisbane Club Tower) was completed in 1988, reaching practical completion on 12 February 1988.

On 10 June 2021, the Brisbane Club contracted with CHAB Office Pty Ltd (the purchaser) to sell, relevantly, the land, the building, the first sublease and the second sublease (among other property) for \$32 million (excluding GST). The Brisbane Club accepted that this would give rise to the happening of CGT event A1, but contended that any gain from it was to be disregarded (in accordance with s 104-10(5)(a) of the *Income Tax Assessment Act 1997* (Cth) (ITAA97)) on the basis that the relevant assets were acquired pre-CGT.

Procedural history

On 21 January 2021, the Brisbane Club requested a pre-lodgment engagement with the Commissioner to determine the tax treatment regarding the proposed sale of the building, the land, the first sublease and the second sublease. On 18 January 2022, the Commissioner advised that his view was that the building, the first sublease and the second sublease were post-CGT assets and that their disposals would be subject to CGT.

On 19 April 2023, the Brisbane Club lodged its income tax return for the substituted accounting period ending 31 March 2022 on the basis that it was consistent with the Commissioner’s views expressed during the pre-lodgment process. In its return, the Brisbane Club returned a net capital gain of \$13,526,818, which resulted in taxable income of \$6,005,444 and an assessed tax liability of \$1,801,633.20 (after the application of carried forward losses, among other income and deductions).

On 30 May 2023, the Brisbane Club lodged an objection against the assessment which was disallowed by the Commissioner. On 22 December 2023, the Brisbane Club filed an appeal to the Federal Court against the Commissioner’s objection disallowance decision.

The legislation

The following are the principal provisions of the ITAA97 that are relevant to the CGT issues raised in the *Brisbane Club* case:

“104-10 Disposal of a CGT asset: CGT event A1

- (1) **CGT event A1** happens if you dispose of a CGT asset.
- ...
- (3) The time of the event is:
- when you enter into the contract for the disposal; or
 - if there is no contract – when the change of ownership occurs.
- ...
- (5) A capital gain or capital loss you make is disregarded if:
- you acquired the asset before 20 September 1985; or
 - for a lease that you granted:
 - it was granted before that day; or
 - if it has been renewed or extended – the start of the last renewal or extension occurred before that day.
- ...

104-110 Granting a lease: CGT event F1

- (1) **CGT event F1** happens if a lessor grants, renews or extends a lease.

Note 1: Other CGT events can apply to leases. An assignment of a lease is an example of CGT event A1.

Note 2: There are special rules that apply to some lease transactions: see Division 132.

- (2) The time of the event is:
- for the grant of a lease:
 - when the contract for the lease is entered into; or
 - if there is no contract – at the start of the lease; or
 - for a renewal or extension – at the start of the renewal or extension.
- ...

108-55 When is a building a separate asset from land?

- (2) A building or structure that is constructed on land that you acquired *before* 20 September 1985 is taken to be a separate CGT asset from the land if:
- you entered into a contract for the construction on or after that day; or
 - if there is no contract – the construction started on or after that day.

Example: You bought a block of land with a building on it on 10 August 1984. On 1 December 1999 you construct another building on the land. The other building is taken to be a separate CGT asset from the land.”

The issues

The two main issues that were raised for decision by the Federal Court in the *Brisbane Club* case were:

- whether the capital gain from the disposal of the building was to be disregarded pursuant to s 104-10(5)(a) (pre-CGT asset) or whether s 108-55(2)(a) ITAA97 (separate CGT asset) applied to separate the building from the land for CGT purposes (the building issue); and
- whether the capital gains from the disposals of the subleases were to be disregarded pursuant to s 104-10(5)(a) because each of the relevant subleases was acquired by the Brisbane Club before 20 September 1985 (the sublease issues).

Wheatley J held in relation to issue (1) that the building was not to be treated as a separate asset for the purposes of CGT, and in relation to issue (2) that the subleases were not to be taken to have been acquired by the Brisbane Club before 20 September 1985.

Approach to statutory construction

Wheatley J said that, given the issues involved, it was worth setting out the principles to be applied in relation to statutory construction.

Her Honour set out the following principles:²

- the starting point for construing a statutory provision is the text of the statute understood in context, while regard is had, at the same time, to its statutory purpose;
- it is necessary to construe the provision in light of the relevant extrinsic materials and legislative history, that being the statutory purpose which the provision is designed to actually achieve;
- extrinsic material may assist in understanding the context and in fixing the meaning of the statutory text. Such materials will illuminate the mischief which the statute is intended to remedy. However, considerations drawn from the extrinsic materials cannot be relied on to displace the clear meaning of the text of the relevant provision. Furthermore, such extrinsic materials cannot be substituted for the text of the statute. The construction which best achieves the purpose or object of the legislation is to be preferred (s 15AA of the *Acts Interpretation Act 1901* (Cth));
- there is a presumption that the same words which occur in different parts of a statute have the same meaning; however, this presumption is one which must yield to the requirements of context. When construing a statute, all words are to be given meaning and effect;
- a deeming provision creates a statutory fiction which operates only so far as is necessary to achieve its statutory purpose; and

- taxing statutes do not form a separate class of statutes which should be construed differently. These are to be construed by application of these settled principles. However, that the statute being construed is a taxing statute does form part of the context.

Building issue

Wheatley J said that the ultimate issue to be decided in relation to the building was whether, despite the occurrence of CGT event A1, the gain from the disposal was to be disregarded by virtue of s 104-10(5)(a) because the building was to be taken to have been acquired before 20 September 1985. If the building was taken to be acquired after 19 September 1985, s 108-55(2)(a) ITAA97 would apply to separate the building from the land and CGT would apply to the disposal of the building.

Wheatley J said that, to determine this issue, it was necessary to consider the following sub-issues:

1. the proper construction of s 108-55 (the construction of s 108-55(2)); and
2. whether, pursuant to s 108-55, the building was a separate asset from the land because the Brisbane Club entered into a contract for construction on or after 19 September 1985 (whether the building is a separate asset).

Construction of s 108-55(2) ITAA97: “is taken to be”

When considering the operation of s 108-55(2)(a), Wheatley J pointed out³ that the provision uses the expression “is taken to be” and is therefore a deeming provision and is to operate only so far as is necessary to achieve its statutory purpose. It is deeming a circumstance which is contrary to the usual position at common law that a building would be regarded as a fixture and part of the land on which it is built. However, a building or structure constructed on land acquired before 20 September 1985 will be deemed to be a separate CGT asset from that pre-CGT land if “you entered into a contract for the construction on or after [20 September 1985]”.

Construction of s 108-55(2) ITAA97: “entered into a contract for the construction”

Wheatley J said that the critical focus of the relevant provisions was the entry into the contract which created the relevant legal obligations and the identification of the time of making (entering into) that contract. Her Honour went on:

“73. ... It does not matter if the contract, when entered, was conditional or was varied at some later point in time. However, any such conditions or amendments must maintain that the original contract remains in full force and effect. That will be a question of construction. If a condition or conditions are not fulfilled, then there will not be a contract ‘for the construction’. At the point in time of considering the application of the provisions, the contract will have been completed and the legislation directs attention, in terms of timing, to the entry of that

contract. Consideration is not directed to when such a contract became unconditional or when that contract was varied. The express object of Subdivision 108-D is to provide (amongst other matters) an exception to the common law principle regarding fixtures and to provide rules for when a building will be a separate asset from the land, for CGT purposes. Usually, on a consideration of the operation of s 108-55(2)(a), the building will already have been built and the contract (whether initially conditional, or whether subsequently varied) will have been completed.

74. The language of the provision also uses the words ‘for’ and ‘the’. It must be a contract for the construction. By the use of the word ‘for’ the provision directs attention to the particular contract in which there is a legal obligation ‘for’ ‘the’ construction. It is not simply a contract ‘for’ construction generally but a contract ‘for the’ construction of the relevant building or structure. The ‘for’ and ‘the’ together provide the legislative requirement that it be a contract with the object or purpose specifically being the actual construction of the building or structure being considered.”

Was the building a separate asset?

Wheatley J said that the Brisbane Club contended that the building was not deemed to be a separate asset in accordance with s 108-55(2)(a) because the relevant contract for its construction was the deed that was entered into on 8 May 1985 (that is, pre-CGT).

The Commissioner contended that it was the building agreement, entered into post-CGT (on 10 January 1986), which was the relevant contract for the construction of the building. The Commissioner necessarily contended that the building agreement was a separate contract which included the usual terms typical for the construction of a building.

Was the deed a contract for the construction of a building?

Wheatley J said that, when determining the meaning of the deed, the objective theory of contract was “in command of the field”. It was necessary to ask what a reasonable businessperson would have understood the terms to mean.

After considering various provisions of the deed and the building agreement, Wheatley J said:

“93. There were terms of the Deed which were conditional upon entry into the Building Agreement. Once the Building Agreement was entered, Part 2 of the Deed became operative. Once entered, the Building Agreement was to form part of and be read with the Deed (Part 2, clause 1(b)). This was contemplated and formed part of the Deed, by the Developer and the Club, at the time of entry into the Deed. The Building Agreement was contained in the Sixth Schedule of the Deed.

94. Although it can be accepted that if the Building Agreement had not been entered, that is, had the condition not been fulfilled, the Deed would not have been “a contract for the construction” of the Building.

The Building Agreement is a critical step, in terms of the construction of the Building. It is the Building Agreement which contains the typical terms for the construction of a building and the Building could not have been constructed on the basis of the Deed without the Building Agreement forming part of it.

95. Therefore, the critical question of construction is whether the Deed contained a condition, being the Building Agreement, or whether the Building Agreement was a standalone contract which the Deed merely referenced.”

Later her Honour said:

“103. Objectively, the parties to the Deed and to the Building Agreement, being the Developer and the Club did not intend to rescind the Deed by entering the Building Agreement. The Building Agreement was not a condition precedent to the formation or the existence of the Deed, it was a condition precedent to the performance of the building works ... Neither the Deed nor the Building Agreement were to be separate, stand-alone contracts. The Building Agreement was not intended to operate without the Deed. The manifest intention of the parties was for the rights and liabilities under the Deed to continue and the Deed was to prevail if the documents conflicted. The Deed, when executed, made reference to and incorporated the terms of the Building Agreement. Aspects of the Deed were conditional upon the Building Agreement being entered. However, the Deed and the Building Agreement were to work together, as one contract. Although the Building Agreement, being a further contract entered into means that there were two contracts ..., as a matter of construction, the Building Agreement was part of the Deed, contained in the Sixth Schedule. Both documents referred to the other document and made express provision for how the documents would be construed together. The entry into the Building Agreement was a conditional aspect of the Deed. Once entered, that condition was fulfilled and in this respect, the Deed was unconditional.”

Wheatley J concluded that, properly construed, the deed was a contract for the construction of the building. The building agreement was a condition of the deed and did not affect the formation of the deed. As the deed was entered into on 8 May 1985 (that is, pre-CGT), s 108-55 ITAA97 did not apply, but s 104-10(5)(a) ITAA97 would apply to disregard the capital gain made on the disposal of the building.

Sublease issues

The second issue that arose for decision in the *Brisbane Club* case related to the two subleases.

Broadly, the Brisbane Club submitted that the subleases were pre-CGT assets as the origin of the Brisbane Club’s right to obtain the first sublease was the deed. Also, the Brisbane Club obtained the benefit of the agreement for the grant of the second sublease in accordance with the option

exercised on about 12 August 1985 pursuant to the deed. The disposal of the first sublease and the second sublease were part of the 10 June 2021 sale, and the Brisbane Club accepted that this was a CGT event A1, there being a disposal by change in ownership.

In rejecting the Brisbane Club’s submissions, Wheatley J said:

“126. ... Therefore, even if the Club’s submissions as to construction can be accepted (which is unnecessary to decide) that contract to enter into a lease must be a contract to enter into the actual grant of the lease which is the CGT event F1. Section 104-110(1) expressly provides that a ‘CGT event F1 happens if a lessor grants ... a lease.’ Section 104-110(2) provides the time of the event, ‘for the grant of a lease’. Section 109-5(2), the table provides that the F1 event occurs ‘in these circumstances’ being ‘a lessor grants a lease to you’ and the timing for that event, again is ‘for grant of lease’. Section 104-5 provides the full description of an F1 event being ‘granting a lease’. The Subleases were between CML and the Club. There is no evidence of any earlier contract for a sublease as between CML and the Club. The Club sought to rely on the contract, being the Deed as between the Developer and the Club, as the relevant timing event, for the grant of the subleases. Even though the Club and the Developer contemplated and even provided in the Deed for the Developer to be able to assign the right, title and interest of the lease provisions, there is no evidence that the Developer did actually exercise that right under clause 32. In the circumstances of this case, given the absence of any assignment, if any contract for a lease was relevant, it would have to be between the same parties as for the grant of lease, referenced in the CGT event F1 provisions.”

Observations

The decision of Wheatley J in the *Brisbane Club* case illustrates the circumstances in which what may have been done pre-CGT can continue to have current CGT implications. The circumstances can include how documents were drafted many years ago. The preservation of relevant documentation will be important.

TaxCounsel Pty Ltd

References

- [2026] FCA 220.
- [2026] FCA 220 at [33]–[37]. Supporting case references cited by Wheatley J are omitted.
- [2026] FCA 220 at [58].

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Jacob has nine years of experience under his belt, currently working as an Associate Director at a family-run tax and business advisory practice in Bunbury, WA. He thrives on building genuine connections and cultivating a tight-knit community where colleagues and clients alike feel valued. Jacob studied a Bachelor of Commerce (Accounting & Finance) at the University of Western Australia and then went on to pursue a diploma and advanced certification to further his expertise.

“My work involved managing business restructures and turnarounds, business sales and liquidations, financial investigations, court-facilitated public examinations and litigation, as well as financial modelling, forecasting, and options reports. It was really interesting work, and I found it technically and personally challenging.”

No standing still

He soon felt compelled to return to Bunbury, where he now works with a wide range of SME clients, helping business owners navigate growth, change, and complexity.

With a new leadership role at his family’s practice, Jacob plans to continue progressing through the CTA program:

“I think it’s critically important for accountants working in the SME space to have a solid understanding of tax law and its application, as well as a solid commercial experience to appreciate the real-world application of business advice. I believe the CTA program provides the best training and resources to develop specialised taxation knowledge in your advisory toolkit.”

Reflecting on regional practice, Jacob noted the difference in community connection:

“The biggest difference I’ve noticed is the feeling that you’re working within and impacting a community. In the city, I could be working very closely with a handful of clients for several months and never see them outside of work. In Bunbury, I regularly bump into clients at the gym, grocery store, or the pub. It’s taken a bit of getting used to,



but it adds to the meaningfulness of the work to have that ongoing connection.”

Balancing study and work

Managing study, work, and life commitments “was really tough,” Jacob admits.

“I had just relocated from the city back to my hometown, I’d just started work in a new area of accounting, and I had a lot going on outside of work. I relied heavily on the support of my family, especially my wife.

I gave up my evenings and weekends during the six-week course, pulled it together at the end, and made it happen. Sometimes balance means accepting that work or study will take priority; it’s not always 50:50.”

Advice for fellow tax professionals

Jacob’s advice is clear: the practical value of further study is significant.

“The real-world application of this course far exceeds what I learned at university or during CA/CPA,” he explains.

He found that “it has really enhanced my advisory toolkit and my confidence. If you commit to the coursework, you’ll get far more out of it than just another qualification.”

As Jacob progresses through the CTA program and grows into his leadership role, he continues building expertise to support client success and the future of his family’s practice.

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Mastering the small business CGT concessions

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The small business CGT concessions in Div 152 of the *Income Tax Assessment Act 1997* (Cth) are often described as generous, yet their practical application remains fraught with complexity. This article examines a number of nuanced issues that regularly undermine eligibility for the concessions, notwithstanding otherwise careful planning. In particular, it explores what is, and is not, included in the maximum net asset value test, the treatment of liabilities that purport to reduce asset values, and the often misunderstood concepts of personal use, connected entities and unpaid present entitlements. Drawing on recent and significant case law, the article highlights how assumptions about market value, asset use and related party arrangements can quickly unravel a small business CGT strategy. It also considers the Commissioner's ongoing willingness to challenge valuations and the circumstances in which multiple valuations may be warranted. The article concludes with practical guidance for advisers on evidentiary preparation and engaging valuers, emphasising the importance of disciplined analysis well before a CGT event occurs.

Overview

The small business CGT concessions (SBCs) contained in Div 152 of the *Income Tax Assessment Act 1997* (Cth) (ITAA97) have been with us in one form or another since September 1999. In theory, they are generous provisions aimed at “small taxpayers” who, in being focused on building wealth via “small businesses”, tend to not superannuate themselves and reinvest profits into their businesses (when, of course, they are not funding lifestyle with Div 7A loans and payments).

The intention is that, when small businesses are subsequently transacted, the majority (if not all) of the capital proceeds are sheltered from tax in addition to being able to contribute relatively significant sums into

superannuation (depending on which of the concessions is applied) outside of usual and respectively insignificant contribution caps.

From an outsider's perspective, you would think that such concessions would be relatively easy to apply in practice, given the target taxpayer.

We insiders, however, know better.

The SBCs have had some changes since their introduction that could be said to both broaden and narrow access, depending where you sit on the spectrum.

The purpose of this article is not to canvass these changes, nor is it to educate the reader on the basics. In addition, others have written comprehensively on all that needs to be known.¹

Instead, what is intended to be canvassed are some more nuanced issues that have been the subject of litigation and for which practitioners should be prepared. While the SBCs are complex in respect of certain aspects of their application (particularly concepts around connected entities, tracing through entities for the purposes of identifying significant individuals, and the full ambit of issues relating to the sale of interests in entities), it could be considered that they are also relatively well traversed.

Of interest to the author specifically is the concept of “market value” – more specifically, how certainty of what is ahead of a CGT event can be achieved. To a lesser extent is the concept of “liabilities” and how a change in use of particular assets during their course of ownership might see them included in circumstances where there is an assumption that they are excluded.

This article highlights that it still appears to be the case that different valuers can arrive at wildly different values when looking at the same fact pattern. Hence, the craft of a valuer continues to appear a dark art that the Commissioner continues to counter and challenge.

The structure of the article is to canvass:

- what is included and what is not included when considering the maximum net asset value test (MNAV);
- which liabilities reduce the market value of an asset that is included;
- some pertinent take outs from cases; and
- how to engage a valuer and when should more than one valuation be obtained.

What is included?

For seasoned practitioners, it can be easy to rattle off the well-known facts that an individual's main residence, assets used for personal use and enjoyment, and anything held in superannuation are not counted when considering the MNAV.

While the statutory provisions relating to these carve-outs may read plainly, as it is with many things in our world, their application to the real world is not as plain. An even worse scenario arises where assumptions are made on the

intent or operation of the provisions without referencing the provisions themselves. A good example is the main residence.

Main residence

For many, whether the main residence is owned by the requisite individuals is where an enquiry starts and stops, given the main residence and qualifying adjacent land are carved out from the MNAVt.²

For those who have worked through s 152-20(2)(b)(ii) and (2A) ITAA97, you will note that it is qualified. Where the residence (and/or adjacent land) has been used to produce assessable income to a particular extent, there is a requirement to attribute a reasonable proportion of that property's market value to the MNAVt. On reading the section, that might be obvious but, for many, it is likely that the question is never asked when considering the SBCs if the main residence has been used for income-producing purposes. Many incorrectly carry over elements of the main residence exemption into an SBC analysis.

Superannuation

Equally, superannuation is readily dismissed as a "no need to know", given it is not included. While that is correct, there are some traps for the uninitiated.

Consider the circumstance where a small business owner acquires business real property and wishes to utilise funds in superannuation. For many, this is seen as an ideal use of those funds, although there are often insufficient funds to acquire the property in its own right and gearing strategies involving superannuation funds are not as readily sourced as they once were.

Historically, a simple and effective strategy for many has been acquiring such property via their superannuation fund and a related party where the property is held as tenants in common and is unencumbered.

While it is correct that assets held by superannuation funds are disregarded for the purposes of the MNAVt,³ the market value of connected entities are not. In the context of connected entities being partnerships, there is no distinction between a tax and general law partnership.⁴ Consequently, while the value of the interest in the property held by the superannuation fund is disregarded for MNAVt purposes, it will be brought to account by virtue of the related party being required to include 100% of the value of the property, given its interest in the partnership is greater than 40%.⁵

Personal use assets

Similarly, enquiries regarding actual use of personal use assets are necessary – particularly if they have previously been used for income-producing purposes.

Holiday homes

*FCT v Altnot Pty Ltd*⁶ is noteworthy in respect of holiday homes that have earlier been used for income-producing purposes, but which cease ahead of a CGT event happening.

This decision dealt with two issues. The primary issue and the appeal related to repealed s 152-30 ITAA97.⁷ The Administrative Appeals Tribunal's (AAT's) decision on the issue of use was not appealed to the Federal Court, given it was favourable to the Commissioner.

Relevantly and in simple terms, a husband and wife owned a property that had previously been used by them as a holiday home and then a rental property. Prior to the CGT event, the property was no longer being rented but, based on the facts, they had not resumed using it as a holiday house, given the period was only two months. Based on the findings of fact, the AAT found that the property was not "being used solely for the personal use and enjoyment" of them and consequently was not disregarded for MNAVt purposes.

Had appropriate evidence been adduced, a finding in their favour (without appeal) is likely wishful thinking. This is particularly the case taking into consideration ATO ID 2011/37 where the Commissioner makes his position clear: the use of the asset over its ownership period is taken into account, not simply the use "just before the CGT event".

Consequently, advice to clients who are keen to cease using their holiday homes for income-producing purposes ahead of a CGT event in an effort to have it disregarded should be given warily as it will very likely be met with a contrary view by the Commissioner.

It is perhaps noteworthy that, while the rules allow you to disregard the main residence, save for an amount attributed to income-producing purposes, there is no equivalent qualification for personal use and enjoyment assets in s 152-20(2)(b)(i) ITAA97.

So, there may be some hope yet, notwithstanding ATO ID 2011/37 and ATO ID 2011/41. The latter interpretative decision indicates the Commissioner's view that renting the holiday home during the course of ownership negates the benefit of disregarding the property's market value.

As a separate issue, there are some interpretative decisions that are worth keeping in mind when considering holiday homes and their use. They highlight incidences where holiday homes will continue to be disregarded. For example, where the holiday home has never been rented but has been used by the relevant individual and their children who are under 18 years old, it will continue to be disregarded (ATO ID 2011/39), in addition to letting relatives and friends use it rent-free (ATO ID 2011/40).

Unfortunately, vacant land on which persons *intend* to construct a holiday house but do not, will not be considered to be used solely for personal use and enjoyment (ATO ID 2009/33).

With one qualification (although it might be trite), it is worth reiterating that holiday homes (and any other personal use assets) that are owned by companies or trusts are *not* disregarded for the MNAVt, notwithstanding that they may not be used for income-producing purposes. In noting this, PBR 1052240600859 delivers quite an extraordinary outcome for the taxpayer, notwithstanding that it is incorrect.

The question on point is: will the trust's property be excluded from the MNAV test under s 152-20(2)(b)(i)? Noting that it is answered in the affirmative, the relevant circumstances are:

- the trust is a discretionary trust;
- the trust carries on a business;
- the trustee of the trust is a company;
- the individual is the sole shareholder and director of the company;
- in 20XX, the trust acquired the property;
- the property has been used solely for personal use and enjoyment since acquisition; and
- the property has not been used as a main residence since acquisition.

It is worth setting out the details of s 152-20(2)(b)(i) which relevantly provides:

“(2) In working out the *net value of the CGT assets* of an entity [the entity being tested for the MNAV]:

... and

(b) if the entity is an individual, disregard:

- (i) assets being used for the personal use and enjoyment of the individual or the individual's affiliate ...” (emphasis added)

Some of the obvious issues are worth calling out. The statutory provision is prefaced on the entity being tested for the MNAV being an individual. In PBR 1052240600859, it is a discretionary trust. Therefore, strictly speaking, the value of the property is caught from the outset under s 152-20(1). You do not even “pass go”.

In addition, an individual can only be an affiliate if they act, or could be reasonably be expected to act, in accordance with the directions of the taxpayer being tested *in respect of the affairs of the business of that individual*.⁸ The facts recited in PBR 1052240600859 are silent on whether the individual undertakes a business in their own right but, interestingly, in properly identifying the requirements for an individual to be an affiliate in the reasons for decision (ie having to be in respect of the individual's business), it falls away, with the ATO concluding:

“As the individual is the sole shareholder and director of the company that is the trustee of the trust, it can be established that the individual would act in concert with the trust. Thus, the individual is an affiliate of the trust.

Therefore, as the property has been only used for an affiliate of the trust's personal use and enjoyment, it will be disregarded for the purposes of the MNAV test under subparagraph 152-20(2)(b)(i) of the ITAA97.”

While a great result for the taxpayer, it is not what the law provides; the property ought to have been included in the MNAV, given it was owned by a trust, notwithstanding the (incorrectly concluded) “affiliate's” personal use and enjoyment of it.

Bank accounts

A bank account is a chose in action that an entity has against the respective financial institution and therefore constitutes a CGT asset under s 108-5(2) ITAA97. Consequently, it is an asset that ought to be considered and most likely included when determining eligibility for the SBCs.

The ATO has previously turned its mind to this in the context of interest-bearing accounts and has concluded that they are not used solely for personal use and enjoyment and therefore they should be included in the MNAV. Presumably, term deposits and similar products would receive the same treatment.

The reason for including such a mundane issue is again a consequence of PBR 1052240600859. It concluded in the negative and in the favour of the taxpayer. Again, while a win for that taxpayer, it is not correct at law.

The question posed in PBR 1052240600859 was: “Will the individual's personal savings account be excluded from the MNAV test?” In answering the question in the negative and accurately reciting s 108-5(2), the ATO concludes that a personal savings account will not be taken to be a CGT asset and is not included in the MNAV because it is neither:⁹

- part of, or an interest in, property or a legal or equitable right that is not property;
- goodwill or an interest in it; or
- an interest in an asset of a partnership.

This is curious, given that, in the context of foreign exchange gains and losses, ATO ID 2003/551 is explicit in recognising that a bank account is a chose in action, a CGT asset, and a separate CGT asset from foreign currency deposited to it. Why should there be a different approach for bank accounts containing money denominated in Australian dollars? With respect, the author considers that there isn't.

The case of *Bell v FCT*¹⁰ is also noteworthy and is addressed below in some detail.

Related party obligations¹¹

The cross-over between related party debts, CGT and the concept of personal use are interesting and often catch the less seasoned practitioner off guard.

Debts, regardless of whether parties are related or not, fall squarely within the definition of a CGT asset in s 108-5(1)(b) ITAA97 as another type of chose in action and is one of the examples cited as a CGT asset in the section.¹²

For those who are keen to generate a capital loss ahead of a capital gain, there is often a late realisation that the assessment of a debt does not stop there – particularly when (as is frequently the case for related party debts) the debt does not arise in the course of gaining or producing assessable income (as interest is usually not charged) or from carrying on a business. Once the debt falls within this tax chasm of sadness, losses arising from these assets being forgiven are disregarded.¹³

Do not, however, be misled into thinking that related party debts that are characterised as *personal use assets* for the

purposes of determining useability of losses are disregarded for MNAVt purposes. They are not – and presumably on the same basis as bank accounts. Practically, they are not assets that can “be enjoyed”.

Related party debts that purport to be statute-barred at law equally continue to be included as assets that are counted in the MNAVt. For states other than New South Wales,¹⁴ the notion of a debt being statute-barred does not operate as a bar to proceedings, but instead provides a defence that can bar the provision of a remedy.

Additionally, a number of cases¹⁵ would suggest a relative ease in finding related party debts being acknowledged. Consequently, it is difficult to mount an argument that a debt is statute-barred.

On point is the appeal decision of *Breakwell v FCT*¹⁶ where a taxpayer unsuccessfully argued that a \$1.1 million loan owed by him to his related family trust was statute-barred. Consequently, it was counted in the MNAVt. For him, the fact that he was the trustee of the lender and the borrower, who had signed the balance sheets, was found to sufficiently constitute an acknowledgment by him (as the borrower) of the existence of the debt.

Which liabilities count?

You would think it was obvious as to which liabilities count but, in short, it isn't. What can be counted is set out in s 152-20(1). The easier category is contained in s 152-20(1)(b) and covers provisions for annual leave, long service leave, unearned income and tax liabilities.

The more difficult category (as it is open to interpretation) is s 152-20(1)(a) which provides for “liabilities of the entity that are related to the assets”. While plain enough, several cases have clarified that there are several liabilities that are not to be taken into account.

Transaction costs

*FCT v Byrne Hotels Qld Pty Ltd*¹⁷ clarified whether liabilities of the taxpayer that were associated with the realisation of a CGT asset could be included as liabilities that reduced

their value for the purposes of the MNAVt, notwithstanding they were payable after the CGT event.

While the taxpayer won in the AAT, the Commissioner appealed to the Federal Court, noting the issues related to solicitors' fees and real estate agent's commission and whether these were liabilities that existed “just before” the CGT event.

From the Full Federal Court's perspective, “just before” meant the moment in time that immediately preceded the signing of the sale contract.

In respect of the solicitors' fees, it was helpful that they were billing in stages so those invoices that had been raised (albeit some were not paid) prior to the execution of the sale contract were liabilities that were included. On the other hand, liabilities arising after that point in time were excluded, notwithstanding they still related to the transaction.

The analysis in relation to the agent's commission is the more interesting aspect of the decision. This was a liability taken into account. Specifically, it was a contingent liability, noting the obligation to pay arose before the signing of the sale contract. Practically, the agent had already completed the majority of their engagement by sourcing the buyer. There the liability arose “just before”.

Unpaid present entitlements

All UPEs are not treated equally!

Well, to use a famous lawyer's turn of phrase, the treatment of UPEs depends on the facts! What it depends on, specifically, are two things:

- the treatment of the UPE (sub-trust, no sub-trust or absolute entitlement); and
- whether the beneficiary is connected to the trust being tested.

The latter circumstance can arise because the beneficiary has not received a distribution for the four preceding years.

Table 1 sets out the variables and results when considering UPEs in the context of a discretionary trust being tested,

Table 1. Treatment of UPEs

	UPE is a sub-trust	UPE is not a sub-trust	Beneficiary is absolutely entitled
Are the assets the subject of a UPE included in net value of the test trust?	No	Yes	No
Are the assets included for another reason?	Yes, the assets are included as an entity connected with the test trust	n/a	Yes, the assets are included as an entity connected with the test trust
Can the assets the subject of a UPE then be excluded?	The assets are excluded from the beneficiary's perspective because of s 152-20(2)(a) but not the test trust	The assets are included from the beneficiary's perspective and not disregarded under s 152-20(2)(a)	The assets are excluded from the beneficiary's perspective because of s 152-20(2)(a) but not the test trust
Does the liability for the UPE count for anything?	No	Yes, it reduces the net value of the test trust's assets	No

what will be included by that trust, and assuming the beneficiary is connected.

TR 2015/4 is quite insightful and usefully provides worked examples to illustrate these concepts. To be clear, and as the ruling confirms,¹⁸ where a connected beneficiary has a UPE to receive an amount of income or capital from a trust, the value of that UPE is included once, and once only, when determining whether or not the test trust satisfies the MNAVt. How it is included depends on the nature of the UPE.

The nature of a UPE

Not to deviate into *Bendel*¹⁹ territory, for the purposes of the MNAVt, a UPE is a liability notwithstanding the absence of a definition of it for present purposes.²⁰ TR 2015/4²¹ directs the reader to TD 2007/14 which confirms that the term “liabilities” takes on its ordinary meaning and extends to legally enforceable debts due for payment and to presently existing legal or equitable obligations to pay either a sum certain or ascertainable sums.²²

Facilities and capital distributions

The fact scenario in *Bell v FCT*²³ is interesting. The ATO decision impact statement²⁴ provides a good summary.

The relevant key facts were about bank account(s) and a liability relating to a capital distribution.

In respect of the bank account, the facility that was contended by the taxpayer to be a single CGT asset with a single value was, in fact, two accounts, being a loan account and an offset account. This finding meant that there were two accounts and therefore two CGT assets, each having an independent value. Consequently, whether each account related to the assets in question necessarily required the taxpayer to treat each account as a separate CGT asset.

The AAT (and on appeal, the decision was undisturbed) found that the loan account was a liability originating from money borrowed to purchase the individual’s dwelling. As that asset was disregarded, the associated liability was also disregarded. Accordingly, the liability that purported to reduce the value of the assets that were counted was not available to reduce their value.

In relation to the capital distribution, this was created before the relevant CGT event as a consequence of the trust not having sufficient cash-sourced funds to pay the distribution. While the AAT found at first instance that the liability was not related to the CGT assets of the trust, this was overturned on appeal to the Federal Court. That decision was overturned again by the Full Federal Court finding that there was no real and substantial connection between the relevant assets of the trust and the debt.

The Full Federal Court held that:

“40. ... as part of the one series of transactions on a single day, the [\$2,018,000 of] borrowed funds were applied directly by Macquarie Bank to the appellant’s own end purposes. Although, as a matter of accounting, the records of the trust ultimately (although not, it seems originally – as the result of a mistake) showed that the

sum of \$2,108,000 had been disbursed to the appellant pursuant to the distribution resolution of October 2006, in fact no money ever passed through the trust. It may be correct to conclude that the trust never had an asset to which the debt to the BPHT related. It is, however, sufficient to note that any such asset had been disposed of (to the appellant) on 13 March 2007, and that, ‘just before the CGT event’ there was no asset to which the liability to the BPHT related.”

The taxpayer’s appeal to each issue was dismissed by the Full Federal Court and special leave to the High Court was denied.

This is a good segue to *Re Track and FCT*.²⁵

Like *Bell*, this case dealt with capital distributions. Ahead of a third-party transaction, the taxpayer entered into an arrangement where capital distributions were made to purposefully established discretionary trusts (not *connected* with the taxpayer) under the umbrella of seeking asset protection.

The argument of course was that the liabilities relating to the capital distributions reduced the value of the assets taken into account under the MNAVt. The taxpayer lodged their tax return on the basis that it satisfied the MNAVt in respect of the capital proceeds received from the CGT event that transpired shortly following entry into the arrangement.

Unlike *Bell* where the liabilities were found not to be related to the CGT assets, the AAT distinguished that case on the basis that “the cash that represented the borrowing had been disposed of [by way of distribution],” whereas in this case “the strategy seems to have been to avoid actually disposing of the cash until after settlement in the sale in the following financial year”. While the distinction may be questionable, it was in response to the taxpayer arguing that the strategy had not in fact worked and the liabilities should not be found to be related to the CGT assets. As part of the taxpayer’s litigation strategy, they had realised that the beneficiaries who would be assessed were outside the amended assessment period. This perhaps better explains why the AAT concluded that the liabilities were related to the asset as it provided the basis for the finding that Pt IVA of the *Income Tax Assessment Act 1936* (Cth) (ITAA36) applied.

This type of “planning” ought to be readily distinguished from other more common strategies, such as (genuinely) gifting cash to adult children, acquiring personal use assets, and/or making contributions to superannuation ahead of a relevant CGT event.

Market value?

Spencer

The seminal case of *Spencer v Commonwealth of Australia*²⁶ is authority for the proposition that market value means what a willing but not anxious purchaser would pay a willing but not anxious seller after proper negotiations among them have taken place.

The Commissioner, in his market valuation guide,²⁷ introduces the concept of “highest and best use”, which does not stem from case law. Excerpts from the relatively recent decision of *Kilgour v FCT*²⁸ by Logan J note that the references to the International Valuation Standards Council conceptual framework were inconsistent with generally accepted principles of market valuation and, relevantly for the taxpayer in *Kilgour*, concluded that it was “contrary to over-whelming authority” to exclude from the market value analysis “special value” to a particular purchaser. The Commissioner’s document though is useful and worthy of inclusion when briefing a valuer who may not necessarily have had experience in valuing assets for tax purposes.

What is of more interest in this section of the article are the outcomes of various cases. The fact that there are a number of cases in the area is unsurprising as valuations remain one of the last “dark arts” of professional services. For this reason, taxpayers (and the Commissioner, for that matter) appear more willing to throw down the gauntlet on valuation issues, confident that a valuation can be sourced from multiple professionals to support a preferred number.

Surprisingly though, a few of the cases discussed below relate to valuation arguments that have differed from actual proceeds from the transaction being scrutinised. This category in particular will almost always be a hiding to nothing.

Syttadel Holdings

*Syttadel Holdings Pty Ltd and FCT*²⁹ is one of the first and, for an easy read, you may care to consider the Commissioner’s decision impact statement.³⁰ Notwithstanding the taxpayer selling their marina for \$8.9 million, they claimed the SBC, arguing that they satisfied the MNAV as they had obtained a market valuation of the asset for \$4.5 million.

The Commissioner disagreed. Correctly, the starting position should be that the sale price of an asset is its market value. Fatally, the evidence submitted by the taxpayer was not sufficient, it being noted that their valuation adopted a market value by reference to offers previously made and an amount for which they were prepared to sell the marina.

In the same year, we also had *M & T Properties Pty Ltd and FCT*³¹ where valuations provided by the taxpayer were based on estimates in circumstances where actual comparative figures were available. As was the case in *Syttadel*, the taxpayer lost, not having discharged their onus of proof.

It should be noted that the Commissioner will not just challenge market value in such peculiar circumstances. He does have a willingness to obtain his own valuation in circumstances where he thinks that the taxpayer’s otherwise valid valuation does not suit his purpose. *Moloney and FCT*³² is illustrative of this point.

Moloney

In *Moloney and FCT*, an internal restructure was undertaken where a capital gain was crystallised and sheltered using the general discount and the SBCs. The valuation was obtained

from a reputable firm which ascribed a value of \$3.5 million to the shares the subject of the restructure. Under audit, the Commissioner took issue and sought his own valuation from another reputable firm that ascribed a value of \$10 million to the shares, therefore making the taxpayer ineligible for the SBCs. In the proceedings, the taxpayers tendered a third valuation from a separate reputable firm that ascribed a value of \$3 million.

The presiding member ultimately favoured the lower valuation, noting that it was more conservative than the Commissioner’s valuation and was specifically persuaded by the lower capitalisation multiple. He took the view that the lower value was more realistic, given the challenges of selling an interest in an unlisted entity as well the nature of the business, being agricultural, having limited geographical operation coupled with poor profitability forecasts for the sector.

Miley

*FCT v Miley*³³ saw a taxpayer, ultimately³⁴ unsuccessfully, argue that, as a consequence of not having a controlling stake in the company, a discount for that apparent disadvantage should apply to reduce the market value of the shares. Problematically, there was nothing in the facts that suggested all of the shareholders were not willing to sell their shares.

Contrast this with circumstances where a discount would be appropriate such that the holder or purchaser of shares was in fact unable to acquire all of the shares in a company or where further shares would or could convert into a holding control.³⁵

Kilgour

*Kilgour v FCT*³⁶ is a more recent and ongoing³⁷ matter where, at the end of the day, the actual sale price between arm’s length parties was treated as market value.

The following is an overview of the facts:

- the taxpayers held shares in Punters Paradise Pty Ltd, transacted with News Corp Australia Investments (News Corp) for circa \$31 million;
- at first instance, the taxpayers argued that the market value substitution rule ought to operate to replace the actual sale price (which saw them exceed the SBC thresholds) with an independent market valuation because the actual sale price was based on a “special value” being placed on it by News Corp; and
- the grounds of appeal relating to this issue were abandoned before the Full Federal Court.

While there existed a relationship between the Chief Operating Officer of Punters Paradise Pty Ltd and the head of product strategy and distribution and a subsidiary of News Corp, News Corp had prepared detailed internal documents outlining the strategy earlier and had valued Punters Paradise Pty Ltd at approximately \$30 million.

Unsurprisingly, the taxpayers lost at first instance and on appeal.

The Federal Court³⁸ rolled out some old favourites in coming to its conclusion, notably:

- *Granby Pty Ltd v FCT*³⁹ which established that parties act at arm's length when they negotiate as independent parties and in their own interests;
- *Trustee for the Estate of the late AW Furse No. 5 Will Trust v FCT*⁴⁰ which reinforced that transactions are arm's length when conducted as if between related parties;
- *Spencer v Commonwealth of Australia*⁴¹ which defined market value as what a willing buyer would pay in an open market, even if the buyer's interests are unique, provided they align with what a typical buyer might also recognise;
- *FCT v Miley*⁴² which supported the inclusion of buyer-specific motivations in market value assessments provided the price aligns with open market conditions; and
- *Inland Revenue Commissioners v Clay*⁴³ which affirmed that, while one buyer may perceive additional value, such value does not compromise arm's length dealings unless it results in an atypical price beyond standard market expectations.

That the ultimate decision to acquire Punter's Paradise Pty Ltd by News Corp happened via its head office in New York, overcame arguments that the local subsidiary was more highly motivated. The high due diligence by News Corp, and its governance protocols generally, reinforced a finding that the parties had dealt with each other on an arm's length basis.

It will be interesting to see if the High Court hears the matter and, if so, whether it has any different views.

Robinson

While not in the context of the SBCs, *Robinson and FCT*⁴⁴ is a very recent Administrative Review Tribunal (ART) decision (16 January 2026) in relation to market value.

The facts of the case are as follows:

- the taxpayer was the sole director and shareholder of TCR Group Pty Ltd (TCR);
- the taxpayer acquired real property for \$865,000 on 19 March 2013, noting the intention to subdivide the block;⁴⁵
- the taxpayer transferred real property to TCR on 28 June 2013;
- the parent block was subdivided into four lots on 27 January 2016, with one of those blocks sold to a third party for \$2.4 million under a contract dated 6 January 2016;
- a second subdivided block was sold to a third party for \$600,000 under a contract dated 7 December 2016 as vacant land;
- TCR entered a building contract on 25 January 2017 to construct a home for \$1.4 million;
- the taxpayer (not TCR) entered into a contract to sell the property to a third party for \$4.128 million on 14 July 2018, with settlement occurring on 15 October 2018; and
- the title to the property had been transferred from TCR to the taxpayer on 9 October 2018 for \$2.25 million based on a professional valuation

The core of the dispute was in respect of the transaction that occurred on 9 October 2018, with the question being whether it resulted in a deemed dividend for the purposes of Div 7A ITAA36, noting that the related party transaction occurred for \$2.25 million while the property sold six days later to a third party for \$4.128 million.

The evidence of the third-party purchaser is interesting and should be read in its entirety at para 29 of the ART decision, but a particular statement is noteworthy and is set out below:

“His [the third party purchaser] view was that they [he and his now former wife] needed to make a ‘substantial offer above what was otherwise a benchmark considering what was available on the market at the same time and having regard to the fact that the Property lacked beach views and access’ in order to have the Property taken off the market so early in its sale campaign. He described himself as being in a ‘position of weakness’ in the negotiation for the sale, and that although he paid ‘a high price’ this was balanced against the convenience offered by the Property and the fact that they intended to hold it for the long term.”

The taxpayer succeeded in their arguments that the property was conveyed for its market value, being the \$2.25 million, because:

- notwithstanding the Commissioner's submission as to the veracity of the third party's statutory declaration:
 - he did appear as a witness at the hearing⁴⁶ and the subsequent separation of him and his wife supported his claim that he was willing to pay “over the odds” to acquire a holiday home quickly in an attempt to save his marriage and avoid going through the trouble of building something and instead opting for a turnkey solution; and
 - the purchaser's “anxiousness” to secure something quickly meant that the price paid (\$4.128 million) was more than what a willing but not anxious person was willing to pay;⁴⁷ and
- there was no reason to disregard the third party valuation obtained in May 2018 because:⁴⁸
 - it was not too far from the transaction date of October 2018;
 - it was detailed and there were no submissions made to the tribunal that any of the assumptions or methodology should be challenged;
 - the definition of “market value” adopted aligned with the principles set out in case law;
 - there were five comparable sales ranging from November 2016 to February 2018; and

- there was no limitation contained within the valuation (ie for stamp duty purposes only).

While a win for the taxpayer in this instance, it is worth noting that “[t]he Tribunal believes that the circumstances of this matter are unusual, particularly as they relate to the purchaser T Co. The Tribunal acknowledges that in more straightforward circumstances the actual price paid in an open market is likely to be compelling evidence of market value”.⁴⁹

Valuers

The answer to the question “do we need to engage a valuer?”, is yes.

A client’s enthusiasm sometimes overwhelms the importance of dotting the i’s and crossing the t’s, with many hoping to find someone willing to put their name to a figure of convenience (often years after the event) and citing the concern of costs to avoid formally briefing properly.

Unlike real property and Australia’s fixation with it as an investment class, non-real property assets do not have a “realestate.com.au” or RP Data equivalent. It therefore follows that a person with the necessary experience, qualifications and understanding of a valuation for tax purposes is required. The costs associated with such an exercise pale when compared to claiming the SBCs and subsequently being found to be ineligible. That path often results in penalties, and funds contributed under any of the retirement concessions to superannuation being assessed as excess non-concessional contributions. Most clients, when faced with that sobering reality, come around.

Once the necessity for a formal valuation is accepted, the quality of their brief becomes critical. At a minimum, a valuer should be:

- provided with the relevant commercial background;
- put on notice of the requirements of the form, basis and future use of the valuation (ie tax);
- provided with the relevant supporting documentation; and
- able to confirm their independence.

This is illustrated in the following sample letter.

Our Ref:

26 February 2026

Valuer Firm

PO Box 00000

BRISBANE QLD 400

By email:

Dear Sir

REQUEST FOR VALUATION QUOTE/PROPOSAL

We act for Trading Co Pty Ltd ACN 000 000 000 (T Co) and have instructions to ask you to submit a proposal and quote for the provision of a valuation in accordance with the instructions outlined below.

1. Background

- 1.1 T Co is a trading entity of which operates under the trading name ‘Trading Activities’.
- 1.2 The founding and current directors of T Co are undertaking a thorough review of the business structure, with a desire to:
 - (a) potentially facilitate a shareholder’s exit; and subsequently
 - (b) implement a corporate restructure (relying on income tax rollovers and concessions), ultimately improving income tax arrangements, saleability and asset protection.

In conjunction with this review, they are considering options to streamline and introduce appropriate business succession procedures.

2. Form, basis and use of valuation

- 2.1 In light of the background, our client seeks confirmation of the market value of T Co as of 30 June 2025 in order to assist them in determining:
 - (a) the value for an exiting shareholder’s interest in T Co;
 - (b) the value of an ownership interest in T Co for income tax purposes – noting that the valuation report prepared because of this engagement may be submitted to the Australian Taxation Office and used in administering the individual shareholders’ tax affairs. It may also be made available to other government agencies and departments, such as the Office of State Revenue.

3. Supporting documentation

- 3.1 To assist in the preparation of your quote, we **enclose**:
 - (a) Current company extract of T Co detailing ownership;
 - (b) Structure diagram for the group;
 - (c) T Co unaudited accounts for the 2024 and 2025 Financial Years;
 - (d) Financial Year to date T Co Profit and Loss Statement;
 - (e) Financial year to date T Co Balance Sheet.
4. If necessary, we can provide additional information upon request.

5. Independence

- 5.1 Please confirm in both your proposal/quote and in your final report that:
 - (a) you have no actual or perceived conflict of interest issues in this matter
 - (b) you have no actual or perceived personal or financial interests in this matter

- (c) any fee you receive for providing a report/advice is not dependent on the outcome or findings of that report/advice.

Please also undertake to immediately advise us and our client if any such interests or conflicts arise during the course of the proposed engagement.

Should you have any queries, please contact the writer.

Yours faithfully

Whether more than one valuation is required will depend on the circumstances. For the most part, the answer should be no. The exceptions would likely be limited to circumstances where, say, a valuation provides a figure that is very close to an SBC threshold (either above or below) or where the non-real property genuinely has no comparable basis. While a second valuer ought to be briefed, it is submitted that best practice would be to not provide them with the first valuation but instead let them know that a valuation has already been obtained and that an independent second valuation is required.

Conclusion

In conclusion, SBCs are not for the faint-hearted. Outside of the simplest examples, it is imperative that there are enquires and evidence of asset use, liabilities and how they came to be. Before filing a tax return claiming that SBCs apply, it would be worthwhile having your defence file prepared and reviewed just in case you are required to engage in a dispute.

John Ioannou, CTA
Principal Lawyer
Macpherson Kelley Lawyers

This article is an edited version of “Defence against the dark arts – mastering the small business CGT concessions” presented at The Tax Institute’s Private Business Tax Retreat held in the Gold Coast on 26 to 27 February 2026.

References

- 1 For example, the paper by Linda Tapiolas, “What do you mean my client doesn’t get a small business concession?”, presented at The Tax Institute’s WA Tax Retreat on 1 to 2 August 2024.
- 2 S 152-20(2)(b)(ii) ITAA97.
- 3 S 152-20(2)(b)(iii) and (iv) ITAA97.
- 4 Ss 328-125(2)(a)(ii) and 995-1 ITAA97.
- 5 S 328-125(2)(a)(ii) ITAA97.
- 6 [2014] FCA 362.
- 7 Now found in s 328-125 ITAA97.
- 8 Other than the “deemed affiliates” rule in s 152-47 ITAA97 which is limited in operation to the deeming of spouses and children.
- 9 ATO ID 2009/33.
- 10 [2013] FCAFC 32.
- 11 Noting that unpaid present entitlements (UPEs) generally are dealt with below under the heading “Which liabilities count?”.
- 12 See the fourth example in note 1 to s 108-5 ITAA97, being “debts owed to you”.

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- 14 Where its legislation extinguishes a creditor’s right to the debt on the expiry of the limitation period.
- 15 *Lonsdale Sand & Metal Pty Ltd v FCT* [1998] FCA 155; *Breakwell v FCT* [2015] FCA 1471, but compare *VL Finance Pty Ltd v Legudi* [2003] VSC 57 where it was found that an acknowledgment must be intended by the borrower and signing the financial statements alone was not sufficient.
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Death, estates and navigating the ATO

by Sally Preston, CTA, Partner,
Smart Solutions Tax Advisory

Managing a client's affairs after death is both a sensitive and technically challenging exercise. For tax practitioners, it marks the start of a detailed administrative and legislative workflow. This article offers a practical roadmap for handling the tax obligations of deceased estates within private group structures, examining how estate administration interacts with CGT, Div 7A of the *Income Tax Assessment Act 1936* (Cth), and broader commercial considerations. It equips advisers with the specific guidance needed to navigate the journey from the date of death through to the ultimate distribution of assets.

Overview

While the death of a client is a personal tragedy, for tax practitioners, it signals the beginning of a complex administrative and legislative process. This article moves beyond generalities to provide a technical roadmap for managing the tax affairs of deceased estates within private groups. It addresses the intersection of estate administration, CGT, Div 7A of the *Income Tax Assessment Act 1936* (Cth) (ITAA36), and business matters, providing practitioners with the specific knowledge required to navigate the period from the date of death through to the final distribution of assets.

The article begins by establishing the procedural groundwork required, including the interactions with the ATO and lodgment obligations.

We explore some of the matters arising during administration of the estate, including the role of the legal personal representative (LPR), their remuneration, present entitlement during administration, and deeds of arrangement.

Things get interesting when we look to CGT and how the law applies to the assets of the deceased and those transferred under the will or under other arrangements. We look at the 50% general discount, the main residence exemption, the potential of a "double death" scenario, and the small business CGT concessions.

A topic that may not apply to all clients, but which will likely be something you are required to address for those who

have more complex structures, is Div 7A. We look at what happens to these loans.

With an increasingly mobile client base, the tax residency of the deceased – and the beneficiaries – can drastically alter tax outcomes. The article analyses distributions to non-residents, the residency of the estate, and inbound distributions from foreign estates.

Then there are the tax matters that arise where a business was operated by the deceased, how different structures are impacted by death, and we look at some other specific matters that you may encounter associated with the death of a client.

Administration

The key steps

Administering a deceased estate involves several key steps:

- **appointment of the LPR:** an executor (if named in the will) or an administrator (if appointed by the court) is given legal responsibility for administering the estate;
- **obtaining probate or letters of administration:** the executor applies for probate (official recognition of the will), or the administrator applies for letters of administration if there is no will;
- **identifying and collecting assets:** the LPR identifies, locates and secures all assets of the deceased, including property, bank accounts, investments and personal belongings. Where a business is owned by the deceased, this includes all of the assets of the business. If the deceased is a shareholder in a company or a unitholder in a unit trust, this would include those interests;
- **business operation:** if there is a business that continues to operate during administration, the executor may need to make decisions about its ongoing management, sale or winding-up, and may be personally liable for losses if they continue to trade without proper authority or prudence;
- **paying debts and expenses:** the estate's assets are used to pay funeral expenses, testamentary and administrative costs, and any outstanding debts of the deceased, including the business debts;
- **dealing with tax obligations:** the LPR must lodge any outstanding tax returns for the deceased, including the business income and expenses, prepare a final tax return up to the date of death, and manage tax obligations for the estate during administration;
- **distribution of assets:** once debts and expenses are settled, the remaining assets (the residuary estate) are distributed to beneficiaries according to the will or, if there is no will, according to intestacy law. Where a business is included, this may be more problematic as decisions may need to be made around whether the business will be distributed as a whole, broken apart or sold during administration; and
- **ongoing trust obligations:** if the will specifies conditions (eg beneficiaries are minors or there are ongoing trusts), the LPR may continue to hold and manage assets as a trustee.

The administration is considered complete when all debts, expenses and legacies have been paid or provided for, and the residue of the estate is ascertained and distributed.

Legal personal representative

The LPR or executors are responsible for managing the deceased's tax affairs. This includes:

- lodging the final income tax return for the deceased, covering income up to the date of death;
- lodging income tax returns for the estate during the administration period and paying any tax due on income earned by the estate after death;
- managing tax affairs for any testamentary trust created by the will, including lodging trust tax returns and paying taxes as appropriate;
- retaining records to support amounts included in tax returns;
- handling any outstanding tax liabilities, including the possibility of seeking release from unpaid tax if the estate cannot pay; and
- dealing with specific assets such as trading stock, depreciating assets and CGT assets according to special rules that apply on death.

ATO processes

The ATO provides guidance on its website to navigate the minefield of administering taxation for a deceased and the estate. Before the ATO will provide the LPR with any information, it requires appropriate evidence of the death and who the LPR is. This will either be in person or by mailing certified copies. It takes up to 28 days for the ATO to update the deceased's records after they receive the notification of death and the required documents.

When the ATO is informed that someone has died, it removes the incumbent tax agent's access to their tax records as their authorisation ends on the individual's death.

To gain access, the LPR will need to appoint the tax agent (or appoint another one).

The deceased estate is required to apply for its own tax file number (TFN). If the estate is running a business where the deceased was a sole trader, it will also need to apply for an Australian business number.

Lodgments

The LPR must arrange to lodge a date of death tax return if any of the following applied to the deceased person in the income year in which they died:

- they had tax withheld from their income, including from interest or dividends;
- their taxable income was above the tax-free threshold; and
- they lodged tax returns in the income years before their death or had outstanding tax returns.

The LPR is also required to lodge tax returns for the estate to:

- report the income of the estate after the person's death, such as rental income or share dividends; and
- claim any tax refund or franking credits owed to the estate.

If a return needs to be lodged, the estate is treated as a trust for tax purposes. Trust tax returns may need to be lodged each year until the estate is finalised.

Tax rates

Ordinarily, income that is not distributed is taxed at the top marginal rate. During the first three years of a deceased estate, the LPR/tax agent can apply for the individual marginal tax rates to be applied to the income of the estate with the benefit of the full tax-free threshold.

Note that deceased estates do not get the benefit of tax offsets such as the low-income tax offset, and Medicare levy is not payable.

The three years of individual tax rates cannot be extended so should be taken into account by an LPR when wrapping up the estate!

Executor's remuneration

An often-overlooked issue is whether the executor should be compensated for their work in administering the estate. Executor payment may arise in several ways, including:

- a specific gift or payment provided for under the will;
- an agreement reached between the executor and the beneficiaries; or
- if no agreement is possible, an application by the executor to the Supreme Court for reasonable remuneration.

An executor may be awarded by the court up to 5% of the estate value – although, from the author's understanding, generally it will not be this much.

It is interesting to note that a payment made to an executor is taxable income according to ATO ID 2014/44. While it may be arguable that the commission is not ordinary income, the amounts may be caught under s 6-10 of the *Income Tax Assessment Act 1997* (Cth) (ITAA97) as statutory income. Section 15-2(1) ITAA97 provides that assessable income includes the value to the taxpayer of all allowances, gratuities, compensation, benefits, bonuses and premiums provided to the taxpayer in respect of, or for or in relation directly or indirectly to, any employment of or services rendered by the taxpayer.

Present entitlement during administration

IT 2622 explains that, while there is a fiduciary obligation for the executor or administrator on the death of a taxpayer, the beneficiaries have no interest in the assets of the estate, although they do have a beneficial right to see that the estate is properly administered.

Even though a will may provide beneficiaries with absolute and indefeasible interests in the capital or income of an

estate, under state and territory laws, those interests cannot crystallise until probate has been granted.

Whether a beneficiary is presently entitled to a share of the income of a trust estate for the purposes of Div 6 of Pt III ITAA36 depends on:

- the stage reached in the administration of the deceased estate;
- the terms of the deceased's will or codicil, trust law and the principles enunciated, and orders made by the courts; and
- whether any discretionary payments have been made to the beneficiary by the executor or trustee.

Income of a deceased estate in the income years before the administration of the estate is complete, is the income of the executors or administrators and is not income of the beneficiaries.

Beneficiaries cannot enjoy present entitlement to income derived by a deceased estate during the administration of the estate, with the exception outlined below.

During the intermediate stage of administration of a deceased estate, the point may be reached where it is apparent to the executor that part of the net income of the estate will not be required to either pay or provide for debts etc. The executor in this situation might, in exercise of the executor's discretion, in fact pay some of the income to, or on behalf of, the beneficiaries. The beneficiaries in this situation *will be* presently entitled to the income to the extent of the amounts actually paid to them or actually paid on their behalf. The fact that the estate has not been fully administered does not prevent the beneficiaries in this situation from being presently entitled to the income actually paid to, or on behalf of, the beneficiaries.

Where the administration of a deceased estate is completed during the course of an income year, ie part-way through the year, the longstanding practice of the ATO is to raise assessments on the basis that beneficiaries will be assessed on their share of the net income of the estate for that year to which they are presently entitled.

However, where the executors and beneficiaries are able to demonstrate, through the striking of accounts at the completion of administration, the actual amounts of income derived in the periods before and after the day on which the estate was fully administered, an apportionment may be made.

Practically, this may mean:

- where the assets of an estate are sold in the course of administering the estate, and the proceeds are paid out in the year of the sale to the beneficiaries, they may be presently entitled to the capital gain instead of the estate paying the tax; and
- where the estate is fully administered during an income year, unless appropriate records are kept, any income generated in that year may be income for the beneficiaries rather than the estate paying the tax.

Deeds of arrangement

The tax implications of a family agreement to share an estate differently – often formalised as a deed of family arrangement – depend on the nature of the assets and the manner in which entitlements are altered.

If beneficiaries agree to vary the distribution of estate assets before the estate is fully administered, the transfer of assets to beneficiaries under the new arrangement is generally treated as a transfer by the LPR, and CGT exceptions may apply. No immediate CGT liability arises at the point of transfer; instead, beneficiaries acquire their interests in the assets for a reasonable apportionment of the cost base and reduced cost base of the asset.

The ATO has issued TR 2006/14, which considers the tax impact of a deed of arrangement on the CGT position of a deceased estate. It states that:

“37. A taxpayer is not required to commence legal proceedings in order to establish, for the purposes of paragraph 128-20(1)(d), that they have a claim to participate in the distribution of the assets of the estate. A claim may be established by a potential beneficiary communicating to the trustee their dissatisfaction with the will.”

Further, it confirms:

“222. ... the Commissioner considers that for the purposes of paragraph 128-20(1)(d) a taxpayer must generally enter into a deed of family arrangement in respect of an asset prior to the legal personal representative completing the administration of the estate in respect of that asset.

223. In limited cases, an asset may, for CGT purposes, pass under a deed entered into after administration of the estate in respect of that asset has been completed. However the beneficiary must be able to demonstrate that a court would have been likely to entertain an application for family provision or an extension of time in which to make such an application at the time the deed was entered into.”

CGT on death

The following discussion summarises the CGT impact of death on the assets of the deceased for tax purposes.

Asset “passes” to LPR

When a taxpayer dies, a capital gain or loss from a CGT event that results from a CGT asset that was owned just before death is disregarded.¹

On the “passing” of an asset to the LPR (executor) or beneficiary, any capital gain or loss at that point is disregarded.²

Asset “passes” to beneficiary

An asset is “passed” to a beneficiary who becomes the owner of the asset:

- under the will (or as it is varied by a court order);

- by operation of an intestacy law (or as it is varied by a court order);
- because it is transferred by the LPR to satisfy an interest in the estate; or
- under a deed of arrangement, if:
 - the deed was entered into to settle a claim to participate in the estate; and
 - the only consideration given for the transfer of the asset was the variation or waiver of a claim to one or more other CGT assets of the estate.

An asset does not “pass” to a beneficiary due to a power of sale by the LPR.

General rules regarding cost base and acquisition date

The LPR or beneficiary is taken to have acquired the asset on the date of death.

If an asset was acquired by the deceased before 20 September 1985, the asset’s cost base (or reduced cost base) for the LPR or beneficiary is the market value of the asset on the date of death.

If an asset was acquired by the deceased after 19 September 1985, the cost base (or reduced cost base) is deemed to be:³

- where the asset was the deceased’s main residence just before they died – the market value on the day the deceased died, provided:
 - the residence passed to the LPR or beneficiary on or after 20 August 1996;
 - the residence was not being used to produce assessable income at the time the deceased died; and
 - the deceased was not then an “excluded foreign resident” (ie an individual who had been a foreign resident for more than six years continuously) at the time of death; and
- for other assets, it is the amount that would have been the cost base (or reduced cost base) to the deceased on the date of death.

General 50% discount

The requirements to be eligible for the 50% discount on a capital gain are that the taxpayer making the gain is an individual or a trust (among others), and the asset must have been acquired at least 12 months before the CGT event.⁴

The rules applying to the general 50% CGT discount are modified to consider an asset sold following the death of a taxpayer. Under these rules, in satisfying the 12-month requirement to be eligible to apply the 50% CGT discount:

- for an asset that was a pre-CGT asset of the deceased immediately before death, the asset will be considered to have been acquired by the LPR or beneficiary at the date of death; and
- for an asset that was a post-CGT asset of the deceased immediately before death, the asset will be considered to

have been acquired by the LPR or beneficiary at the time the deceased did.

Non-residents

Non-residents are no longer able to claim the 50% CGT discount on a capital gain to the extent that the capital gain accrued while a non-resident.⁵ For this rule, the timing of the acquisition of the asset by the non-resident is important.

A post-CGT asset that passed to the non-resident as the beneficiary of a deceased estate, is taken to have been acquired by the non-resident at the time the deceased acquired it.⁶ Therefore, the non-resident is taken to have held the asset as an Australian resident up to the deceased’s date of death. The period after the date of death is the period of non-resident ownership. If the asset was a pre-CGT asset, the non-resident would be taken to have acquired it at the deceased’s date of death.

Therefore, the 50% general discount is to be apportioned per the following:⁷

“(3) If:

- (a) the discount testing period starts on or before 8 May 2012; and
- (b) you were an Australian resident (but not a temporary resident) on 8 May 2012;

the following (expressed as a percentage) is the percentage resulting from this section:

Number of days in discount testing period	–	Number of apportionable days that you were a foreign resident or *temporary resident
2 × Number of days in discount testing period		

where:

‘apportionable day’ means a day, after 8 May 2012, during the discount testing period.”

Where, instead, CGT event K3 is triggered by an asset of the deceased estate passing to a non-resident, the non-resident will be outside of the Australian tax laws when the shares are subsequently sold (if they remain a non-resident). Therefore, there is no need to access the 50% general discount.

Main residence

A capital gain or loss made on from a CGT event in relation to the deceased’s main residence is disregarded where the deceased is not an excluded foreign resident just before death and:⁸

- the property was acquired pre-CGT; or
- where it was acquired post-CGT, it was the deceased’s main residence just before death and it was not being used to produce assessable income; and
- the property is sold within two years (or further time allowed by the Commissioner) and the property was not being used to produce assessable income just before their death; or

- where the property was acquired by the deceased pre-CGT, and from the death until the ownership interest in the property ends, it was the main residence of:
 - the spouse of the deceased (except where they were living permanently separated and apart);
 - an individual who has a right to occupy the dwelling under the will; or
 - the individual who inherited the property under the will.

Note that there are specific CGT events that this applies to. The most common is where a disposal occurs (CGT event A1).

If the above is not satisfied, there may be a partial exemption available.⁹

Right to occupy

In TD 2026/D1, the Commissioner has proposed that, under the cited case law:

- the term “right to occupy the dwelling under the deceased’s will” is limited to circumstances where a right to occupy has been expressly granted under the terms of the will to an individual specifically named in the will;
- the executor granting the right to occupy does not qualify for this exemption, nor does a right under a separate agreement, such as a deed of arrangement;
- where the right to occupy is for a limited period, occupying the property past this time will mean that the exemption cannot be applied;
- a family provision order granting the right to occupy will be treated as though it was a right under the will; and
- the term “will” does not extend to clauses in a testamentary trust that grants the right to occupy.

The above points may have significant implications for the drafters of wills going forward and require the review of wills already in place if the intention is that a particular person is to be allowed to occupy the property, ie a life estate.

Life estates

TR 2006/14 discusses the consequences of creating life and remainder interests in property (whether between living persons or by testamentary provision) and of any subsequent dealings in those interests. Note that the topic of life and remainder interests is in itself a large topic, and this article only provides a summary where a “right to occupy under the will” is created.

TR 2006/14 confirms:

- where a legal life interest is created under a will, the executor is deemed to have acquired the original asset on the date of the deceased’s death similar to other assets of the estate;¹⁰
- there are exceptions to CGT events E5, E6 and E7 arising when an executor transfers a legal life and remainder interest from the estate to the beneficiaries;
- any gain or loss that the LPR would make from CGT event A1 happening would be disregarded;

- like other assets that pass through an estate, the life interest and the remainder interest holders are taken to have acquired the interest at the date of death;
- there is to be a reasonable apportionment of the cost base between the life and remainder interest;
- on the death of the life interest owner, CGT event C1 occurs;
- the death of the life interest owner has no consequence for the remainder interest owner as they do not acquire an asset, their existing asset is merely enlarged – which means no amount is added to the cost base; and
- it is noted that a right to reside in a property for life (or for x years) is not equivalent to a legal or equitable life interest.

Double death

At the time of writing this article, we were waiting on the Commissioner to release a draft determination on the CGT consequences under Div 128 ITAA97 when a beneficiary of a deceased estate dies before a CGT asset of the deceased estate passes to them.

Law Council of Australia feedback during consultation

The Law Council of Australia has released its response to the ATO during the consultation period on the draft determination which sets out the Commissioner’s view on the application of the CGT roll-over in Div 128 when there is a chain of deaths. In the response, it is shared that para 5 of the draft determination states:

“Where a beneficiary of a deceased estate dies (second deceased) before a CGT asset passes to them, section 128-15 does not apply to disregard any capital gain or capital loss the LPR of the second deceased estate makes when the asset passes to the beneficiary of the second deceased’s estate. This is because the asset was not one which the second deceased owned just before they died.”

The ATO’s interpretation of the relevant date for “owning” an asset is contained in para 10 of the draft determination:

“A beneficiary of a deceased estate is not considered to own the relevant asset/s of the estate until:

- where there is a valid will, probate of the will is obtained
- where a deceased person dies intestate, letters of administration have been obtained.”

The ATO therefore concludes that, where a beneficiary dies before probate or letters of administration are granted in relation to the first deceased’s estate, Div 128 roll-over relief does not apply when the asset is later transferred from the second deceased’s estate to the final beneficiary.

The Law Council of Australia made the following recommendations, not only in regard to the above but also in other matters within the draft determination:

- Div 128 roll-over relief should be available when a CGT asset passes from a first deceased to a second deceased and then to the second deceased's beneficiaries or LPR, by deeming the second deceased to have "owned" the asset immediately before their death;
- the draft determination should be amended to clarify that the requirement for probate or letters of administration as a pre-condition to the transmission of assets is jurisdictionally dependent and not required in all cases;
- noting the broader recommendations for changes to the draft determination, specific regard should be had to roll-over relief under Div 128 where assets are intended, under coordinated wills, to pass to the same beneficiary;
- the legislation or associated guidance should confirm that, for the purposes of Div 128, the relevant inquiry is whether an asset has passed under s 128-20 ITAA97, and not whether probate or letters of administration have been issued. This clarification should be accompanied by provisions to ensure that beneficiaries or LPRs are not disadvantaged by administrative or judicial delays beyond their control;
- the ATO should clarify the distinctions between "when administration is complete", "present entitlement", and "ownership" for CGT purposes, ensuring that these concepts are consistently and accurately applied in the draft determination; and
- the draft determination should expressly address the interaction of Div 128 with all relevant state and territory survival provisions, including s 39 of the *Wills Act 1997* (Vic), s 35 of the *Succession Act 2006* (NSW), and s 49 of the *Wills Act 2008* (Tas), to avoid unnecessary CGT events and ensure consistent national application.

Private binding rulings

In the absence of the draft determination, we can refer to a private binding ruling for guidance on what the Commissioner's view may be.

PBR 1052401863203 was issued 29 July 2025 and has in part been replicated here.

The relevant facts were:

- the first deceased owned property as a main residence (she inherited from her husband on his death);
- the first deceased died and her will specified that her son (the second deceased) was the executor and trustee of her estate;
- the will specified for the estate to pay debts, funeral expenses and duties in relation to her estate and any remainder was left to the second deceased. However, in the event of his death, for them to be split equally between his children;
- the second deceased treated the property as his own, but did not obtain probate and so the land remained in his mother's name until his death. He held the property on trust for himself as the sole beneficiary;

- the applicant was acting as executor of the estate of the second deceased and the administrator for the first deceased; and
- under the second deceased's will, the property was left to his grandchildren, with son no. 1 retaining a life interest in the property.

Without being caught up in this ruling (which the author recommends you read for yourself), the key takeaway is that, because the asset was not owned by the second deceased at the time of his death, a transfer of the asset under his will could not be disregarded under Div 128. The reasoning was as follows:

Under s 128-15(3) ITAA97, any capital gain or loss made by the LPR is disregarded. A CGT asset owned by the deceased person passes to a beneficiary if the beneficiary becomes the legal owner of the asset or becomes absolutely entitled to the asset as against the executor/trustee.

An asset passes to a beneficiary in the circumstances set out in s 128-20.

Before a beneficiary of a deceased estate owns the relevant asset of the estate, certain steps are required to be undertaken as part of the administration of the deceased estate. During this time, the executor's duties consist of paying debts and expenses and distributing the property of the deceased among the persons entitled under the will.

IT 2622 outlines the stages of administration of an estate of a deceased person as follows:

1. Burial of deceased.
2. Executor appointed by will or administrator appointed by Court.
3. Probate applied for and granted by Court.
4. Assets vest in executor who pays debts and testamentary expenses:
 - Initial stage – net income of estate is applied to reduce debts, etc.
 - Intermediate stage – part of the net income of estate that is not required to pay debts, etc., may be paid to beneficiaries.
 - Final stage – debts, etc., are paid or provided for in full and net income of estate is available for distribution.

ADMINISTRATION OF ESTATE IS COMPLETE"

In relation to real property, where there is a valid will, a beneficiary of a deceased estate is not considered to own the relevant asset of the estate until probate is obtained and the residue of the estate is ascertained. IT 2622 provides that an executor of a deceased person's estate who leaves a will must obtain probate of the will, which is the official proving of the will and provides the executor with authority to deal with the estate (para 2 of IT 2622). Even though a will may provide beneficiaries with absolute and indefeasible interests in the capital or income of an estate, under state and territory laws, those interests cannot crystallise until probate has been granted (para 4 of IT 2622).

During the time a deceased estate is being administered, a beneficiary of the estate has no right to, or ownership interest in, individual assets of the estate.¹¹

IT 2622 confirms that the beneficiaries of a deceased estate become beneficial owners of the assets of the deceased after the estate is fully administered (therefore, not until probate is granted). At para 2, IT 2622 provides:

“On the death of a taxpayer, the property of the deceased taxpayer passes to his or her estate, legal control over which is exercised by an executor or administrator. The executor or administrator, in effect, steps into the shoes of the deceased and winds up the deceased’s personal affairs. An executor of a deceased person who leaves a will must obtain probate of the will. This is the official proving of the will and provides the executor with authority to deal with the estate.”

Where a beneficiary of a deceased estate dies (the second deceased) before a CGT asset passes to them, s 128-15 does not apply to disregard any capital gain or loss that the LPR of the second deceased estate makes when the asset passes to the beneficiary of the second deceased estate. This is because the asset was not one which the second deceased owned just before they died.

Therefore, the second deceased is not the owner of the asset and, accordingly, Div 128 cannot be applied to disregard the capital gain or loss that arises when the property is transferred in accordance with the second deceased’s will.

Small business CGT concessions

The small business CGT concessions may be available where:¹²

- a CGT event occurs for a CGT asset that forms part of the estate of an individual or was owned by joint tenants and one of them dies;
- the asset has been passed to an LPR, beneficiary, the surviving joint tenant, or a testamentary trust;
- the deceased would have been entitled to reduce or disregard a capital gain if a CGT event had happened in relation to the CGT asset just before their death; and
- a CGT event happens in relation to that asset within two years of the individual’s death.

The Commissioner can extend this period in certain circumstances.

The small business CGT concessions are modified so that:

- the 15-year exemption is modified to only require the deceased to have been 55 years or over, or permanently incapacitated, at the time of the CGT event. That is, the requirement that the CGT event happens in relation to the retirement of the individual does not need to be met; and
- the small business retirement exemption is modified so that there is no need for the amount to be paid into a superannuation fund, even if the deceased was less than 55 years of age just before their death. This reflects the

likely outcome if the deceased had disposed of the asset before death and paid the amount into a superannuation fund. The amount would be released to beneficiaries after death.

Example

Oliver owned a commercial property for his custom furniture business, Bespoke Creations Pty Ltd, which he owned 100% of. He acquired the property for \$2 million on 1 July 2018. Oliver passed away on 15 March 2024, leaving the property to his sister, Clara, who chose not to continue the business. The property remained vacant until Clara sold it for \$4 million on 26 June 2025.

Before his death, Oliver sold another business in March 2023, realising a \$100,000 capital gain on its goodwill. He claimed the CGT small business roll-over, intending to reinvest within two years; however, his death intervened. Oliver qualified for the small business CGT concessions and had not exhausted his CGT retirement limit. Clara inherited all of his assets with no capital losses.

Under s 152-80 ITAA97, Clara can access the small business CGT concessions that Oliver would have qualified for if a CGT event occurs within two years of his death. The conditions are:

1. the asset must be part of the deceased’s estate;
2. the asset must devolve to the LPR or a beneficiary;
3. the deceased would have qualified for concessions if a CGT event occurred before death; and
4. a CGT event must occur within two years of death.

Clara can apply for the 50% small business reduction, retirement exemption, and CGT roll-over relief for the property sale because:

- the property was part of Oliver’s estate;
- it passed to Clara as per his will;
- Oliver would have qualified for the concessions before his death; and
- the CGT event (sale) occurred within the allowable period.

The capital gain is calculated as the sale price of \$4 million minus the cost base of \$2 million, resulting in a \$2 million gain. As Clara is treated as acquiring the property at Oliver’s death date (15 March 2024), she qualifies for a 50% discount since she held it for over 12 months.

This is calculated as:

- gross capital gain: \$2,000,000
- less 50% CGT discount: \$1,000,000
- net capital gain: \$1,000,000
- less 50% CGT active asset discount: \$500,000
- less retirement exemption: \$500,000
- net capital gain: \$0.

Regarding the goodwill gain, CGT event J5 would normally apply if a replacement asset is not acquired within two

years. Since Oliver died before reinvesting, the deferred gain is disregarded, and the gain does not pass to Clara.

Division 7A

Where an individual dies with loans in their own name from a private company within their business group, several Div 7A issues arise. Common scenarios include:

1. a new “fresh” loan was made to the individual in the year of death;
2. there is a non-complying loan of a prior year that was detected after death; and
3. there is a complying loan of a prior year in place prior to death.

For the purposes of the discussion below, assume that there is a loan from a company directly to the deceased, and the deceased is an associate of a shareholder of a company under s 318 ITAA36.

Loan from company to deceased: year of death

A deemed dividend arises under s 109D ITAA36 where a loan is made that is not repaid before the lodgment day of the tax return for the year it was made. However, the dividend is deemed to arise at the end of the year in which the loan related.

It follows that, where the person borrowing the amount dies before the end of the income year, they cannot be deemed the dividend.

In this case, the next question is:¹³

“Is a private company taken, under section 109E of the *Income Tax Assessment Act 1936* (ITAA 1936), to have paid a dividend to the taxpayer, the executor of the deceased estate of a shareholder in the company, in respect of a loan the company made to the shareholder before he died?”

The ATO’s view in ID 2002/741 is, no, the entity to whom the private company is taken to have paid the dividend must be the same entity to whom the private company made the amalgamated loan.

On this basis, s 109D cannot apply to treat the loan as a deemed dividend to the deceased, nor can it be a dividend to the estate.

Prior year non-compliant loan from company to deceased

Ordinarily, where there was a loan that was not placed under a Div 7A compliant loan agreement and that also has not been repaid by the due date of the income tax return of the year of the loan, s 109D deems this to be a dividend.

If the error is detected during the process of administering a deceased estate, the executor may apply to the Commissioner for relief under s 109RB ITAA36, which allows the Commissioner to disregard the deemed dividend or allow the dividend to be franked.

The Commissioner is empowered to do this where the error arises because of an honest mistake or inadvertent omission. In applying this discretion, the Commissioner must have regard to the circumstances.

TR 2010/8 outlines the criteria and evidentiary requirements for the exercise of this discretion. Some considerations include:

- ignorance – while it may be arguable that the taxpayer simply did not know that a Div 7A issue existed, it may be hard to argue that, if a tax agent is used to lodge the income tax return, this was not “deliberate behaviour to remain ignorant”. Further, it may be also difficult to argue what the deceased did or did not know when they are no longer available to attest to this;
- deliberate indifference or wilful blindness – this cannot be a valid excuse;
- mistakes or omissions by other entities, or errors that commonly or repeatedly occur – these may be acceptable, but only if supported by objective evidence rather than mere assertions.

PS LA 2011/29 provides guidance as to the process required for the Commissioner to exercising the discretion under s 109RB.

Complying loans

If a complying loan was already in place prior to the individual’s death and had been fully compliant in earlier years, the loan does not cease simply because the borrower has died.

Instead, the executor takes on responsibility for ensuring that the loan remains compliant. This may be by making the required minimum yearly repayments for the income year in which death occurs, repaying the loan in full, or declaring a dividend and treating this as a repayment for Div 7A purposes.

Death and residency

Non-resident beneficiaries

Where a resident estate passes an asset of the estate to a non-resident beneficiary, CGT event K3 occurs. This capital gain is triggered where an individual dies and a CGT asset they owned just before dying passes to a beneficiary in the estate who (when the asset passes) is a foreign resident. This CGT event only arises where the deceased is an Australian resident at the date of death and the asset is not “taxable Australian property”.¹⁴

The reason that this is exempt is because non-residents are still required to pay Australian tax on taxable Australian property. Therefore, the standard cost base rules can be applied where taxable Australian property is transferred to a non-resident. So, CGT event K3 is focusing on assets that may otherwise escape tax in Australia by passing to a non-resident.

A capital gain is made if the market value of the asset on the date of death is more than the asset’s cost base. The time of

the event is just before the date of death, and the event is taken to have occurred to the deceased.

Also consider circumstances where a deceased had once been an Australian resident and acquired the non-taxable Australian property while they were a resident. On ceasing to be an Australian resident, CGT event I1 would have been triggered. At the time of ceasing to be an Australian resident, the deceased would have paid tax based on the market value for any non-taxable Australian property – or at least they should have. They also had the choice to elect that the capital gain be disregarded, and the asset be treated the same as taxable Australian property would be treated until the asset is sold or they again become an Australian resident.¹⁵

“The LPR or beneficiary is taken to have acquired the asset on the date of death.”

And finally, consider circumstances where an Australian resident dies and the non-resident beneficiary is intended to receive taxable Australian property under the estate. Foreign resident CGT withholding would apply when the beneficiary sells the property. If this withholding is higher than the tax otherwise paid, for example, where the property was the main residence of the deceased, the beneficiary would need to lodge an income tax return in Australia to claim the credit for the withholding. This likely means they would need to have a TFN, MyGov etc. These types of circumstances may be a critical factor for an executor or an adviser of the deceased estate when deciding to settle an estate via selling assets during administration and/or looking at how a deed of arrangement may be used to mitigate any excessive tax or administration.

Residency of the LPR

For Australian tax purposes, the residency status of a deceased estate is generally determined by the residency of the executor(s) administering the estate.

Under s 95(2) ITAA36, a trust estate is a resident if the:

- trustee was a resident at any time during the year of income; or
- the central management and control of the trust was in Australia at any time during the year of income.

If there are two executors and one is a non-resident, the estate may be treated as a non-resident estate for tax purposes if the non-resident executor is actively involved in the administration of the estate.

The ATO considers the place where the central management and control of the estate is exercised. If central management and control is outside Australia due to the involvement of a non-resident executor, the estate may be

treated as a non-resident. It may also be a resident in two jurisdictions.

So why does it matter if the deceased estate is a non-resident?

For tax purposes, the practical effect is that, if any executor is a non-resident and exercises significant control, the estate may lose access to the concessional tax treatment available to resident estates and may be taxed as a non-resident trust, with higher rates and different rules applying. For example,

- access to the 50% CGT discount may be lost;
- the estate will not have access to the tax-free threshold applicable to residents during the first three years and so will be taxed at a higher rate; and
- the foreign resident withholding regime may apply to any sale of land by the estate.

TD 2017/23 states:

“8. Subsection 95(1) of the ITAA 1936 requires the trustee of a trust estate to calculate the net income of the trust for a year of income as if the trustee were a resident taxpayer (the residency assumption). Residents are required to include capital gains and capital losses from all sources in the calculation of their net capital gain (which forms part of the net income of the trust).

9. Section 855-10 of the ITAA 1997 provides that the trustee of a trust that is a foreign trust for CGT purposes disregards a capital gain or a capital loss if the relevant CGT event happens in relation to a CGT asset that is not “taxable Australian property.”

And:

“1. ... Where a CGT event happens to a CGT asset of a foreign trust for CGT purposes and that asset is not “taxable Australian property”:

- the trustee disregards any capital gain (or capital loss) from that event in calculating the net income of the trust under subsection 95(1) of the ITAA 1936, and
- Subdivision 115-C of the ITAA 1997 does not treat the trust’s beneficiaries as having capital gains (or make the trustee assessable) in respect of the event.

2. However, if an amount attributable to such a gain is paid or applied for the benefit of a resident beneficiary of the trust, the amount may be included in the beneficiary’s assessable income under section 99B of the ITAA 1936.”

Consider, therefore, where the trust makes a distribution of a capital gain to an Australian beneficiary. If s 99B ITAA36 applies, the amount that the beneficiary is taken to receive will not be able to access the 50% CGT discount or be applied to reduce capital losses, which it may have done if the estate was an Australian resident.

For a non-resident beneficiary, what happens then?

Under s 855-10 ITAA97, a capital gain or loss is disregarded for foreign residents, or trustees of foreign trusts, and the property is not taxable Australian property. However, we

would assume that CGT event K3 would apply where the deceased was a resident at the time of death and these assets pass to non-resident beneficiaries, regardless of the residency of the estate.

Distributions from non-resident deceased estates

Following on from the discussion above, s 99B applies to include an amount received from a non-resident deceased estate in the taxable income of an Australian resident beneficiary unless an exception applies. The main exception is for corpus of the estate. However, TD 2017/24 takes the view that a distribution from a net capital gain is not corpus of the estate. Therefore, having the LPR sell the assets, finalise administration of the estate, and distribute cash instead, does not alleviate the tax in Australia.

Taxation of other business assets

Trading stock

When you dispose of an item of trading stock outside the ordinary course of business, what you get for it is included in your assessable income (under s 6-5 ITAA97).¹⁶ If an item stops being trading stock for any other reason, an amount is generally included in the owner's assessable income to account for the reduced stock amount. This includes when the owner dies.¹⁷ In this case, the market value of the trading stock at the date of death is included in the assessable income of the deceased in their tax return (prepared by the LPR). However, the LPR of the deceased estate can make an election¹⁸ to use an alternative value for the trading stock, subject to certain conditions.

The LPR may elect to include the trading stock at the value it would have had at the end of the income year if the deceased had not died (ie the book value or closing stock value), rather than market value. This election can only be made if:

- the business continues to be carried on after death; and
- the trading stock continues to be held as trading stock of that business.

For standing or growing crops, crop-stools, or trees planted and tended for sale, the LPR may elect to value these at nil instead of market value, but this does not apply to ordinary trading stock.

If the election is made, the business is treated as continuing, and the closing value of trading stock in the deceased's return becomes the opening value in the estate's first return.

The election must be made before the deceased's return for the period up to death is lodged, or within such extended time as the Commissioner allows.¹⁹

Lodging the return with the elected value is generally sufficient evidence of the LPR's election.

Depreciating assets

The decline in value of a depreciating asset is available for a taxpayer where the asset is held and used (or installed

ready for use) for the purposes of producing assessable income.²⁰ This requirement would cease on the death of the owner of the asset.

On the death of the owner, a balancing adjustment event occurs,²¹ giving rise to an assessable or deductible balancing adjustment, calculated as the difference between the termination value and the adjustable value of the asset.²²

The termination value of a depreciating asset that the owner stops holding due to death, and which starts to be held by the LPR, is the asset's adjustable value on the date of death or, if the asset is part of a low-value pool, so much of the closing pool balance that is reasonably attributable to the asset. Based on this, no balancing adjustment should arise in the hands of the LPR. Where the asset passes directly to the beneficiary or joint tenant, the termination value is the market value of the depreciating asset on the date of death.²³ This means that a balancing adjustment equal to the difference between the market value and the depreciated value would arise.

Business receivables and work in progress

Section 15-50 ITAA97 deals with income derived from work in progress for certain professionals, such as lawyers, architects and accountants. "Work in progress" is defined in s 25-95(3) ITAA97 as:

- “(3) An amount is a **work in progress amount** to the extent that:
- (a) an entity agrees to pay the amount to another entity (the **recipient**); and
 - (b) the amount can be identified as being in respect of work (but not goods) that has been partially performed by the recipient for a third entity but not yet completed to the stage where a recoverable debt has arisen in respect of the completion or partial completion of the work.”

The value of work in progress is included in assessable income when it is derived, typically when the fee is billed or received, rather than when the work is performed. This is distinct from the trading stock provisions under s 70-105 ITAA97 which apply to businesses holding trading stock at the time of death.

On the death of a business owner, s 70-105 generally requires the market value of trading stock (which may include work in progress if it is treated as trading stock) to be included in the deceased's assessable income up to the date of death. However, if the business is a professional practice to which s 15-50 ITAA97 applies, work in progress is not treated as trading stock and is only brought to account for tax purposes when the income is derived (ie when the fee is billed or received), not at the date of death. This means that, for professional practices covered by s 15-50, the death of the owner does not trigger an immediate tax event for work in progress; instead, the income from work in progress will be assessed when it is actually derived by the estate or successor.

Impact of structure

The implications of the death of a business owner or controller differ depending on the business structure, that is, sole trader, partnership, trust or company, or a combination of these.

Sole traders

Where the deceased operated the business as a sole trader, the business and assets pass to the estate on their death.

From a business perspective, the death of a sole trader can have a significant impact on the operations of the business. The LPR is expected to step in and:

- assess the business status: this may require evaluating the financial health, liabilities and assets of the business;
- engage with stakeholders: there may be employees, key suppliers and customers that need to be considered;
- determine the appropriate course of action: this may be to continue trading the business, sell it or transfer it to a beneficiary; and
- ensure compliance: the executor will need to ensure that the appropriate licences, contractual obligations and any other legal requirements are maintained.

If a LPR is in a position where they do not have the requisite skills to undertake the above, they would need to seek assistance and advice in relation to their role and obligations.

As identified above, where the business operated by the sole trader holds depreciating assets, work in progress or receivables or trading stock, the LPR needs to be aware of the potential tax implications that death has on these items.

Partnerships

A “partnership” is defined for tax purposes as:²⁴

“*partnership* means:

- an association of persons (other than a company or a limited partnership) carrying on business as partners or in receipt of ordinary income or statutory income jointly; or
- a limited partnership.”

A general law partnership, as described in the first limb of para (a) of the definition of a partnership, is “an association of persons (other than a company or a limited partnership) carrying on business as partners”.²⁵

It is therefore “easier” to fall under the definition of a tax law partnership than it is a general law partnership, as the term encompasses more situations.

The impact of the death of a partner in a general law partnership is governed by both partnership law and the terms of the partnership agreement.

Under the Partnership Acts, unless the partnership agreement provides otherwise, the death of any partner dissolves a general law partnership. A partnership agreement may contain provisions that allow the

partnership to continue among the remaining partners after a partner’s death. In such cases, the surviving partners may form a new partnership and the deceased partner’s share is dealt with according to the agreement, often involving payments to the deceased’s estate.

The estate or LPRs of the deceased partner do not automatically succeed to a beneficial interest in specific partnership assets. Instead, they are entitled to the deceased’s share of the partnership, which is typically calculated as the surplus of assets over liabilities.

If the partnership is dissolved, a tax return is lodged for the period up to the date of death, and the deceased’s share of income or loss is included in their final return.

If the partnership continues (a “technical dissolution”), the partnership is treated as continuing for tax purposes, and a single tax return is lodged for the whole year, with income or loss apportioned as per the agreement.

The above special rules regarding trading stock and depreciating assets, including potential roll-over relief and market value adjustments at the date of death, may apply.

If the surviving partners continue to use the deceased’s share of partnership property, the estate may be entitled to interest or a share of profits attributable to that share until final settlement.

Trusts

The impact of death on a trust in Australia depends on the type of trust and the role of the deceased (eg whether they were the appointor, trustee or beneficiary).

Appointor

The impact of the death of an appointor in a family or discretionary trust depends primarily on the provisions of the trust deed. Most trust deeds allow a sole appointor to nominate a replacement appointor, often through a will. If a replacement is not nominated, court involvement may be required to appoint a new appointor.

If the trust deed is silent on succession, the LPR of the deceased appointor may take over the role, at least temporarily, and may have the power to appoint a replacement.

Where there are multiple appointors, the surviving appointors usually continue in their role. If the deceased was the sole appointor, the deed should be checked for any succession provisions or mechanisms for appointment by beneficiaries or the trustee.

Trustee

The death of a trustee has several important legal and practical consequences for the administration of a trust in Australia. A new trustee must generally be appointed to ensure the ongoing administration of the trust. The process for appointing a new trustee is typically set out in the trust deed or, if not, under relevant state or territory trust legislation. The court may also intervene to appoint a new trustee, if necessary, with the primary consideration

being the interests of the beneficiaries and the proper administration of the trust.

The LPR (executor or administrator) of the deceased trustee's estate may temporarily assume certain responsibilities, particularly if the deceased was the sole trustee, until a replacement is formally appointed.

Trust property does not form part of the deceased trustee's personal estate. Instead, the property vests in the new or continuing trustees, or, in some cases, temporarily in the public trustee or a court-appointed trustee until a new trustee is appointed.

Beneficiary

The impact of the death of a beneficiary of a discretionary trust in Australia depends on the terms of the trust deed and the nature of the beneficiary's interest. In a discretionary trust, beneficiaries generally do not have a fixed entitlement to trust property; instead, the trustee has discretion to distribute income or capital among a class of beneficiaries. If a beneficiary dies, the following considerations typically apply:

- the deceased beneficiary's interest in the trust does not automatically pass to their estate, as they do not have a proprietary interest in the trust assets unless the trustee has made a distribution in their favour prior to death;
- the trustee retains discretion to distribute trust income or capital to the remaining beneficiaries or to any new beneficiaries as permitted by the trust deed;
- if it is permitted by the trust deed, the deceased beneficiary's LPR may be added as a beneficiary, but this is not automatic and depends on the trust's terms; and
- the death of a beneficiary may trigger a review of the class of beneficiaries and may require the trustee to consider whether to amend the trust deed or update records to reflect the change.

For tax purposes, any distribution made to the deceased beneficiary prior to death may be included in their final tax return, but future distributions will not be made to them or their estate unless specifically provided for in the trust deed.

Family trust elections

It is important to consider the impact of the death of a key individual where the trust has a family trust election in place. Note that a family trust election cannot be made specifying a person who has already died!

These elections essentially lock the entities into the particular "family group" for the purposes of making distributions. The impact of this is that family trust distribution tax may be imposed on distributions outside of the group. This means that, where the specified person dies, further agreements cannot be made to bring other entities into the group. Moving forward, this can have significant tax implications for the group structure.

Companies

If the sole director and shareholder of a proprietary company passes away, the executor or administrator of their estate is permitted to appoint a new director.²⁶ This new director may be the executor or administrator themselves, or another individual.

The newly appointed director will have the legal authority to manage the company, inheriting all powers and responsibilities that the deceased director held. This includes the ability to access bank accounts and make operational decisions for the company.

The new director can ensure that the company continues to function until the shares are transferred to the beneficiaries. The beneficiaries then have the option to appoint new directors or to dissolve the company.

In the absence of a director, the company may struggle to operate effectively, as there will be no one with the legal authority to make decisions and oversee management. For instance, the company may be unable to:

- buy or sell products and services;
- access its bank accounts;
- pay bills; and
- compensate employees.

This situation could lead to confusion and distress for family members, employees and suppliers, potentially diminishing the company's value.

If the sole director and shareholder has a valid will, the process for appointing an executor can be streamlined, enabling the quick appointment of a new director.

If the sole director and shareholder dies intestate (without a will), a relative or another suitable individual must apply to the local Supreme Court for authorisation to manage the estate and appoint a new director. This authorisation is referred to as "letters of administration".

The process of obtaining these letters can take some time, potentially several months.

In cases where there are no relatives or individuals able to manage the estate, a public trustee may be appointed. The time required for a public trustee to take over management of the estate could also extend over several months.

A company is a separate legal entity, so the death of a shareholder or director does not directly affect the company's tax obligations. Shares owned by the deceased pass to the estate or beneficiaries, potentially triggering CGT events. The company continues to lodge its own tax returns and pay tax at the company rate. If the deceased was a key controller, succession planning and changes in directorship may be required, but the company's tax position remains unchanged.

Other tax matters

Continuity of ownership: losses

The death of a shareholder can affect the continuity of ownership in several ways. For tax purposes, where a

shareholder dies, their beneficial ownership of shares is deemed to continue as long as the shares are held by the trustee of the deceased's estate or by a beneficiary who receives them from the estate. This means that, for tax purposes (such as the continuity of ownership test for loss recoupment), the company is not considered to have failed the test simply because of the shareholder's death.²⁷

Insurance payouts

As outlined in TD 2007/4, where a life insurance policy is taken out and the proceeds are paid out following death, ordinarily this would give rise to CGT event C2²⁸ because the rights under the policy have ended. However, an exemption for the capital gain or loss is provided under s 118-300 ITAA97.

Under s 118-300, an amount paid out on a life insurance policy is exempt from CGT where it is paid out to:

- the original owner of the policy;
- an entity that acquired the policy for no consideration;
- a beneficiary (including an LPR) on a subsequent payment made by the trustee that is attributable to such policy or instrument; or
- a complying superannuation entity.

A "policy of insurance on the life of an individual" is not limited to a life insurance policy within the common law meaning of that term. It also includes other life insurance policies,²⁹ but only to the extent that those policies provide for a payment to be made if an event happens that results in the death of an individual. This means that the term includes the payment of a "terminal illness benefit" where it is essentially a pre-payment of a death benefit.

A payment under a trauma policy may be exempt under s 118-300 if it is paid in respect of the death (rather than an injury) of the insured and the other conditions in the provision are satisfied. A payment under such a policy in respect of a disability will not be exempt under s 118-300, but such payment may be exempt under s 118-37 ITAA97 as compensation or damages.

Key person insurance

The term "key person insurance" generally refers to insurance on the life of a director, partner, employee or other key person associated with a business. The type of policy may be life insurance and/or sickness/accident insurance.

If a business takes out a policy on the life of a key person, the taxation of any amounts paid out under the policy depends on the purpose of the amounts. For example, if the insurance is paid out to fund a shortfall in revenue, the insurance receipt is more likely assessable income:³⁰

"... in general, insurance moneys are to be considered as received on revenue account where the purpose of the insurance was to fill the place of a revenue receipt which the event insured against has prevented from arising or of any outgoing which has been incurred on revenue account in consequence of the event insured

against, whether as a legal liability or as a gratuitous payment actuated only by consideration of morality or expediency."

IT 155 states:

"9. Examples of situations in which premiums on accident or term policies would not be deductible under section 51 and the proceeds would not represent income are –

- (a) insurance taken out by a company in respect of a director for the purpose of providing, in the event of death by accident, funds for the payment to his estate of a debt owing to the director (see 3 NZ TBRD Case 9);
- (b) insurance taken out by one partner in respect of another for the purpose of providing in the event of the other partner's death by accident, funds to buy out his estate's interest in the partnership; and
- (c) insurance taken out by a manufacturer in respect of a supplier of components for the purpose of providing, in the event of the supplier's death by accident, funds to buy the supplier's business."

Buy/sell agreements

Where a business is operated by multiple parties, with each having an interest in the business or shares/units, it is not uncommon for the shareholder/partner/unitholder agreement to have a buy/sell clause. This is an agreement whereby the owners of the business agree that, in the event of death, trauma or total and permanent disablement, the remaining owners will buy the interest owned by that party.

Buy/sell agreements generally include a put and a call option, where the remaining business owners can call for the sale of the interests, and the deceased estate (or exiting owner) can also require the remaining business owners to buy.

A buy/sell agreement is often supported by some form of insurance policy so that the acquiring parties have the capital to fund the acquisition. The amount insured is generally changed in line with the value of the business year to year to ensure that there are sufficient funds to make the required acquisition.

Where an insurance policy is used, it is important to consider the above tax issues regarding the insurances and whether the premiums are deductible and the proceeds received are assessable.

Conclusion

In bringing the above issues together, this article highlights the breadth of considerations that arise once a client passes away. The interaction between estate administration, CGT outcomes, Div 7A implications, residency complexities, and the continuation or winding-up of business interests demonstrates that no two estates follow the same path. By understanding how these provisions operate across the full lifecycle of the estate – from the initial administrative steps through to the ultimate distribution – practitioners are

better positioned to manage risk, preserve value, and ensure that the intentions of the deceased are given practical effect within the framework of Australia's tax laws.

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This article is an edited version of "The final return – death, estates and navigating the ATO" presented at The Tax Institute's Private Business Tax Retreat held in the Gold Coast on 26 to 27 February 2026.

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ATO debt: some key issues

by Bruce Collins, CTA, Principal Solicitor,
Tax Controversy Partners

The ATO debt machine has been cranked into overdrive during the last few years, post-COVID-19, with the result that the use of ATO debt collection powers has become more prominent in the minds of the community and practitioners. This has in turn led to a range of critical feedback from practitioners and taxpayer advocates regarding current ATO debt enforcement strategic settings and the existing legislative regime regarding the Commissioner's debt enforcement powers and discretions. This article looks at the current environment and some of these issues, noting that the changes to the system are still a work-in-progress.

ATO Vulnerability Framework

The ATO Vulnerability Framework¹ sets out the ATO's commitment to supporting people who are experiencing vulnerability, outlining its guiding principles, core focus areas and engagement approach.

The framework is very much a work-in-progress, and at this stage can be seen more as a statement of principles rather than a series of practical modules for implementation to deal effectively with the more common types of taxpayer vulnerability. Commentators are recommending further work on specific categories of vulnerability.

Based on the ATO Charter, the six guiding principles are:

1. equity and fairness and considering individual circumstances;
2. accessibility and inclusion in the design and delivery of products and services;
3. empathy and compassion by fostering a respectful, supportive and safe environment;
4. transparency and accountability by taking care to explain processes, actions, decisions and review rights to ensure understanding;
5. privacy and data security to foster trust and confidence that privacy is safeguarded; and
6. continuous improvement by responding to changing needs and expectations.

Core focus areas

The ATO's core focus areas are set out below.

Support

The ATO will:

- explain obligations and options clearly and inform taxpayers of the support available;
- respond empathetically and compassionately, providing assistance where it can; and
- collaborate with partners and advocates to stay informed about community challenges.

Services

The ATO will:

- support people in using existing services, enhance current services where it can, and consider the needs of those experiencing vulnerability when creating new services;
- regularly review its service offering to identify areas for improvement and address any gaps, ensuring its systems and services are accessible and easy to use; and
- continue to develop tools and tailored education products, programs and resources to support taxpayers in understanding its tax obligations and entitlements.

Design

The ATO will:

- integrate vulnerability considerations into the design process for new products, services, policy and law, incorporating a safety by design approach;
- continue to enhance its communication and support channels for diverse needs;
- collaborate closely with other government agencies and partners to understand and address the needs of those experiencing vulnerability; and
- prioritise privacy, security and sensitivity of data use, only sharing information when permitted by law or when it is ethical to do so.

Staff

The ATO will:

- provide training and continue to build capability that is tailored to staff roles;
- provide resources and foster a positive work environment to ensure that its staff feel supported, safe and trusted to effectively and confidently support taxpayers; and
- work towards a consistent understanding and approach to recognising, responding and supporting people who are experiencing vulnerability.

Previous consultation: outstanding issues

Overall, the general opinion from stakeholders is that the final version of the Vulnerability Framework is better than the draft, but that there were a range of issues that were not fully resolved and remain outstanding in the final version, including:

- the consensus from the previous feedback was that the original draft only concentrated on supporting vulnerable taxpayers to understand their obligations and referring

them to other support services. To some extent, the problem is an insufficient focus in the final version on the Commissioner exercising his existing powers and discretions to benefit taxpayers who are experiencing different types of vulnerability. In the final version, the ATO seems to be at least recognising the more common ATO powers and discretions, while still falling short of giving guidance to ATO staff or external stakeholders as to how those powers should be applied for different types of vulnerable taxpayers;

- there was a lack of specific focus in the draft on more common examples of different types of vulnerability, how those may give rise to particular tax compliance risks, and how the Commissioner might respond to those within the existing statutory regime and powers. There is a bit more coverage of some types of vulnerability in the final version, but there is still a lack of specific guidance as to how ATO staff might be able to apply existing discretions or powers to assist taxpayers in dealing with those matters, to the extent that it may be possible to do so;
- the focus in the final version on providing awareness training to ATO staff does go some way towards helping them to identify vulnerable taxpayers, but the difficult tax compliance issues flowing from such vulnerability are more likely to require special treatment by specialist resources. It seems likely that the ATO may need to consider providing additional specific channels for taxpayers and their advisers to use to access such specialist resources over time; and
- while the final version does reflect some focus on the ATO recommending legislative change to improve the ways in which the tax laws may deal with vulnerable taxpayers, there is a need for further proactivity from the ATO on this front, given the limitations in the current system.

ATO next steps/work in development

The ATO has committed to ongoing work on specific actions and activities to support people who are experiencing vulnerability, and implementation of the Tax Ombudsman recommendations on the identification and management of financial abuse within the tax system.

The specific actions were agreed with industry partners, and are:²

- **debt:** review and revise activities relating to debt relief, waiver/non-pursuit and payment plans to assess whether these products appropriately consider the impact of people experiencing vulnerability, and make appropriate changes where required;
- **First Nations:** explore practical changes to make it easier for First Nations people to register and engage with the tax and superannuation system;
- **zone tax offset:** progress system improvements to ensure that taxpayers who are eligible for the zone tax offset are claiming this entitlement, and the correct amount;
- **whole-of-government:** understand existing information-sharing pathways between the ATO and other agencies

to identify opportunities to use data that the ATO already has to better support people who are experiencing vulnerability, and to identify new pathways and data;

- **financial coercion and domestic abuse:** explore and develop tailored and trauma-informed processes to better support people who are experiencing financial coercion and domestic violence, including spouse and elder abuse; and
- **proof of record ownership and access:** explore alternative forms of identification that recognise and support the diverse ways people engage with the tax and superannuation systems, particularly those who may face barriers with current processes.

ATO debt concessional principles

The current consultation on these principles is another in the series of cultural and strategic shift documents that the ATO is currently implementing to support its increased focus on debt collection, especially for small businesses and private groups.

The ATO has initiated a review of:

- payment plans;
- deferrals; and
- remission of the general interest charge (GIC) and failure to lodge penalties.

Refreshed approach to concessions³

The ATO is committed to being transparent about:

- the availability of concessions;
- how to access concessions; and
- factors relevant to making a concession decision.

The ATO's published principles support consistent decision-making within the law, and help staff to understand the relevant factors when making concession decisions.

Principle 1: Fairness

The ATO will be fair to the taxpaying community who have lodged and paid on time by not advantaging those who haven't by taking into account their specific circumstances, so that vulnerable taxpayers are not disadvantaged.

Principle 2: Conditionality

If concessions have conditions or expectations, taxpayers may need to show that they are making all efforts to lodge and pay on time.

Principle 3: Context

Taking into account any previous decisions, including other concessions that have already been provided, to support taxpayers to keep meeting their obligations. This means that the ATO may consider other concessions that have already been provided.

Principle 4: Engagement

Taxpayers who proactively engage and who show that they are willing to comply will be considered more favourably.

Principle 5: Exclusions

Taxpayers who knowingly and deliberately avoid their obligations may not have access to concessions.

Public consultation closed on 2 October 2025.

Feedback received

The following feedback has been received:

- **consistency:** there is a desire to see a commitment to consistent application of the concessions policies and procedures from ATO staff;
- **transparency:** there is a need for greater visibility of the policies and processes that the ATO uses to make decisions, and what considerations have informed a decision better communicated in ATO letters;
- **flexibility:** there is a need for the ATO to be more flexible in accommodating individual circumstances, specifically in relation to payment plans;
- **role of agents:** there should be greater recognition for the role that tax practitioners have in supporting taxpayers to understand and apply for concessions; and
- **vulnerability:** greater clarity is needed on how the ATO will consider clients experiencing vulnerability, and how the ATO's policies will accommodate those more dynamic and complex scenarios.

Practitioners and advocacy groups are keenly awaiting the results of that consultation process, in terms of a more final version of the above principles in practice – noting the following item gives some indication as to the ATO's thinking on these fronts.

GIC and failure to lodge penalty remissions

Examples of GIC requests that are *likely* to be accepted⁴ include the following circumstances:

- where a taxpayer has been impacted by a natural disaster (such as fire, flood or drought);
- where a taxpayer or their tax or BAS agent has been impacted by industrial action;
- the unforeseen collapse of a major debtor;
- the sudden ill health of an individual, a sole trader or key personnel in a small business or the tax or BAS agent where it was not practical to make alternative arrangements;
- the theft of, or damage to, property that is critical to business operations; and
- where a taxpayer has experienced, or is currently experiencing, financial abuse, coercive control, family and domestic violence or other circumstances that contribute to experiencing vulnerability that impacts their ability to meet their obligations.

GIC is likely to be remitted in these circumstances, provided the taxpayer can:

- demonstrate that the circumstances were beyond their control;

- took reasonable steps to reduce the delay in payment; and
- has a strong history of paying on time.

Examples of GIC requests that are *unlikely* to be accepted⁵ include the following circumstances:

- adverse business conditions that impact cash flow;
- general economic downturn;
- fluctuations in currency or exchange rates;
- general business risks such as late payment of invoices by a creditor;
- using moneys to expand the taxpayer's business instead of paying their overdue taxes;
- missing a lodgment or payment date because the tax or BAS agent was not given sufficient time to meet deadlines; and
- being on holidays when lodgment or payment is due as the taxpayer is expected to make arrangements to meet their obligations.

New process for filing GIC and FTL remission submissions

The ATO has updated its processes when requesting a remission of GIC or failure to lodge (FTL) penalty.⁶ For tax practitioners, requests can be lodged electronically using an application form or by phone.

Legal practitioners and businesses (including sole traders) are also expected to use the application form and lodge it with the ATO or by phone (noting that only tax agents are given the online option).

Registered tax and BAS agents need to request remissions using the correct remission application form and submit it through ATO online services. Forms are available for GIC, SIC and FTL penalty remissions.

Remission application forms

Completing the correct application form and attaching it in online services will:

- guide you to provide the information needed to make a decision; and
- reduce the need for the ATO to make contact requesting additional information.

The application form has the following key questions that must be answered:

- For which account is the remission being sought?
- What are the reasons that prevented the debt being paid on time? (Include information that shows the debt would have been paid on time if the specific circumstances had not occurred.)
- What was the timeframe over which the inability to pay existed?
- What actions were taken to minimise the delay in payment? For example, was alternative finance sought? Was the ATO notified?
- Provide any other supporting information/evidence.

The feedback on this process is that it appears to be an improvement, at least for tax agents.

GIC/SIC remission review by IGTO⁷

Reasons for review

Compliance with tax obligations is the responsibility of all taxpayers. A key obligation is for taxpayers to pay their tax liabilities as and when they fall due. Failure to do so may lead to the accrual of interest on the unpaid debts. With the current interest charge rate at around 11% for unpaid debts, for some taxpayers, the interest itself may very quickly become larger than the original debt.

While GIC is compensation to the government and community for the deliberate late payment of tax liabilities, there may be a range of factors that impact a taxpayer's ability to pay their liabilities on time and in which it is appropriate to remit GIC.

PS LA 2011/12 provides guidance on the criteria to be considered in the remission of GIC. The ATO has publicly stated its intention to take a stricter approach to debt collection and GIC remission, and the effects of this shift in the ATO's approach have been widely reported. In addition, the law has also been amended so that GIC incurred after 1 July 2025 is no longer tax deductible.

It is important that ATO decisions are supported by policies, systems and processes that align with principles of good tax administration, such as consistency, transparency and getting it right.

Terms of reference

The terms of reference for the review of remission of GIC are:

- “1. Whether ATO policy, communications and guidance to staff and the public clearly explain how GIC remission requests should be considered, including:
 - a. when and how remission requests can be made; and
 - b. the criteria for full remission and partial remission;
2. The reasons behind the ATO's recent decision to tighten up its remission of GIC and the intended outcomes;
3. Whether remission decisions are made fairly and consistently in line with the policy/practice, including whether:
 - a. decisions take into account the individual circumstances of taxpayers, including those experiencing vulnerability and victims of fraud;
 - b. outcomes differ for represented and unrepresented taxpayers;
 - c. similar or related taxpayers (e.g. spouses, co-directors, related entities) receive consistent treatment when requesting GIC remission;
 - d. internal quality assurance and training support consistent decision-making; and

- e. there are robust and accessible processes to internally review a decision where the taxpayer disagrees with the outcome;
4. Whether taxpayers are given clear and complete reasons for decisions not to remit interest;
5. Whether the interaction between GIC remission and payment plans supports fair and effective debt resolution; and
6. Whether there are opportunities to improve GIC remission systems and processes, in light of the growing cost impact on taxpayers.”

Consultation closed in October 2025 and the final report was released in March 2026.⁸

The report makes fascinating reading, and there is a very useful summary called “Ten things to know from this report”, which reads:

- “1. Between 2019 and 2025, the increase in the balance of GIC owed to the ATO (185%) has outpaced the increase in uncontested tax debt (94%). Of the \$55 billion uncontested tax owed, 18% is made up of GIC (up from 13% in 2019). See Appendix C.
2. In late 2023, the ATO tightened its approach to remitting interest charges from its previously more generous approach, without clear communication to the community. This left taxpayers and tax practitioners confused and frustrated. See pages 19–22.
3. Last year, large businesses had more of their GIC remission requests approved, compared to individuals or small businesses. Although they made fewer requests, this creates a perception that the rules are applied more stringently for those who can least afford it. See page 39.
4. Interest compounds daily, even while taxpayers make repayments under approved plans. This can make small debts grow to unaffordable levels very quickly and, for some taxpayers, the interest can become greater than the original debt, making full repayment near impossible. See pages 29–30.
5. One of the main concerns raised in this review is inconsistency of the ATO's GIC remission decisions. This is due, in large, to the ATO's guidance to taxpayers and its staff which has been too vague. This has led to unfair outcomes with some genuine and deserving applications rejected and others that should rightly be declined being approved. See page 40.
6. The law requires GIC to be applied to any overdue tax. The ATO does not have the power to stop GIC from accruing, but it can decide when to remit it, if circumstances warrant. However, the ATO's recent considerations of remission requests have not always met community expectations. For example, our case studies show that, in some cases, GIC has compounded to amounts grossly disproportionate to

the underlying debt, raising concerns about whether remission decisions are being made fairly. See pages 27–30.

7. Once the ATO makes a decision on GIC remission, taxpayers cannot seek a ‘merit review’ through the Administrative Review Tribunal or the courts. Prior to this review, the ATO would only consider a new GIC remission request if a taxpayer could provide new or additional information to support their request. However, now the ATO may also reconsider its GIC remission decision when taxpayers or their representatives submit a request detailing circumstances where they think the ATO has made an error. This is not well known. See pages 45–46.
8. GIC is intended to encourage taxpayers to pay on time, but this is only achieved if the GIC rate is higher than other sources of credit. When it is lower than other credit, it may actually incentivise non-payment. See pages 14 & 21.
9. The ATO’s GIC remission decision letters are often generic, unhelpful and (in some cases) lack empathy. These letters often lack detail, do not explain how decisions were made and whether evidence was missing or incomplete, and do not outline what options the taxpayer has. See pages 46–47.
10. The ATO has made recent improvements to its administration of GIC remission, which we strongly support. This includes: the creation of a dedicated function to make remission decisions (reducing inconsistency); publishing improved guidance including examples of how the decision-making criteria will apply; a standardised application form; and extending the circumstances in which it will reconsider its remission decisions. These changes address many of the findings of our review. See page 21.”

To experienced professional eyes, the recent ATO improvements in its debt collection frameworks and processes are highly beneficial and may be seen as a valiant attempt to get in front of the findings and recommendations from the Tax Ombudsman’s review – before that report was finalised.

Treasury consultation on “Combatting financial abuse perpetrated through coerced directorships”⁹

Financial abuse is a form of family and domestic violence that undermines a victim-survivor’s economic independence and inhibits their ability to leave abusive relationships or rebuild their lives.

Perpetrators can weaponise company directorships to perpetuate financial abuse in various ways:

- **fraudulent appointment:** involving a perpetrator registering a victim-survivor as a director of a company

fraudulently without their knowledge. Fraudulent appointments can also occur outside of the context of financial abuse or family and domestic violence;

- **coerced appointment:** involving a perpetrator coercing a victim-survivor into signing a director appointment consent form through abuse such as verbal threats, financial abuse or physical violence. In these scenarios, there is significant variability in the extent to which a victim-survivor understands or has knowledge about their role as director; and
- **financial abuse following initial consent to appointment:** involving a victim-survivor who initially consented to their appointment as director (potentially alongside the perpetrator as co-director) and actively participated in the management of a company for a period of time, which is later weaponised by the perpetrator to cause harm to the victim-survivor.

Objectives and key principles

The objective of the proposed reforms is to reduce the prevalence and impact of coerced directorships. Legislative change across the *Corporations Act 2001* (Cth) and the *Taxation Administration Act 1953* (Cth) may be required to achieve this objective, and the consultation paper considers three key principles when evaluating options to address these issues:¹⁰

1. victim-survivor safety;
2. promoting system integrity; and
3. proportionality.

Feedback was sought on policy options across four key areas:¹¹

1. reducing the prevalence of coerced directorships by strengthening the director registration and removal process, including director consent requirements in the *Corporations Act 2001*;
2. reducing the impact of coerced directorships by expanding the defences available for breaches of insolvency-related directors’ duties and director penalty notices;
3. supporting coerced directors to respond to a director penalty notice; and
4. exploring safe mechanisms to hold perpetrators to account.

The consultation period closed on 24 December 2025, and we are awaiting a formal government response (potentially as early as in the May Budget).

From a wide variety of perspectives, the general trend from advocacy group feedback in this consultation is that they:

- support making it harder for potential victims to be fraudulently recorded as directors;
- advocate providing greater access to defences for corporate insolvency for victims-survivors;
- advocate providing easier access to defences for director penalty notices for victims-survivors; and

- focus on sanctions against perpetrators for the harm that they have caused to the victims-survivors and creditors (including the ATO).

Conclusion

The current ATO debt environment for small business and private group clients and the tax practitioners who support them is still very challenging. The recent and forthcoming ATO administrative changes are promising, but practitioner experience shows that there is still substantial room for improvement when dealing with various instances of taxpayer vulnerability that give rise to problems with paying tax-related liabilities. We shall all need to continually monitor the system over time and to give feedback to our professional bodies (including The Tax Institute) to give insight to administrators at the ATO, scrutineers (like the Tax Ombudsman) and government on areas for improvement.

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This article is an edited version of “Hot topics round up: part 1 – debt update” presented at The Tax Institute’s Private Business Tax Retreat held in the Gold Coast on 26 to 27 February 2026.

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A Matter of Trusts

by James Gao, Sladen Legal

Non-widely held trusts and the qualified persons rule

On 18 November 2025, ATO guidance QC 105857 was updated after the ATO raised concerns with arrangements where newly incorporated beneficiary companies claim franking credits.

Background

Australia introduced the dividend imputation system in 1987 to address the issue of double taxation for dividends (at the company level and the shareholder level). Part IIIAA of the *Income Tax Assessment Act 1936* (Cth) (ITAA36) provided the franking rules. Even back then, the dividend imputation system offered a “franking credit” for tax paid by the company when its taxed profits were distributed by way of “franked dividends” to the company’s shareholders.

As franking credits pass to the registered shareholder at the book-closing date for the dividend, investors could abuse the system by buying shares just before the book-closing date and selling shares the following day without the dividend attached. The result has the investor receiving the fully franked dividend, and a capital loss due to the share price dropping by an amount equivalent to the amount of dividends.

As a response to these issues, parliament inserted Div 1A, containing the qualified person rule, into Pt IIIAA.¹

Where are the provisions?

If you searched the current *Income Tax Assessment Act 1997* (Cth) (ITAA97) or the ITAA36, you would not find provisions setting out the qualified person rule (or the holding period rule or related payments rule).

Instead, the current regime works principally through ss 207-145 and 207-150 ITAA97, which state that imputation benefits are denied where a recipient is not a “qualified person in relation to the distribution for the purposes of Division 1A of former Part IIIAA of the *Income Tax Assessment Act 1936*”. Part IIIAA ceased to have operation from 1 July 2002² and was repealed in 2006.³

TD 2007/11 explains that, although Pt IIIAA ceased to have application from 1 July 2002, “the rules contained in Division 1A have continued to inform the operation of the imputation system since that date via the express terms of

sections 207-145 and 207-150”. Therefore, determining the availability of the franking tax offset requires consideration of repealed legislation.

Qualified person rule

A taxpayer must be a “qualified person” to access franking credits.⁴ This requires the taxpayer satisfying the “holding period rule” and, if applicable, the “related payments rule” unless the “individual small shareholder exemption” applies.⁵

For non-widely held trusts, both the trustee and the beneficiary (including potential beneficiaries for discretionary trusts) must be qualified persons. However, only the beneficiary can rely on the individual small shareholder exemption; the trustee must satisfy the holding period rule and, if applicable, the related payments rule.

Holding period rule

The holding period rule requires taxpayers to hold shares (or an interest in shares) “at risk” for at least 45 days (or 90 days for preference shares) within a defined “qualification period” (called the primary qualification period). For non-widely held trusts, both the trustee and the beneficiary must satisfy the holding period rule.⁶

“At risk”

To be “at risk” the taxpayer must hold the shares without materially diminished risks of loss or opportunities for gain in respect of the shares or interest.⁷ A taxpayer has materially diminished risks of loss or opportunities for gain if the taxpayer’s “net position” in relation to the shares or interest in shares has less than 30% (or a net position delta of less than 0.3) of those risks and opportunities.⁸

For a non-widely held trust, the trustee must meet the above “at risk” requirement.

Section 160APHL ITAA36 sets out how to work out a beneficiary’s interest in shares. Broadly, if the trust has made a family trust election, the beneficiary will be treated in the same way as a shareholder.⁹ Without a family trust election, a discretionary beneficiary may have a long position under s 160APHL(7), but that position may be offset by a short position under s 160APHL(10), leaving a nil net position where the beneficiary does not have a vested and indefeasible interest in the shares.

“Qualification period”

The “qualification period” is the period beginning on the day after the trustee acquired the shares and ending on the 45th day after the day the shares became “ex-dividend”.¹⁰ The shares become “ex-dividend” on the day after the last day on which the acquisition of a share will entitle the person to receive a dividend.¹¹ The day of acquisition, day of disposal and any days where there is materially diminished risks of loss or opportunities for gain are excluded for the qualification period. The excluded days do not break the continuity of the period for which the trustee held the shares.

Related payments rule

The related payments rule applies if a taxpayer or an associate makes a “related payment”.

A taxpayer or an associate makes a “related payment” if they are under an obligation, or may reasonably be expected, to do “anything having the effect of passing the benefit of the dividend or distribution to one or more other persons”.¹²

If a related payment is made, a secondary qualification period applies where, to be a “qualified person” for a dividend or distribution, the taxpayer must hold the relevant shares “at risk” for the period beginning on the 45th day before and ending on the 45th day after the day on which the shares became ex-dividend (90 days before and after for preference shares).¹³

The distribution by a trustee of a franked dividend to a presently entitled beneficiary is not a related payment.¹⁴

Individual small shareholder exemption

The individual small shareholder exemption is a de minimis exemption for individual taxpayers or individual beneficiaries. It exempts individual taxpayers or beneficiaries with a total franking tax offset entitlement not exceeding \$5,000 for an income year from satisfying the holding period rule.¹⁵ This exemption does not apply if the related payments rule applies.¹⁶

Acquisition, holding and disposal for non-widely held trusts

Subsections (3) and (4) of s 160APHG ITAA36 provide special rules for the acquisition, holding and disposal of shares by non-widely held trust beneficiaries:

- “(3) If the trustee of a trust (other than a widely held trust) acquires, holds, or disposes of, shares or an interest in shares, each beneficiary of the trust (including, if the trust is a discretionary trust, a potential beneficiary) is taken to acquire, hold, or dispose of, as the case may be, an interest in the shares.
- (4) If a trust estate (other than the trust estate of a widely held trust) includes shares or an interest in shares:
- (a) where a taxpayer becomes a beneficiary (including, if the trust is a discretionary trust, a potential beneficiary) of the trust, the taxpayer is taken to acquire an interest in the shares; or
 - (b) where a taxpayer ceases to be a beneficiary (including, if the trust is a discretionary trust, a potential beneficiary) of the trust, the taxpayer is taken to dispose of the taxpayer’s interest in the shares.”

The ATO’s previous administrative practice

Unfortunately, the ATO erased its previous guidance when it published the update in QC 105857.

One private ruling, PBR 1011772911682, sheds some light on how the ATO administered these rules. As with all private rulings, however, it is fact-specific and not precedential for other taxpayers. It states:

“The beneficiaries of a non-widely held trust under subsection 160APHG(3) of the ITAA 1936 are deemed to have acquired, held or disposed of an interest in shares when the trustee acquires, holds or disposes of those shares. Pursuant to former subsection 160APHG(4) of the ITAA 1936, a taxpayer is taken to acquire an interest in the shares of the trust estate when the taxpayer becomes a beneficiary. As such, what happens to the trustee will also happen to the beneficiary. Therefore, if a trustee is considered to be a qualified person, the beneficiary will also be a qualified person provided that they too satisfy the at-risk requirement of the qualified person rule.”

In other words, in PBR 1011772911682, the ATO appears to first apply subs (4) so that a beneficiary is taken to acquire an interest in the shares, and then applies subs (3) to deem the timing of acquisition, holding or disposal for the beneficiary to match that of the trustee’s. The result is, if the trustee is a qualified person, the beneficiary is also a qualified person, provided the beneficiary satisfies the at-risk requirement in s 160APHL.

In the author’s opinion, this is a concessionary approach that the ATO has taken and that the legislation does not afford. The subsections are all conditional statements that can be broken down into:

Subsection	Hypothesis	Conclusion	Abbreviation
160APHG(3)	If a trustee acquires shares	Then each beneficiary is taken to acquire an interest in shares	Statement 3a
160APHG(3)	If a trustee holds shares	Then each beneficiary is taken to hold an interest in shares	Statement 3b
160APHG(3)	If a trustee disposes of shares	Then each beneficiary is taken to dispose of an interest in shares	Statement 3c
160APHG(4)	If a taxpayer becomes a beneficiary	Then the taxpayer is taken to acquire an interest in shares	Statement 4a
160APHG(4)	If a taxpayer ceases to be a beneficiary	Then the taxpayer is taken to dispose of an interest in shares	Statement 4b

The author sees no indication in the legislation that, when a subs (4) statement applies, subs (3) should be reapplied. To illustrate with an example of a trust acquiring shares before a taxpayer became a beneficiary:

1. in the author's view:
 - a. when the trustee acquires the shares, statement 3a applies, resulting in each of the trust's (existing) beneficiaries being taken to acquire an interest in shares at this time;
 - b. when the taxpayer became a beneficiary, statement 4a applies, resulting in the taxpayer (new beneficiary) being taken to acquire an interest in shares at this time; and
 - c. as the trustee holds shares, statement 3b applies, resulting in all beneficiaries (existing and new) being taken to hold an interest in shares after they have acquired it in the above steps;
2. alternative view:
 - a. when the trustee acquires the shares, statement 3a applies, resulting in each of the trust's (existing) beneficiaries being taken to acquire an interest in shares at this time;
 - b. when the taxpayer became a beneficiary, statement 4a applies, resulting in the taxpayer (new beneficiary) being taken to acquire an interest in shares at this time; and
 - c. as the trustee acquired and holds shares, all beneficiaries (existing and new) are taken to hold an interest in shares (statement 3b) from the time the trustee acquired the shares (that is, before the new beneficiary came into existence).

The uncertainty arises because subs (3) does not say "existing". Despite this, the author argues that, if a new beneficiary of a trust adopts the trustee's time of acquisition, holding and disposal, then subs (4) becomes entirely superfluous. This goes against a fundamental principle of statutory interpretation that courts should construe statutes such "that no clause, sentence, or word shall prove superfluous, void, or insignificant".¹⁷

Other private rulings merely recite or paraphrase the rule in s 160APHG(3) without engaging s 160APHG(4). However, it is unclear whether s 160APHG(4) was relevant on those facts.¹⁸

What does QC 105857 say now?

QC 105857 states that, for non-widely held trusts holding shares acquired on or after 31 December 1997, both the trustee of the trust and the beneficiary must be qualified persons.

QC 105857 then explains the "holding period rule" for both the trustee and the beneficiary. Under the subheading "When a beneficiary has an interest in shares", QC 105857 first paraphrases s 160APHG(3), before noting that s 160APHG(3):

"... only applies to beneficiaries that are currently in existence at the time the trustee acquires, holds or disposes of the shares or the interest in shares."

QC 105857 then paraphrases s 160APHG(4)(a), before adding that:

"This applies to persons that became a beneficiary upon their birth or incorporation, or because of changes to the class of beneficiaries under the trust deed or by the trustee."

QC 105857 continues:

"These persons will only be taken to have acquired an interest in one or more shares or interests forming part of the trust estate on the day they became a beneficiary (including a potential beneficiary) of the trust, including because of their birth or incorporation. A beneficiary is a potential beneficiary where they can benefit under the trust (for instance, where the trustee can exercise a discretion to distribute income or capital to them)."

QC 105857 concludes this subheading by paraphrasing s 160APHG(4)(b) without further comment on birth or incorporation (or death or deregistration).

Under subheading "Beneficiary qualification period", QC 105857 explains that:

"The qualification period for beneficiaries is generally the period beginning on the day after the beneficiary acquired the interest in the shares and ending on the 45th day (or 90th day for preference shares) after the day on which the interest became 'ex-dividend'. The shares become 'ex-dividend' on the day after the last day on which the acquisition of a share will entitle the person to receive a dividend."

QC 105857 then adds:

"It's noted that a beneficiary of a non-widely held trust (including a potential beneficiary of a discretionary trust) who was not born, or was not incorporated, during the qualification period won't hold the interest in shares for a continuous period of at least 45 days (90 days for preference shares) during the qualification period. This is even if the trustee has satisfied the holding period rule in their own right."

QC 105857 then explains the related payments rule and the individual small shareholder exemption before providing six examples.

Unborn/unincorporated beneficiaries

QC 105857 effectively takes the view that, if a company did not exist on the ex-dividend date, it cannot satisfy the holding period rule because the company will have acquired an interest in the shares only on the day that it became a "potential beneficiary" of the trust, that is, the day of incorporation.

Example 5 sets out a fact scenario where a family trust decided to distribute its dividend income to a new corporate beneficiary:

- on 1 June 2025, the shares became ex-dividend, and a fully franked dividend was paid to the trust;
- on 15 June 2025, a new corporate beneficiary was incorporated and became a beneficiary;
- for the 2025 income year, the trust distributed income (including the fully franked dividend) to the new beneficiary;
- the trustee held the shares for 10 years and therefore satisfies the holding period rule and therefore is a qualified person; and
- the beneficiary acquired its interest when it was incorporated and became a beneficiary on 15 June 2025. As this is after the ex-dividend date, the beneficiary did not hold the shares “at risk” for a period of at least 45 days during the qualification period. Therefore, the beneficiary is not a qualified person and is not entitled to a franking tax offset.

Example 6, called “share buy-back”, functionally illustrates the same new corporate beneficiary issue. The difference is that a company paid a fully franked dividend to a trust as part of a share buy-back of ordinary shares. The trustee held the shares for years, but the new corporate beneficiary was only incorporated on 21 June 2025 and became a beneficiary on that date. Therefore, the trustee is a qualified person, but the beneficiary is not.

In both examples, a corporate beneficiary was incorporated and became a beneficiary of a trust on the same date. There does not appear to be clear judicial authority directly resolving how former s 160APHG(3) and (4) interact for a beneficiary who is contemplated by the trust deed but comes into existence only later.

The author wonders whether QC 105857 conflates a beneficiary being born or incorporated with a non-beneficiary becoming a beneficiary. The provisions do require that, when a non-beneficiary becomes a beneficiary, s 160APHG(4)(a) applies. The more difficult question is how that paragraph interacts with s 160APHG(3) where the person was contemplated by the trust deed but did not yet exist?

Conclusion

The position in QC 105857 does not appear to have been clearly tested by the tribunals or courts, and guidance remains limited. The key unresolved issue is how a court would interpret the interaction between s 160APHG(3) and (4), particularly where a trust deed is drafted widely enough to contemplate unborn persons or later-incorporated companies as beneficiaries.

For now, forward planning becomes more crucial than ever. Taxpayers intending to stream franked distributions to corporate beneficiaries through non-widely held trusts should ensure that the beneficiary is already in existence, and already a beneficiary, early enough before the relevant ex-dividend date to satisfy the 45-day holding period requirement.

If the qualified person rule is not satisfied, the franking credit offset is lost. Accordingly, the corporate beneficiary loses the imputation benefit attached to the franked distribution and must pay tax without the benefit of the franking tax offset.

In a related area, the ATO’s advice under development program currently lists a draft taxation determination on “identifying the relevant shareholdings when applying the integrity rules under Division 1A” and a draft practical compliance guideline on “arrangements where taxpayers have used financial derivative instruments to reduce the economic exposure to their Australian shares”, with expected completion shown as early 2026.

James Gao
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References

- 1 *Taxation Laws Amendment Act (No. 2) 1999.*
- 2 *New Business Tax System (Imputation) Act 2002.*
- 3 *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006.* All references to the ITAA36 in this article are to repealed provisions.
- 4 Ss 207-145 and 207-150 ITAA97.
- 5 Former ss 160APHO and 160APHT ITAA36.
- 6 Former ss 160APHD and 160APHU(1).
- 7 Former s 160APHM.
- 8 Former s 160APHJ.
- 9 Former s 160APHL(10).
- 10 See the definition of “qualification period,” “primary qualification period” and “secondary qualification period” in former s 160APHD.
- 11 Former s 160APHE.
- 12 Former s 160APHN(2).
- 13 Definition of “qualification period” and “secondary qualification period” in former s 160APHD.
- 14 Former s 160APHN(5).
- 15 Former s 160APHT(1).
- 16 Former s 160APHT(2).
- 17 *Project Blue Sky Inc v Australian Broadcasting Authority* [1998] HCA 28 at [71].
- 18 See PBR 1011962060881, PBR 1011962038334, PBR 1011961454107, PBR 1051621970115, and PBR 1051983718762.

Events Calendar

Upcoming months

APRIL

21–22

Tue–Wed

Online

Next Generation Leadership Masterclass



4 to 8 CPD hours

APRIL

29

Wed

NSW

Online

Not-for-profit Tax Intensive



7 CPD hours

MAY

6

Wed

NSW

Online

Tax Disputes Masterclass



7 CPD hours

MAY

21–22

Thu–Fri

NSW

NSW Tax Forum



14 CPD hours

MAY

28–29

Thu–Fri

QLD

QLD Tax Forum



12 CPD hours

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Giving back to the profession

The Tax Institute would like to thank the following presenters from our March CPD sessions. All of our presenters are volunteers, and we recognise the time that they have taken to prepare for the paper and/or presentation, and greatly appreciate their contribution to educating tax professionals around Australia.

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