

Volume 60(8)
March 2026

TI The Tax
Institute

Taxation *in* Australia

AML regulation of accountants and lawyers

Mathew Leighton-Daly, FTI

Dealings with Australian agricultural land

Catherine Nufer, CTA

Foreign surcharges and Australia's tax treaties

Jared Clements



Contents

Cover article

444

AML regulation of accountants and lawyers

Mathew Leighton-Daly, FTI, Special Counsel,
HWLE Lawyers

Feature articles

450

Dealings with Australian agricultural land

Catherine Nufer, CTA, Special Counsel, Hamilton Locke

463

Foreign surcharges and Australia's tax treaties

Jared Clements, Senior Lecturer, Law School,
The University of Western Australia

Insights from the Institute

428 President's Report

429 CEO's Report

430 Head of Tax & Legal's Report

Regular columns

427 Tax News – at a glance

433 Tax News – the details

438 Tax Tips

443 Higher Education

469 A Matter of Trusts

473 Obituary

474 Events Calendar

475 Cumulative Index

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

February – what happened in tax?

The following points highlight important federal tax developments that occurred during February 2026. A selection of the developments is considered in more detail in the “Tax News – the details” column on page 433 (at the item number indicated).

Thin capitalisation review

In a joint media release on 30 January 2026, the Treasurer, the Assistant Treasurer and the Assistant Minister for Productivity announced that the Board of Taxation had been tasked to undertake an independent review of the government’s thin capitalisation reforms. **See item 1.**

Contrived property development arrangements

The Commissioner has released a taxpayer alert in relation to certain property development arrangements between related parties involving long-term construction contracts that appear to be designed to create an artificial mismatch between the recognition of income from the property development activity and deductions claimed for the costs of development (TA 2026/1). **See item 2.**

CGT: right to occupy dwelling under a will

The Commissioner has released a draft determination that considers the operation of the special CGT main residence exemption provision (s 118-195 of the *Income Tax Assessment Act 1997* (Cth)) that can apply where a dwelling (or an ownership interest in a dwelling) passes to a beneficiary in a deceased estate or is owned by the trustee of a deceased estate (TD 2026/D1). **See item 3.**

Reckless: penalty assessments upheld

The Administrative Review Tribunal (ART) has rejected a taxpayer’s challenge to penalty shortfall assessments made by the Commissioner on the basis that the taxpayer had been reckless (*Tilli and FCT* [2026] ARTA 80). **See item 4.**

Input tax credits time-barred

The Federal Court (Logan J) has dismissed an appeal by a taxpayer from a decision of the ART which held that the taxpayer’s claims for GST input tax credits were out of time (*Barth Family Trust (Trustee) v FCT* [2025] FCA 1693). **See item 5.**

Enterprise issues and an AI hallucination

In a recent decision in which the ART held that the dog-breeding activities of the taxpayer constituted an enterprise for the purposes of GST (either as the carrying on of a business or as an adventure in the nature of trade), the ART also considered various issues relating to penalties and commented on the use of artificial intelligence in the preparation of submissions being made to the ART (*Smith and FCT* [2026] ARTA 25). **See item 6.**

FBT: work vehicles

The ATO has recently released details of its focus on businesses that overlook or misreport their FBT liabilities for the private use of work vehicles. The private use of work vehicles, including the use of eligible commercial vehicles such as dual cab utes, is an area that the ATO continues to focus on. The ATO uses sophisticated data and analytics to detect businesses that are not meeting their obligations.

Default assessments: onus not discharged

The ART has held that an individual taxpayer failed to discharge the onus of proving that amended default assessments that the Commissioner had raised against him for the 2013 to 2017 income years were excessive and also that, for those income years, there was no avoidance of tax due to fraud or evasion (*Zhou and FCT* [2026] ARTA 16). The taxpayer made no attempt to demonstrate his actual taxable income for the relevant years.



President's Report

by Tim Sandow, CTA

Thank you for your insight

President Tim Sandow thanks members for their engagement on the future of our Institute.

Last month, Scott and I travelled to most major cities, giving members the opportunity to better understand The Tax Institute and the Institute of Public Accountants (IPA) amalgamation proposal we are discussing, to raise questions, concerns or impacts, and to help inform due diligence and decision-making.

As Scott and I explained during the session, the big picture is this: right now, we can support day-to-day operations. We can continue to produce the same benefits, resources and services we do currently. But we cannot effectively deliver needed and significant investment in technology and service delivery. We cannot substantially improve member benefits or introduce new benefits in ways that members are asking for.

Although our operating result is trending in the right direction to recover our net asset position, the speed of the recovery is not growing as fast as our need to invest in our technology and services. Today, we could remain as we are. But if we do that, the rest of the world will move on around us and we will not be able to catch up. Eventually, we will be in a position where we cannot continue as we are.

We want to explore our future opportunities now, from a place of stability, rather than in a future where the same options may no longer be available to us. This proposal with the IPA will provide us with an opportunity to grow, invest and build better member services, while preserving everything we love about The Tax Institute – our brand, our identity, our credentials, our education offerings and our world class events.

The Tax Institute is known for the high quality of its education, events, advocacy and resources and its unwavering commitment to the tax profession. That reputation is well-earned and is clearly something our members are proud of and hold dear.

That's important not just for our members today – our work in the tax system is important for all tax practitioners

currently practising and the future generations who may enter tax in years to come.

In order to maintain that excellence, we need to consider avenues of further stability and future growth. Right now, we have the opportunity to explore a future where we remain the home of tax, member-driven and flourishing for years to come. I'm excited by the future prospects ahead of us and hope you are too.

I'd like to thank everyone who attended a Member Consultation session, either online or in-person, for being engaged in the future of your Institute. Some wonderful perspectives and insights were raised.

Please expect to hear more from us on both the insights gained through these consultation sessions and next steps as we progress through our due diligence.



CEO's Report

by Scott Treatt, CTA

Member consultations

CEO Scott Treatt thanks members for their engagement on the future of our Institute.

As Tim has said in his report, last month we had the pleasure of meeting with members in cities around Australia and in various online sessions to hear your questions, feedback and insights on the Institute of Public Accountants (IPA) proposal currently undergoing due diligence.

For any of you who weren't able to attend, here is a brief summary of some of the member feedback we see this proposal addressing:

- **we need a financially sustainable Tax Institute for years to come** – sharing back-office, IT and accommodation will see significant future cost savings estimated to be up to \$3.5 million pa;
- **we want to be an Institute that is second to none on tax technical insight and recognised as the “Home of Tax”** – a bigger TPA team supported by members;
- **members need a reliable digital experience on the website, member portal and all interactions with The Tax Institute** – leveraging an existing tech stack that the Institute can transition to swiftly post-agreement means that our technology can be brought up-to-date quickly, ensuring a better overall digital experience. Pooled IT resources means that the platforms can be maintained, along with a rapidly changing digital landscape;
- **continuing strong advocacy both within the Australian tax system and globally should be prioritised** – a larger overall community strengthens our voice in advocacy spaces, while ensuring that Tax Institute members continue to drive the agenda and direction of our efforts. IPA's global reach provides a pathway to advocacy on a greater level;
- **prompt, efficient and effective engagement with Tax Institute staff should continue and be enhanced** – a larger and better resourced team means that your needs are met promptly by staff who are well-trained and working within efficient systems that allow us to tailor your experience; and

- **increased technical tools and resources spanning all parts of the tax profession, available as part of your membership** – a larger technical team with a broader spectrum of expertise allows us to deliver more and varied benefits to members.

We will endeavour to give you more information about the insights gathered during these sessions soon and to keep you in the loop on developments as we can. For now, I will say thank you for engaging with us and sharing in an open and honest discussion around what we are trying to achieve for our Institute and for the wider profession.



Head of Tax & Legal's Report

by Julie Abdalla, FTI

A new era for rental property tax compliance

We consider the ATO's proposed new guidance on rental property income and deductions and reflect on the key refinements needed for a clearer and more practical framework.

Australia continues to grapple with a deepening housing crisis, driven by chronic undersupply, soaring demand, and rising construction costs, which have pushed home prices and rents sharply higher across major cities and regions. As governments look for solutions, we have seen a number of changes in the form of new tax measures and changes in administration. In 2024, the Victorian Government enacted the *Short Stay Levy Act 2024 (Vic)*, imposing a 7.5% levy on short-stay accommodation bookings from 1 January 2025 in an effort to shift properties back into the long-term rental market and improve housing availability. At the federal level, the Australian Taxation Office has in recent years intensified its focus on rental property compliance, particularly on deductions claimed for holiday homes and short-term rentals. This stems from ATO concerns about improper deduction claims, including those linked to properties that are primarily used for private leisure rather than for genuine income-earning purposes. The surge in short-stay accommodation platforms (such as Airbnb) has blurred the distinction between investment and lifestyle assets, necessitating clear, contemporaneous guidance.

TR 2025/D1 and related practical compliance guidelines

In November 2025, the ATO released for public consultation (which, at the time of writing, remains in draft form) draft public advice and guidance (draft PAG), comprising:

- TR 2025/D1 *Income tax: rental property income and deductions for individuals who are not in business*;
- PCG 2025/D6 *Apportionment of rental property deductions – ATO compliance approach*; and
- PCG 2025/D7 *Application of section 26-50 of the Income Tax Assessment Act 1997 to holiday homes that you also rent out – ATO compliance approach*.

The draft PAG marks a significant policy shift in rental property tax guidance since the withdrawal of IT 2167, which outlined the longstanding approach since 1985. It outlines how individuals not carrying on a rental property business should treat rental income and related deductions, with a particular focus on holiday homes, short-stay platforms and mixed-use properties. The draft PAG now treats holiday homes as a leisure facility under s 26-50 of the *Income Tax Assessment Act 1997 (Cth)* (ITAA97), resulting in the denial of deductions for key ownership costs, such as loan interest, council rates and land tax. In addition, there are aspects of the draft PAG that should be clarified, and it has issues regarding fairness and administrative practicality.

Clarify the interpretation of “mainly used to produce assessable income”

TR 2025/D1 places heavy emphasis on whether a rental or holiday property is “mainly used” to produce assessable income, the key test in determining whether the leisure facility rules in s 26-50 ITAA97 will apply to deny ownership deductions. TR 2025/D1 and PCG 2025/D7 provide that whether a property is “mainly used” to produce assessable income is a qualitative test. It depends on a range of factors, including whether the property's pricing is realistic, the number of days it is available for rent, whether it is available at desirable times, and the pattern of use. TR 2025/D1 and PCG 2025/D7 do not provide a clear quantitative test for what the term “mainly” means, such as a certain number of days that a property must be rented or available for rent. A property rented for most of the year may not be considered “mainly used” to produce assessable income if, for example, during peak holiday periods, it is not available for rent and is instead used for private purposes.

The Tax Institute recommends adopting a quantitative approach to reduce uncertainty created by the ATO's proposed method for property owners and tax practitioners. An interpretation of “mainly” that is construed as “more than 50%” or “for the most part” would better clarify when the exception can be applied under s 26-50 ITAA97. This would be consistent with other ATO guidance that defines “mainly” as “more than 50%”, such as TR 2022/3 which is relevant to interpreting whether income is mainly for personal services under s 84-5 ITAA97.

Increase transparency around ATO assessment of “genuine availability”

If s 26-50 ITAA97 does not apply, the draft PAG reinforces that deductions will still depend heavily on whether a property is [genuinely available for rent](#), yet the underlying principles remain somewhat subjective.

The ATO considers pricing, booking acceptance, and availability during peak seasons as factors that determine “genuine availability”. PCG 2025/D7 states that rejecting reasonable booking requests or setting unrealistic prices may result in deductions being denied for the affected period of time. We recommend introducing clearer examples

and practical compliance thresholds, such as a minimum ratio of accepted bookings to booking inquiries, market pricing benchmarks, objective indicators of unrealistic pricing, and acceptable reasons for blocking dates (eg repairs, safety and storm damage). This would provide the necessary guidance to property owners and tax practitioners, reduce disagreements during audits, and improve consistency in ATO decision-making.

Include a separate section on the tax treatment for holiday homes, generating some rental income

The draft PAG would benefit from explicit guidance on the tax treatment when a holiday home generates some rental income but does not satisfy the exception in s 26-50 ITAA97. PCG 2025/D6 appropriately explains that ownership expenses listed in s 26-50(1) are not deductible in these circumstances. It also clarifies through examples that certain expenses directly related to the derivation of rent – such as agent's commission, advertising, cleaning and laundering after guest stays, and usage-based utilities – may still be deductible under s 8-1 ITAA97 on a fair and reasonable basis. However, the guidance does not include a standalone section that explicitly sets out the tax treatment. To improve usability and reduce uncertainty for taxpayers, the draft PAG should include a dedicated section addressing these scenarios, distinguishing between non-deductible ownership costs and expenses that are either wholly deductible (such as those listed in para 11 of PCG 2025/D6) or require reasonable apportionment. This additional explanation would ensure that taxpayers understand the correct treatment of costs when a holiday home is not mainly held to produce rent but nonetheless generates some assessable income.

Include CGT implications where ownership costs are non-deductible

The draft PAG would benefit from further clarification of the capital gains tax implications that arise when taxpayers rent out all or part of their main residence or a holiday home. While this topic may be considered somewhat outside the scope of the current guidance, if that is the case, the ATO should publish separate PAG addressing these CGT issues, given their close connection to the matters already covered. In particular, when ownership costs are made non-deductible under s 26-50 ITAA97, taxpayers will naturally question whether such costs may instead be included in the property's cost base. As the draft PAG is silent on this point, we recommend that the ATO clarify the CGT treatment of ownership costs denied under s 26-50(1), including whether they can form part of the third element of the cost base for properties acquired after 20 August 1991. The Tax Institute is of the view that, where the exception in s 26-50(3)(b)(ii) is not met, and deductions are therefore denied, these ownership costs should be included in the third element of the cost base under s 110-25(4) ITAA97.

Clarify the eligibility of the main residence exemption

Clarity is needed regarding how the CGT rules apply when a taxpayer rents out a room or temporarily lets their entire main residence. In these common scenarios, the six-year absence rule in s 118-145 ITAA97 does not apply because the dwelling has not ceased to be the taxpayer's main residence, and instead the apportionment rules in s 118-190 ITAA97 operate to reduce the main residence exemption. The draft PAG should expressly explain how ss 118-145, 118-190 and, where relevant, 118-192 ITAA97 apply, and provide contemporary examples illustrating the practical CGT consequences, including the impact of assessable income, allowable deductions, and the need for accurate record-keeping. This additional clarity would help to ensure that taxpayers and practitioners correctly understand how occasional or partial rental use affects eligibility for the full main residence exemption.

Introduce clearer compliance and record-keeping requirements

While the draft PAG signals greater scrutiny, it provides limited detail about what level of documentation the ATO expects during reviews. We consider that publishing a detailed compliance checklist would clarify expectations, reduce audit disputes, and improve taxpayer confidence. Such a checklist could provide supplementary guidance on the required evidence of genuine availability, documentation for rental inquiries and rejections, and records needed to substantiate private versus rental use.

Conclusion

The draft PAG is an important step towards modernising Australia's rental property tax framework, but further refinements are needed to ensure that it is fair, clear and practically applicable. By improving guidance on the meaning of "mainly used for rental", strengthening transparency around ATO assessments, and providing clearer compliance directions, the ATO can issue a final PAG that improves taxpayer certainty while maintaining the integrity of the tax system.



 Tax Academy

3 self-paced units for the price of 2.

Building tax skills his way.

Self-paced, flexible, stackable, Tax Academy units allow you to build practical tax knowledge that fits your schedule and needs.

Pick up skills that make an impact.

Use discount code **2TA1** to obtain the 3rd complimentary unit.

Select your units taxinstitute.com.au/taxacademy/learn-more

 The Tax Institute

Tax News – the details

by TaxCounsel Pty Ltd

February – what happened in tax?

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

Government initiatives

1. Thin capitalisation review

In a joint media release on 30 January 2026, the Treasurer, the Assistant Treasurer and the Assistant Minister for Productivity announced that the Board of Taxation had been tasked to undertake an independent review of the government's thin capitalisation reforms.

The thin capitalisation reforms target the excessive use of debt deductions to avoid paying tax in Australia, and are in line with the OECD's best practice guidance.

As part of the independent review, the Board will consider the overall performance of the amendments in strengthening Australia's thin capitalisation rules.

The Board has been asked to provide its report within 12 months.

The independent review of the thin capitalisation reforms is a statutory requirement, stipulated when the legislation became law in April 2024.

The Commissioner's perspective

2. Contrived property development arrangements

The Commissioner has released a taxpayer alert in relation to certain property development arrangements between related parties involving long-term construction contracts that appear to be designed to create an artificial mismatch between the recognition of income from the property development activity and deductions claimed for the costs of development (TA 2026/1).

Under the arrangements, tax on the profits may be indefinitely deferred and the losses generated are utilised within the group to obtain a tax advantage.

The arrangements involve a special purpose developer (the developer) being interposed between an entity that owns the land being developed (the landowner) and another entity undertaking building and construction works on the land (the builder). The interposition of the developer

artificially separates the land ownership and development activities which are, in substance, a single economic activity of property development.

More particularly, the property development arrangements under review typically involve the following characteristics:

- a separation of land ownership and development activities is created through the interposition of an existing or newly established special purpose developer between the landowner and builder;
- the landowner and the developer are under common ownership or control;
- the landowner and the developer enter into a property development agreement using a long-term construction contract that spans more than one income year;
- the terms of the contract deliberately provide that the developer does not derive any income for managing and delivering the development until the project is completed;
- while under the terms of the contract the developer purportedly provides development services to the landowner, in practice, there is minimal or no evidence that the developer does, or has the capacity to, undertake the development. That is, the developer exists in form only, and it appears that the services provided to the landowner are all outsourced to the builder and funded by another party;
- the losses (arising from the deductions claimed progressively for construction costs while the recognition of income is deferred) are then offset against other income earned by the developer or used to offset other income of the economic group;
- this arrangement may be repeated in a deliberate manner to coordinate with the timing of income from the broader economic group or other development projects, resulting in minimal to no tax being paid across the economic group;
- while minimal to no tax is paid, there can be significant growth in the wealth of the economic group, and in some cases, this wealth is subsequently extracted by individual controllers of the group for their personal benefit.

The ATO is actively reviewing arrangements involving long-term construction contracts that exhibit features similar to those described in TA 2026/1.

The ATO is concerned that related parties undertaking these arrangements are, in substance, undertaking a single economic activity of property development, yet have artificially separated land ownership and development activities to gain a tax advantage.

The ATO is also concerned that the arrangements are contrived and designed to artificially separate the land ownership and development activities to:

- inappropriately manipulate the application of the trading stock provisions of the *Income Tax Assessment Act 1997* (Cth) (ITAA97);
- inappropriately defer the recognition of income by the developer;

- generate artificial losses in the developer that are used to offset other income within the economic group, leading to reduced tax or no tax being paid;
- with repeated use of the arrangement in a deliberate manner, ensure that reduced tax, or no tax, is being paid, sometimes indefinitely, and enable wealth extraction.

Also, these arrangements may be a scheme for the purposes of the general anti-avoidance provisions (Pt IVA of the *Income Tax Assessment Act 1936* (Cth)).

Draft practical compliance guideline

Importantly, the ATO intends to publish a draft practical compliance guideline for comment to accompany TA 2026/1. The draft guideline will outline the ATO's proposed compliance approach, including indicators of higher-risk arrangements and illustrative examples likely to attract scrutiny.

3. CGT: right to occupy dwelling under a will

The Commissioner has released a draft determination that considers the operation of the special CGT main residence exemption provision (s 118-195 ITAA97) that can apply where a dwelling (or an ownership interest in a dwelling) passes to a beneficiary in a deceased estate or is owned by the trustee of a deceased estate (TD 2026/D1).

So far as is presently relevant, where the dwelling (or the ownership interest) was a pre-CGT asset of the deceased, there are several circumstances in which the special CGT main residence exemption provision potentially applies. One of these circumstances is where the dwelling was, from the deceased's death until the relevant ownership interest ends, the main residence of one or more individuals who had "a right to occupy" the dwelling "under" the deceased's will (item 2(b) of the table in s 118-195(1) ITAA97).

The following are some points made in TD 2026/D1:

- the phrase "right to occupy the dwelling under the deceased's will" is not defined in the ITAA97 and takes its ordinary meaning, having regard to the statutory context;
- the right to occupy is a personal right, encompassing the right to reside or "live on" a property for a specified period;
- the term "under" has been considered by the courts, in the context of income tax legislation, to mean "in accordance with", "pursuant to" and "by virtue of";
- the right to occupy must have been expressly granted under the terms of the will to an individual specifically named in the will;
- an individual will only have a right to occupy a dwelling under the deceased's will if the right was granted in accordance with the terms of the will itself without the aid or intervention of any subsequent or intermediate transaction;
- a right to occupy granted to an individual by a trustee pursuant to a broad discretion, given to the executor or trustee of the deceased estate under the deceased's

will, is not "a right to occupy the dwelling under the deceased's will" for the purposes of s 118-195(1) ITAA97; and

- similarly, an individual will not be considered to have a right to occupy a dwelling under the deceased's will if that right was granted under a separate agreement, such as a deed of arrangement which is entered into between the beneficiaries and executor or trustee of the deceased estate.

The reference to the term "will" is, properly construed, a reference to the deceased's will only and does not extend to a testamentary trust. Therefore, an individual will not have a right to occupy a dwelling under the deceased's will for the purposes of item 2(b) in situations where:

- an individual is specifically named in a testamentary trust deed as having a right to occupy the dwelling; or
- the testamentary trust deed provides the trustee of the deceased estate with a discretion to grant a right to occupy the dwelling to any individual.

Where s 118-195 ITAA97 applies, the whole of a capital gain or capital loss is disregarded. However, part of the capital gain or capital loss may be disregarded under s 118-200 ITAA97. If this provision applies, the partial exemption will be calculated in accordance with the formula in s 118-200(2).

Recent case decisions

4. Reckless: penalty assessments upheld

The Administrative Review Tribunal (ART) has rejected a taxpayer's challenge to penalty shortfall assessments made by the Commissioner on the basis that the taxpayer had been reckless (*Tilli and FCT*).

Following an audit of the taxpayer's tax affairs for the 2015, 2016 and 2017 income years (including a compulsory interview), the Commissioner determined that the taxpayer had omitted income totalling \$180,184, comprised of:

- rental income from properties owned by a family trust of which the taxpayer was one of the trustees totalling \$28,383;
- unexplained deposits and payments into the taxpayer's bank accounts totalling \$122,868; and
- cash deemed have been received by the taxpayer from her husband totalling \$28,933.

The Commissioner also determined that the taxpayer was liable for a shortfall penalty arising from making a false or misleading statement, calculated at a base penalty rate of 50% on the basis that the taxpayer behaved recklessly. The penalty was also subject to an uplift of 20% for the 2016 and 2017 income years due to the circumstances attracting the penalty being repeated in those years.

On 23 June 2021, the Commissioner issued notices of amended assessments and penalty assessments for the relevant income years reflecting the audit decision. The taxpayer objected to these assessments and, following

the Commissioner's disallowance of the objections, sought a review by the ART.

By the time the matter came before the ART, the only issue that remained for determination was whether the base rate of the penalty imposed resulted from a failure to take reasonable care, and should therefore have been imposed at 25% or, in the alternative, whether the ART should exercise its discretion to remit the penalty to that amount.

The ART said that, in conceding the application for review in respect of the primary tax liabilities, the taxpayer was taken to admit that the statements made by her to the Commissioner were false and misleading. In practical terms, it would be incredibly difficult for a taxpayer to discharge the onus of establishing that an assessment was excessive or otherwise incorrect in the absence of positive evidence, especially in a matter such as the present where an explanation as to the taxpayer's conduct was of significance.

The ART went on:

“53. Recklessness is assessed objectively. The question is not whether the taxpayer subjectively believed that her affairs were being properly attended to or whether she trusted others to manage those affairs on her behalf, but whether her conduct displays an indifference to a real risk her tax returns were incorrect, and the risk was obvious to a reasonable person in her position.

...

56. While I draw no adverse inference from that decision, the paucity of evidence before me necessarily limits the factual conclusions that may be drawn in [the taxpayer's] favour. The onus requires the [taxpayer] to establish facts sufficient to displace the Commissioner's assessment. That onus cannot be discharged by speculation, bare assertion or by inviting the Tribunal to draw favourable inference in absence of positive evidence.

57. During the Relevant Years, the [taxpayer] disclosed only \$20,500 in notional trust distributions as her assessable income. At the same time, her self-reported annual living expenses totalled \$49,500. That level of expenditure was objectively inconsistent with the limited income disclosed in her returns.

58. The Notices of Amended Assessment were ultimately issued on the basis that [the taxpayer] had received significant amounts of undeclared income identified through unexplained deposits, rental income and cash from [her spouse]. These were substantial receipts directly relevant to her income position.

...

60. [The taxpayer's] conduct was not merely passive. She admitted to signing documents of clear legal and financial significance without reading them or attempting to understand their contents or consequences. This behaviour reflects a complete abdication of personal responsibility for her own financial and taxation affairs.”

The ART pointed out that, while it is common and often understandable for taxpayers to rely on professional advisers, such reliance does not absolve a taxpayer of all accountability. There remains an expectation that a taxpayer will have some minimum level of engagement with their affairs, awareness of significant income and assets in their name, preparedness to ask basic questions, and willingness to review, understand and attest to the accuracy of documents before signing them. The taxpayer did none of these things.

This was not a case of inadvertent carelessness or isolated oversight, but rather wilful disengagement. The taxpayer chose not to know, and not to ask, in circumstances where a reasonable person would have recognised the real risk that returns lodged on her behalf may not have been correct.

The following observations of the ART may be noted:

“75. At the forefront of my mind is that the exercise of the remission discretion must be consistent with the purpose of the penalty regime. I have found the [taxpayer's] conduct was not careless, passive or isolated. There was a wilful blindness and complete abdication of responsibility for her tax affairs. In the absence of a full and proper explanation, remission (even in part) would risk conveying a message that reckless indifference or voluntary disengagement carries no real consequences. I do not consider that outcome would be consistent with the purpose of the legislative regime.”

For a further recent decision of the ART in which the concept of recklessness in the context of the penalties regime was considered, see *Crawford and FCT*.²

5. Input tax credits time-barred

The Federal Court (Logan J) has dismissed an appeal by a taxpayer from a decision of the ART which held that the taxpayer's claims for GST input tax credits were out of time (*Barth Family Trust (Trustee) v FCT*).³

The taxpayer operated a swimming pool construction business and had been registered for GST since 1 July 2000, accounting for GST on a cash basis and lodging quarterly business activity statements (BASs).

In late 2012 and 2013, the taxpayer fell behind in its BAS lodgments. By the time the outstanding BASs were lodged in 2018, approximately four to five years had passed since the dates for lodgment required under the GST legislation.

The returns that were finally lodged brought GST to account on taxable supplies and claimed input tax credits. Following an audit, the Commissioner issued amended assessments disallowing the input tax credits on the basis that any entitlement to the input tax credits was extinguished by s 93-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (GSTA99). It was the Commissioner's decision disallowing the taxpayer's objection to the amended assessments that came before the ART for review. The ART affirmed the objection decision of the Commissioner and the taxpayer appealed from this decision to the Federal Court.

So far as is relevant, s 93-5 provides to the effect that a taxpayer ceases to be entitled to an input tax credit for a creditable acquisition to the extent that the input tax credit has not been taken into account, in an assessment of a net amount of the taxpayer, during the period of four years after the day on which the taxpayer was required to give to the Commissioner a GST return for the tax period to which the input tax credit would be attributable. The taxpayer then appealed to the Federal Court.

In dismissing the taxpayer's appeal, Logan J said that the position was that there was neither assessment nor objection within any of the prevailing four-year periods. In each case, the taxpayer claimed an input tax credit outside that period. All that the Commissioner did in amending the assessment so as to disallow the input tax credit concerned was to give effect to the language of s 93-5. The time having expired, the right to the input tax credit ceased. In turn, all that the objection decision did in affirming it was to recognise that position.

Logan J said that the ART's role in reviewing the objection decision did not entail any revival of the right to the input tax credit. Instead, all that the ART did was to recognise, in reviewing the objection decision, that the input tax credit concerned had not been taken into account in any assessment within a prevailing four-year period.

6. Enterprise issues and an AI hallucination

In a recent decision in which the ART held that the dog-breeding activities of the taxpayer constituted an enterprise for the purposes of GST (either as the carrying on of a business or as an adventure in the nature of trade), the ART also considered various issues relating to penalties and commented on the use of artificial intelligence (AI) in the preparation of submissions being made to the ART (*Smith and FCT*⁴).

As to the use of AI, the ART said that the cases the taxpayer cited in support of his submissions did not stand for the principles he asserted, if the cases existed at all. The ART was not certain that this had occurred in the present case, but commented that, if AI was used as a research tool by litigants before the ART, each case identified by AI needed to be located on public websites and (assuming it exists) read in order to ensure that it stands for the proposition for which it is cited before it is put to the ART. Otherwise, the ART's time and scarce resources are being wasted, as the ART must look for cases that do not exist and read cases that have no relevance at all. Unfortunately, that was exactly what had happened, whether AI was used or not.

The ART gave six instances of erroneous reliance on cases, including:

- *Vidler v FCT*⁵ which has nothing to say about reconstructed records as the taxpayer asserted. It was a case about whether land could comprise "residential premises" under the GSTA99 despite it having no building, on the basis it had residential zoning. It also had nothing to say about creditable acquisitions as the taxpayer asserted and was irrelevant to the case before the ART;

- the taxpayer also cited "*Re Jowett v Commissioner of Taxation* [2011] AATA 433" for a similar proposition. The case that has that citation is *Wall and Secretary, Department of Education, Employment and Workplace Relations*⁶ and it too has nothing to say about reconstructed records. The "Jowett" case that the taxpayer cited as an ART case does not exist under any citation. It is a hallucination. The taxpayer linked *Federal Commissioner of Land Tax v Jowett*⁷ to his closing submissions; presumably on the basis that the word "Jowett" was in the title. The taxpayer clearly had not read that High Court case from 1930 which was nothing like the case he cited (an Administrative Appeals Tribunal case from 2011). The High Court case he linked was about a claim for court costs and the main High Court decision was about land tax and provided assistance on valuing pastoral leases and unimproved land. It had nothing to say about reconstructed records. It was entirely irrelevant to the present case.

It should be noted that the ART has issued an AI transparency statement which considers aspects of the use of AI by the ART. It could be expected that the ART will in due course develop guidelines that would apply to applicants in the preparation of submissions to be made by or on behalf of litigants.

TaxCounsel Pty Ltd
ACN 117 651 420

References

- 1 [2026] ARTA 80.
- 2 [2026] ARTA 90.
- 3 [2025] FCA 1693.
- 4 [2026] ARTA 25.
- 5 [2010] FCAFC 59.
- 6 [2011] AATA 433.
- 7 [1930] HCA 51.




Tax Forum Season

The highly anticipated Tax Forum Season is back!



VIC Tax Forum

19-20 March | Face-to-face |  Melbourne




NSW Tax Forum

21-22 May | Face-to-face |  Sydney



QLD Tax Forum

28-29 May | Face-to-face |  Brisbane



March – May 2026



Up to 14 CPD hours

Register now
taxinstitute.com.au

 The Tax
Institute

Tax Tips

by TaxCounsel Pty Ltd

Informality and regularity

In a recent tax decision, the Full Federal Court referred to the informality that may be evident in business dealings involving related entities.

Background

When advising a client and implementing a client's instructions, a tax practitioner must ensure that what is done is in fact effectively done.

Where an issue arises as to the effectiveness of what has been done in a particular case, the taxpayer may object to the Commissioner's assessment, and if the taxpayer is dissatisfied with the Commissioner's decision to disallow the objection, the broad position is that the taxpayer may apply to the Administrative Review Tribunal for a review of the decision or appeal to the Federal Court against the decision.¹ On any such application or appeal, the taxpayer has the burden of proving (on the balance of probabilities) that the assessment is excessive or otherwise incorrect and what the assessment should have been.²

From an evidentiary perspective, issues can often arise where there is no adequate written evidence of a contract and the parties to an alleged transaction are not dealing with each other at arm's length.

Also, there are two evidentiary considerations that may, depending on the circumstances, assist a taxpayer in pursuing an appeal or a review. One of these considerations is the fact that the courts recognise that, in many cases, and particularly where the parties to a transaction or course of conduct are connected, informality may be evident and this informality will need to be taken into account when the tax implications are being considered. For convenience this is referred to as the "informality principle" and was considered by the Full Federal Court in a recent decision.

The other evidentiary consideration is the presumption of regularity that applies for the purposes of the law of evidence.

This article briefly considers these two evidentiary considerations.

Informality

The recent decision of the Full Federal Court in which the informality principle was referred to is the decision in *Charles Apartments Pty Ltd v FCT*.³ However, before considering this decision, reference may be made to what was said in several earlier decisions.⁴

In a tax context, Hill, Heerey and Hely JJ, in *Service v FCT*,⁵ said:

"38 True it is the 1984 discussion relied on was informal and not recorded in any contemporaneous document. This informality is understandable in a setting where shareholders, directors and the party promising to pay over the fees were members of the same family. But to say as much does not deny the existence of an intent to create legal relations."

In *VL Finance Pty Ltd v Legudi*,⁶ where the issues included whether certain alleged loans made by a company existed and the effect of book entities, Nettle J said:

"29. In the end, very little of the defendants' case at trial was devoted to the contention that the debts do not exist. In effect it amounted to no more than assertions of the defendants from the witness box that the loans transaction was just book entries conceived by Charles Legudie and Mr Curwood and that there could not have been any loans in reality because not one of the family members got any cash in their hands. But Mr Stark, who appeared for the defendants, did not seek to make anything of the witnesses' assertions. In the course of his final submissions he contented himself with the observation that the gist of his non-existence case was really the product of his unconscientious advantage argument.

30. In the circumstances I think it suffices to say of the book entries point that, in the absence of any suggestion of sham, there is no reason why loans agreed to by [sic] made by a family company to members of the family cannot be created orally or by conduct and sufficiently evidenced by book entry, and that it is enough to dispose of the consequences of the lack of cash in hand contention to observe that it has been the law since *Spargo's* case that obligations may effectually be set off one against another, leaving a net balance due, without any money changing hands." (references omitted)

In *Halloran v Minister Administering National Parks and Wildlife Act 1974*,⁷ Gleeson CJ, Gummow, Kirby and Hayne JJ, in a joint judgment, said:

"55. First, the Minister contends, as the Court of Appeal held, that Talbot J erred because the evidence and agreed facts do not establish that the steps said to have taken place in May 1998 actually occurred. The submission was developed by saying that, because the elaborate and sequential steps (particularly respecting the drawing, acceptance and negotiation of a bill of exchange) had not been taken, the scheme had not been implemented in accordance with its design; as a result, Pacinette had held at the resumption date no compensable equitable interest.

56. Several points should be made immediately concerning the width of the Minister's first contention ... Another is that the Minister accepts that contractual assent may be inferred from conduct, and that, any requisite statutory formalities apart, company directors may act informally and may manifest unanimous consent without the passage of formal resolutions ... Furthermore, the mere fact that

a number of meetings are held simultaneously does not deprive the resolutions of efficacy. If, for example, three people are the sole shareholders in each of a number of companies, however large that number may be, they could effectively resolve, on a single occasion, in their capacities as the shareholders of all those companies, in a manner binding all those companies; assuming, of course, that the subject-matter of such resolution was otherwise within the power of a general meeting of the shareholders of each company.”

In *Melbourne Corporation of Australia Pty Ltd v FCT*,⁸ Logan J said:

“8. Common to each present taxation appeal, and every such proceeding, is that a burden falls on the applicant to prove the assessments concerned to be excessive: s 14ZZO, TAA; *Federal Commissioner of Taxation v Dalco*.^[9] The proceeding being civil in character, it is both necessary and sufficient, in relation to any issues of fact upon which proof that the assessment is excessive depends, that the applicant do this on the balance of probabilities: s 140(1), *Evidence Act 1995* (Cth) (*Evidence Act*); nothing more is necessary but nothing less will suffice. That said, where a finding in respect of a particular issue of fact would entail grave conclusions about conduct, the considerations identified in s 140(2) of the *Evidence Act* and the preceding discussion of principle in *Briginshaw v Briginshaw*^[10] must be, and has been, taken into account.”

Charles Apartments

In the recent *Charles Apartments* case, Logan, Downes and Goodman JJ, in a joint judgment, said:¹¹

“16. An agreement in writing evidencing the making and terms of the asserted intragroup loan from Demian Investments to CAPL [Charles Apartments Pty Ltd] was not adduced in evidence before the Tribunal by CAPL, if indeed there ever was an agreement in writing. The Tribunal accepted that the internal affairs of the Demian Group were conducted with great informality by Mr Demian. He was the ultimate controller of the entities within the group.

17. Such informality is, in itself, unremarkable in small business in Australia, especially when control is so closely held: ... Eligibility to claim a deduction under s 8-1 of the ITAA 1997^[12] is not conditioned upon the existence of evidence in writing to prove that a liability was incurred in the amount claimed. It is singularly important that the Commissioner brings to bear this understanding of small business and of s 8-1 in his administration of the ITAA 1997 and other taxation legislation. Great injustices can be done if he does not do so. All this said, an absence of evidence in writing supporting the existence and terms of a loan can present real challenges for a taxpayer in discharging the statutory onus of proof mentioned above. Sometimes the existence of a loan and even the incurring of a related interest liability may be evident enough from a taxpayer’s accounts. But such accounts may not, and often will not, disclose the terms of the loan concerned. In this case, the detailing of the terms of the intra-group

loan to CAPL and its assignment depended upon the acceptance of Mr Demian’s oral evidence by the Tribunal.

18. As to this, the Tribunal accepted Mr Demian’s evidence ... What the Tribunal found ... was that ‘interest accrued on the amount advanced under the intragroup arrangement but WCVB [CAPL] was not liable to pay the interest as it accrued. It would instead pay the capitalised interest when it sold the Astoria property [Charles Street Properties] (he said) “and then only to the extent there was sufficient sale proceeds from the sale of the [Astoria] properties to pay the interest”’. The Tribunal also accepted that the prevailing rate of interest on the intra-group loan matched that for which West Apartments was liable to Suncorp. Given the nature of the statutory appeal to this Court in its original jurisdiction, these findings of fact by the Tribunal stood, in the absence of the upholding of any challenge alleging that they were affected by an error of law. There was no such challenge. To the contrary, each party’s submissions in the original jurisdiction and on the appeal to this Court depended upon their correctness.”

It should be noted that the taxpayer has lodged an application for special leave to appeal to the High Court from the decision of the Full Federal Court in the *Charles Apartments* case. In the event that special leave to appeal is granted, this may give the High Court the opportunity to consider the issue.

Mercanti

The decision of the Western Australian Court of Appeal in *Mercanti v Mercanti*¹³ should also be referred to as it provides an illustrative example of the application of the approach to be taken where there is informality.

One issue in the *Mercanti* case was whether a deed (the MMF variation deed) which purported to vary the deed that established a discretionary trust (the MMF Trust) was effective. It was argued that the MMF variation deed did not bind the corporate trustee (Slondia Nominees Pty Ltd (Slondia)) because it was not executed pursuant to the lawful authority of Slondia’s directors or shareholders. In this regard, it was alleged, in particular, that there was no resolution of Slondia within the meaning of cl 17(4) of the MMF Trust deed. It was contended that cl 17(4) of the trust deed was mandatory in its effect, and obliged a sole corporate trustee (such as Slondia) to pass a resolution in order to effectively exercise the power to vary the MMF Trust deed under cl 28 of the deed.

Clause 17(2) of the trust deed provided, relevantly:

“38 ... Any exercise by the Trustees of any power discretion or authority conferred on the Trustee by this Deed including without limiting ... the revocation addition to and variation of the trust’s terms and conditions herein contained *may be made* ...

- (a) in writing signed by all ... the Trustees; or
- (b) by resolution duly passed at a meeting of the Trustees; or
- (c) *in the case of a sole corporate Trustee in the manner set out in sub-clause (4) of this clause.*” (emphasis added)

And clause 17(4) provided, relevantly:

“Every Trustee which is a corporation ... may exercise ... any discretion or power hereby conferred on the Trustee by a resolution of such corporation ... or by a resolution of its Board of Directors or governing body ...” (emphasis added)

In a joint judgment, Newnes and Murphy JJA, in dismissing the appeal, said:¹⁴

“364 The language of cl 17(4), both read on its own and in conjunction with cl 17(2), is plainly permissive. Clause 17(4) does not, in its ordinary meaning, prescribe or mandate the manner of the exercise of a power by a sole corporate trustee. Clause 17(4) does not, accordingly, preclude a power of amendment to be exercised by a sole corporate trustee executing a deed of variation under its corporate seal in accordance with s 127(2) of the *Corporations Act 2001* (Cth). That is what happened here.”

While this was sufficient to dispose of the contention, Newnes and Murphy JJA also said that, in any event, they did not accept the appellants’ further contention that the primary judge erred in concluding that there was a meeting of the directors of Slondia at which it was agreed that Slondia should enter into and execute the MMF variation deed. Their Honours went on:¹⁵

“367 The relevant finding was that, on 15 June 2004, Michael, Yvonne and Tyrone [the directors of Slondia] attended a meeting with Mr Nettleton of Brett Davies Lawyers at that firm’s premises. His Honour found that at the meeting, Michael and Yvonne instructed Mr Nettleton, among other things, to prepare a deed of variation to update the MMF Trust Deed, including replacing Michael as Guardian and Appointor with Tyrone, and to send the document to Tyrone to deal with its execution; and that Tyrone assented to those things being done. His Honour concluded that, notwithstanding the lack of formality, there was a meeting of the minds of Michael, Yvonne and Tyrone, as directors, that Slondia should enter into the MMF Variation Deed and that Tyrone should attend to its execution, and that that constituted a sufficient meeting of the directors.

368 The appellants attacked that finding, submitting that Michael, Yvonne and Tyrone did not attend at Brett Davies Lawyers on that occasion in their capacities as directors, but solely in their personal capacities – in the case of Michael and Yvonne, for estate planning purposes – and that whatever Michael, Yvonne and Tyrone agreed to that day were not decisions in the management of the business of Slondia, but simply decisions with respect to their personal affairs.

369 That submission should be rejected. The primary judge made adverse findings as to the reliability of the evidence of Michael and Yvonne, and rejected their evidence as to the circumstances in which the MMF Variation Deed came to be executed. His Honour’s finding as to the meeting of the directors on 15 June 2004 was clearly open to him on the evidence. It is consistent with, among other things, the contemporaneous notes of the meeting on 15 June 2004 made by Mr Nettleton, which his Honour accepted as the best evidence of the meeting; the subsequent affixing of Slondia’s common seal to the MMF Variation Deed by

Michael and Tyrone; and Michael’s written consent to the change in the MMF Variation Deed.” (references omitted)

Presumption of regularity

As has been noted, practitioners should also be aware that, under the law of evidence, there is a presumption of regularity that may also be relevant in a range of situations.

In *Morris v Kanssen*,¹⁶ Lord Simonds explained that resort to the presumption of regularity is based on the premise that:

“The wheels of business will not go smoothly round unless it may be assumed that that is in order which appears to be in order.”

In *Carpenter v Carpenter Grazing Co Pty Ltd*,¹⁷ Hope JA (Samuels and Priestley JJA concurring) said:

“For the defendants it has been submitted that the presumption of regularity applies only when there is no evidence as to the fact in question. As I understand it, the true rule is that the presumption may reasonably be drawn where an intention to do some formal act is established, when the evidence is consistent with that intention having been carried into effect in a proper way, the observance of the formality has not been proved or disproved and its actual observance can only be inferred as a matter of probability: ... There was no evidence in the present case that there was no [share] register; the evidence was simply that no one had seen it or knew of its existence. This does not prove that it did not exist, and is consistent with the person to whom its keeping was left, Mr McClung, having duly carried out his responsibility. Mr McClung appears to have kept the accounts with due regularity, to have prepared and filed the annual returns, and to have made enquiries about transfers of shares. In my opinion his Honour was correct in applying the presumption to find that the share register did in truth exist, and that the transfer signed by Karen which had been made out in favour of Kenneth was entered in that register.”

In *Popovic v Tanasijevic (No. 5)*,¹⁸ Olssen J said:

“85. If there remained any need to do so, then it seems to me that resort may properly be had to the presumption of regularity, which is by no means restricted, in its application, to public acts or acts of public officials. As was pointed out by Griffith CJ in *McLean Bros & Rigg Ltd v James Grice*^[19] (*McLean*) at 850, this principle is certainly applicable to the proceedings of corporate bodies. It logically touches on acts preceding what has publicly occurred, in this case the registration of the SCWA.^[20]

86. In absence of evidence to the contrary it is to be inferred, as a matter of probability, that the necessary pre-requisite formalities to bring an association into existence were attended to.”

In *Kendell v Sweeney*,²¹ Muir J, in applying the presumption of regularity, said:

“[28] The books of the Trust and the company were written up to record the subject transactions by the entities’ accountants on the instructions of the person who had the capacity to give them. The income tax returns were similarly prepared. They are formal documents

prepared pursuant to obligations under the corporations legislation existing at the time and for the purposes of the *Income Tax Assessment Act*. Their content stood unchallenged for some years and I see no reason why the presumption of regularity should not apply.^[22]

[29] Additionally, the evidence does not suggest to me that the testator intended that the subject entries not record legally effective transactions. Nothing has been placed before me to show that the testator was incapable of lawfully implementing the transactions under consideration. And it is difficult for the applicant, having acceded to his father's sole conduct of the affairs of the company and Joymar in his lifetime, to now assert irregularities on the grounds of his lack of knowledge or participation."

In *Celermajer Holdings Pty Ltd v Kopas*,²³ Ward J said:

"88. Finally, reliance is placed on the presumption of regularity. Mr Marshall referred in this regard to what was said in *Manufacturers Mutual Insurance Ltd v Motor Accidents Authority of NSW*^[24] by Handley JA (Clarke and Hope JJA agreeing) at [77,347] column 1:

Mr Gee further submitted that the prescribed fee had not been paid, which is true, and that there was no evidence that the RTA had approved the non-payment of the fee for the purposes of R53A(2) which is not true. The issue by the Registry of a letter, interim receipt, and interim registration label to a member of the public during working hours and in the ordinary course of business was *prima facie* evidence that the RTA had approved the waiver of any fee. The inference of approval is strengthened by the later entries in the RTA's own records and the internal memoranda which the dishonour of the owner's cheque generated. The *prima facie* inference arises from the presumption of regularity which applies to business transacted by the public openly and in good faith with government officials. This is only one manifestation of the principle that acts are presumed to have been done rightly and regularly unless the contrary appears ... In *McLean Bros [& Rigg Ltd] v Grice*^[25] Griffiths CJ quoted with approval the following statement from a decision of the Supreme Court of the United States:

'It is a rule of very general application that where an act is done which can be done legally only after the performance of some prior act, proof of the latter carries with it a presumption of the due performance of the prior act.'

Observations

As the discussion above indicates, where there is a degree of informality in the dealings between parties, this must be taken into account when determining what the actual position is between the parties.

In the *Charles Apartments* case, the Full Federal Court, when considering the question of informality, referred to the fact that eligibility to claim a general income tax deduction for an amount under s 8-1 ITAA97 is not conditioned on the existence of evidence in writing to prove that a liability was incurred in the amount claimed.

It should be noted that the absence of evidence in relation to a transaction that has potential taxation ramifications may mean that there has been a breach of the record-keeping requirements of the income tax law. In particular, s 262A ITAA36 provides that a person carrying on a business must keep records that record and explain all transactions and other acts engaged in by the person that are relevant for any purpose of the Act.

A further point is that, if there is a supply of goods or services under an implied contract, the possibility of GST implications would need to be considered.

In the case of the existence of a loan and its terms, the approach adopted by Nettle J in *VL Finance Pty Ltd v Legudi* is, it is submitted, correct. In some cases (for example, where a loan is involved) where book entries are relied on, there may be an issue as to when an outgoing was incurred for the purposes of the general deduction provision.

Further case

On 17 February 2026, a unanimous Full Federal Court (McElwaine, Feutrill and Wheatley JJ), reversing a decision of Logan J, held that a contract between related parties for the payment of service fees could not be inferred from the conduct of the parties. A note in relation to this decision of the Full Federal Court will be included in the next issue of the journal.²⁶

TaxCounsel Pty Ltd

References

- 1 S 14ZZ of the *Taxation Administration Act 1953* (Cth) (TAA53).
- 2 Ss 14ZZK and 14ZZO TAA53.
- 3 [2025] FCAFC 180.
- 4 The underlying relevant facts in each case will be gleaned from the quotations from the judgments.
- 5 [2000] FCA 188.
- 6 [2003] VSC 57.
- 7 [2006] HCA 3.
- 8 [2022] FCA 972.
- 9 (1990) 168 CLR 614 at 623–625.
- 10 [1938] HCA 34.
- 11 [2025] FCAFC 180.
- 12 This section is the general deduction provision of the *Income Tax Assessment Act 1997* (Cth) (ITAA97).
- 13 [2016] WASCA 206.
- 14 Buss P, the other member of the Court of Appeal, gave separate reasons for dismissing the appeal.
- 15 At [367] to [369].
- 16 [1946] 1 All ER 586 at 592.
- 17 (1987) 5 ACLC 506.
- 18 [2000] SASC 87.
- 19 [1906] HCA 1.
- 20 The Serbian Community Welfare Association.
- 21 [2005] QSC 64. An appeal from this decision was dismissed by the Queensland Court of Appeal: [2005] QCA 390.
- 22 *Carpenter v Carpenter Grazing Co Pty Ltd* (1987) 5 ACLC 506 at 514; and *Popovic v Tanasijevic* (No. 5) [2000] SASC 87.
- 23 [2011] NSWSC 304.
- 24 [1991] NSWCA 187.
- 25 [1906] HCA 1.
- 26 *FCT v SNA Group Pty Ltd* [2026] FCAFC 10.

CTA: Your to a world of tax distinction.

Study with us to become a Chartered Tax Adviser (CTA)

Earn the CTA designation when you complete the CTA3 Advisory subject. This internationally recognised designation is the gold standard in tax, signifying technical excellence and advanced planning and advisory skills.

Get rewarded for your in-demand insights, practical skills, and real contribution to shaping businesses.

Enrolments close soon.

taxinstitute.com.au/education

 **The Tax
Institute** | Higher
Education

Higher Education

From curiosity to passion

The Dux of ATL008 Tax for Trusts shares his journey from curiosity about his own tax savings to shaping policy and inspiring others through his dedication to tax education and reform.

James Dawson, CTA

Northern Territory Government

“I am indebted to my wife, Kate, who selflessly picked up the ‘parenting slack’ I inflicted on our family!” James, father of two, told us modestly when asked about his journey to achieving dux. When he’s not with his family on bike rides or looking for frogs in the backyard, he works as an Assistant Director at the Territory Revenue Office within the Northern Territory Department of Treasury and Finance.

His entry into the tax industry started with refreshingly honest motivations, ones we certainly don’t hear every day at TTI.

“Admittedly, my initial attraction to tax was entirely out of self-interest: How can I keep more of what I earn?” he admits with a laugh. After completing a Bachelor of Laws/ International Studies at Macquarie University and being admitted as a Solicitor in the Supreme Court of NSW, James went on to study a Graduate Certificate in Business at QUT. “I have just shy of nine years’ experience in the world of tax. I started out as an employment taxes consultant at KPMG in Sydney, before transitioning into tax and revenue policy within the Northern Territory Department of Treasury and Finance.”

When curiosity became purpose

What transformed James’s perspective was discovering the deeper purpose behind tax frameworks.

“I became intrigued by the policy choices underpinning taxation frameworks. I started to wonder what mischief they were attempting to address, and what social outcomes they achieved. I am truly passionate about how taxes are designed and their impact on society.

As I’ve ventured further into the world of tax, I’ve learned just how interwoven it is with seemingly unrelated societal outcomes. The ability to influence these outcomes through tax is genuinely fulfilling. I derive a lot of pleasure from bringing about ‘A-ha’ moments in others, in a way that inculcates genuine understanding of a complex topic,” he explains enthusiastically.



Eyes on the future

Given his keen interest in superannuation, an area of tax that undoubtedly affects all Australians, his future learning is pretty clear.

“I’m one subject away from attaining the Graduate Diploma of Applied Tax Law. I’ll be enrolling in the Advanced Superannuation subject in 2026 and I’m really looking forward to developing my expertise in that field, particularly given how almost all Australians will interact with the superannuation system at some point in their lives.”

That “A-ha” moment when studying at TTI

“Trusts had always been somewhat of a mystery to me,” James reflects on his [Tax for Trusts](#) subject experience. “I had no appreciation for their practical use, nor how real people might make use of them day to day, or the issues that they would encounter when making decisions about their use.

To that end, I found the letter of advice and late-breaking fact to be the most interesting aspects of the subject. Particularly, how family dynamics force advisers to reckon with what is permissible under the trust deed, and the point at which obsessive tax optimisation triggers anti-avoidance considerations. It was also interesting to consider how an unruly or unwitting adviser might stuff things up!”

What advice would you give someone looking to further their education?

“Do it already! Add enough feathers to your cap and you’ll fly!”

With his combination of technical excellence, policy insight, and genuine passion for demystifying tax complexities, James exemplifies the kind of tax professional who doesn’t just understand the rules, but also assesses their impact on people’s lives. That is, when he’s not playing hide-and-seek with his kids or dreaming about getting reacquainted with his PlayStation.

AML regulation of accountants and lawyers

by Mathew Leighton-Daly, FTI,
Special Counsel, HWLE Lawyers

The “tranche 2” reforms to Australia’s anti-money laundering and counter-terrorism financing regime will extend to a new range of businesses and services, including accountants and lawyers. The legislation takes effect on 31 March 2026, with newly regulated entities commencing compliance from 1 July 2026. This article considers the disciplines of accounting and law within the context of the forthcoming AML/CTF regulation. First, it introduces readers to the concept of AML/CTF regulation in Australia, including the justification for the regulation of professionals, namely, accountants and lawyers. Next, it contrasts the two professions generally. The discussion then turns to lawyers’ status as officers of the court and the resulting tension created by co-regulation. Finally, the article analyses some practical aspects of the availability of legal professional privilege and its administration.

Introduction

The “tranche 2” reforms to Australia’s anti-money laundering and counter-terrorism financing (AML/CTF) regime will extend to a new range of businesses and services, including accountants and lawyers. This regulation has been extended via a new sub-category of “designated services” titled “professional services” in s 6 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (AML/CTF Act). The legislation takes effect on 31 March 2026, with newly regulated entities commencing compliance from 1 July 2026.

This article considers the disciplines of accounting and law within the context of the forthcoming AML/CTF regulation. First, it introduces readers to the concept of AML/CTF regulation in Australia, including the justification for the regulation of certain professionals, namely, accountants and lawyers. Next, it contrasts the two professions generally. The discussion then turns to lawyers’ status as officers of the court and the resulting tension created by co-regulation. Finally, the article analyses some practical aspects of the availability of legal professional privilege (LPP) and its administration.

Tranche 2 reforms

Anti-money laundering regimes provide countries with the means to help deter, detect and disrupt money laundering, terrorism financing and proliferation financing (financial crime control). They also provide substantial financial intelligence to revenue agencies, regulators and law enforcement bodies. In Australia, the AML/CTF Act implements a risk-based approach to financial crime control regulation and sets out general principles and obligations.

“Reporting entities” under the AML/CTF Act must have an AML/CTF program specifying how they comply with the AML/CTF legislation. The program must show how the reporting entity identifies, mitigates and manages the risk of their products or services being used for money laundering or terrorism financing, and must be appropriate to the level of risk that the reporting entity may reasonably face.

AML/CTF programs are risk-based. This means that they must take into account the likely level of risk of the reporting entity being used for money laundering and terrorism financing, based on its size, nature and complexity, taking into account:

- the reporting entity’s customers;
- the services provided, including how they are delivered; and
- foreign jurisdictions with which the reporting entity deals.

At the time of writing, the AML/CTF Act requires two parts to an AML/CTF program. Part A must include the processes and procedures to help reporting entities identify, mitigate and manage the money laundering and terrorism financing risks that reporting entities may reasonably face. Part B is focused on the procedures for identifying customers and beneficial owners, including those that are politically exposed persons and verifying their identity (this is referred to as customer due diligence and enhanced customer due diligence).

The current prescriptive two-part program structure is being replaced by a unified, risk-based, and outcomes-oriented model. Reporting entities will be able to structure their programs in a way that best meets their specific needs and risks, provided they adhere to the requirements of the amended AML/CTF Act. New programs must contain both of the following:

- a risk assessment: reporting entities must identify and assess their money laundering, terrorism financing and proliferation financing risks (referred to as ML/TF risks); and
- AML/CTF policies: reporting entities must develop and maintain appropriate policies, procedures, systems and controls to manage and mitigate their ML/TF risks and assist them complying with their obligations.

Implicit in any risk-based approach is that there is no “one-size-fits-all” AML/CTF program; each reporting entity will likely have its own unique set of money laundering/terrorism financing risks. The logic behind the new approach is that it will give reporting entities greater flexibility in

deciding how to meet their obligations and in developing stronger and/or additional controls when necessary. In the author's view, this tailoring of AML/CTF processes represents both the biggest challenge and the biggest failure of reporting entity programs since the enactment of the AML/CTF Act. The author also suggests that the new risk assessment model will likely create more scope for enforceability by the Australian Transaction Reports and Analysis Centre (AUSTRAC) via civil pecuniary penalties and other remedies available under the AML/CTF Act.

The regulation of professional services

The Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 (the Bill) was introduced into parliament on 11 September 2024. The Bill amends the AML/CTF Act and received royal assent on 10 December 2024. The changes to the AML/CTF Act relevantly take effect from 31 March 2026, with compliance obligations for newly regulated entities commencing from 1 July 2026.

A primary driver for the Bill was to close – in some cases, 20-year-old – regulatory gaps identified by the intergovernmental body, the Financial Action Task Force (FATF), which sets standards for combating financial crime. The explanatory memorandum (EM) to the Bill notes:

“13. A key element of the reforms is to expand the AML/CTF regime to certain services provided by gatekeeper professions: real estate professionals, dealers in precious metals and precious stones, and professional service providers, including lawyers, conveyancers, accountants and trust and company service providers (also known as ‘tranche two’ entities).

14. Certain services provided by these sectors are recognised globally as high risk for money laundering exploitation. AUSTRAC's *Money Laundering in Australia National Risk Assessment 2024* found that these sectors posed a medium to high money laundering vulnerability. The assessment also identified that gaps in regulation of tranche two entities is a key national vulnerability that impacts the effectiveness of Australia's AML/CTF regime.”

Accountants and lawyers' services are recognised as high risk for financial crime exploitation because these professionals are potentially “enablers” of financial crime:¹

“Transnational and Australia-based crime groups are increasingly making use of professional facilitators or ‘gatekeepers’ to the financial system, such as lawyers, accountants and trust and company service providers (TCSPs), to set up complex legal structures to disguise and launder criminal wealth. These gatekeepers may be unaware that their services are being exploited by criminals or ‘wilfully blind’ to the misuse. A small minority of gatekeepers may collude and operate as criminal facilitators.” (footnote omitted)

Professional services providers then were always recommended to be the subject of AML/CTF regulation and indeed have been in other jurisdictions for some time. It was no surprise then that the FATF's initial assessment

of Australia in 2015, although it found some strong legal frameworks, identified significant shortcomings, particularly regarding the non-regulation of professionals. Domestically, s 251 of the AML/CTF Act also required a review of the operation of the AML/CTF Act and associated rules and regulations. In December 2013, the government commenced the review. It was completed in 2016 and its findings set out in the *Report on the Statutory Review of the Anti-Money Laundering and Counter Terrorism Financing Act 2006 and Associated Rules and Regulations*. This report was tabled in parliament on 29 April 2016. Notably, recommendation 4.6(a) is:²

“The Attorney-General's Department and AUSTRAC, in consultation with industry, should:

- a) develop options for regulating lawyers, conveyancers, accountants, high-value dealers, real estate agents and trust and company service providers under the AML/CTF Act ...”

The tranche 2 amendments to the AML/CTF Act do not distinguish between accountants and lawyers. Instead, they prescribe “designated services” in s 6 of the AML/CTF Act, which relevantly include:³

- assisting a person in the planning or execution of a transaction, or otherwise acting for or on behalf of a person in a transaction, to sell, buy or otherwise transfer real estate, where:
 - the service is provided in the course of carrying on a business; and
 - the sale, purchase or other transfer is not pursuant to, or resulting from, an order of a court or tribunal;
- assisting a person in the planning or execution of a transaction, or otherwise acting for or on behalf of a person in a transaction, to sell, buy or otherwise transfer a body corporate or legal arrangement, where:
 - the service is provided in the course of carrying on a business; and
 - the sale, purchase or other transfer is not pursuant to, or resulting from, an order of a court or tribunal;
- receiving, holding and controlling (including disbursing) or managing a person's:
 - money;
 - accounts;
 - securities and securities accounts;
 - virtual assets; or
 - other property;

as part of assisting the person in the planning or execution of a transaction, or otherwise acting for or on behalf of a person in a transaction, in the course of carrying on a business;

- assisting a person in organising, planning or executing a transaction, or otherwise acting for or on behalf of a person in a transaction, for equity or debt financing relating to:

- a body corporate (or proposed body corporate); or
 - a legal arrangement (or proposed legal arrangement);
- in the course of carrying on a business;
- selling or transferring a shelf company, in the course of carrying on a business;
 - acting as, or arranging for another person to act as, any of the following, on behalf of a person (the nominator), in the course of carrying on a business:
 - a director or secretary of a company;
 - a power of attorney of a body corporate or legal arrangement;
 - a partner in a partnership;
 - a trustee of an express trust;
 - a position in any other legal arrangement that is functionally equivalent to a position mentioned in any of the above paragraphs;
 - acting as, or arranging for another person to act as, a nominee shareholder of a body corporate or legal arrangement, on behalf of a person (the nominator), in the course of carrying on a business; and
 - providing a registered office address or principal place of business address of a body corporate or legal arrangement, in the course of carrying on a business.

Accountants and lawyers

Professional services practitioners often have backgrounds in accounting and/or law whether they practise as accountants, lawyers or both. Despite the grouping of the two disciplines by the AML/CTF Act, as will be shown, the distinction between the two is important because it can result in material differences in the way that the AML/CTF Act regulates different professionals in particular contexts.

An accountant is a professional who performs financial services such as preparing financial records, auditing and tax services for individuals and organisations. They analyse and interpret financial data, prepare reports, manage budgets, and provide strategic advice on financial matters, including compliance, taxation and investment decisions. Accountants typically earn a bachelor's degree in accounting, finance or business, which can be followed by a postgraduate degree like a Master of Professional Accounting to qualify for professional certification. Many also pursue professional certifications such as CPA (certified practising accountant) or CA (chartered accountant). Some accountants will register as tax agents under the *Tax Agent Services Act 2009* (Cth).

A lawyer is a legal professional who is trained and licensed to advise clients on legal matters and represent them in legal proceedings. They apply their knowledge of the law to specific cases by providing advice, preparing legal documents like contracts and wills, conducting research, and advocating for their clients in court or negotiations. Lawyers complete either an undergraduate Bachelor of Laws degree or a postgraduate Juris Doctor degree. Both degrees provide the foundational knowledge for a career

in law, although the Juris Doctor degree is specifically designed for those with an existing degree. To be admitted as a lawyer, they must first complete the required academic and practical legal training, then apply for admission with the Supreme Court of the relevant state/territory. After admission, they can apply for a practicing certificate, which is a separate requirement to enable them to engage in legal practice.

Under the doctrine of the separation of powers, the judiciary is separate from the executive (and parliament). The judiciary consists of the courts, including the Supreme Court. Lawyers are officers of the court and subject to its inherent jurisdiction. Under s 25 of the Legal Profession Uniform Law (applicable in NSW and Victoria) for example, an Australian lawyer is “an officer of the Supreme Court” of for as long as their name remains on that court’s roll. This legislation reflects the common law position:⁴

“[A]s an officer of the court concerned in the administration of justice [a legal practitioner] has an overriding duty to the court, to the standards of his profession, and to the public, which may, and often does, lead to a conflict with his client’s wishes or with what the client thinks are his personal interests.”

Arguably, registered tax and BAS agents can give tax-related legal advice under the *Tax Agent Services Act 2009*, although the scope of this is not clear.⁵ Nevertheless, the distinction between accountants and lawyers remains important as, under the relevant state and territory laws (including the Legal Profession Uniform Law), unqualified legal practice is prohibited⁶ and LPP is only potentially available to clients of lawyers.

Legal professional privilege

LPP (also referred to as “client legal privilege” because, in Australia, it belongs to the client and not the professional) arises in relation to:

- confidential communications,
- which come into existence for the dominant purpose of:
 - legal advice, or
 - litigation.

LPP has been described as a legal right and is a substantive rule of law (ie not merely a procedural provision).⁷ LPP both facilitates the administration of justice and is closely linked to the human rights to privacy and a fair trial. The law of LPP is recognised in both statute (eg the uniform evidence law) and common law. LPP has been described as “an immunity from the exercise of powers which would otherwise compel the disclosure of privileged communications”.⁸ The doctrine applies more broadly than the statutes prescribe (eg the uniform evidence law). Under common law, it also applies to non-court processes such as investigations. Both the common law and the uniform evidence law apply to the pre-trial stages of a proceeding (for example, producing documents under a subpoena).

Where LPP applies⁹ (either pursuant to statute or common law), a person generally cannot be compelled to disclose

communications that are covered by LPP. Disputes about whether a communication is privileged are determined by a court. The test as to whether LPP applies is objective.

Limitations to LPP

Chaikin summarises regulators and commentators' concerns and about the availability of privilege:¹⁰

“[T]here is a widespread belief by law enforcement and tax authorities that lawyers aggressively use LPP to obfuscate and delay complying with legitimate claims for documents. There have been several cases where legal practitioners have asserted LPP by routing non-legal advice through legal practitioners, warehousing of documents to avoid discovery in litigation, or inappropriately relying on LPP as a justification for not producing documents in response to tax authorities, Royal Commissions or AUSTRAC. Although the LPP claims were not justifiable in these matters, the ‘very nature and purpose of client legal privilege’ makes it difficult to assess the extent of abuse.” (authorities omitted)

Some of the concerns with regard to LPP relate to conduct around the administration of claims rather than shortcomings in the doctrine. Illegitimate LPP claims may give rise to serious consequences. These include costs orders (including personal costs orders) against lawyers under relevant court rules and disciplinary action by the relevant professional association and/or Supreme Court.

Conceptually, there are at least two limitations to the doctrine, which are perhaps worthy of explicit mention in the context of the above concerns.

Crime–fraud exception

Under the so-called “crime–fraud exception”, where a person consults a lawyer in furtherance of a criminal purpose, whether or not the lawyer knowingly assists in the furtherance of such purpose, the communications between the client and the lawyer do not attract LPP.¹¹ Although it is sometimes described as the crime–fraud exception, that is in fact a misleading description because it is not restricted to criminal or fraudulent activities, and it is not a true exception to privilege but rather a situation in which privilege does not arise at all.

Transactional documents

Heydon, writing extra-curially in *Cross on evidence*,¹² notes:¹³

“The privilege does not protect documents which constitute or evidence transactions, such as contracts or conveyances, which are not themselves the giving or receiving of advice or part of the actual or anticipated litigation ...”

The crime–fraud exception and transactional documents delineate circumstances where certain client–lawyer communications will, generally, not attract LPP. These might be regarded as prima facie categories where LPP will not apply notwithstanding that they are, or include, confidential client–lawyer communications.

Regulators and LPP

AUSTRAC

AUSTRAC is Australia’s anti-financial crime regulator. In other words, it administers the AML/CTF Act. It is also a financial intelligence unit (FIU). Since the domestic responses to the FATF’s recommendations, AUSTRAC (formerly the Cash Transaction Reports Agency) has evolved and matured from an FIU to both an FIU and a regulator. Since 7 January 2025, AUSTRAC has also been equipped with additional powers (as part of the enactment of the tranche 2 reforms) which include examination powers akin to those available to other regulators.¹⁴ Pursuant to the same amendments, AUSTRAC’s investigation powers were also expanded in relation to its collection of information.

Financial crime regulators

It is important to note that AUSTRAC is one of several agencies responsible for the regulation of financial crime. For example, ASIC leads the regulation of financial crime in relation to corporations and financial services (eg insider trading); the ACCC leads the regulation of cartel behaviour under the competition and consumer law; and the AFP investigates federal fraud and money laundering offences under the *Criminal Code Act 1995* (Cth). The membership of the Serious Financial Crime Taskforce demonstrates the multi-agency approach to the prevention, detection, investigation and prosecution of financial crime:¹⁵

- Australian Federal Police;
- Australian Criminal Intelligence Commission;
- Australian Taxation Office;
- Australian Transaction Reports and Analysis Centre;
- Australian Securities and Investments Commission;
- Commonwealth Director of Public Prosecutions; and
- Department of Home Affairs, incorporating its operational arm, the Australian Border Force.

Co/multi-regulation

Both accountants and lawyers are regulated by their respective professional associations (eg Chartered Accountants ANZ and the Law Society of NSW). This means that accountants and lawyers will be the subject of co-regulation in relation to the AML/CTF Act’s regulation of professional services. As noted above, lawyers are also regulated by their Supreme Court. In the case of lawyers, it appears that there is at least a tension or complication in a regulatory regime (ie the AML/CTF regime) – administered by an emanation of the Federal Executive – that regulates officers of the court. It is not suggested that this is insurmountable,¹⁶ but it is a complication and will likely play out in relation to the administration of LPP claims.

Suspicious matter reports

If a reporting entity suspects that a person or transaction is linked to a crime, it must generally submit a suspicious matter report (SMR) to AUSTRAC. SMRs are an important part of the AML/CTF reporting obligations.¹⁷ In terms of the

test of suspicion, suspicion and belief are but two stages on an ascending continuum of postulation from the lowest, conjecture, through suspicion and belief to the highest, knowledge.¹⁸ Suspicion is not a demanding test but objective in that it must be the suspicion of the reasonable person warranted by facts from which inferences can be drawn.¹⁹ Those facts must be “sufficient to induce” these states of mind in a reasonable person.²⁰

In relation to when professionals might have to lodge an SMR to AUSTRAC pursuant to the tranche 2 amendments, the author observes and/or suggests:²¹

- an accountant or lawyer who is not a reporting entity/providing a designated service under the AML/CTF Act has no obligation to lodge SMRs;
- confidential communications between an accountant and a client (even if the accountant is legally qualified) do not attract LPP;
- if an accountant is a reporting entity and develops a suspicion in relation to a client, they are obliged to lodge an SMR; and
- where a lawyer would otherwise be required to make an SMR to AUSTRAC and LPP applies to all of the information that forms the basis of the reasonable suspicion, they must not make disclosure.

LPP claims relating other than to SMR obligations

LPP claims may also arise in many situations other than in relation to SMRs. These include situations involving enhanced customer due diligence, politically exposed persons and, of course, responses to AUSTRAC (or another financial crime regulator) exercising its coercive powers. The administration of privilege claims such as these and SMRs when the reporting entity is not the lawyer is more complicated and will likely need to be considered on a case-by-case basis. For example, where a professional services firm receives a coercive notice from AUSTRAC to produce certain information relating to a client, which includes potentially privileged information, in addition to obtaining the client’s instructions, it ought to take legal advice. Similarly, where a professional services firm has taken legal advice in relation to its AML/CTF processes (or otherwise for that matter), the firm (as the “client” and “owner” of the LPP) should, again, obtain legal advice.

Conclusion

The “better late than never” tranche 2 reforms to Australia’s AML/CTF regime will extend to a new range of businesses and services, including, relevantly, accountants and lawyers. The legislation takes effect on 31 March 2026, with newly regulated entities commencing compliance from 1 July 2026. Under the AML/CTF Act, reporting entities are required to have a program specifying how they comply with the AML/CTF legislation and, moreover, identify, mitigate and manage the risk of their products or services being used for money laundering or terrorism financing.

Accountants and lawyers are grouped together in relation to the forthcoming regulation of professional services.

However, accountants and lawyers are quite different disciplines, even though their services may overlap. As officers of the court, confidential communications between a lawyer and their client may give rise to LPP. Confidential communications between an accountant and their client will not give rise to LPP. The privilege belongs to the client and any information subject to LPP in the possession of the client or their accountant may be protected from disclosure. By the same token, LPP will not apply *carte blanche* to confidential client-lawyer communications, which might be required to be produced to AUSTRAC or another financial crime regulator. The two examples covered above were the crime-fraud exception and communications in relation to transactional documents.

Mathew Leighton-Daly, FTI

Special Counsel
HWLE Lawyers

References

- 1 Attorney-General’s Department, *Report on the statutory review of the Anti-Money Laundering and Counter Terrorism Financing Act 2006 and associated Rules and Regulations*, April 2016, p 28.
- 2 *Ibid*, p 42.
- 3 Table 6 of the EM.
- 4 *Rondel v Worsley* [1969] 1 AC 191.
- 5 F Morgan, “When does ‘tax advice’ become ‘legal advice’ and thus ‘unqualified legal practice?’”, paper presented at The Tax Institute’s 34th National Convention, 13 to 15 March 2019; M Leighton-Daly, “Business law curriculum and the statutory tax profession – closing the gap”, (2014) 19 *Journal of the Australasian Tax Teachers Association* 97.
- 6 S 10 of the *Legal Profession Uniform Law* (NSW).
- 7 See *Esso Australia Resources v FCT* [1999] HCA 67 at [111] (Kirby J in obiter). Kirby J is quoting Deane J in *Attorney-General (NT) v Maurice* (1986) 161 CLR 475 at 490. See also Young J in *AWB v Cole* [2006] 152 FCA 1234 at [37].
- 8 *Glencore International AG v FCT* (2019) 265 CLR 646 at 656.
- 9 Section 242 of the AML/CTF Act expressly confirms that the AML/CTF Act does not affect the law relating to LPP.
- 10 D Chaikin, “Past promises and future directions: anti-money laundering regulation and the legal profession”, (2025) 48(1) *UNSW Law Journal* 237 at 268–269.
- 11 *R v Cox and Railton* (1884) 14 QBD 153.
- 12 D Heydon, *Cross on evidence*, 7th ed, Butterworths, 2004, para 25 225.
- 13 See *Mullen & De Bry* [2007] FMCAfam 10 where the court adopted the above reference.
- 14 For example, to ASIC under s 19 of the *Australian Securities and Investments Commission Act 2001* (Cth).
- 15 See www.cdpp.gov.au/crimes-we-prosecute/fraud/serious-financial-crime-taskforce.
- 16 It is a complication that manifests and is managed elsewhere with lawyers. See, for example, in relation to Australian consumer law (which applies to lawyers in relation to work done outside of court), *LT King Pty Ltd v Besser* [2002] VSC 354.
- 17 S 41 of the AML/CTF Act.
- 18 *George v Rockett* (1990) 170 CLR 104 at 114–115; *Fisher v McGee* [1974] VLR 324, citing *Homes v Thorpe* [1925] SASR 286.
- 19 *Shaaban bin Hussien v Chong Fook Kam* [1969] 3 All ER 1626.
- 20 *George v Rockett* (1990) 170 CLR 104 at 112.
- 21 S 242 of the AML/CTF Act.

Financial Services Taxation Conference



The must-attend event for financial services practitioners

This 2-day conference is designed to equip industry professionals with insights, strategies and technical expertise to stay ahead of continual changes in the financial sector.



26-27 Mar 2026



CPD 12



Crown Sydney

Register now
taxinstitute.com.au

Dealings with Australian agricultural land

by Catherine Nufer, CTA, Special Counsel,
Hamilton Locke

Primary producers and farming families have always faced a range of challenges, from dealing with Australia's sometimes harsh and unpredictable climate and environmental factors, to managing cash flows in a cyclical industry. Thoughts of family succession planning, seeking capital investment, or divesting ownership of agricultural businesses can seem overwhelming in an increasingly complex legal landscape. As a result of a constantly evolving landscape, it is becoming increasingly difficult to navigate the varying duty and land tax regimes which exist across the Australian states and territories, and therefore obtaining specialist advice remains particularly important to ensure that plans can be implemented in a timely way, without triggering adverse tax consequences.

Overview

This article examines key considerations for dealings with Australian agricultural land, including:

- inbound Foreign Investment Review Board (FIRB) thresholds for agricultural land;
- who qualifies (and who does not qualify) for land tax exemptions;
- critical thresholds, exemptions and key differences across jurisdictions for duty when accessing the intergenerational primary production concessions; and
- an overview of recent cases in New South Wales and Victoria.

It is outside the scope of this article to cover all of the possible considerations and concessions which could be utilised across the jurisdictions with respect to primary production businesses, and specific advice should be obtained based on each case's individual facts and circumstances.

Foreign investment in agricultural land

What is the FIRB regime?

In Australia, under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (FATA), specific restrictions and notification requirements are imposed on foreign acquisitions of

agricultural land and agricultural businesses. These restrictions are designed to protect Australia's national interest, particularly in terms of food security, environmental sustainability and the control of critical infrastructure.

Foreign persons must seek approval from the FIRB before acquiring certain types of property or business in Australia. The notification requirements, restrictions and application fees imposed vary based on the type of land being acquired and who is the intended investor (ie by type of entity but also whether the intended investor is a private investor or a government investor).

Who is a "foreign person"?

The provisions contained in the FATA take into account both direct and indirect control, meaning that, even if a foreign person does not directly own a large stake in a company, they may still be considered a "foreign person" if they exert substantial influence over its operations.

It is important to note when looking at whether someone is a "foreign person" that the correct definition is referred to. For example, the definition of a "foreign person" in NSW for the purposes of duty and land tax references the definition under the FATA (however, other jurisdictions do not tie their definition of who will be considered a "foreign person" directly to the Act).

Table 1 summarises the definition of a "foreign person".

What are the thresholds for agricultural land?

Foreign investment in agricultural land is restricted, and FIRB approval is required, when the proposed acquisition exceeds certain thresholds. However, these thresholds can vary based on the nature and location of the land, such as proximity to key infrastructure or sensitive areas.

Generally, the thresholds for agricultural land which require FIRB approval are:

- where the cumulative value of the agricultural land holdings exceeds (or would exceed with the proposed investment) \$15 million (noting that this threshold is higher depending on the nationality of the foreign investor); and
- foreign government investors require approval for all acquisitions (ie their monetary threshold is \$0).¹

Where FIRB considers that certain agricultural land acquisitions may trigger other considerations and restrictions, it may impose additional conditions or limitations. For example, where land is classified as national security land, it will require approval regardless of who the foreign investor is. The types of things that FIRB may consider when placing restrictions or additional criteria to be met include:

- national security considerations:
 - strategically sensitive land: if the agricultural land is located near critical infrastructure (eg military installations, ports or airports), the acquisition may be more heavily scrutinised, even if the land size does not exceed the usual thresholds; and

Table 1. Summary of FATA foreign person tests

Entity	Summary
Individuals	<ul style="list-style-type: none"> A natural person who is not ordinarily resident in Australia.
Corporations	<ul style="list-style-type: none"> A corporation (in its own capacity, as a trustee of a trust, or a general partner of a limited partnership) in which either: <ul style="list-style-type: none"> a foreign person holds a substantial interest of 20% or more, either alone or aggregated with interests held by its associates; or where two or more foreign persons hold an aggregate substantial interest of 40% or more (either alone or aggregated with interests held by its associates).
Trusts	<ul style="list-style-type: none"> Will be considered a “foreign person” if a foreign beneficiary (either alone or together with its associates) <i>could</i> receive 20% or more of the income or capital of the trust. Importantly, this means that, where a trust is discretionary, it could be considered foreign even if no foreign beneficiaries have ever received distributions, especially in circumstances where the trustee has discretion to make distributions to all beneficiaries and there is no exclusion of foreign beneficiaries from being considered.

- foreign government investors: foreign government-controlled entities face stricter scrutiny when acquiring agricultural land and may be subject to additional restrictions or outright prohibitions, especially if the acquisition could be perceived as having national security implications;
- land use restrictions: the government can impose conditions on the land’s use to ensure that it does not harm the agricultural sector or other industries that are important to the national interest. This could include stipulations on how the land is to be managed, including any restrictions on foreign owners’ ability to sell the land to other foreign entities;
- special provisions for indigenous land: if the agricultural land involves Indigenous lands or lands that have specific cultural or environmental significance, the acquisition may be subject to additional review and require more stringent conditions to protect cultural heritage and community rights; and
- notification and transparency: foreign investors are required to notify FIRB if they intend to acquire agricultural land, and the FIRB process includes reviewing the impact of the acquisition on agricultural production, the environment and other relevant public policies.

In addition to requiring FIRB approval for acquisitions of agricultural land, there are also restrictions around the acquisition of an interest in an Australian agribusiness of 10% or more. A business will be considered an Australian agribusiness where either 25% or more of its assets are used for, or 25% or more of its income is generated from,

a business of agriculture, forestry, fishing or a business of food product manufacturing.

The fees imposed on foreign investment applications depend on the type of interest or land being acquired and the type of action which is being undertaken. For example, the current fees for agricultural land start at \$14,700 for acquisitions of \$2 million or less, rising to a maximum of \$1,171,600 for acquisitions of more than \$80 million, with fee tiers increasing every \$2 million of consideration.²

Other considerations

In addition to the above, once agricultural land is acquired, there are notification requirements and/or restrictions which may be imposed by FIRB which will need to be satisfied. For example, these can include:

- notice requirements to the Registrar of the Register of Foreign Ownership of Australian Assets, requiring the Registrar to be notified of certain actions relating to agricultural land and water entitlements and any other foreign investments;
- record-keeping requirements relating to the foreign investment for up to five years; and
- approval for certain types of activities, such as changing the use or prior to undertaking redevelopment.

Due to the constantly changing landscape around the foreign investment regime, investors and advisers need to be aware of any recent changes and seek specialist advice where necessary to ensure that conditions or restrictions are not breached. The breaching of conditions or restrictions of land or interests without obtaining FIRB approval can result in a range of repercussions, including fines, forced disposal or, in extreme cases, prosecution.

“In many jurisdictions, the requirements for concessions go further, requiring a business of primary production to be carried out on the land ...”

State taxes: defining a business of primary production

One of the key requirements across all jurisdictions for both the land tax and duty concessions to apply is for the property being transferred, or which is subject to land tax, to be used for primary production purposes.

In many jurisdictions, the requirements for concessions go further, requiring a business of primary production to be carried out on the land, for example, in NSW, the “sole or dominant” use of the land must be for the business of primary production, whereas in Victoria, the land must be “primarily used” for primary production.

What is “primary production”?

The definition of “primary production” differs across jurisdictions (see Table 2). However, broadly speaking, it will include the cultivation of land to sell produce, maintaining animals to sell (including their natural increase or their bodily produce), propagating or cultivating plants to sell or to sell their produce, and planting and tending to trees in a forest or plantation for the purpose of sale.

The definitions are generally similar or the same in each of the respective jurisdictions from both a duty and a land tax perspective. However, these should always be checked as there may be slight differences in definitions which have been adopted across states and territories.

What constitutes a “business”

The question of whether a primary production business is carried on is a question of fact and degree, based on common law principles. The law in this area is generally well settled and has been considered in numerous cases at both a state and federal level. The ATO has a well-known taxation ruling, TR 97/11, which sets out the relevant factors which should be considered. In addition, many of the revenue authorities have also released rulings or other published guidance or incorporated these factors into their relevant legislation.

Generally, the relevant factors which need to be examined to establish whether a business is being carried on include:

- whether the activity has a significant commercial purpose or character;
- whether there is more than just an intention to engage in a business (ie look to the extent of activity to develop same);
- whether there is an intention to make a profit, as well as the profitability of the activity;
- whether there is repetition, as well as the regularity of the activity;
- whether the activity is of the same kind and carried on in a similar manner to that of the ordinary trade in that line of business;
- whether the activity is planned, organised and carried on in a business-like manner such that it is directed at making a profit;
- the size, scale and permanency of the activity; and
- whether the activity is better described as a hobby, a form of recreation or a sporting activity.

Level of primary production activity

For some jurisdictions, there is a specific requirement that the land be used solely or primarily, or have a dominant purpose of use, for primary production.

As we will see, where there is a requirement that land is used primarily for primary production, there can be some difficulty and nuances in working out exactly the nature

Table 2. State taxes: summary of primary production definitions

Jurisdiction	Definition of primary production
Queensland	<p>The definition of “the business of primary production” in Sch 6 to the <i>Duties Act 2001</i> (Qld) includes agriculture, pasturage or dairy farming.</p> <p>In s 2 of the <i>Land Tax Regulation 2021</i> (Qld), the following primary production activities are prescribed:</p> <ul style="list-style-type: none"> • maintaining animals for the purpose of selling the animals or their bodily produce, including their natural increase; • cultivating land for the purpose of selling produce; • propagating or cultivating plants or mushrooms for the purpose of selling the plants or mushrooms or produce from the plants, whether the plants or mushrooms are grown in sand, gravel or liquid, without soil and with added nutrients, or in the ground or in pots, bags or containers; • planting or tending trees in a plantation or forest for the purpose of selling the trees or produce from the trees; • an activity, other than an activity mentioned above, that is agriculture, dairy farming or pasturage; or • an activity that is directly related to, and carried out to support, an activity mentioned above and carried on for the same business of primary production mentioned s 53 of the <i>Land Tax Act 2010</i> (Qld).
NSW	<p>The definition of “land used for primary production” in the Dictionary of the <i>Duties Act 1997</i> (NSW) refers to s 10AA of the <i>Land Tax Management Act 1956</i> (NSW).</p> <p>The definition of “primary production” includes:</p> <ul style="list-style-type: none"> • cultivation, for the purpose of selling the produce of the cultivation; • the maintenance of animals (including birds), whether wild or domesticated, for the purpose of selling them or their natural increase or bodily produce; • commercial fishing (including the preparation for that fishing and the storage or preparation of fish or fishing gear) or the commercial farming of fish, molluscs, crustaceans or other aquatic animals; • the keeping of bees, for the purpose of selling their honey; • a commercial plant nursery, but not a nursery at which the principal cultivation is the maintenance of plants pending their sale to the general public; or • the propagation for sale of mushrooms, orchids or flowers.

Jurisdiction	Definition of primary production
Victoria	<p>Separately defined in both s 64 of the <i>Land Tax Act 2005</i> (Vic) and s 3(1) of the <i>Duties Act 2000</i> (Vic); however, the definitions are essentially the same and include:</p> <ul style="list-style-type: none"> • cultivation for the purpose of selling the produce of the cultivation (whether in a natural, processed or converted state); • the maintenance of animals or poultry for the purpose of selling them or their natural increase or bodily produce; • the keeping of bees for the purpose of selling their honey; • commercial fishing, including the preparation for commercial fishing or the storage or preservation of fish or fishing gear; or • the cultivation or propagation for sale of plants, seedlings, mushrooms or orchids.
Western Australia	<p>Separately defined in both s 30A of the <i>Land Tax Assessment Act 2002</i> (WA) and s 101A of the <i>Duties Act 2008</i> (WA); however, the definitions are essentially the same and include:</p> <ul style="list-style-type: none"> • the growing or rearing of plants (including trees, fungi or any crop) for the purpose of selling them, parts of them or their produce; • the breeding, rearing or maintenance of living creatures for any of the following purposes (produce animals): selling them, or their progeny, for food or for stud purposes; the production or collection of their skins, shells or bodily produce; selling parts of them or their skins, shells or bodily produce; • the breeding or rearing of horses for the purpose of selling them or their progeny; or • any other thing prescribed by the Commissioner for the purposes of the section. <p>When determining whether or not something is primary production, it is irrelevant whether a thing is sold, or to be sold, in a natural, processed or converted state, but the processing or converting of anything for the purpose of selling it is not primary production.</p>
South Australia	<p>Separately defined in both s 2 of the <i>Land Tax Act 1936</i> (SA) and s 2 of the <i>Stamp Duties Act 1923</i> (SA); however, the definitions are largely the same, except the definition for the purposes of the <i>Land Tax Act 1936</i> includes “the intensive agistment of declared livestock”, which are currently cattle, sheep, pigs or poultry.</p> <p>Both definitions include “the business of agriculture, pasturage, horticulture, viticulture, apiculture, poultry farming, dairy farming, forestry or any other business consisting of the cultivation of soils, the gathering in of crops, the rearing of livestock or the propagation and harvesting of fish or other aquatic organisms”.</p>
Tasmania	<p>Separately defined in both s 7(2) of the <i>Land Tax Act 2000</i> (Tas) and s 3 of the <i>Duties Act 2001</i> (Tas), the definitions are largely the same but there are some distinctions.</p> <p>Under the <i>Duties Act 2001</i>, primary production is defined as:</p> <ul style="list-style-type: none"> • the cultivation of land for the purpose of selling the produce of the cultivation; • the maintenance of animals for the purpose of selling them or their natural increase or bodily produce; • the keeping of bees for the purpose of selling their honey; • the production from a nursery; • the propagation for sale of mushrooms or flowers; • an undertaking relating to planting or tending trees with a view to selling the trees or timber obtained from those trees; or • the breeding of horses. <p>Under the <i>Land Tax Act 2000</i>, the following would be considered a “business of primary production”:</p> <ul style="list-style-type: none"> • cultivating land to sell the produce of the cultivation; • maintaining animals or poultry for sale or selling their natural increase or bodily produce; • keeping bees to sell their honey; • commercial fishing and cultivating aquatic plants or animals, including the preparation for fishing and the storage and preservation of fish and fishing gear; and • cultivating or propagating for sale plants, seedlings, mushrooms or orchids.
Australian Capital Territory	<p>Separately defined in the Dictionary of the <i>Land Tax Act 2004</i> (ACT) and s 6 of the <i>Duties Act 1999</i> (ACT); however, the definitions are essentially the same and include:</p> <ul style="list-style-type: none"> • production resulting directly from the cultivation of land, keeping animals for their sale, their bodily produce or natural increase, fishing operations or forest operations; and • the manufacture of dairy produce by the person who produced the raw material used in that manufacture.
Northern Territory	<p>There is no land tax regime in the Northern Territory. The definition of “primary production” in s 4(1) of the <i>Stamp Duty Act 1978</i> (NT) includes:</p> <ul style="list-style-type: none"> • the growing or cultivation of trees, crops or other vegetation (including fungi) for sale or for sale of their produce; or • the breeding, rearing or maintenance of living creatures for sale as food or for the production of skins, shells or bodily produce for sale.

and extent that the land is used for those purposes and the types of factors which should be considered and given weight when assessing this requirement.

“Dominant use”

The key cases, and the principles arising from these cases, were helpfully summarised by Jagot J in the recent decision of *Godolphin Australia Pty Ltd v Chief Commissioner of State Revenue*³ (*Godolphin*), the relevant paragraphs of which have been extracted below:

“63. In *Leda Manorstead Pty Ltd v Chief Commissioner of State Revenue*,^[4] Gzell J, considering s 10AA(2) and (3) of the Act, said that ‘[d]ominant in its ordinary meaning connotes ruling, prevailing, or most influential. The statute’s reference to a dominant use presupposes that land may be used for more than one purpose and requires a determination of which use of the land is the main, chief or paramount use.’ In determining that question, his Honour applied the approach of the Land Appeal Court of Queensland in *Thomason v Chief Executive, Department of Lands*,^[5] namely that ‘the proper approach to be taken when ascertaining the dominant use of land is to consider such matters as the amount of land actually used for any purpose, the nature and extent and intensity of the various uses of the land, the extent to which land is used for activities which are incidental to a common business or industry of a type specified ... the extent to which land is used for purposes which are unrelated to each other, and the time and labour and resources spent in using the land for each purpose. When undertaking this exercise, one cannot ignore the conclusion that an objective observer would reach from viewing the land as a whole.’

64. In the appeal from Gzell J, in *Leda Manorstead Pty Ltd v Chief Commissioner of State Revenue*, Allsop P (with whom Campbell and Whealy JJA agreed) found nothing in the extrinsic material relevant to the insertion of s 10AA into the Act as justifying approaching the provision ‘in some beneficial fashion striving to expand the reach of the exemption or to narrow the taxing operation of the section according to strict language. More particularly, there is nothing in the purpose of the legislation, drawn from its words and context or from the secondary material insofar as that addresses mischief to require used “for” to be limited to use of land which is producing beneficial or commercial return’.

65. In *Leppington Pastoral Co Pty Ltd v Chief Commissioner of State Revenue*,^[6] White J considered the application of s 10AA(3) to land used for multiple purposes. White J said that:

‘In this case, three competing uses are to be considered. The question is not simply whether the primary production use is the chief use, being of a greater scale, intensity, character or importance than either of the other two competing uses, but whether having regard to both competing uses, it is the use that dominates.

Section 10AA(3) requires weighing the nature and intensity of the competing uses, the physical areas over which they are conducted, the time and labour

spent in conducting the different uses, the money spent or assets deployed in each use and the value derived or to be derived from it.’

66. In *Chief Commissioner of State Revenue v Metricon Qld Pty Ltd*,^[7] 108 Barrett A-JA (with whom Macfarlan and Ward JJA agreed) reviewed these and other cases. Having done so, Barrett A-JA made these points: (a) ‘[e]xamination of “activities undertaken upon the land in question” is thus central to identification of “use”’; (b) ‘s 10AA is concerned with “use” at large rather than “use” by any particular person’; (c) ‘[t]he expression “dominant use” [in s 10AA(3)] has regard to quantification of uses within paras (a) to (f) as against uses that are not within those paragraphs’; and, (d) the context surrounding s 10AA(3) points to the ‘physical concept of land’ as relevant to the provision, rather than ‘land’ meaning estates or interests in land as defined in s 21 of the *Interpretation Act 1987* (NSW).’ (emphasis added and citations/footnotes omitted)

The principles emerging from the above cases when making an assessment of “dominant use” were further summarised by Jagot J at para 67 of *Godolphin*:

“First, close attention to the precise terms of the exempting provision is required.

Second, the accepted orthodoxy in which the Act was enacted and has been amended is that use of land is for a purpose.

Third, in the ordinary case, the question is one of identifying the physical acts conducted on the land by which the land is made to serve some purpose.

Fourth, the question of the use of land for a purpose is one of objective fact to be determined in all relevant circumstances, but particularly the degree, extent and intensity of the physical activities on the land.

Fifth, as an objective fact, determined in all relevant circumstances, the same land may be used for more than one purpose.

Sixth, in determining the objective fact whether the same land is being used for more than one purpose it may be necessary to consider if the various physical activities conducted on the land, on the one hand, are wholly ancillary to or directly facilitative of a single purpose or, on the other hand, serve an additional, independent or collateral purpose. If the former, the correct characterisation will be that the land is being used for one purpose. If the latter, the correct characterisation will be that the land is being used for more than one purpose.

Seventh, and finally, where the same land is being used for more than one purpose, the question whether the use of the land is ‘solely’, ‘primarily and principally’ or ‘dominantly’ for the specified exempt matter requires a comparison between such uses (being for the specified statutory exemptions) and other uses (not being for the specified statutory exemptions) to ascertain whether the former is the main, chief or paramount use for purpose.” (emphasis and spacing added)

“Used primarily”

In the recent Victorian case of *Delma Investments Pty Ltd v Commissioner of State Revenue*⁸ (*Delma Investments*), the Commissioner sought to rely on the observations made by Kennedy J in *Annat v Commissioner of State Revenue*⁹ (*Annat*), outlining indicia that provide assistance in determining whether land is “used primarily” for the business of primary production (noting that, in *Delma Investments*, Croft J stated¹⁰ that “though the principles canvassed in *Annat* are helpful in evaluating whether a taxpayer’s land is vested with the relevant character of primary production in instances which multiple land uses are in question, there is no occasion for the application of the *Annat* indicia to the present facts”).

The indicia identified in *Annat* are summarised below:

- all of the circumstances bearing on the degree, extent and intensity of the uses are to be considered, and the question is one of fact and degree to be approached on a broad, commonsense basis;¹¹
- this issue is to be determined by looking at all of the activities together with the surrounding circumstances of the taxpayer’s evident purpose in carrying out those activities;¹²
- the concept of “use” is one of physical deployment of the physical mass,¹³ with deployment understood as including not only activity, but also inactivity deliberately adopted as a means of obtaining advantage from the land;¹⁴
- if there are multiple uses, it is necessary to weigh the respective uses against one another in order to ascertain which is the “dominant use”.¹⁵ The classification is an evaluative task which may be approached in a number of ways. It involves questions of degree on which minds

can reasonably differ. There are several possible methods of quantification and, except in glaringly obvious cases, no one conclusion will be correct to the exclusion of others. Hence, figures for income and expenses may not necessarily provide a clear guide as to the relative level of the extent and intensity of the different uses;¹⁶

- however, a key question of characterisation is whether the use for primary production was the predominant use of the land so as to impart to the whole of the land the necessary character.¹⁷

Land tax

Land tax is an annual tax which is calculated based on a percentage of the unimproved value of land owned by an individual, company or trust in the relevant jurisdiction at a particular point in time (usually tested at the end of the financial year or at the end of the calendar year).

Although the concept of an annual land tax is the same across jurisdictions, the legislation, thresholds, land tax rates and eligibility requirements to access concessions differ between the states and territories.

The land tax calculation is based on the annual value for the land determined by the valuer-general (or equivalent) in each jurisdiction.

Table 3 sets out the key legislative and published guidance on the land tax primary production exemptions available in each jurisdiction.

In addition to the key factors being satisfied (discussed above), Table 4 provides a summary of some of the jurisdictional nuances to when the concessions can be applied.

Table 3. Land tax: summary of legislation and revenue rulings

Jurisdiction	Legislative references	Revenue rulings and published guidance
Queensland	Section 53 of the <i>Land Tax Act 2010</i> (Qld) <i>Land Tax Regulation 2021</i> (Qld)	LTA053.1.3 <i>Land used for primary production</i>
NSW	Section 10AA of the <i>Land Tax Management Act 1956</i> (NSW) <i>Land Tax Act 1956</i> (NSW)	LT 097v3 <i>Land used for primary production</i>
Victoria	Sections 64 to 70 of the <i>Land Tax Act 2005</i> (Vic)	LTA-010 <i>Exemption for primary production land</i> LTA-011 <i>Primary production exemption for land in urban zone</i> LTA-006v2 – <i>Preparation of land for a primary production exemption</i>
Western Australia	Sections 29 to 30 of the <i>Land Tax Assessment Act 2002</i> (WA) <i>Land Tax Act 2002</i> (WA)	LT17.1 – <i>Primary production business exemptions</i> (Commissioner’s practice)
South Australia	Section 5(10)(g) of the <i>Land Tax Act 1936</i> (SA)	There are no rulings or published guidance regarding primary production concessions for land tax
Tasmania	Sections 7 and 8 of the <i>Land Tax Act 2000</i> (Tas)	<i>Primary production land classification guideline</i>
Australian Capital Territory	Section 10 of the <i>Land Tax Act 2004</i> (ACT)	There are no rulings or published guidance regarding primary production concessions for land tax
Northern Territory	There is no land tax regime in the Northern Territory.	

Table 4. Land tax: jurisdictional nuances

Jurisdiction	Nuances
Queensland	<ul style="list-style-type: none"> Adopts a broader definition of “primary production” under the Queensland Regulations than is used for duty. Exemption or partial exemption available for land <i>used solely</i> for primary production. Exemption is not available where primary production land is owned by an absentee individual, a company (where a foreign company or public company has a direct or indirect interest), or a trust (where a direct or indirect interest is held by a foreign person or public company).
NSW	<ul style="list-style-type: none"> The <i>dominant use</i> of the land must be for primary production.
Victoria	<ul style="list-style-type: none"> Thresholds depend on where land is located: <ul style="list-style-type: none"> outside of greater Melbourne: must be <i>primarily used</i> for primary production; inside of greater Melbourne but not in an urban zone: must be <i>primarily used</i> for primary production; and inside of greater Melbourne and in an urban zone: must be <i>solely or primarily used</i> for the <i>business</i> of primary production.¹⁸ An exemption is also available where land is being prepared for use primarily for primary production.¹⁹
Western Australia	<ul style="list-style-type: none"> If the land is rural land, it must be <i>used solely</i> for a business of primary production. For other land (non-rural), it must be <i>used solely</i> for a business of primary production by the owner of the land or a family member of the owner of the land.²⁰ Section 30B of the <i>Land Tax Assessment Act 2002</i> (WA) sets out when land will be considered to be used for a “primary production business”. If unrelated persons or a non-family owner jointly owns the land, all of the owners, and no other entities, must use the land for a primary production business.²¹
South Australia	<ul style="list-style-type: none"> Must be <i>used wholly or mainly</i> for the business of primary production. The land (or combined adjoining land) must be 0.8 hectares or larger to qualify. Different requirements based on whether the land is located in the “defined rural area”. For example, for land outside of the “defined rural area”, the owner of the land does not need to be the person conducting the business of primary production. Where the land is inside the “defined rural area”: <ul style="list-style-type: none"> owned by natural person/s: one owner must be engaged on a substantially full-time basis (on own behalf or as an employee in the relevant business). Owners not engaged in the relevant business must be a relative of an owner who is engaged; and different eligibility requirements apply where the land is owned by a company, trust, deceased estate etc. Definitions for who will be considered a “relative” of an owner. Primary production definition includes the intensive agistment of “declared livestock” (ie cattle, sheep, pigs or poultry).
Tasmania	<ul style="list-style-type: none"> Must be <i>used substantially</i> for the business of primary production.²² Also for land declared as a private timber reserve, or a permanent timber production zone, or land where there is a certified forest practices plan.²³
Australian Capital Territory	<ul style="list-style-type: none"> Must be classified as “rural land”.²⁴ Rateable land leased for the purposes of primary production only, or for primary production and other purposes (but main use must be primary production).

Duty

In all states and territories, there are duty exemptions which allow for the transfer of the family farm between members of the family. While these exemptions can be beneficial, care must be taken to ensure that all requirements can be satisfied to fit within the exemption, prior to undertaking any transactions which may trigger duty.

This article only examines the exemptions which are available for property used for primary production. However, depending on the way the family farm has been structured, it may be beneficial to explore whether there are alternative exemptions or concessions available to achieve the same outcome. Therefore, seeking specialist advice is essential

and early planning allows the transaction to be considered and the added comfort of obtaining private rulings from the relevant revenue authority (to the extent possible).

Relevant legislation and revenue rulings

Table 5 sets out the key legislative and published guidance on the duty primary production concessions and exemptions available in each jurisdiction.

Primary production exemptions generally

Although duty across the states and territories is by no means close to being harmonised, there are a number of factors which appear as a requirement to be satisfied for any concessions or exemptions (albeit with differences to

Table 5. Duty: summary of legislation and revenue rulings

Jurisdiction	Legislative references	Revenue rulings and published guidance
Queensland	Sections 96 to 107 of the <i>Duties Act 2001</i> (Qld)	DA 105.2.3 <i>Guidelines for determining the existence of a business – family businesses</i> DA 105.1.3 <i>Concession for dutiable transactions for particular family businesses – defined relative or descendant who is a minor</i>
NSW	Section 274 of the <i>Duties Act 1997</i> (NSW)	DUT 050v2 <i>Transfer of primary production property between family members</i>
Victoria	Sections 56, 69AA to 69AI of the <i>Duties Act 2000</i> (Vic)	There are no rulings or published guidance regarding primary production concessions for duty
Western Australia	Sections 99 to 106 of the <i>Duties Act 2008</i> (WA)	DA 51.0 <i>Family farm transactions: primary production business exemptions</i> (Commissioner's practice)
South Australia	Section 71CC of the <i>Stamp Duties Act 1923</i> (SA)	SDA007 <i>Section 71CC – ex gratia scheme for transferor/transferee trusts</i>
Tasmania	Sections 30, 30E, 93, 225, 226 of the <i>Duties Act 2001</i> (Tas)	<i>Intergenerational rural transfer exemption guideline</i>
Australian Capital Territory	Section 230 of the <i>Duties Act 1999</i> (ACT) Definition of “primary production” – s 6 of the <i>Duties Act 1999</i> (ACT)	DAA002.1 <i>Exemption from duty – intergenerational rural transfers</i> (revenue circular) DI2017-230 <i>Duties (intergenerational rural transfer guidelines) determination 2017 (No 1)</i>
Northern Territory	Section 87 of the <i>Stamp Duty Act 1978</i> (NT)	CG-SD-003 <i>Stamp duty exemption for conveyances of ‘family farming property’</i>

definitions and how they are applied). These key factors, which have been discussed above, include:

- what is considered primary production;
- when a business is being carried on; and
- the intensity of use of the business of primary production.

In addition to the above factors, in a duty context, the other main requirement which needs to be satisfied across jurisdictions, in some form, is whether the transferor and transferee are members of the same family, or, in circumstances where the concessions allow for transfers to companies or trusts, whether the relevant requirements around family members being involved or controlling those entities can be satisfied.

Transfers between family members

Generally, across jurisdictions, there must be a familial relationship between both the transferor and the transferee to the transaction. In jurisdictions which have extended the application to allow the transferor and/or transferee to be an entity rather than a natural person, there are usually requirements that these entities are specifically maintained for, or controlled by, family members or relatives.

In Queensland, the meaning of a “defined relative” for the purposes of the concession is set out in Sch 6 to the *Duties Act 2001* (Qld). A person will be considered to be a “defined relative” of another where they are either:

- the person's spouse;
- a parent of the person or the person's spouse;
- a grandparent of the person or the person's spouse;

- a brother, sister, nephew or niece of the person or the person's spouse;
- a child or grandchild of the person or the person's spouse;
- an aunt or uncle of the person or person's spouse;
- a child of an aunt or uncle of the person or a child of the spouse of an aunt or uncle of the person; and
- the spouse of anyone mentioned above.

Jurisdictional nuances

Table 6 provides a summary of some of the jurisdictional nuances to when the concessions can be applied. As the requirements across jurisdictions vary, it is critical that specialist advice is obtained to ensure the requirements will be satisfied.

Recent case law

[Wylarah Pastoral Co Pty Ltd ATF Tallong Family Trust v Chief Commissioner of State Revenue](#)²⁵

Issue

Whether the dominant use of the land was for the maintenance of animals (including birds) for the purpose of selling them or their natural increase or bodily produce, within the meaning of the *Land Tax Management Act 1956* (NSW).

Summary of facts

The taxpayer purchased 9.3 hectares of land in May 2022, located in Medway, NSW, which was zoned “RU2 Rural Landscape”.

Table 6. Jurisdictional nuances of primary production concessions

Jurisdiction	Nuances
Queensland	<ul style="list-style-type: none"> The Queensland concession provides an exemption where there is a transfer or an agreement to transfer business property, where there is an acquisition of a partnership interest (where the partnership property includes business property), or where there is a trust acquisition in a trust (which holds business property). The transferor (or the person directing the transfer) needs to be a defined relative of the transferee, and the transferee must not acquire the property in its capacity as trustee or as an agent or nominee of another person. This means that where, for example, land was being transferred, it will need to be held by the transferee in their individual capacity. There needs to be a primary production business carried on by a defined relative or an ancestor of the transferee and there must be an intention to carry on a primary production business by the transferee after the transaction.
NSW	<ul style="list-style-type: none"> In NSW, the concession extends to companies and trusts provided the control requirements are satisfied. Broadly, this usually requires that the entity is controlled by the transferor or transferee and that, to the extent there are other people involved (for example, shareholders, trustee or corporate trustee and appointor), they are family members of the people directing or controlling the transferor and/or transferee.²⁶ Where the transferor or transferee are entities, the interests must be held for a period of time to avoid a clawback of the exemption: <ul style="list-style-type: none"> for the transferor entity: three years prior to the transfer; or for the transferee entity: three years after the transfer.²⁷
Victoria	<ul style="list-style-type: none"> There are two separate concessions which may be applied: <ul style="list-style-type: none"> the family farm concession requires there to be a familial link between the transferor and transferee;²⁸ and where the transferee is a “young farmer” (under 35 years old) or the transferee is an entity of a young farmer.²⁹ Relies on the definition of “primary production” under ss 65 to 67 of the <i>Land Tax Act 2005</i> (Vic). The young farmer concession also relies on a similar definition of “primary production” contained in s 3(1) of the <i>Duties Act 2000</i> (Vic).
Western Australia	<ul style="list-style-type: none"> Concession available for transfer between the transferor and transferee (or their respective entities) that have a familial relationship (subject to satisfying other requirements). Post-transfer restriction on claiming the exemption again if the same property is transferred within five years.³⁰
South Australia	<ul style="list-style-type: none"> Concession available for the transfer of land used for primary production business if the transferor and transferee (or their respective entities) have a familial relationship (subject to satisfying other requirements).³¹
Tasmania	<ul style="list-style-type: none"> Concession available for the transfer of land used for primary production business if the transferor and transferee (or their respective entities) have a familial relationship (subject to satisfying other requirements).³² Where the transferee is a trust and the above exemption has been claimed, the following circumstances will trigger a clawback of the exemption (ie duty will be payable on the transfer): <ul style="list-style-type: none"> a person who is not a relative of the transferor becomes entitled to a share or an interest in the trust or otherwise benefits from the trust; or the transferor gains control of the trust.³³ Interestingly, the limitation period provided under s 19(3) of the <i>Taxation Administration Act 1997</i> (Tas) is specifically switched off for the purposes of this provision (ie there is no time limit on the Commissioner being able to make a reassessment).³⁴
Australian Capital Territory	<ul style="list-style-type: none"> Allows an exemption for transfers to a descendant of the transferor, or where the transferor is a company or trust, the transferee must be a descendant of the entity’s shareholders or beneficiaries.³⁵
Northern Territory	<ul style="list-style-type: none"> An exemption is available for the transfer of land between family members (or their respective entities) where the land is used for a primary production business (subject to satisfying other requirements).³⁶ Similar to Western Australia, there is a post-transfer restriction on claiming the exemption again if the same property is transferred within five years.³⁷

The taxpayer maintained that the land was exempt from land tax as it was used for the maintenance of cattle. However, between 2022 and 2023, various preparatory works were carried out on the property and there was no income from the sale of cattle.

The sole income generated on the property between 2022 and 2023 was rental income of approximately \$650 a week from the leasing of a residence located on the property.

Decision

The Commissioner’s assessments were confirmed. The dominant use of the land was not the maintenance of animals.

On analysis of both the property identification code attached to the cattle and the satellite images, there were no cattle located on the land during the 2023 land tax year.

The arguments then turned to whether there was preparatory work for the maintenance of cattle carried out during the 2022 and 2023 land tax years which would satisfy the dominant use test.

The NSW Civil and Administrative Tribunal agreed that the statutory purpose of s 10AA(3) of the *Land Tax Management Act 1956* (NSW) could still be fulfilled even if the animals in question were not on the land 100% of the time, and accepted that the work being done during the period constituted “use” insofar as s 10AA(3) was concerned, based on the weight of the two uses of the land.

The tribunal found that the dominant use of the land was for the leasing of the residential property due to the income derived from the rental and the expenditure on the house itself. This was sufficient to prove that the primary use of the land was not for grazing (regardless of the fact that the rental property comprised of only 5% of the total land area).

T & A Skills Care Service Pty Ltd v Chief Commissioner of State Revenue³⁸

Issue

Whether the land satisfied the primary production exemption (and was therefore exempt from land tax) in the 2019 and 2020 land tax years (when the land was classified as “rural land”) and the 2021 and 2022 land tax years (when the land was not classified as “rural land”).

Summary of facts

The taxpayer bought the land in 2002 for \$1.9 million; it was around 16 hectares, comprising six lots. In 2020, it was rezoned to non-rural land and was subsequently sold in July 2023 for \$70 million.

The taxpayer submitted that the primary production exemption for land tax should apply as the dominant purpose and use of the land was to cultivate bamboo for the sale of timber and, from 2021 onwards, to breed and maintain goats for sale.

Bamboo growing business. The taxpayer stated that its intention was to use the land to cultivate bamboo for the production of bamboo shoots for sale as foodstuffs. The business model was later changed from shoots and poles to bamboo timber production.

Between 2002 and 2007, the taxpayer prepared the land for bamboo production. There was no record of bamboo being sold or harvested from the land after 2016. The taxpayer argued that the growing of the bamboo was a “set and forget” type venture (not requiring fertilising or watering). There was no business plan for the bamboo business.

The Commissioner had expert evidence that the majority of the bamboo was “well beyond the practical lifespan for bamboo pole harvesting because they have not been appropriately maintained”.

Cattle and goat business. In 2021, the taxpayer decided to switch to goat-breeding production, and it purchased four female goats and one male goat (which was never

delivered). There was a business plan for the goat business. However, this was dated in 2023.

Expert evidence was given on behalf of the Commissioner that the goat-farming business “didn’t really make sense” and that, of the total land area of 16.8 hectares, the only area of the land suitable for grazing was 5.5 hectares.

Findings

The Commissioner’s assessments were confirmed. There was insufficient evidence that any part of the land was being used for the goat-breeding business and bamboo business.

The business requirement (that primary production activity be engaged in for the purpose of profit on a continuous or repetitive basis) does not require an actual profit to be derived. However, it does require a well-structured, long-term character, with the aim of generating a profit year to year over a succession of years. This would usually be supported and evidenced by appropriate business plans, administration and support, although it is accepted that a family farming operation may involve a less rigid approach.

Zonadi Holdings Pty Ltd ATF Wombat Investment Trust v Chief Commissioner of State Revenue³⁹

Issue

Whether the dominant use of the land was for the cultivation and sale of wine grapes, or for the purpose of selling the product of the cultivation (ie the wine).

Summary of facts

The taxpayer ran a vineyard on the land from which the grapes were produced. There was also a cellar door where the sale of wine occurred, a wine storage area, a residence and tourist accommodation.

Of the total land area (approximately 11 hectares), 38% was used for the planting and growing of vines. There were also unused areas of approximately 2.4 hectares near the vineyards which consisted of trees and a paddock. The land area of the cellar door, cellar storage, residence, tourist accommodation and surrounding area was approximately 1.56 hectares.

In each of the relevant land tax years in question, a portion of the wine grape crop grown on the land was sold. The remainder of the crop was used by the taxpayer to make wine, which was produced off the land but sold on the land via the cellar door. The ownership of the grapes which were used to make the wine did not change (ie these were always owned by the taxpayer).

In addition to the revenue made by the taxpayer on the sale of wine grapes and the sale of wine at the cellar door, it also generated revenue from the sale of other goods and from renting the tourist accommodation.

Findings

The Commissioner’s assessments were upheld. The wine sold was not the sale of the product of the cultivation of the land; rather, it was a product of secondary production (ie it used the produce of the land to produce another product).

In weighing up the factors of what the dominant use of the land was, the NSW Civil and Administrative Tribunal looked at:

- the total area of the land that was used for the sale and storage of wine in the cellar door area, the residence and the tourist accommodation (which was significantly less than the land used for the cultivation of the wine grapes); and
- the gross revenue over the relevant land tax years for wine sales versus grape sales. For the relevant years, the total gross revenue from wine sales ranged between 80% and 94% and the operating expenses of the vineyard alone exceeded the income which was generated from the sale of wine grapes.

Although cultivation was obviously the dominant use of the land, it was not cultivation for the purpose of selling wine grapes, rather the cultivation was for the purpose of producing wine grapes to be made into wine.

Premier Bay Pty Ltd v Commissioner of State Revenue⁴⁰

Issue

The issue for consideration on appeal was whether the taxpayer's primary business was primary production.

Summary of facts

The taxpayer was the trustee of a trust that owned the land. The land was leased to a partnership between the beneficiary of the trust and the estate of his deceased wife to be used for the business of breeding cattle for sale.

The taxpayer also owned other properties which were leased to third parties. It had entered into a development agreement for the land in question. The primary production business was also carried out on another property.

Findings

The taxpayer was successful. The appeal was allowed on the basis that the original Victorian Civil and Administrative Tribunal (VCAT) decision should be overturned. The Supreme Court found that the lease to the partnership was a function of the taxpayer's primary production business due to the connection between the primary production activities and the lease to the partnership, and therefore the land was exempt from land tax on the basis that the taxpayer was carrying on a primary production business.

In the original VCAT decision, the tribunal had accepted the fact that the land was primarily used for primary production and that a trust beneficiary was substantially engaged full time in the primary production business. However, it found that primary production was not the taxpayer's primary business as it also carried out a leasing business.

Australian Investment & Development Pty Ltd v Commissioner of State Revenue⁴¹

Issue

Whether the taxpayer was undertaking a primary production business and whether its sole shareholder was normally

engaged in a substantially full-time capacity in a business of primary production.

Summary of facts

The Commissioner had issued land tax assessments for the 2014, 2015 and 2016 land tax years on the basis that the primary production exemption did not apply. The Commissioner's assessments were confirmed in the original Victorian Supreme Court case and this was appealed by the taxpayer.

The sole shareholder of the taxpayer, Mr Apswoude, gave evidence that:

- the taxpayer had been undertaking farming activities on the land for the relevant years (namely, the cultivation of cassinia crop, with the objective of making future sales and profit from the sale of cassinia-based fencing products); and
- that he was normally engaged in a substantially full-time capacity in the business of primary production which was being undertaken by the taxpayer, and that of farming activities conducted by the taxpayer on the land for each of the three tax years in question.

Mr Apswoude was cross-examined extensively about the potential development of the land, including the precinct structure plan which had been issued in relation to the land and the multiple planning applications which had been made in relation to the land.

Questions were also raised about the business plans submitted for the cassinia business, as there was evidence that the profit that was to be generated would not be sufficient to cover the significant expenses incurred as a result of holding the land.

Findings

The findings of the trial judge were upheld and the Commissioner's assessments affirmed. The trial judge found that:

- the income from sales of cassinia were unlikely to be sufficient to sustain the taxpayer and the only plausible commercial undertaking was to sell the land in order to recoup the significant other losses made;
- the taxpayer's "primary production business" was conducted by its sole director and shareholder and a small number of family and friends (this was compared to the property development business which engaged professionals);
- any cassinia business was incidental as the taxpayer's capital consisted almost entirely of the land and it relied on the future sale of the land to recoup costs and make a profit; and
- there was no contemporaneous evidence of any business plan for the cassinia business and the taxpayer's own expert witness had never previously heard of cassinia being cultivated for commercial purposes.

The appeal judges accepted the trial judge's findings and found that he had not erred in concluding that none of the

elements of the land tax exemption had been made out by the taxpayer.

Delma Investments Pty Ltd v Commissioner of State Revenue⁴²

Issue

Whether the taxpayer was able to claim the primary production land tax exemption under s 67 of the *Land Tax Act 2005* (Vic).

Summary of facts

The taxpayer carried out a primary production business on the land in question; it also carried out a separate primary production business on another property.

The director of the taxpayer worked in both businesses.

In respect of the land the subject of the assessments, there were some activities being undertaken for the eventual development of this land, although this would likely be in the distant future.

The taxpayer had also made Div 7A loans to members of the director's family. The Commissioner submitted that the taxpayer was carrying on a money-lending business.

Findings

The Commissioner's assessments were confirmed. In determining this, the Victorian Supreme Court considered:

- whether the land was used solely or primarily for the business of primary production (ie the maintenance of cattle for sale);
- whether the taxpayer's business was the business of primary production conducted on the land; and
- whether the director of the taxpayer was normally engaged in a substantially full-time capacity in that business.

It was found that:

- the taxpayer used the land primarily for the business of primary production, although it was noted that it was a "very modest one" and that the taxpayer's principal business was the business of primary production carried out on the land;
- the taxpayer was "deeply committed" to land development, although these were in early stages and there would not be any income generated from these activities for a number of years; and
- the taxpayer was not engaged in a money-lending business due to the Div 7A loans that it had made to family members.

However, the Commissioner's assessments were upheld on the basis it could not be found that the director of the taxpayer was normally engaged in a full-time capacity in the taxpayer's business of primary production in relation to the land. The taxpayer also conducted a separate primary production business on another property and the director was engaged substantially in a full-time capacity with

respect to both businesses, but not when considering only the business conducted on the land.

Conclusion

Regardless of the purpose, when considering dealing with Australian agricultural land, there are a variety of issues which need to be considered to avoid adverse FIRB or tax consequences. As is often the case, the devil is in the detail during the planning stages of a proposed transaction to ensure smooth implementation and to minimise avoidable mistakes or delays.

Advisers who are considering unfamiliar jurisdictions should always consider obtaining specialist advice where the transaction requires advice outside of their area of expertise, and consider seeking pre-transaction rulings from revenue authorities (where available) to provide certainty of outcome.

From a land tax perspective, we are continuing to see a number of cases on the application of the primary production exemptions, particularly in NSW and Victoria. Although this does not necessarily signal a change in position, it does show that revenue authorities have an increased appetite to challenge taxpayers who are pushing the limits of these exemptions.

Catherine Nufer, CTA
Special Counsel
Hamilton Locke

This article is an edited version of "Dealings with Australian agricultural land – state tax issues and FIRB" presented at The Tax Institute's Agribusiness Intensive held in Brisbane on 1 to 2 May 2025.

Acknowledgment

The author would like to acknowledge the invaluable assistance provided by Maddison Morgan, Katie Morrison and Max Deng for the research and analysis they have undertaken to assist with the preparation of this article.

References

- 1 Refer to FIRB Guidance Note 3 – Agricultural Land.
- 2 Refer to FIRB Guidance note 10 – Fees.
- 3 [2024] HCA 20.
- 4 [2011] NSWSC 867.
- 5 [1995] QLAC 4.
- 6 [2017] NSWSC 9.
- 7 [2017] NSWCA 11.
- 8 [2024] VSC 649 at [61].
- 9 [2020] VSC 108 at [103].
- 10 *Delma Investments* at [83].
- 11 *Safety Beach Estate Pty Ltd v Commissioner of Land Tax (NSW)* (1979) 9 ATR 451 at 457.
- 12 *CDPV Pty Ltd v Commissioner of State Revenue* [2016] VSC 322 at [22], citing *Leda Manorstead Pty Ltd v Chief Commissioner of State Revenue* [2011] NSWSC 867 at [24].
- 13 This was a definition of "land" articulated by Isaacs J in *Commonwealth v New South Wales* [1923] HCA 34 as "the concrete physical mass, commencing at the surface of the earth and extending downwards to the centre of the earth, which is called 'land'", cited in *Chief Commissioner of State Revenue v Metricon Qld Pty Ltd* [2017] NSWCA 11 at [55] (*Metricon*).

- 14 *Metricon* at [61].
- 15 *Metricon* at [48].
- 16 *Metricon* at [72]–[79].
- 17 *Abbott v CSR* [1985] VR 164, 164-5, 165–6, 169-70; *CPDV Pty Ltd v Commissioner of State Revenue* [2017] VSCA 89, [51].
- 18 Sections 65 to 67 of the *Land Tax Act 2005* (Vic).
- 19 Section 68 of the *Land Tax Act 2005* (Vic).
- 20 Section 30C of the *Land Tax Assessment Act 2002* (WA).
- 21 Section 30D of the *Land Tax Assessment Act 2002* (WA).
- 22 Section 7 of the *Land Tax Act 2000* (Tas).
- 23 Section 7(1)(a) to (d) of the *Land Tax Act 2000* (Tas).
- 24 Section 10(2) of the *Land Tax Act 2004* (ACT).
- 25 [2024] NSWCATAD 366.
- 26 Section 274 of the *Duties Act 1997* (NSW).
- 27 Section 274(4A) of the *Duties Act 1997* (NSW).
- 28 Section 56 of the *Duties Act 2000* (Vic).
- 29 Section 69AA to 69AI of the *Duties Act 2000* (Vic).
- 30 Section 104 of the *Duties Act 2008* (WA).
- 31 Section 71CC of the *Stamp Duties Act 1923* (SA).
- 32 Section 225 of the *Duties Act 2001* (Tas).
- 33 Section 226 of the *Duties Act 2001* (Tas).
- 34 Section 226(4) of the *Duties Act 2001* (Tas).
- 35 Section 5 of the *Duties (Intergenerational Rural Transfer Guidelines) Determination 2017 (No 1)* (ACT).
- 36 Section 87 of the *Stamp Duty Act 1978* (NT).
- 37 Section 87(5) of the *Stamp Duty Act 1978* (NT).
- 38 [2025] NSWCATAD 18.
- 39 [2025] NSWCATAD 84.
- 40 [2024] VSC 447.
- 41 [2025] VSCA 47.
- 42 [2024] VSC 649.



Tax Discussion Groups

It's back – take advantage and register today!

Build tax technical skills, industry connections and leadership confidence through informal, peer-led sessions focused on practical insights and open discussion, with regular sessions in 2026 and offering 1.5 CPD hours per session.

📍 Sydney | Melbourne | Canberra | Hobart

📅 Feb – Nov 2026 ☆ CPD 1.5 / session

Register now
taxinstitute.com.au



Foreign surcharges and Australia's tax treaties

by Jared Clements, Senior Lecturer,
Law School, The University of
Western Australia

In a landmark decision, the High Court has upheld the constitutional validity of Victoria and Queensland's foreign land tax surcharges. In *G Global 120E T2 Pty Ltd v Commissioner of State Revenue*, the court clarified the scope of the Commonwealth's constitutional power to give domestic effect to tax treaties and confirmed that inconsistencies between Commonwealth and state tax laws may be resolved through retroactive amendment. This article examines the broader implications of *G Global* for foreign land tax and duty surcharges, foreign nationals seeking to rely on Australia's tax treaties, the Commonwealth's treaty implementation powers, and the future design of state and territory taxes.

Introduction

Foreign land tax and duty surcharges imposed by Australian states and territories have long raised questions about their compatibility with Australia's tax treaties. Those concerns culminated in the Commonwealth's retroactive amendment of the *International Tax Agreements Act 1953* (Cth) (ITAA53) in 2024 to confine the operation of Australia's tax treaties to income tax and fringe benefits tax. In *G Global 120E T2 Pty Ltd v Commissioner of State Revenue* (*G Global*),¹ the High Court held that, although Victoria and Queensland's foreign land tax surcharges were inconsistent with the ITAA53 and non-discrimination articles in certain tax treaties and therefore rendered inoperative by s 109 of the Constitution, the Commonwealth had the power to amend the ITAA53 retroactively to remove that inconsistency and revive the surcharges.

This article outlines the legislative and policy background to foreign land tax and duty surcharges and the operation of the non-discrimination articles in Australia's tax treaties. It then examines *G Global* and what the decision means for the Commonwealth's power to give domestic effect to tax treaties and resolve inconsistencies between Commonwealth and state tax laws. The article concludes by considering the broader implications of *G Global* for foreign land tax and duty surcharges, foreign nationals seeking to rely on Australia's tax treaties, the Commonwealth's treaty implementation powers, and the future design of state and territory taxes.

Legislative and policy background

Foreign land tax and duty surcharges

Foreign land tax and duty surcharges were introduced against a backdrop of escalating housing prices in Australia's major cities and concerns that foreign investment was contributing to affordability pressures. In response, several states and territories imposed duty surcharges on foreign purchasers, and land tax surcharges on foreign or absentee owners. Table 1 provides an overview of the surcharges currently applicable in each Australian jurisdiction.

While the definition of "foreign person" varies across jurisdictions, these surcharges generally apply where land is owned or ultimately controlled by a non-resident individual, a foreign-incorporated or foreign-controlled entity, or a trust with foreign beneficiaries. Various exceptions may also apply, depending on the jurisdiction.

Non-discrimination articles in Australia's tax treaties

Australia is a signatory to 46 international tax treaties or double tax agreements (DTAs), which are given the force of law by s 5(1) ITAA53. A subset of these treaties contains non-discrimination articles that prohibit Australia from imposing more burdensome taxes on foreign nationals than those imposed on Australian residents. In several cases, these non-discrimination articles apply broadly to "taxes of every kind and description".

The scope of these non-discrimination articles came into focus in *Addy v FCT* (*Addy*),² where the High Court held that the Commonwealth's "backpacker tax" contravened art 25 of the Australia-United Kingdom DTA because it imposed a higher rate of income tax on UK working holiday-makers than on Australian nationals in comparable circumstances. *Addy* confirmed that the non-discrimination articles in Australia's tax treaties, when given the force of law under

Table 1. Foreign land tax and duty surcharges by jurisdiction

Jurisdiction	Foreign or absentee owner land tax surcharge	Foreign purchaser duty surcharge
ACT	0.75%	N/A
NSW	5%	9%
NT	N/A	N/A
Qld	3%	8%
SA	N/A	7%
Tas	2%	8% (residential land); 1.5% (primary production land)
Vic	4%	8%
WA	N/A	7%

Notes

1. Surcharges shown are in addition to general land tax or duty rates.
2. Exemptions or concessions may apply and vary across jurisdictions.
3. Rates are current as at 1 November 2025.
4. No land tax is payable in the NT.

s 5(1) ITAA53, can override domestic tax measures that treat foreign nationals differently to Australian citizens where both are considered tax residents.

Following *Addy*, attention turned to whether foreign land tax and duty surcharges could be inconsistent with the ITAA53 and non-discrimination articles in certain tax treaties, and potentially invalid under s 109 of the Constitution. Section 109 provides:

“When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.”

In response to the constitutional issue, Revenue NSW announced in 2023 that it would no longer apply foreign land tax and duty surcharges to nationals of certain treaty partners, including New Zealand, Finland, Germany, India, Japan, Norway, South Africa and Switzerland, on the basis that the surcharges were inconsistent with the non-discrimination articles in Australia’s DTAs with those jurisdictions. It also invited nationals from those countries who had paid a surcharge to apply for a refund. The revenue offices in other Australian states and territories did not follow suit.

On 8 April 2024, the Commonwealth amended the ITAA53 to confine the operation of Australia’s DTAs to income tax and FBT, with retroactive effect from 1 January 2018.³ A new s 5(3) was inserted into the ITAA53 providing:

“The operation of a provision of an agreement provided for by subsection (1) is subject to anything inconsistent with the provision contained in a law of the Commonwealth, or of a State or Territory, that imposes a tax other than Australian tax, unless expressly provided otherwise in that law.”

“Australian tax” was defined for this purpose to mean income tax or FBT.⁴ Accordingly, the amendments operated to confine the scope of Australia’s DTAs to income tax and FBT, and ensure that foreign land tax and duty surcharges imposed by Australian states and territories would prevail in the event of an inconsistency with Australia’s DTAs.

Not long thereafter, Victoria and Queensland also enacted legislation to retroactively confirm the validity of their foreign land tax and duty surcharges and of assessments issued before the Commonwealth amendments took effect, providing an additional safeguard for their revenue bases in the event of a constitutional challenge to the Commonwealth’s amendments to the ITAA53.⁵ Queensland also introduced a separate “windfall tax”, which would apply if the surcharges were ultimately held to be invalid.⁶

The High Court’s decision in *G Global* Factual background

G Global involved two sets of proceedings heard together. Diagrams 1 and 2 provide an overview of the factual background.

In the first proceeding, two corporate trustee companies – G Global 120E T2 Pty Ltd and G Global 180Q Pty Ltd – were

Diagram 1. *G Global* proceedings

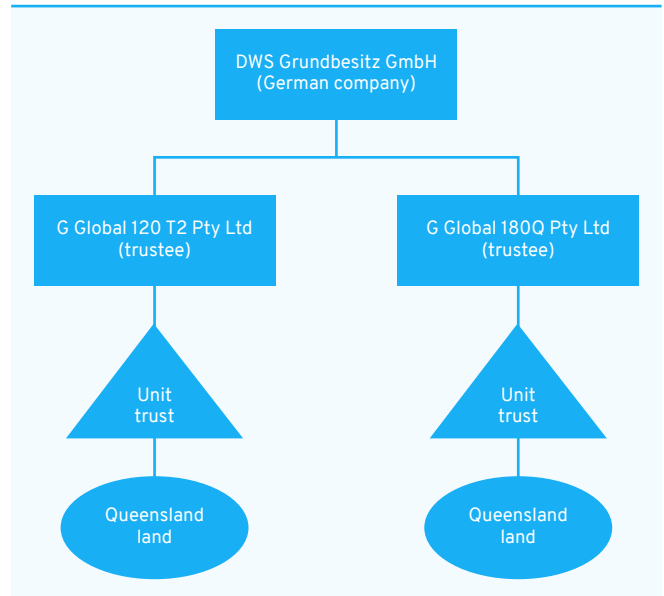
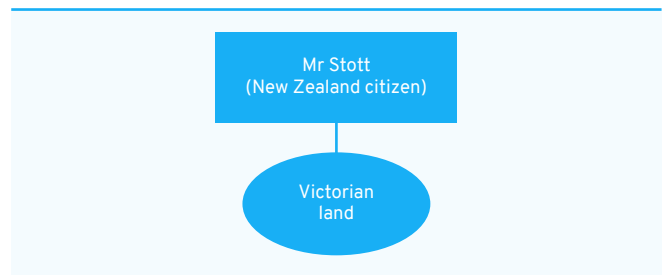


Diagram 2. *Stott* proceedings



trustees of unit trusts that held land in Queensland. The shares in the trustee companies and units in the trusts were ultimately owned or controlled by a German company. For Queensland land tax purposes, the trustee companies were treated as “foreign companies” and trustees of “foreign trusts” and were assessed for land tax, including a foreign land tax surcharge under the *Land Tax Act 2010* (Qld). Article 24 of the Australia–Germany DTA contains a non-discrimination article which applies to “taxes of every kind and description” and prohibits Australia from imposing more burdensome taxes or related requirements on German nationals than on Australian residents.

In the second proceeding, Mr Stott, a New Zealand national, owned land in Victoria and was treated as an “absentee person” for Victorian land tax purposes because he was not an Australian citizen or resident and was not in Australia at the relevant times under the *Land Tax Act 2005* (Vic). After notifying the Victorian Commissioner of his status, Mr Stott was reassessed for land tax at the higher absentee owner rates. Article 24 of the Australia–New Zealand DTA contains a non-discrimination article in substantially identical terms to that in the German treaty, and likewise applies to “taxes of every kind and description”.

In both cases, the foreign land tax surcharges resulted in more burdensome taxation of foreign taxpayers than comparable Australian taxpayers, raising questions about

inconsistency with the non-discrimination articles in the relevant DTAs and, in turn, with s 5(1) ITAA53.

Issues before the court

The proceedings raised three main issues:

1. whether the Queensland and Victorian foreign land tax surcharges were inconsistent with the non-discrimination articles in the Australia–Germany and Australia–New Zealand DTAs and s 5(1) ITAA53, such that they were invalid under s 109 of the Constitution. A related question was whether the Commonwealth’s retroactive amendments to the ITAA53 were effective in removing that inconsistency, thereby reviving the surcharges;
2. whether the amendments to the ITAA53 were supported by a valid Commonwealth head of power, and in particular whether it was open to the Commonwealth to limit the operation of Australia’s tax treaties to income tax and FBT; and
3. whether s 5(3) ITAA53, by effectively removing a taxpayer’s right to obtain a refund of the foreign land tax surcharge that they had paid, effected an acquisition of property otherwise than on just terms contrary to s 51(xxix) of the Constitution.

High Court’s findings

Constitutional inconsistency and retroactive amendments

The High Court found that inconsistency under s 109 of the Constitution will arise where a state law alters, impairs or detracts from the operation of a valid Commonwealth law. It explained that, where inconsistency is established, the state law is not void or beyond legislative power, but is inoperative to the extent of the inconsistency. If the Commonwealth law is later amended so that the inconsistency is removed, the state law resumes operation.

The court held that the Australia–Germany and Australia–New Zealand DTAs were given the full force of law by s 5(1) ITAA53, and that the foreign land tax surcharges in Queensland and Victoria were inconsistent with the non-discrimination articles in those treaties because they imposed more burdensome taxation on foreign nationals than on Australian residents in comparable circumstances. As a result, the surcharges were inoperative under s 109 of the Constitution for so long as the non-discrimination articles applied to “taxes of every kind and description”.

The court then considered whether the Commonwealth’s retroactive amendments to the ITAA53 were effective to remove the inconsistency by narrowing the domestic operation of Australia’s DTAs so that the non-discrimination articles applied only to income tax and FBT. It confirmed that the Australian Parliament generally has power to enact retroactive tax laws, and that this extends to retroactively amending Commonwealth legislation in a way that removes an inconsistency under s 109.

In doing so, the court overruled its earlier decision in *University of Wollongong v Metwally (Metwally)*,⁷ which had

suggested that the Commonwealth could not retroactively undo or alter the invalidating effect of s 109 once an inconsistency had arisen. The court in *G Global* held that whether a retroactive Commonwealth law removes an inconsistency is a matter of statutory construction. The law must, in substance, remove the underlying basis for the inconsistency rather than merely declaring that no inconsistency exists or asserting that the Commonwealth law is not intended to “cover the field”.

The court also emphasised that the Commonwealth’s ability to enact retroactive laws is not without limitations. Such laws may be beyond the Commonwealth’s legislative power if they significantly impair, curtail or weaken the capacity of the states to exercise their constitutional powers and functions, or if they impermissibly interfere with the judicial process. Those concerns did not arise on the particular facts.

Applying these principles, the court held that the amendments to the ITAA53 did more than simply state that there was no inconsistency. They retroactively narrowed the operation of s 5(1) ITAA53 so that the non-discrimination articles in Australia’s DTAs no longer applied to certain taxes. This removed the basis for any inconsistency between those non-discrimination articles and the foreign land tax surcharges. Accordingly, the surcharges were valid and operative from the date the amendments took retroactive effect on 1 January 2018.

“... governments must remain alert to constitutional issues and the potential constraints on their taxing powers.”

Commonwealth’s power to implement tax treaties

The court then considered whether the Commonwealth’s amendments to the ITAA53 were supported by a valid head of power. It noted that the taxation power in s 51(ii) of the Constitution supports Commonwealth legislation implementing tax treaties to the extent that those treaties operate in relation to Commonwealth taxes such as income tax and FBT. However, s 51(ii) does not extend to state taxes and therefore cannot support provisions that purport to give treaty obligations domestic effect in that context.

The court then turned to the external affairs power in s 51(xxix) of the Constitution. It reaffirmed that this power can support legislation implementing Australia’s obligations under international treaties, even where the subject-matter of those obligations concerns areas, such as state taxes, that would otherwise lie outside of Commonwealth legislative power. The key question is whether the legislation is reasonably capable of being considered appropriate and adapted to implementing Australia’s treaty obligations.

The taxpayers argued that s 5(3) ITAA53, by limiting the domestic operation of Australia's tax treaties to income tax and FBT, was not appropriate and adapted to the implementation of the relevant DTAs, which were expressed to apply to all taxes. The court rejected that argument. It held that a law will fall outside the external affairs power only if any deficiency in implementation is so substantial as to deny the law the character of a measure implementing the treaty, or to render the law, viewed as a whole, substantially inconsistent with the treaty.

Although s 5(3) narrowed the operation of Australia's DTAs as a matter of domestic law, that limitation was not so substantial as to deprive s 5 ITAA53 of its character as a law implementing Australia's international treaty obligations. Section 5, viewed as a whole, continued to give domestic effect to Australia's DTAs in relation to the specified Commonwealth taxes and was therefore supported by the external affairs power.

Extinguishment of rights to recover tax

The final issue was whether s 5(3) ITAA53 effected an acquisition of property otherwise than on just terms contrary to s 51(xxxi) of the Constitution. The taxpayers argued that their rights to claim refunds of foreign land tax surcharges were choses in action and therefore constituted property for the purposes of s 51(xxxi), and that the Commonwealth was required to provide restitution for extinguishing those rights. The Commonwealth contended that the amendments merely removed an obstacle to the imposition of state taxes and were properly characterised as laws with respect to taxation, rather than laws with respect to the acquisition of property.

The court observed that a law relating to the imposition of taxation will rarely, if ever, amount at the same time to a law with respect to the acquisition of property within the meaning of s 51(xxxi) of the Constitution. It held that the foreign land tax surcharges were "genuine taxes" and that s 5(3) operated to revive them. The amendments were therefore properly characterised as laws with respect to taxation and not as laws with respect to the acquisition of property. As a result, the Commonwealth was not required to provide restitution for extinguishing the taxpayers' rights.

What are the implications?

Validity of foreign land tax and duty surcharges

G Global has immediate implications for the ongoing validity of foreign land tax and duty surcharges imposed by Australian states and territories. The High Court's decision confirms that s 5(3) ITAA53 is effective to remove any inconsistency between foreign surcharges and the non-discrimination articles in Australia's DTAs (at least from 1 January 2018). As such, foreign land tax and duty surcharges imposed on or after that date are valid as a matter of domestic law.

The decision also obviates the need for states and territories to enact validating legislation in relation to their

foreign surcharges, as was done in Victoria and Queensland. By retroactively removing the basis for constitutional inconsistency, the Commonwealth's amendments to the ITAA53 appear sufficient to revive the operation of foreign surcharges in all jurisdictions.

With the validity of Queensland's foreign surcharges now confirmed, it remains to be seen whether it will repeal its windfall tax provisions. Those provisions were intended to operate only if the surcharges were declared constitutionally invalid and, in light of *G Global*, there appears to be little justification for their retention.

New South Wales presents a particular case. It was the only jurisdiction to cease applying foreign surcharges and to offer refunds once concerns about inconsistency with DTAs were identified. In light of *G Global*, those surcharges were always capable of being validly imposed (at least from 1 January 2018). Whether Revenue NSW will seek to retrospectively impose surcharges that were not levied, or revisit refunds granted during the period of uncertainty, remains to be seen. Any reassessment would, however, be subject to the applicable statutory limitation periods.

Foreign nationals relying on Australia's DTAs

Foreign nationals (and their advisers) should be aware that s 5(3) ITAA53 confines the domestic operation of Australia's DTAs to income tax and FBT. In particular, foreign taxpayers cannot rely on non-discrimination articles in Australia's DTAs to challenge state or territory taxes, or other Commonwealth taxes, even where the treaty appears to apply broadly to "taxes of every kind and description".

This represents a significant narrowing of the protection that non-discrimination articles in tax treaties might otherwise have afforded to foreign nationals. It also highlights the inherent risk in relying on treaty based protections, as the domestic effect of a DTA depends on its implementing legislation, which may be amended (including with retroactive effect).

Commonwealth's ability to retroactively cure inconsistency

By overruling *Metwally* and confirming that the Commonwealth can retroactively amend its laws to remove inconsistency under s 109 of the Constitution, *G Global* expands the avenues available to the Commonwealth in managing conflicts between Commonwealth and state laws. The Commonwealth may now retroactively amend its own legislation to remove the basis for an inconsistency and thereby restore the operation of otherwise inoperative state laws, provided it does so in a way that does not undermine the capacity of states to exercise their constitutional powers and functions, or impermissibly interfere with judicial processes.

For taxpayers, this creates a more uncertain environment. A state tax law that appears invalid by reason of inconsistency at one point in time may later be revived by retroactive Commonwealth amendments. Taxpayers who rely on apparent inconsistency when deciding whether

to challenge an assessment may find that the legal landscape shifts during or after litigation. When significant constitutional questions arise, it will be important to factor in the possibility of retroactive legislative changes.

G Global also confirms that Commonwealth amendments to tax legislation will not ordinarily be characterised as laws involving an acquisition of property requiring just terms under s 51(xxxi) of the Constitution, even where they adversely affect a taxpayer's right to claim a refund.

Commonwealth power to give DTAs the force of law

G Global provides important clarification on the constitutional powers that enable the Commonwealth to give domestic legal effect to Australia's tax treaties. The taxation power supports legislation giving DTAs the force of law to the extent that they operate in relation to Commonwealth taxes. Meanwhile, the external affairs power can support legislation implementing a DTA where that legislation is reasonably capable of being considered appropriate and adapted to the implementation of Australia's international obligations, even where the law operates in relation to an area, such as state taxes, where the Commonwealth has no power.

The external affairs power does not, however, require complete or perfect implementation of a treaty. A law giving effect to a DTA will fall outside that power only where any deficiency in implementation is so substantial as to deny the law the character of a measure implementing the treaty, or where the law, viewed as a whole, is substantially inconsistent with the treaty.

Potential violation of international law

Although *G Global* confirms that the domestic operation of a tax treaty depends entirely on its implementing legislation, this does not relieve Australia of its obligations under international law. As a party to the Vienna Convention on the Law of Treaties, Australia is obliged to perform its treaty obligations in "good faith" and may not invoke its domestic law as justification for non-performance.⁸

Limiting the domestic operation of certain non-discrimination articles so that they no longer apply to "taxes of every kind and description" could place Australia in violation of its obligations under international law.⁹ In these circumstances, it would be prudent for Australia to engage with affected treaty partners to explain its position and to consider renegotiating non-discrimination articles to align the treaty text with the intended scope of domestic implementation.

If Australia's settled policy is that DTAs should apply only to income tax and FBT, it should avoid agreeing to broad non-discrimination articles in future treaty negotiations.

Future design of state and territory taxes

The Commonwealth's amendments to the ITAA53, together with the High Court's decision in *G Global*, clear the way for states and territories to impose land tax and duty surcharges on foreign nationals. A further, and potentially unanticipated, consequence is that it may now also be open

to states and territories to impose surcharges on foreign nationals in other tax contexts, subject to the relevant limits on their taxing powers.

G Global, along with other recent cases such as *Vanderstock v Victoria*,¹⁰ highlights the need for state and territory legislatures to remain alert to constitutional issues and potential constraints on their taxing powers. Had the potential inconsistency between foreign surcharges and Australia's DTAs been identified, and the ITAA53 amended before they were introduced, it is unlikely that the *G Global* litigation would have reached the High Court.

Early identification of constitutional issues and limits on state and territory taxing powers can avoid the substantial time and cost associated with constitutional challenges, as well as the prolonged uncertainty experienced by taxpayers while such matters are resolved.

It is therefore suggested that state and territory governments introduce a formal framework to ensure that constitutional issues and limits on taxing powers are systematically identified and evaluated before any new taxes are introduced. This should include a structured process for obtaining constitutional law advice and evaluating risk at both the policy development and legislative drafting stages. Engaging with other jurisdictions, particularly the Commonwealth, together with public consultation, may further assist in identifying constitutional concerns at an early stage, enabling governments to address risks before legislation is enacted.

Conclusion

G Global confirms the validity of state and territory foreign land tax and duty surcharges imposed on or after 1 January 2018. It also expands the Commonwealth's capacity to manage conflicts between Commonwealth and state laws. The Commonwealth may retroactively amend its own legislation to remove the basis for inconsistency under s 109 of the Constitution and revive an otherwise inoperative state law. However, this must not be done in a way that undermines the capacity of the states to exercise their constitutional powers and functions, or impermissibly interferes with judicial processes.

The domestic implementation of Australia's tax treaties is supported by the taxation power and the external affairs power in the Constitution, which permit the Commonwealth to give DTAs the force of law. Although Australia has only partially implemented the non-discrimination articles in some tax treaties, that deficiency is not so substantial as to place the ITAA53 outside the scope of Commonwealth power. Nonetheless, this partial implementation raises concerns as to whether Australia has complied with its obligations under international law.

The ITAA53 operates to confine the domestic operation of Australia's tax treaties to income tax and FBT. As a result, foreign nationals cannot rely on the non-discrimination article in a tax treaty to challenge state or territory taxes, or other Commonwealth imposts, even where the treaty appears, on its face, to apply to all taxes.

Looking ahead, the current legal landscape may present opportunities for state and territory governments to introduce foreign surcharges in contexts beyond land tax and duty. However, governments must remain alert to constitutional issues and the potential constraints on their taxing powers. Adopting a framework for identifying and assessing constitutional risks at an early stage of tax design may assist in managing those risks.

Dr Jared Clements
Senior Lecturer, Law School
The University of Western Australia

References

- 1 [2025] HCA 39.
- 2 [2021] HCA 34.
- 3 S 2 of Sch 1 to the *Treasury Laws Amendment (Foreign Investment) Act 2024* (Cth).
- 4 S 3(1) ITAA53.
- 5 S 104 of the *Land Tax Act 2010* (Qld); s 688 of the *Duties Act 2001* (Qld); s 106A of the *Land Tax Act 2005* (Vic); s 282A of the *Duties Act 2000* (Vic).
- 6 S 246J of the *Duties Act 2001* (Qld).
- 7 [1984] HCA 74.
- 8 Arts 26 and 27 of the Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, United Nations, *Treaty Series*, vol 1155, p 331 (entered into force 27 January 1980).
- 9 Art 60 of the Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, United Nations, *Treaty Series*, vol 1155, p 331 (entered into force 27 January 1980).
- 10 [2023] HCA 30.

24-008RES_03/26



“

It’s usually my first stop to research complex tax issues.

Theodore, Tax Accountant

With over 42,000+ in-depth analyses, journal articles, case studies and more, **Tax Knowledge Exchange** is the database trusted by thousands of tax professionals nationwide. **Subscribe today.**

taxinstitute.com.au/tke

A Matter of Trusts

by Edward Hennebry, FTI, Sladen Legal

Division 7A liabilities after death

This article explores the interaction between deceased estates and Div 7A, highlighting the obligations of executors, ATO views, and practical strategies to mitigate risk.

Executors of deceased estates¹ have important income tax obligations, particularly following the grant of probate of the deceased's will. If an executor does not act carefully, they may have to use personal assets to satisfy the outstanding tax-related liabilities of the deceased.²

Executors should therefore be conscious of Div 7A ITAA36, because Div 7A can treat loans and forgiven debts from a private company to a shareholder (or an associate of a shareholder) as an unfranked dividend.

The death of the shareholder (or associate) does not extinguish Div 7A liabilities, and the actions of the executor can also trigger Div 7A liabilities to the deceased estate.

Executors and their responsibilities in respect of debts

A core obligation of an executor (following the grant of probate) is to attend to the payment of debts before they can distribute the residue of the deceased estate to beneficiaries under the will. That is, a deceased estate will not be fully administered until debts have been paid or provided for.³

Accordingly, an executor administering a deceased estate with Div 7A loan liabilities will need to consider how these loans are satisfied and the implications of forgiveness. In particular:

- executors are obligated to discharge the outstanding tax-related liabilities for which the deceased person would be liable if they were still alive following probate;⁴
- an outstanding tax-related liability of a deceased could arise from unfranked dividends under Div 7A (eg loans that have not been placed under complying s 109N ITAA36 terms); and
- income tax on a person's income, although not assessed until after their death, has been held to answer the description of an outstanding tax-related liability.⁵

Whether a deceased's liabilities include a Div 7A loan

Division 7A broadly applies to payments, loans and forgiven debts from private companies to entities.

An "entity", for the purposes of Div 7A, has the same meaning as under s 960-100 of the *Income Tax Assessment Act 1997* (Cth),⁶ which includes an individual and a trust.

Executors of deceased estates are separate and distinct entities to the deceased. For income tax purposes, a deceased estate is a trust.⁷ Accordingly, executors may need to distinguish between:

- Div 7A liabilities which have crystallised to the deceased; and
- Div 7A liabilities which may crystallise to the deceased estate (as a distinct entity in its own right).

Consider, for example, the Table 1 scenarios in the context of loans under s 109D ITAA36.

Table 1. Does a deemed dividend under s 109D arise?

Type of loan	Application to deceased estate
Loan made from a private company to a deceased shareholder (or an associate) and the deceased shareholder (or associate) dies before the end of the income year in which the loan was made.	<i>Unlikely</i> to constitute a deemed dividend under s 109D(1) to the deceased or the deceased estate. The entity that received the loan from the private company (the deceased) is not the same entity that is deemed to be paid a dividend (the deceased estate) under s 109D(1). That is, the deceased was not alive on 30 June in the year the loan was made. The ATO took this approach in PBR 1052231682732 (issued in March 2024).
Loan made by a private company to a deceased shareholder (or an associate) when the deceased shareholder (or associate) dies <i>after</i> the end of the income year in which the loan was made and which was not subject to a complying s 109N agreement.	<i>Likely</i> to constitute a deemed dividend under s 109D(1) to the deceased. For the purposes of s 109D, the deceased was the relevant "entity" at the end of the private company's year of income. The deceased was alive on 30 June in the year the loan was made. However, it will not be possible for the private company and the deceased to enter into a complying s 109N agreement by the lodgment date of the private company's tax return for the year the loan was made (because the deceased is dead).

Despite the scenarios noted in Table 1, and even if it transpires that some loans owing by the deceased are not taken to be dividends under s 109D, these loans may constitute debts to which executors will need to have regard when administering the deceased estate. In particular, the forgiveness of a debt can trigger a deemed dividend to the deceased estate under s 109F ITAA36.⁸

The views of the ATO

The interactions between Div 7A and deceased estates have not been judicially considered, nor is there guidance

in secondary materials like explanatory memoranda. ATO guidance is also limited.

ATO ID 2002/741

In ATO ID 2002/741, the ATO considers that a private company is not taken to have paid a dividend to the executor of the deceased estate of a shareholder in the company in respect of a loan the company made to the shareholder before death for the purposes of s 109E ITAA36.

The ATO's reasons are based on the view that the entity to whom the private company is taken to have paid the dividend under s 109E must be the same entity to whom the private company made the amalgamated loan.

ATO ID 2012/77

In ATO ID 2012/77, the ATO considers that s 109F applies to treat a private company as having paid a dividend to an executor when:

- a private company has made an amalgamated loan to a shareholder who dies before the amalgamated loan is repaid; and
- the private company forgives that loan while the shareholder's estate is in administration.

The ATO's reasons are based on the view that, as title to the shares in the private company passed to the executor on death, the executor is the relevant shareholder for the purposes of s 109F(1)(a). Accordingly, by forgiving the debt owed by the executor, the private company is taken to have paid a dividend to the executor (in its capacity as trustee for the deceased estate).

The facts of ATO ID 2012/77 indicate that the deceased died in NSW, and so the probate laws in NSW were relevant to the ATO's reasoning as to when the executor became a shareholder.

Forgive before probate is granted?

Some edited private rulings issued from 2017 to 2020 concluded that s 109F *did not* apply when a debt is forgiven *before the granting of probate*.⁹ In these rulings, the ATO considered that, depending on the relevant state/territory vesting provisions in the location of death, a deceased's property vests in a public trustee (not the executor) before the grant of probate.

Taxpayers and their advisers may be tempted to refer to these edited private rulings to influence private company lenders (that are related to a deceased borrower) to forgive the Div 7A loans owing from the deceased *before the granting of probate*. However, these rulings now contain the following warning:

This edited version has been found to be misleading or incorrect. It does not represent the ATO's view of the relevant law.

Further, in more recent edited private rulings on the ATO database, it appears that the ATO's views have changed and that dividends under s 109F are likely to arise to a deceased estate if debts (including Div 7A loans) are forgiven, regardless as to whether the debts are forgiven before or after probate is granted.

This was the case in PBR 1052195584659 (issued in December 2023). This position appears to have been formed on the basis that:

- on death, the private company lender is owed a debt by the executor of the deceased estate (even though there may be temporal bars to the private company obtaining satisfaction of the debt prior to the grant of probate); and
- the executor of the deceased estate is a "shareholder" in the private company when the debt is forgiven, including before probate, having regard to various court cases (such as *FCT v Angus*¹⁰ where it was held that executors should be regarded as shareholders for the purposes of the payment of a dividend).

The facts in PBR 1052195584659 indicate that the loans were made *during* the income year of the deceased's death. Would the outcome be different if the loans were made *before* the income year of the deceased's death? This is not likely, at least according to the ATO in PBR 1052190586791 (issued in November 2023).

These recent private rulings, although not intended to provide taxpayers with advice or guidance (according to PS LA 2008/4), are illustrative of the ATO's views. Executors that inherit debts owing to private companies should therefore consider if s 109F applies to those debts if they are forgiven (regardless as to when probate is granted).

Is forgiveness after death ever an option?

Despite the above, it may be possible for a private company lender to write off a debt without a dividend under s 109F applying to the deceased estate under certain circumstances. For example:

- s 109G(3) ITAA36 provides that s 109F does not apply if a private company forgives a debt resulting from a loan and which, because of the loan, the private company is taken to have paid a dividend under s 109D. The identity of the debtor does not appear to be relevant for the purposes of s 109G(3);
- if a debt is statute barred, the debt may already have been forgiven for the purposes of s 109F(1). This may mean that the forgiveness of the debt by the private company now will not trigger a deemed dividend to the deceased estate because of s 109F(8); and
- s 109F is constrained by the concept of the company's distributable surplus under s 109Y ITAA36. This means that, even if a debt is forgiven and s 109F is otherwise satisfied, the amount treated as a deemed dividend is capped at the company's distributable surplus calculated under s 109Y.

What happens if Div 7A issues surface after the granting of probate?

If, for example, the financial statements of the lending private company reveal loans owing to it from the deceased after the grant of probate, the following considerations arise:

- Were the loans subject to a complying s 109N agreement?

If yes, the failure to make minimum yearly repayments on those loans after death may not cause s 109E deemed dividends (according to ATO ID 2002/471).

If no, and depending on when the loans were made, these loans may be taken to be s 109D dividends to the deceased (and so an executor would be liable to discharge the outstanding tax-related liabilities that arise from these deemed dividends).

- Can the loans be forgiven now without causing a s 109F dividend (see above)?
- Has the period of review expired?

The general amendment periods are two or four years, but there is no time limit if the Commissioner believes that there has been fraud or evasion or if there is no assessment for the relevant income year (eg because no income tax return has been lodged).

A four-year amendment period generally applies for assessments in respect of Div 7A.¹¹

If the deceased was a beneficiary of a trust (eg a potential object of discretionary trust), they may be subject to a four-year amendment period unless the trust is a small or medium business entity.¹²

- Could the distributable surplus save you (see above)?

Practical tips for managing Div 7A issues in a deceased estate

To mitigate personal liability and ensure proper administration of the deceased's income tax obligations, some practical tips for executors include:

- **conduct a full review of the deceased's tax history and speak to the tax agent:** executors should undertake a comprehensive review of the deceased's tax history to identify and address any outstanding income tax returns or other tax obligations. The executor should retain records of these communications in the event of ATO scrutiny;
- **seek advice:** executors should obtain specialist tax and legal advice before distributing the assets of the deceased or taking steps that could trigger a deemed dividend under Div 7A;
- **make adequate provision for tax liabilities before distribution:** an executor may wish to ensure that the ATO issues a notice of assessment (or a nil assessment) and that sufficient moneys are retained by the estate to fund any assessed income tax liabilities before distributing assets to beneficiaries;
- **act conservatively:** an executor may wish to avoid distributing any estate property to beneficiaries if there is any doubt or concern about tax liabilities up to the date of death. The Commissioner cannot recover tax from a beneficiary once assets are distributed, making the executor a target for recovery by the ATO;¹³
- **voluntary disclosure (but note amendment periods):** where there is uncertainty due to missing data or tax records, an executor may wish to contact the ATO to make a voluntary disclosure. Voluntary disclosures

typically lead to reduced penalties and interest charges. Furthermore, if the executor becomes aware of material errors or omissions in the prior year tax returns of the deceased, an executor may be wise to request amended assessments (if the period of review has not expired);

- **consider a private ruling:** a private ruling from the Commissioner may provide an executor with comfort and certainty;
- **understand the Commissioner's s 109RB discretion:** consider whether to seek Commissioner's discretion under s 109RB if a dividend under Div 7A arises due to honest mistakes or inadvertent omissions; and
- **maintain records and evidence:** the onus of proof is on taxpayers. Executors should retain records of correspondence with the deceased's tax agent and document action taken in respect of managing the deceased's tax affairs to mitigate ATO scrutiny.

Concluding thoughts

Executors should review the income tax affairs of the deceased and seek specialist advice concerning Div 7A if the deceased has received payments or loans from a private company of which the deceased was a shareholder (or an associate of a shareholder). In particular, the temptation to instruct a private company lender (or trust in certain circumstances) to forgive a debt owed by a deceased should be approached with caution given the breadth of s 109F and the ATO's recent views as per the edited private rulings highlighted in this article.

Edward Hennebry, FTI
Special Counsel
Sladen Legal

References

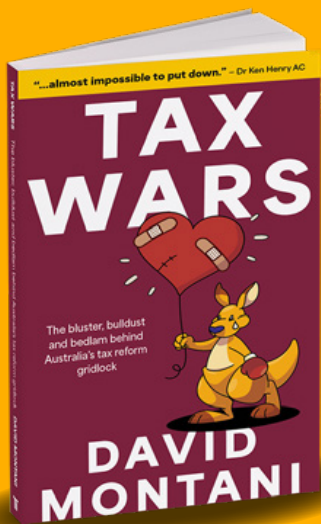
- 1 Also known as "legal personal representatives" (s 955-1 of *Income Tax Assessment Act 1997* (Cth)) or "trustees" (s 6(1) of the *Income Tax Assessment Act 1936* (Cth) (ITAA36)).
- 2 Personal liability applies up to the market value of the deceased's assets that come into the executor's hands. See *Barkworth Olives Management Ltd v DCT* [2010] QCA 80.
- 3 See IT 2622 and *FCT v Whiting* [1943] HCA 45.
- 4 S 260-140 of Sch 1 to the *Taxation Administration Act 1953* (Cth).
- 5 See *Binetter v FCT* [2016] FCAFC 163 and para 56 of PCG 2018/4. PCG 2018/4 concerns the liability of executors for "less-complex" deceased estates, and provides some general principles and safe harbours of which executors should be aware. However, executors cannot rely on PCG 2018/4 if the deceased estate includes shares in a private company (and so may have limited application if the deceased had a Div 7A liability).
- 6 S 109ZD ITAA36.
- 7 In other circumstances, a deceased estate may not be a trust. For instance, a deceased estate is not generally considered a trust before or during the estate administration process. See *Re Estate of Stagliano* [2025] VSC 39.
- 8 Section 109F applies to "debts," whereas s 109D applies to "loans".
- 9 See PBR 1013123836003, PBR 1051533271418 and PBR 1051705944220.
- 10 [1961] HCA 18.
- 11 Item 2 of the table in reg 14 of the *Income Tax Assessment (1936 Act) Regulation 2015* (Cth).
- 12 *Yazbek v FCT* [2013] FCA 39.
- 13 *DCT v Brown* [1958] HCA 2.

“ **...almost impossible to put down.** ”
Dr Ken Henry AC

Tax Wars

by David Montani

The bluster, bulldust and bedlam



Tax is the hidden lever defining our economy, businesses and lifestyles. And in Australia, the tax system is fundamentally broken.

So, what's stopping us from changing for the better and achieving real tax reform?

In a sweeping look at tax policy, history and regulation, explore the story behind Australia's attempts, failures and dire need to reform our tax system. Is it a lack of knowledge and ideas holding us back, or a political impasse more than 30 years in the making?

Get your copy now.

taxinstitute.com.au/resources/books/taxwars

 The Tax Institute

Obituary

Kevin Burges, FTI (Life)

Kevin passed away on 10 January 2026, aged 96.

He was admitted to practice as a solicitor in 1952. A year later, he joined a small, one-partner firm, and became a partner in that firm (renamed Giovanelli & Burges) six months later.

In 1976, he was invited by the Sydney law firm Stephen, Jaques & Stephen (now part of King & Wood Mallesons, and soon to be known simply as Mallesons) to join the firm and establish a stand-alone tax practice, with Kevin as the leader. Kevin remained as the leader of the National Tax Group of the firm for the next 18 years, until his retirement from the firm in 1994.

In the mid-1960s, Kevin (along with Tom Magney, Rodney Rosenblum, and a relatively small number of other solicitors and barristers of their generation in Sydney) had begun to develop expertise in tax law, enhanced by completing in the late 1960s a Master of Laws degree in tax subjects at Sydney University, under the tutelage of Professor Ross Parsons.

Before long, the members of that group became widely recognised by the tax profession and the ATO as leading tax lawyers in Sydney. However, anyone who had the privilege of working closely with any of them would know that, first and foremost, they were among the finest general lawyers (including in areas such as trusts, companies, partnerships, real estate and private international law), and consummate professionals, of their generation. It was those fundamental qualities that enabled them to become, and be recognised as, leading tax lawyers.

Kevin was an early joiner of The Tax Institute, and later its National President (1988–89). He served (in many cases as the chair) on various committees of the Institute, the Law Council of Australia, and the Law Society of NSW. He also served on the ATO Public Rulings Panel for 20 years, until 2010, and on its National Tax Liaison Group for many years.

What is less well-known is that Kevin played a critical role in at least two matters in the public domain.

First, in 1980, in procuring the ATO's eventual reluctant acceptance of the right of a doctor to practise through a medical practice company (in order to avail themselves of the right to make tax deductible superannuation contributions).¹ That led to an almost immediate stampede by doctors, dentists and other health professionals to set up incorporated medical or other practice companies, and the rest is history. Many doctors and other health professionals have Kevin to thank for that incredible breakthrough 45 years ago.

Second, Kevin was instrumental in drafting the critical language of the original 1989 ATO *Guidelines to accessing professional accounting advisers' papers*, and leading the team representing all of the then accounting associations, including The Tax Institute, the Law Council and others, which persuaded the ATO to introduce the accountants' concession and adopt those hugely important guidelines. His concepts and language remain in the current version of the guidelines. So, all practising tax accountants have much to thank Kevin for his pioneering work in that regard.

Kevin was an exceptional, brilliant, thoughtful, humble, warm and generous man, professional colleague, mentor, teacher, role model and close friend, who also made plenty of time throughout his career to help many charities and individuals in need.

He was also a committed family man, who is survived by his wife Annette, six children, and many grand and great grandchildren.

He will be sorely missed by all those who were fortunate enough to know him.

RIP Kevin Burges.

John King

Member of The Tax Institute, 1974–2025

Professor Robert Deutsch, CTA

Senior Tax Counsel, The Tax Institute, 2017–2023
Currently Tax Technical Editor, The Tax Institute

Reference

- 1 See IT 25, issued on 7 August 1981.

Events Calendar

Upcoming month

MARCH

19–20

Thu–Fri

VIC

VIC Tax Forum



12 CPD hours

MARCH

24–25

Tue–Wed

Online

Superannuation Intensive



8 CPD hours

MARCH

26–27

Thu–Fri

NSW

Financial Services Taxation Conference



12 CPD hours

MARCH

30–31

Mon–Tue

Online

Estate Planning



8 CPD hours

APRIL

21–22

Tue–Wed

Online

Next Generation Leadership Masterclass



4 to 8 CPD hours

For more information on upcoming events, visit taxinstitute.com.au/events.

Cumulative Index

The following cumulative index is for volume 60, issues (1) to (8). Listed below are the pages for each issue:

Vol 60(1): pages 1 to 52	Vol 60(5): pages 221 to 290
Vol 60(2): pages 53 to 106	Vol 60(6): pages 291 to 358
Vol 60(3): pages 107 to 154	Vol 60(7): pages 359 to 426
Vol 60(4): pages 155 to 220	Vol 60(8): pages 427 to 488

15-year exemption
small business CGT
concessions243-245
- restructuring310, 313, 314
50% CGT discount
co-ownership, letting residential premises373
Select Committee inquiry362, 363
183-day test68

A
Absentee persons
land tax464
Accommodation expenses
reasonable amounts58, 59
Accountants
regulation, anti-money laundering and counter-terrorism financing444-448

Administrative errors
restitution137-141
Administrative penalties – see also Penalties

client taxation records62
reasonable care, breach233

Administrative powers
trust deeds383

Administrative Review Tribunal
artificial intelligence used in submission to436
asset betterment assessments228, 229
confidentiality orders refused1
making decisions without holding a hearing298

Ageing population46, 56, 294, 299, 318, 326, 330

Aggregated turnover thresholds56

Agreements
or contracts, deceased estates118-121

Agribusinesses – see Family farms; Primary production
--

Agricultural land – see also Primary production
development, GST liability300
“dominant use”454, 457-460
duty exemptions456, 457
foreign ownership in
Australia329, 450, 451
land tax455, 456
primary production activity452, 454, 455, 460
primary production exemptions456, 457, 461
state taxes451, 455
thresholds for450, 451
transfers between family members457
“used primarily”455

Airbnb430

Alienation arrangements
personal services businesses172, 179, 180, 365, 366

Allocation of profits
professional services firms184-186

Amended assessments
asset betterment228, 229
contract for sale of CGT asset359
tax evasion, residency8, 9, 67-69
tax uncertainty20

Announced but unenacted measures
superannuation balances above \$3m, 15% tax207-209

Anti-avoidance provisions
Div 7A, payments or repayments161

Anti-money laundering and counter-terrorism financing
regulation of professional services444-448

Appeals
tax dispute litigation274-276

Appointors of trusts
choice of376, 377
fiduciary powers377
trust deed issues376-379

Arm's length
definition44
price260

Arm's length dealings
royalty characterisation264, 265

Artificial intelligence
used for submissions to Administrative Review Tribunal436

Asprey report395

Assessable income
failure to keep records114

Asset betterment assessments228, 229

Asset ownership
joint tenancy323, 324

Asset protection
family farms238
small business CGT concessions, restructuring316
superannuation proceeds trusts341
testamentary discretionary trusts, foreign beneficiaries204

Assets
intangible, tax treatment256, 264
SMSFs, valuation36, 37

Auditors
SMSFs
- compliance36, 38
- trustee loss of capacity135, 136

Audits
failure to keep records114
risks of87, 91

Australia
agricultural land, foreign ownership329, 450, 451
double tax agreements – see Double tax agreements
whether Bitcoin is money125-127
Australian Capital Territory
land tax legislation and revenue rulings455, 456
powers of attorney, foreign jurisdictions46

primary production
concessions458
primary production definition453

Australian Charities and Not-for-profits Commission194, 201
--

Australian Prudential Regulation Authority
superannuation funds30, 35, 43, 44

Australian residents
corporate tax residency189
Covid travel restrictions60, 61

Australian Securities and Investments Commission
SMSF auditor registration38

Australian tax system
FBT, whether a “good tax”394-397
reducing red tape227
restitution137-141
tax reform
- need for56, 57, 110
- The Tax Institute recommendations158
tax uncertainty, impact of224, 225

Australian Taxation Office
administrative errors, restitution137-141
CGT event K6107
compliance
- large corporations162
corporate tax residency test189, 190
deceased estates, Div 7A liability469, 470
departure prohibition orders366, 367
early engagement with90, 91
education directions, SMSFs227, 228
employee/contractor relationship175
FBT, work vehicles427
GST evasion113, 114
non-arm's length expenditure147, 148
non-arm's length income
- private company dividends97, 98
- SMSFs344-347
- unit trust investments98, 99
practical compliance guidelines23, 24
private rulings88-90
professional firms184
relationship with275
Rental properties guide371
rental property tax compliance430, 431
scam warning6, 7
superannuation
- asset valuation guidelines37
- financial advice fees7
- illegal early access34, 35
- SMSF auditors, compliance approach36, 38
tax avoidance taskforce266
tax governance87, 88
unpaid present entitlements
- capital gains for beneficiaries143-145
- Div 7A issues73-79
varying interpretations225

Australian Transaction Reports and Analysis Centre
anti-financial crime regulation445, 447, 448

Australian Treasury
Economic Reform Roundtable294

B

Baby boomers
intergenerational wealth transfer318, 385

Backpacker tax463

Bad debts
family farm restructuring251, 252

Bankruptcy
farm management deposits240

Benchmark interest rate
Div 7A58

Better targeted superannuation concessions
\$10m higher tax threshold279
calculating earnings278

calculation of tax278
future realised capital gains280
indexing thresholds278
timing280
unrealised gains295
valuation evidence280

Binding death benefit nominations
capacity of member to make27, 28
disputes385, 386
power to renew26
providing to all trustees28
SMSF trustees, capacity134
superannuation26-28, 30

Biodiversity agreements
carbon farming404-411
CGT events404-407
NSW scheme404-407
succession planning407

Biodiversity Offsets Scheme (NSW)404-407

Biodiversity stewardship agreements
CGT provisions408, 409
how the scheme works405
sale of credits407, 409
- change in contract structure411
- further questions407, 408
- land value411
- small business CGT concessions407
- whether revenue407

Bitcoin
CGT assets125-127
tax treatment125, 126
whether Australian currency125, 126
whether foreign currency127

Board of Taxation
corporate tax residency57, 191
Red Tape Reduction Review227, 294, 295

Building and construction industry
long service leave benefit115

Business premises test
personal services business177, 178

Business structures – see also Restructuring businesses
Div 7A loan issues76, 77

C

Canadian pension funds
farm equity partnerships331, 332

Capacity
BDBNs27, 28, 134, 135
drafting trust deeds379
enduring power of attorney46-48, 133-135
powers of court to vary trusts40
SMSF trustees
- documentation requirements134, 136
- fund deed130, 131
- replacement of trustee131-133
- SMSF adviser role133-135
- SMSF auditor role135, 136

Capital beneficiary clauses
trust deeds382, 383

Capital gains tax
50% discount, Select Committee inquiry362, 363
biodiversity stewardship agreements405-411
Bitcoin125-127
co-ownership, letting residential premises372
conservation covenants402-404
pre- or post-CGT assets303-306
record-keeping obligations62
reform recommendations159
right to occupy dwelling under a will434
share sale agreement367, 368

Capital raising
distributions funded by227
farm equity partnerships326-335

Car benefits
FBT
- ATO focus427
- electric car discount365, 397
- non-monetary benefits11-14
- not-for-profit organisations196
- reforms395, 396

Carbon farming			
biodiversity agreements and credits.....	404-411		
conservation covenants.....	401-404		
Carrying on a business			
co-ownership, letting residential premises.....	371		
definition of "residency".....	190		
Cash withdrawals			
default assessments.....	301, 302		
Caution			
tax agent sanction.....	166-169, 229, 230		
Central control			
testamentary trusts (US).....	204		
Central management and control			
corporate tax residency.....	189-191		
CGT assets			
Bitcoin.....	125-127		
market value.....	367, 368		
pre- or post-CGT assets.....	303-306		
unpaid present entitlements.....	143, 144		
CGT events			
event A1.....	125, 143, 144, 252, 304, 372, 406, 407, 409-411		
event C2.....	143, 144, 248		
event D1.....	143-145, 252, 254, 402-404, 406		
event D4.....	402-411		
event E1.....	88		
event E4.....	315, 317		
event E5.....	144		
event J2.....	315, 317		
event J5.....	315, 317		
event J6.....	315, 317		
event K3.....	205		
event K6.....	107		
CGT improvement threshold.....	53		
CGT roll-overs			
back-to-back.....	113		
business restructures.....	310		
family farm restructures.....	243, 246, 249		
Charitable			
meaning.....	200		
Charitable gifts			
cy près doctrine.....	387		
Charitable purpose			
cy près doctrine.....	387		
payroll tax exemptions.....	200		
Charitable trusts			
gift-over clauses.....	386, 387		
gifts, initial impossibility of.....	386		
Charities – see also Not-for-profit organisations			
GST.....	299, 300		
Childcare businesses			
default assessments.....	301, 302		
Children			
death benefit dependants.....	32		
superannuation proceeds trusts.....	341, 342		
trust beneficiaries.....	40, 41, 381		
Client identification obligations			
tax practitioners.....	6, 7		
Client legal privilege.....	446		
Client records			
record-keeping.....	62-66		
Code of Professional Conduct			
potential breaches.....	23		
reasonable care concept.....	231-233		
record-keeping obligations.....	62-66		
tax agent breaches.....	166-169		
Commercial agreements			
care in drafting.....	264, 266		
Commercial and contractual arrangements			
characterisation.....	258, 260		
interpretation.....	263		
whether a royalty.....	260		
whether a tax benefit.....	263		
Commissioner of Taxation			
asset betterment assessments.....	228, 229		
capital raising, distributions funded by.....	227		
denying deductions for ATO interest.....	161, 162		
departure prohibition orders.....	366, 367		
Div 7A, loan guarantees.....	228		
education directions, SMSFs.....	227, 228		
personal services businesses.....	178, 179, 365, 366		
personal services income guideline.....	180-184		
property developments, contrived arrangements.....	433, 434		
rental property income and deductions.....	366		
settlements with taxpayers.....	91		
unpaid present entitlements, Div 7A.....	73-79, 295		
Commonwealth			
power to implement tax treaties.....	465, 466		
Commonwealth Superannuation Scheme.....	68		
Company tax			
Productivity Commission recommendations.....	113		
Compliance – see also Tax compliance			
ATO resources.....	23, 24		
education directions, SMSFs.....	227, 228		
large businesses.....	162, 163		
personal services businesses.....	365, 366		
privately owned groups, ATO focus.....	298, 299		
Tax Practitioners Board.....	367		
Compliance risk			
capital raising, distributions funded by.....	227		
Concessions – see also Small business CGT concessions			
not-for-profit organisations.....	195, 196		
Confidentiality			
tax dispute litigation.....	274		
Connected entities			
informality principle.....	438-440		
presumption of regularity.....	440, 441		
Conservation covenants			
CGT provisions, application of.....	402-404		
tax deductions.....	401, 402		
Consideration			
concept for royalty purposes.....	258, 259, 264, 265		
Consolidated entity disclosure			
public companies.....	191-193		
Constitutional validity			
foreign land tax surcharges.....	463-468		
Construction contracts			
property developments, contrived arrangements.....	433, 434		
Contract			
or agreement, deceased estates.....	118-121		
Contractors			
definition of "employee".....	110, 111		
employee/contractor relationship.....	175		
employment agency provisions.....	225, 296		
not-for-profit organisations.....	199, 200		
or employees.....	199		
superannuation.....	199, 200		
Contraventions			
education directions, SMSFs.....	227, 228		
Contributions			
statutory long service leave fund.....	115		
superannuation			
– farm management deposits.....	240		
– overpaid.....	137-139		
Corporate limited partnerships			
tax residency.....	57		
Corporate tax			
compliance.....	162, 163		
tax certainty.....	162		
transparency.....	162, 163		
Corporate tax rate			
reform recommendations.....	158, 159		
Corporate tax residency – see also Residency			
Australian tax residents.....	189		
central management and control.....	189-191		
consolidated entity disclosure.....	191-193		
foreign-incorporated companies.....	189-193		
tax reform, need for.....	57, 159		
Corporations			
large business compliance.....	162, 163		
Cost-of-living pressures			
Medicare levy reduction, low-income earners.....	296		
Costs orders.....	270		
Counter-terrorism financing			
regulation of professional services.....	444-448		
Country-by-country reporting			
multinational companies.....	163		
public, exemptions.....	59		
Covid			
travel restrictions.....	60, 61		
Crime-fraud exception			
legal professional privilege.....	447		
Cross-border transactions			
testamentary discretionary trusts, foreign beneficiaries.....	204-206		
Cryptocurrency			
whether Bitcoin is money.....	125-127		
Currency			
whether Bitcoin is money.....	125-127		
Cy près doctrine.....	387		
D			
Death			
co-ownership, residential premises.....	372		
Div 7A liability following.....	469-471		
farm management deposits.....	240		
Higher Education Loan Program debts.....	83		
superannuation, liability for Div 296 tax.....	414, 415		
testamentary trusts, non-resident beneficiaries.....	204, 205		
Death benefits – see Superannuation death benefits			
Death benefits dependant			
definition.....	340		
Death tax			
liability for Div 296 tax, superannuation.....	414		
Deceased estates			
Div 7A liabilities.....	469-471		
"double death".....	113		
main residence CGT exemption			
– land consolidation.....	94, 95		
– multiple units.....	93, 94		
right to occupy dwelling.....	113, 434		
stamp duty.....	118-121		
testamentary discretionary trusts, foreign beneficiaries.....	205		
Deductibility of expenditure			
conservation covenants.....	401, 402		
financial advice fees.....	7		
personal services income.....	179, 180		
refinancing interest.....	359		
rental properties, non-business.....	366, 430, 431		
shortfall interest charge/general interest charge.....	4, 5		
Deemed dividends			
Div 7A loans.....	75, 76, 78		
Default assessments			
onus of proof.....	301, 302, 427		
Default distribution clauses			
trust deeds.....	382, 383		
Departure prohibition orders.....	366, 367		
Depreciating assets			
family farm restructures.....	242, 246		
Depreciation rules			
small and medium enterprises.....	161, 295		
Derivation of income			
income "derived by" and "paid to".....	257, 260, 265		
statutory long service leave fund.....	115		
Digital currency			
whether Bitcoin is money.....	125-127		
Directors			
consolidated entity disclosure obligations.....	192, 193		
FBT			
– non-monetary benefits.....	11-14, 53		
– not-for-profit organisations.....	198, 199		
whether employees.....	12-14		
Disclosure obligations			
consolidated entities, directors.....	192, 193		
Discretionary trusts			
family farms.....	328		
foreign beneficiaries, estate planning.....	204-206		
interest in land.....	120		
non-arm's length income, SMSFs.....	98		
non-monetary benefits of directors, FBT.....	11-14, 53		
pre- or post-CGT assets.....	303-306		
professional services firms, restructures.....	184		
property settlements.....	210-212		
specifying trust purpose.....	210		
unpaid present entitlements			
– CGT issues.....	145		
– Div 7A.....	53, 57, 295		
Dispute resolution			
litigation.....	268-276		
Diverted profits tax			
royalties, intellectual property.....	163, 164, 256, 257, 261-263, 296		
Dividends			
family farms.....	240		
Division 7A			
benchmark interest rate.....	58		
liability after death.....	469-471		
loan guarantees.....	228		
loan issues			
– deemed dividends.....	78		
– payments or repayments.....	161		
– preserving objection rights.....	78		
– structuring implications.....	76, 77		
– sub-trust arrangements.....	78		
– unpaid present entitlements.....	53, 57, 73-79, 295		
Documentation			
dealings involving related parties.....	438-441		
FBT, salary packaging.....	197		
legal professional privilege.....	115, 116		
s 70-100 election.....	250, 251		
Subdiv 122-A roll-overs.....	247		
trustees, loss of capacity.....	134, 136		
Domestic travel expenses.....	59		
Domicile test.....	68		
Dominant use			
agricultural land.....	454, 457-460		
"Double death"			
deceased estates.....	113		
Double tax agreements			
Australia-Germany.....	464, 465		
Australia-NZ.....	464, 465		
Australia-UK.....	463		
Australia-Ukraine.....	298		
Commonwealth's power to implement.....	465, 466		
non-discrimination articles, foreign land tax surcharges.....	463-467		
Dutiable property			
agricultural land in Australia.....	456, 457		
transfer, deceased estates.....	118-121		
Duty exemptions			
primary production.....	456, 457, 459		
Dwelling			
definition.....	93, 94		

- E**
- Economic Reform Roundtable**..... 294
- Education – see Tax education**
- Education directions**
SMSFs..... 227, 228
- Electric car discount**.....365, 397
- Embedded royalties**.....258, 263, 265
- Employee share scheme discounts**
reportable fringe benefit amount.... 198
- Employees**
car benefits, FBT.....11-14, 196
definition of “employee”.....110, 111, 158
independent contractor or employee.....175
not-for-profit organisations, exemptions.....200, 201
- Employer obligations**
not-for-profit organisations....194-203
Payday Super requirements.....295, 398, 399
- Employment**
definition of “employee”.....110, 111
evidence of.....12-14
independent contractor or employee.....175, 199
- Employment agency provisions**
contractors.....225, 296
- Employment benefits**
not-for-profit organisations....194-203
- Employment test**
personal services business.....177
- Enduring power of attorney**
foreign jurisdictions.....46-48
SMSF trustees, loss of capacity.....133
- Entertainment benefits**
not-for-profit organisations.....196, 197
- Entertainment facility leasing benefits**
not-for-profit organisations.....195, 196
- Environmental conservation**
carbon farming.....401-411
- Equity**
tax and superannuation systems, restitution.....137-141
- Errors – see also Mistakes**
salary packaging.....197
tax and superannuation systems, restitution.....137-141
tax professionals.....2
- Estate planning – see Succession and estate planning**
- Evasion**
residency, amended assessments.....8, 9, 67-69
- Evidence**
characterisation of transactions.....20
dealings involving related parties.....438-441
employment contract.....12-14
legal professional privilege.....447
tax dispute litigation.....269, 270, 274, 276
uniform evidence law.....446
- F**
- Fair-dealing rule**
trustee purchase of beneficial interest.....119
- Fairness**
tax and superannuation systems, restitution.....137-141
- False and misleading statements**
tax shortfall penalties.....21, 435
- Family assistance payments**.....198
reportable fringe benefit amount.... 198
- Family farms**
duty exemptions.....456, 457
equity partnerships
– ageing population.....326
– Australian agriculture.....326-331
– Canadian pension funds.....332
– equity capital to fund growth.....331-334
– examples.....334, 335
– financing.....329, 330
– succession.....330, 331
restructuring as corporations.....238-254
– CGT concessions.....243-245, 249
– dividends.....240
– farm management deposits.....240
– GST, trading stock transfer.....251
– private company operation.....239, 240
– rent, farm land held in personal names.....240
– roll-over relief, transfer of assets to wholly owned company.....249-251
– salary and wages.....240
– shareholder loans.....240
– small business restructure roll-over.....241-245
– state duties.....253, 254
– tax concessions.....239, 244
– trade debtors/bad debts.....251, 252
– unpaid present entitlements.....252, 253
transfers between family members.....457
- Family law**
definition of “property”.....210
property settlement.....210-212
- Family trust distribution tax**
distributions outside “family groups”.....295
non-deductibility of interest.....161, 162
tax professionals, risks.....2
The Tax Institute advocacy.....292, 360
- Family trusts – see Discretionary trusts**
- Farm equity partnerships**.....326-331
ageing population.....326
Australian agriculture.....326-331
Canadian pension funds.....332
equity capital to fund growth.....331-334
examples.....334, 335
financing.....329, 330
succession.....330, 331
- Farm management deposits**.....240, 330
- Farming – see Family farms**
- Federal Budget 2008-09**.....397
- Federal Budget 2020-21**
corporate tax residency.....191
- Federal Budget 2023-24**.....398
- Federal Budget 2025-26**.....296
- Federal Budget 2026-27**.....296
- Federal election 2025**.....294
- Financial accommodation**
unpaid present entitlements, Div 7A.....73-75
- Financial advice fees**
superannuation funds.....7
- Financial crime control**
regulation of professional services.....444-448
- Fit and proper person**
tax agent caution.....166-169
- Fly in fly out work**
Covid travel restrictions.....60, 61
- Food and drinks**
not-for-profit organisations.....196
- Foreign currency gains and losses provisions**
Bitcoin, whether foreign currency.....127
- Foreign-incorporated companies**
corporate tax residency.....189-193
- Foreign Investment Review Board**.....450, 451
- Foreign land tax surcharges**
Commonwealth’s power to implement tax treaties.....465, 466
constitutional validity.....463-468
international law, potential violation.....467
non-discrimination articles in Australia’s tax treaties.....463, 464
rights to recover tax.....466
validity.....466
- Foreign ownership**
agricultural land in Australia.....329, 450, 451
- Foreign resident beneficiaries**
surcharge.....381
testamentary trusts, estate planning.....204-206
- Foreign trust surcharge**
testamentary discretionary trusts, foreign beneficiaries.....205
- Forgiveness of debt**
Div 7A liability after death.....469-471
- Franked distributions**
capital raising to fund.....227
- Fraud**
GST evasion.....113, 114
- Fraud on a power doctrine**.....211
- Fringe benefits tax**
benefit identification and valuation.....395, 396
definition of “employee”.....110, 111
disclosure.....396
discretionary trust, non-monetary benefits.....11-14
electric car discount.....365, 397
exemptions and reductions.....396
“good tax” criteria.....394-397
India.....397, 398
New Zealand.....398
not-for-profit organisations
– directors and officeholders.....198, 199
– meal entertainment.....196, 197
– pooled cars.....196
– salary packaging.....197, 198
– salary sacrifice.....195, 196
reform recommendations.....158, 399
reportable fringe benefit amounts.....196, 198, 396, 399
United Kingdom.....398
work vehicles.....427
- Fund-raising events**
GST.....299, 300
- G**
- General anti-avoidance provisions**
CGT roll-overs.....113
personal services businesses.....365, 366
- General deduction for interest**
loans.....359
- General interest charge**
changes from 1 July 2025.....4, 5
non-deductibility.....161, 162, 295
remissions.....5
tax litigation.....271
- Genesis block**.....126
- “Genuine availability”**
rental property tax compliance.....430, 431
- Genuine mistakes**
family trust distribution tax.....2
tax and superannuation systems, restitution.....137-141
- Genuine restructure**
safe harbour rule.....242, 312
- Germany**
Australia-Germany DTA.....464, 465
- Gift-deductible entities**
GST.....299, 300
- Gifts**
cy près doctrine.....387
gift-over clauses.....386
initial impossibility.....386
- Gig economy**
Uber driver payroll tax.....296
- Giving funds**
new rules, Australian charities.....6
- Global value chains**
profit shifting.....162
- “Good tax”**
FBT design criteria.....394-397
- Goods and services tax**
co-ownership, letting residential premises.....372
dog-breeding activities.....436
family farms, trading stock transfer.....251
fund-raising events.....299, 300
input tax credits
– time-barred.....435, 436
land development.....300, 301
record-keeping obligations.....62
reform recommendations.....159
refund arrangements.....113, 114
tax reform, need for.....57
- Goodwill**
farming businesses.....239, 253
- Guarantees**
loans, Div 7A.....228
- Guardians of trusts**
choice of.....376, 377
fiduciary powers.....377
trust deed issues.....377-379
- H**
- Harmonisation**
need for, definition of “employee”.....110, 111, 158
- HECS debts**.....81-85
- Henry review**.....57, 158, 363, 397
- High net worth individuals**
FBT avoidance.....394
- High-risk arrangements**
SMSF auditors.....38
tax uncertainty.....22-24
- High wealth groups**
ATO compliance focus.....298, 299
- Higher education – see Tax education**
- Higher Education Loan Program**
death.....83
eligibility.....82
interest on debt.....83
overseas travel.....83, 84
proposed changes.....84
repayment schedule.....82
- Holiday rental properties**
income and deductions, non-business.....366, 430, 431
- Holistic tax reform**.....56, 57
- Honest mistakes**
family trust distribution tax.....2, 292, 295
- Housing affordability**
effects of 50% CGT discount.....363
foreign land tax surcharges.....463
rental property tax compliance.....430
- I**
- In connection with retirement**.....313, 314
- In respect of**
definition.....11-14
- Incapacity**
SMSF trustees.....129-136
– documentation requirements.....134, 136
– fund deed.....130, 131
– replacement.....131-133
– SMSF adviser role.....133-135
– SMSF auditor role.....135, 136
- Income “derived by” and “paid to”**.....257, 260, 265
- Income tax withholding obligations**
superannuation death benefits.....32
- Independent contractors**
employee/contractor relationship.....175, 199
personal services income.....173
- India**
FBT.....397, 398
- Individuals**
co-ownership, letting residential premises.....370-373
personal income tax, new tax cuts.....296
proposed \$1,000 instant tax deduction.....295, 296
rental property income and deductions.....366
tax reform recommendations.....159
tax residency.....67-69
- Inflation**
effects of 50% CGT discount.....362
- Informality principle**
related entities.....438-440

Input tax credits			
time-barred.....	435, 436		
Instant asset write-off			
small and medium enterprises.....	295		
small businesses.....	57, 161, 224, 225		
tax reform recommendations.....	159		
Intangible assets			
tax treatment.....	256, 264		
Integrity measures			
capital raising, distributions funded by.....	227		
Intellectual property			
licensing	257-259, 263		
diverted profits tax.....	261-263		
royalty for right to use.....	257, 259, 261, 264, 265		
royalty withholding tax.....	163, 164, 296		
Intentional disregard			
tax shortfall penalties.....	21		
Interdependency relationships			
death benefit dependants.....	32		
Interest			
Higher Education Loan Program debts.....	83		
Interest charges			
non-deductibility.....	4, 5, 359		
"Interest in land"			
deceased estates.....	120		
Intergenerational equity	294		
Intergenerational report	56		
Intergenerational rural transfers	457		
Intergenerational wealth transfers			
failed trust distributions.....	321-323		
joint tenancy asset ownership.....	323, 324		
SMSF disputes.....	385		
trust-to-trust distributions.....	318, 319		
trust vesting, avoiding.....	319-321		
International tax			
FBT.....	397, 398		
royalty withholding tax or diverted profits tax.....	296		
International tax treaties – see Double tax agreements			
Investment			
effects of 50% CGT discount.....	362, 363		
farm equity partnerships.....	326-335		
J			
Joint tenancy			
asset ownership.....	323, 324		
co-ownership, letting residential premises.....	370-373		
L			
Land consolidation			
main residence CGT exemption, deceased estates.....	93-95		
Land development			
GST liability.....	300, 301		
Land partition			
co-ownership, letting residential premises.....	372		
Land tax			
absentee persons.....	464		
agricultural land.....	455, 456		
primary production exemptions.....	456, 457		
Land tax surcharge			
foreign persons.....	463-467		
trusts, foreign beneficiaries.....	205, 381		
Land use			
carbon farming.....	401-411		
Lawyers			
regulation, anti-money laundering and counter-terrorism financing.....	444-448		
Leases			
related party arrangements, SMSFs.....	36		
Legal professional privilege			
crime-fraud exception.....	447		
description.....	446, 447		
limitations.....	447		
loan agreements.....	115, 116		
suspicious matter reports.....	447, 448		
transactional documents.....	447		
Legal representatives			
tax dispute litigation.....	275		
Legal tender			
whether Bitcoin is money.....	125-127		
Leisure facilities			
income and deductions, non-business.....	366, 430, 431		
Licences			
intellectual property.....	257-259, 263		
Lifestyle assets			
ATO focus, privately owned and wealthy groups.....	298, 299		
Limitation period			
tax dispute litigation.....	271		
Listed securities			
ATO valuation guidelines.....	37		
Litigation			
tax disputes.....	268-276		
uncertain tax positions.....	90		
Livestock			
forced disposal or death.....	239		
precluded assets.....	246		
transferring.....	249, 250		
Loan agreements	77, 78		
legal professional privilege.....	115, 116		
Loan guarantees			
Div 7A.....	228		
Loans			
Australian farm sector.....	329, 330		
benchmark interest rate.....	58		
Div 7A			
- liability after death.....	469-471		
- payments or repayments.....	161		
general deduction for refinancing interest.....	359		
Higher Education Loan Program.....	81-85		
"in respect of" employment of directors.....	13		
tax time loans.....	59		
unpaid present entitlements, Div 7A.....	53, 57, 73-79, 295		
"Lock-out" rule			
small businesses.....	295		
Long service leave fund			
derivation of income.....	115		
Loss of capacity – see Incapacity			
Low-income earners			
Medicare levy reduction.....	296		
Lump sum benefits			
taxation.....	32		
M			
Main residence CGT exemption			
co-ownership, letting residential premises.....	373		
deceased estates			
- land consolidation.....	94, 95		
- multiple units.....	93, 94		
rental property tax compliance.....	431		
right to occupy dwelling under a will.....	434		
"Mainly used to produce assessable income"			
rental property tax compliance.....	430, 431		
Market value			
ATO definition.....	36		
CGT assets.....	367, 368		
small business CGT concessions, restructuring.....	316		
Marriage settlements			
discretionary trusts.....	210-212		
Meal allowances			
expenses, reasonable amounts.....	58, 59		
Meal entertainment benefits			
not-for-profit organisations.....	195-197		
Medicare levy	340, 341, 396		
reduction, low-income earners.....	296		
surcharge, reportable fringe benefit amount.....	198		
Member Spotlight			
Annemarie Wilmore.....	17		
Eric Lay.....	73		
George Hodson.....	236		
Kim Reynolds.....	124		
Mental incapacity – see Capacity			
Minors – see also Children			
superannuation proceeds trusts.....	341, 342		
Mistakes – see also Errors			
family trust distribution tax.....	2, 292, 295		
tax and superannuation systems, restitution.....	137-141		
tax practitioners.....	156		
Mobile phone benefits			
not-for-profit organisations.....	196		
Money			
Bitcoin, whether legal tender.....	125-127		
Money laundering and counter-terrorism financing			
regulation of professional services.....	444-448		
Motor vehicles			
FBT			
- ATO focus.....	427		
- electric car discount.....	365, 397		
- non-monetary benefits.....	11-14		
- not-for-profit organisations.....	196		
- reforms.....	395, 396		
Multinational enterprises			
country-by-country rules.....	163		
engagement with ATO.....	90, 91		
N			
Nature Repair Market	404		
Negative gearing	363		
New South Wales			
Biodiversity Offsets			
Scheme.....	401, 404-407		
land tax legislation and revenue rulings.....	455, 456		
powers of attorney, foreign jurisdictions.....	46		
primary production concessions.....	458		
primary production definition.....	452		
New Zealand			
Australia-NZ DTA.....	464, 465		
FBT.....	398		
powers of attorney, foreign jurisdictions.....	46		
Non-arm's length expenditure			
SMSFs.....	35, 36		
- ATO position.....	147, 148		
- lower than arm's length loss.....	146		
- nil expenses.....	146, 147		
- non-arm's length income.....	344-347		
Non-arm's length income			
definition.....	35		
SMSFs			
- background.....	43, 44		
- disproportionate tax.....	43-45		
- fixed and non-fixed trust entitlements.....	97-99		
- legislative overview.....	44		
- non-arm's length expenditure.....	344-347		
- private company dividends.....	97, 98		
- trustee remuneration.....	346		
Non-discrimination articles			
Australian tax treaties, foreign land tax surcharges.....	463-467		
Non-resident beneficiaries			
testamentary trusts, estate planning.....	204-206		
Northern Territory			
powers of attorney, foreign jurisdictions.....	46		
primary production concessions.....	458		
primary production definition.....	453		
Not-for-profit organisations			
concessions.....	195, 196		
contractors.....	199, 200		
directors and officeholders.....	198, 199		
employer concessions.....	194-203		
FBT.....	194, 195		
- directors and officeholders.....	198, 199		
- meal entertainment.....	196, 197		
- mobile phone benefits.....	196		
- pooled cars.....	196		
- salary packaging.....	197, 198		
- salary sacrifice.....	195, 196		
new giving fund rules.....	6		
Payday Super.....	201, 202		
payroll tax exemptions.....	200, 201		
salary packaging.....	197, 198		
salary sacrifice arrangements.....	195, 196		
superannuation guarantee charge.....	201, 202		
Notice of assessment			
deceased estates.....	118-121		
O			
Obituary			
Kevin Burges.....	473		
Objections			
asset betterment assessments.....	228, 229		
challenging private rulings.....	89, 90		
extension of time to lodge.....	164		
preserving right to.....	78		
tax litigation.....	273		
Onus of proof			
default assessments.....	301, 302, 427		
obtaining a tax benefit.....	261, 262, 265		
Ordinary income tax			
co-ownership, letting residential premises.....	370, 371		
Overseas employment			
tax residency.....	8, 9, 67-69		
Overseas resident beneficiaries			
testamentary trusts, estate planning.....	204-206		
Overseas travel			
Higher Education Loan Program debts.....	83, 84		
Overtime meal allowances			
expenses, reasonable amounts.....	58, 59		
P			
Pacific Australia Labour Mobility scheme			
residency.....	68, 69		
Pacific Labour Scheme			
residency.....	69		
Pareto principle	318		
Partition of land			
co-ownership, residential premises.....	372		
Partnerships			
letting residential premises.....	370, 371		
trading stock election.....	249		
Pay as you go withholding			
definition of "employee".....	110, 111		
financial advice fees.....	7		
Payday Super			
employer requirements.....	295, 398, 399		
not-for-profit organisations.....	201, 202		
Payroll tax			
contractor provisions.....	225, 296		
definition of "employee".....	110, 111		
exemptions, not-for-profit organisations.....	200, 201		
Uber drivers.....	296		
Penalties – see also Administrative penalties			
client taxation records.....	62		
superannuation guarantee shortfalls.....	202		
tax dispute litigation.....	270		
tax shortfalls.....	20, 21, 89, 91, 434, 435		
unregistered tax agents.....	58		
Penalty assessments			
asset betterment.....	228, 229		
Pension benefits			
taxation.....	32		
Perpetuities			
rule against.....	318, 319		
Personal income tax			
new tax cuts.....	296		
Personal services businesses			
alienation arrangements.....	365, 366		
business premises test.....	177, 178		
definition.....	173, 174		
determination.....	178, 179		

- employment test177
 results test174-176
 unrelated clients test176, 177
- Personal services income**
 alienation172, 179, 180, 365, 366
 Commissioner's guideline180-184
 deductions179, 180
 independent contractors173
 meaning172, 173
- Philanthropy**
 new giving fund rules6
 payroll tax exemptions200
- Pooled cars**
 not-for-profit organisations196
- Power of attorney**
 foreign jurisdictions46-48
 SMSF trustees, loss of capacity133
- Practical compliance guidelines**
 ATO resources23, 24
- Pre-CGT assets**303-306
- Precedent**
 tax dispute litigation275
- Presumption of regularity**
 related entities440, 441
- Primary producers**
 carbon farming401-411
 state taxes451-455
- Primary production**
 carrying on a business452
 definition452
 "dominant use"454, 457-460
 duty exemptions456, 457, 459
 family farms, transfers between
 family members457
 family farms restructuring as
 corporations238-254, 326
 - CGT concessions243-245, 249
 - dividends240
 - farm management deposits240
 - GST, trading stock transfer251
 - private company
 operation239, 240
 - rent, farm land held in
 personal names240
 - roll-over relief, transfer
 of assets to wholly owned
 company249-251
 - salary and wages240
 - shareholder loans240
 - small business restructure
 roll-over241-245
 - state duties253, 254
 - tax concessions239, 244
 - trade debtors/bad debts251, 252
 - unpaid present
 entitlements252, 253
 land tax455, 456
 land tax exemptions461
 level of activity452-455
 revenue rulings456, 457
 state taxes451-455
 thresholds for agricultural
 land450, 451
 "used primarily"455
- Principal purpose**
 obtaining a tax benefit263
- Private companies**
 Div 7A, loan guarantees228
 family farm restructuring239, 240
 SMSF investments in, non-arm's
 length income97, 98
 unpaid present entitlements,
 Div 7A53, 57, 73-79, 295
- Private health insurance rebate**
 reportable fringe benefit amount198
- Private rulings**
 ATO, uncertain tax positions88-90
- Private use of trading stock**
 goods taken from stock299
- Privately owned groups**
 ATO compliance focus298, 299
- Procedure**
 tax dispute litigation274
- Productivity Commission**
 draft recommendations113, 158
 Pillar 1 interim report294
 The Tax Institute submission
 to56, 158, 294
- Professional development**
 tax practitioners156, 157
- Professional services firms**
 allocation of profits184-186
 regulation, money laundering and
 terrorism financing444-448
 risk assessment172, 181-186
- Profit shifting**
 large businesses162
- Proper purpose rule**
 discretionary trust powers211
- Property**
 definition of "family law"210
 whether Bitcoin is money125
- Property development**
 contrived arrangements433, 434
- Property settlements**
 discretionary trusts210-212
 powers of court to vary trusts40, 41
- Public benevolent institutions**
 salary packaging195
- Public companies**
 consolidated entity
 disclosure191-193
 definition of "public company"191
- Public interest**
 tax agent registration
 termination7, 8
 tax litigation272
- Public rulings**
 interaction with private rulings89
- Public Sector Superannuation
 Scheme**68
- Q**
- Queensland**
 foreign land tax surcharges463-466
 land tax legislation and revenue
 rulings455, 456
 powers of attorney, foreign
 jurisdictions46
 primary production concessions458
 primary production definition452
- R**
- Ralph report**172, 180, 362
- Rates of tax**
 corporate tax entities56
- R&D**
 tax incentives163
- Real property**
 ATO valuation guidelines37
- Reasonable amounts**
 travel and overtime meal
 allowances59
- Reasonable care**
 administrative penalties233
 application of law232, 233
 breach of duty231
 lack of21
 tax practitioners156, 231, 232
- Reasonably arguable positions**
 tax shortfall penalties21
 tax uncertainty21, 22
- Recklessness**
 tax shortfall penalties21
- Record-keeping**
 client records62-66
 failure to keep records114
 rental property tax compliance431
 trustees, loss of capacity134, 136
- Records**
 concept of63, 64
- Recreational entertainment benefits**
 not-for-profit organisations195-197
- Red Tape Reduction Review**294, 295
- Refinancing**
 deductibility of interest359
- Registration**
 SMSF auditors38
 tax agents58
 - caution166-169, 229, 230
 - termination7, 8, 163
- Regularity**
 presumption of, related
 entities440, 441
- Related entities**
 informality principle438-440
 presumption of regularity440, 441
- Related party lease arrangements**
 SMSFs, business real property36
- Remuneration**
 SMSF trustees346
- Rent**
 farm land held in personal names240
- Rental properties**
 carrying on a business of letting,
 co-ownership371
 income and deductions,
 non-business366
 tax compliance430, 431
- Reportable fringe benefit
 amounts**196, 198, 396, 399
- Reportable tax positions**
 risk rating227
 tax uncertainty22, 23
- Reporting obligations**
 country-by-country, exemptions59
 trust beneficiary tax file
 numbers365
- Research and development tax
 incentive**
 tax agent registration,
 termination163
- Residency – see also Corporate tax
 residency**
 amended assessments,
 evasion8, 9, 67-69
 Covid travel restrictions60, 61
 definition190
 individuals67-69
- Residency tests**
 individuals67-69
- Residential premises**
 co-ownership, letting by
 individuals370-373
- Resides test**67, 68
- Restitutive relief**
 tax and superannuation
 systems137-141
- Restructuring businesses**
 family farms – see **Family farms**
 professional services firms184
 small business CGT
 concessions308-317
 - 15-year exemption313
 - future access to316
 - genuine restructure312
 - in connection with
 retirement313, 314
 - market value316
 - reasons against using312
 - retirement exemption315
 - roll-over or sale309, 310
 - summary of concessions310
 - superannuation contribution
 requirement312
 - trading stock312
- Results test**
 personal services business174-176
- Retention of profits arrangements**
 personal services
 businesses365, 366
- Retirement**
 in connection with313, 314
- Retirement exemption**
 small business CGT
 concessions243-245
 - restructuring310, 315
- Retrospective legislation**
 Australian tax treaties463
 tax uncertainty225
- Revenue rulings**
 primary production456, 457
- Risk assessment**
 Div 7A, loan guarantees228
 professional services
 firms172, 181-186
- Risks**
 of audits87, 91
 tax uncertainty20, 21, 87, 88
- Roll-over relief**
 business restructuring310-313
 family farms
 - small business
 restructures241-243
 - transfer of assets to wholly
 owned company249-251
- Royalties**
 embedded258, 263, 265
 intellectual property, right to
 use257, 259, 261, 264, 265, 296
- Royalty withholding tax**
 intellectual property163, 164,
 256-261, 265, 296
- Rule against perpetuities**318, 319
- Rural land – see Agricultural land**
- S**
- Safe harbour rule**
 genuine restructure242, 312
- Salary or wages**
 family farms240
 personal services income173, 179
- Salary packaging**
 FBT396
 not-for-profit organisations197, 198
- Salary sacrifice arrangements**
 not-for-profit organisations195, 196
- Sanctions**
 tax agent caution166-169, 229, 230
 tax agents58
- Scams**
 ATO warning6, 7
- Scheme**
 definition44
- Seasonal Worker Program**
 residency68
- Self-dealing rule**
 trust property119
- Self-managed superannuation funds**
 assets, valuation36, 37
 auditor compliance36, 38
 balances above \$3m, revised
 changes to Div 296 tax413-415
 BDBNs26-28, 30, 134, 135, 385, 386
 contraventions, education
 directions for227, 228
 illegal early access34, 35
 non-arm's length expenditure35, 36
 - ATO position147, 148
 - lower than arm's length
 loss146
 - nil expenses146, 147
 non-arm's length income
 - background43, 44
 - disproportionate tax43-45
 - fixed and non-fixed
 entitlement97-99
 - legislative overview44
 - non-arm's length
 expenditure344-347
 - private company
 dividends97, 98
 - staff discount policies345, 346
 - trustee remuneration346
 structural review after member's
 death29
 superannuation rule
 changes34-39, 207-209
 trust deeds
 - death benefits385, 386
 trustees
 - loss of capacity129-136
 - remuneration346
- Serious Financial Crime
 Taskforce**447
- Share sale agreement**
 CGT market value367, 368
- Shareholder loans**
 Div 7A, liability after death469-471
 family farms240
- Short-term rental properties**
 income and deductions,
 non-business366, 430, 431
- Shortfall interest charge**434, 435
 changes from 1 July 20254, 5
 non-deductibility161, 162, 295
- Shortfall penalties**20, 21, 89, 91
- Significant economic connection**
 corporate tax residency191
- Simplified depreciation rules**
 small and medium
 enterprises161, 295

Single touch payroll					
FBT recommendations.....	398, 399				
reportable fringe benefit amounts.....	198				
Small and medium enterprises					
instant asset write-off.....	295				
Small business 50% reduction					
business restructuring.....	310				
co-ownership, letting residential premises.....	373				
Select Committee inquiry.....	362, 363				
Small business CGT concessions					
biodiversity credits, sale.....	407				
business restructuring					
- 15-year exemption.....	313				
- future access to.....	316				
- genuine restructure.....	312				
- in connection with retirement.....	313, 314				
- market value.....	316				
- reasons against using.....	312				
- retirement exemption.....	315				
- roll-over or sale.....	309, 310				
- summary of concessions.....	310				
- superannuation contribution requirement.....	312				
- trading stock.....	312				
family farms.....	243-249				
Small business instant asset write-off					
amendments.....	161				
extension.....	295				
tax reform, need for.....	57, 159				
tax uncertainty.....	224, 225				
Small business roll-overs – see Roll-over relief					
Small Business Super Clearing House					
closure.....	202				
Small businesses					
simplified depreciation rules.....	161, 295				
tax reform recommendations.....	159				
SMSFs – see Self-managed superannuation funds					
Software royalties	264				
South Australia					
land tax legislation and revenue rulings.....	455, 456				
powers of attorney, foreign jurisdictions.....	46				
primary production concessions.....	458				
primary production definition.....	453				
Spouses					
death benefit dependants.....	32				
- revised changes, Div 296 tax.....	414, 415				
trust beneficiaries.....	381				
Stamp duty					
deceased estates.....	118-121				
Statutory long service leave fund					
derivation of income.....	115				
Stay applications					
tax agent registration termination.....	7, 8				
Step-children					
trust beneficiaries.....	381				
Streaming income					
trust deeds.....	383				
Student loans					
HECS debts.....	81-85				
Sub-trust arrangements					
unpaid present entitlements, Div 7A.....	78				
Subcontractors					
long service leave benefit.....	115				
Subdivision of land					
land development, GST.....	300, 301				
Succession and estate planning					
biodiversity agreements and credits.....	407				
family farms.....	238, 241, 243, 244, 250				
- equity partnerships.....	330, 331				
family farms, transfers between family members.....	457				
intergenerational wealth transfer					
- failed trust distributions.....	321-323				
- joint tenancy asset ownership.....	323, 324				
- SMSF disputes.....	385				
- trust-to-trust distributions.....	318, 319				
- trust vesting, avoiding.....	319-321				
marital property.....	210-212				
notional estate rules.....	28				
powers of attorney, foreign jurisdictions.....	46-48				
SMSF trustees, loss of capacity.....	134, 135				
specifying trust purpose.....	210				
superannuation issues.....	26-33				
- BDBNs.....	26-28, 30, 134, 135, 385, 386				
- Div 296 tax.....	414, 415				
testamentary discretionary trusts, foreign beneficiaries.....	204-206				
trust deeds, guardians and appointors.....	378, 379				
Superannuation – see also Self-managed superannuation funds					
balances above \$3m					
- 15% tax.....	34-39, 207-209				
- major changes to Div 296 tax.....	295				
- revised changes to Div 296 tax.....	413-415				
BDBNs.....	26-28, 30, 134, 135, 385, 386				
better targeted superannuation concessions					
- \$10m higher tax threshold.....	279				
- calculating earnings.....	278				
- calculation of tax.....	278				
- future realised capital gains.....	280				
- indexing thresholds.....	278				
- timing.....	280				
- unrealised gains.....	295				
- valuation evidence.....	280				
contractors.....	199, 200				
illegal early access.....	34, 35				
non-arm's length income, definition.....	35				
Payday Super					
- employer requirements.....	295				
- not-for-profit organisations.....	201, 202				
reform recommendations.....	159				
restitution, overpaid contributions.....	137-139				
small business CGT concessions.....	310, 311				
- retirement exemption.....	312				
SMSF rule changes.....	34-39, 207-209				
succession and estate planning.....	26-33				
- SMSF trustees, loss of capacity.....	134, 135				
- unjust enrichment.....	140, 141				
- unrealised gains.....	278, 292, 295				
Superannuation contributions					
CGT concession stakeholders.....	315				
farm management deposits.....	240				
Superannuation death benefits					
death bed withdrawals.....	31				
dependants.....	32				
disputes.....	385, 386				
income tax withholding.....	32				
notional estate rules.....	28				
revised changes, Div 296 tax.....	414, 415				
superannuation.....	26-33				
superannuation proceeds trusts.....	340				
Superannuation funds					
financial advice fees.....	7				
Superannuation guarantee					
definition of "employee".....	110, 111				
Superannuation guarantee charge					
not-for-profit organisations.....	201, 202				
Superannuation proceeds trusts					
death benefits.....	340				
"death tax".....	340				
"look-through" tax treatment.....	340, 341				
outside terms of a will.....	342				
sole minor beneficiary.....	341, 342				
Superannuation test	68				
SuperStream					
not-for-profit organisations.....	202				
Suspicious matter reports	447, 448				
T					
Tasmania					
land tax legislation and revenue rulings.....	455, 456				
powers of attorney, foreign jurisdictions.....	46				
primary production concessions.....	458				
primary production definition.....	453				
Tax administration					
restitution for errors.....	137-141				
Tax advisers					
assisting clients with tax uncertainty.....	19-24, 87-92				
role in tax governance.....	87, 88				
Tax agent registration					
caution to fit and proper person.....	166-169, 229, 230				
sanctions rules.....	58				
termination.....	163				
- stay of decisions.....	7, 8				
Tax agents					
lack of disclosure by clients.....	229				
record-keeping obligations.....	62-66				
sanctions and registration.....	58, 166-169, 229, 230				
Tax benefit					
obtaining, onus of proof.....	261, 262				
personal services businesses.....	365, 366				
Pt IVA schemes.....	261-263, 265				
Tax compliance					
ATO resources.....	23, 24				
large businesses.....	162, 163				
reducing red tape.....	227, 294, 295				
rental properties.....	366, 430, 431				
Tax concessions – see also Small business CGT concessions					
not-for-profit organisations.....	195, 196				
Tax debts					
departure prohibition orders.....	366, 367				
Tax disputes					
litigation					
- alternative dispute resolution.....	271, 272				
- appeals.....	274-276				
- confidentiality.....	274				
- evidence.....	269, 270, 274, 276				
- general interest charge.....	271				
- legal costs.....	270, 276				
- legal representatives.....	275				
- penalties.....	270				
- precedent.....	275				
- procedure.....	274				
- timing issues.....	271, 274				
Tax education					
ATL004 CTA2B Advanced Dux Award					
- Ryan Attard.....	307				
ATL007 Advanced Superannuation Dux Award					
- Michelle Hunt.....	374				
ATL008 Tax for Trusts Dux Award					
- James Dawson.....	443				
ATL009 Corporate Tax Dux Award, study period 3, 2024					
- Sherry Cummins.....	70				
ATL009 Corporate Tax Dux Award, study period 2, 2024					
- Clara Tio.....	15				
CPD events.....	156, 157				
CTA1 and CTA2A Dux Awards					
- Lloyd Miller.....	170				
CTA1 Foundations Dux Award, study period 3, 2024					
- Emily Greer.....	122				
CTA2B Advanced, Tax for Trusts and CTA3 Advisory Dux Awards					
- Carrie Tan.....	234				
Tax evasion					
GST.....	113, 114				
residency, amended assessments.....	8, 9, 67-69				
Tax file numbers					
trust beneficiaries.....	365				
Tax liabilities					
departure prohibition orders.....	366, 367				
general interest charge.....	271				
self-assessment.....	4, 5				
vulnerable persons.....	17				
Tax Ombudsman					
work plan.....	58				
Tax practitioners					
ATO scam warning.....	6, 7				
dealings involving related parties.....	438, 440				
family trust distribution tax, risks.....	2				
professional development.....	156, 157				
reasonable care.....	156, 231-233				
record-keeping obligations.....	62-66				
tax time loans.....	59				
upskilling.....	156				
Tax Practitioners Board					
2026 compliance priorities.....	367				
appeal pending.....	229, 230				
client identification obligation.....	6, 7				
confidentiality orders.....	1				
information sheet.....	63				
tax agent registration termination.....	7, 8				
tax time loans.....	59				
Tax reform					
Art of Tax Reform Summit.....	294				
effects of 50% CGT discount.....	362, 363				
family trust distribution tax.....	2				
FBT.....	397				
"good tax" design criteria.....	394-397				
need for.....	56, 110				
Productivity Commission recommendations.....	1				

Testamentary discretionary trusts			
cross-border transactions.....	204-206		
foreign beneficiaries, estate planning.....	204-206		
Testamentary trusts			
deceased estates.....	118-121		
The Tax Institute			
advocacy.....	222, 292, 360		
Case for Change.....	56, 111		
Community Achievement Awards.....	108, 109		
CPD events.....	157		
CPD requirements.....	156		
family trust distribution tax.....	292, 360		
Incoming Government Brief.....	2, 56		
Institute of Public Accountants proposal.....	428, 429		
local engagement.....	223		
member consultations.....	428, 429		
new governance structure.....	3		
professional development.....	156, 157		
submissions to			
- Board of Taxation.....	295		
- NSW Legislative Council.....	296		
- Productivity Commission.....	56, 158		
Tax Academy.....	293		
tax reform			
recommendations.....	158, 159, 292		
technology upgrades.....	223		
The Tax Summit 2025.....	54, 55, 108, 109		
volunteers.....	222		
Thin capitalisation			
independent review.....	433		
Timing issues			
better targeted superannuation concessions.....	280		
input tax credits			
time-barred.....	435, 436		
objections, extension of time to lodge.....	164		
tax dispute litigation.....	271, 274, 276		
tax uncertainty.....	20		
Total superannuation balance			
above \$3m			
- major changes to Div 296 tax.....	295		
- new tax on earnings.....	34-39, 207-209		
- revised changes to Div 296 tax.....	413-415		
Trade debtors			
family farm restructuring.....	251, 252		
Trading stock			
private use, value.....	299		
transfer			
- as part of business restructure.....	245, 312		
- disposal "outside the ordinary course of business".....	249		
- election for reconstitution of partnerships.....	249		
- precluded assets.....	246		
- small business restructure roll-over.....	241		
Transactional documents			
legal professional privilege.....	447		
Transfer duty			
characterisation of transaction.....	260		
Transparency			
large corporations.....	162, 163		
Travel expenses			
reasonable amounts.....	58, 59		
Travel restrictions			
Covid, residency.....	60, 61		
departure prohibition orders.....	366, 367		
Travelling overseas			
Higher Education Loan Program debts.....	83, 84		
Trust beneficiaries			
children and spouses.....	381		
excluding or changing.....	381		
foreign residents.....	381		
income definitions.....	381, 382		
non-residents, estate planning.....	204-206		
tax file number reporting.....	365		
trustee issues.....	380, 381		
unadministered estates.....	381		
widows/widowers.....	381		
Trust deeds			
administrative powers.....	383		
beneficiary and trustee issues.....	380, 381		
capital beneficiary clauses.....	382, 383		
charitable trusts.....	386		
default distribution clause.....	382, 383		
drafting issues after execution.....	387-391		
- court approval for variation.....	388-391		
- judicial advice on interpretation.....	388		
- power of amendment.....	387		
- rectification.....	387, 388		
guardians and appointors			
- capacity.....	379		
- non-existent/wrong clauses.....	379		
- succession and estate planning.....	378, 379		
powers of amendment.....	383, 384		
preparation.....	376-391		
SMSF death benefits.....	385, 386		
streaming income.....	383		
Trust distributions			
intergenerational wealth transfer			
- failed distributions.....	321-323		
- trust-to-trust distributions.....	318, 319		
Trust income			
definitions.....	381, 382		
Trust-to-trust distributions			
intergenerational wealth transfer.....	318, 319		
Trust vesting			
avoiding.....	319-321		
extending dates.....	389, 390		
Trustees			
obligations.....	40		
powers of court to vary trusts.....	40, 41		
SMSFs, structural review.....	29		
Trusts			
administration systems.....	365		
appointors and guardians.....	376-379		
corporate beneficiaries			
- Div 7A loans.....	73-75		
- unpaid present entitlements, CGT.....	143-145		
family trust distribution tax.....	2		
powers of court to vary.....	40, 41		
Turnover threshold			
tax reform recommendations.....	159		
U			
Uber drivers			
payroll tax.....	296		
Ukraine			
Australia-Ukraine DTA.....	298		
Uncertain tax positions – see Tax uncertainty			
Uniform evidence law	446		
Unit trusts			
ATO			
- non-arm's length income.....	98, 99		
- valuation guidelines.....	37		
United Kingdom			
Australia-UK DTA.....	463		
FBT.....	398		
testamentary trust beneficiaries, estate planning.....	204		
United States			
testamentary trust beneficiaries, estate planning.....	204		
Unlisted securities			
ATO valuation guidelines.....	37		
Unpaid present entitlements			
capital gains issues			
- corporate beneficiaries.....	143-145		
- release, waiver or assignment.....	143		
- whether CGT assets.....	143, 144		
Commissioner's appeal.....	295		
Div 7A loan issues.....	53, 57, 73-79, 295		
family farm restructuring.....	252, 253		
Unpaid tax			
departure prohibition orders.....	366, 367		
non-deductibility of interest.....	161, 162		
Unrealised gains			
superannuation.....	295, 414, 415		
superannuation earnings.....	278, 292		
Unrelated clients test			
personal services business.....	176-178		
Used primarily			
primary production businesses.....	455		
V			
Valuation			
SMSF assets.....	36, 37		
Vesting dates			
trusts.....	318-320, 389, 390		
Victoria			
foreign land tax surcharges.....	463-466		
land tax legislation and revenue rulings.....	455, 456		
powers of attorney, foreign jurisdictions.....	46		
primary production concessions.....	458		
primary production definition.....	453		
Voluntary disclosures			
engagement with ATO.....	91		
W			
Wait and see rule	318, 319, 322		
Wealthy groups			
ATO compliance focus.....	298, 299		
Western Australia			
land tax legislation and revenue rulings.....	455, 456		
powers of attorney, foreign jurisdictions.....	47, 48		
primary production concessions.....	458		
primary production definition.....	453		
Widows/widowers			
trust beneficiaries.....	381		
Wills			
cy près doctrine.....	387		
gift-over clauses.....	386, 387		
Pareto principle.....	318		
right to occupy dwelling.....	113, 434		
stamp duty issues.....	118-121		
Windfall tax	298		
Withholding tax			
income tax, death benefits.....	32		
PAYG, financial advice fees.....	7		
royalties, intellectual property.....	163, 164, 257-261, 265, 296		
Work-related expenses			
proposed \$1,000 instant tax deduction.....	295, 296		
Work vehicles			
FBT.....	427		
Legislation			
A New Tax System (Goods and Services Tax) Act 1999	126, 127, 251		
Pt IVC.....	164		
s 9-20.....	373		
s 40-35.....	372		
s 40-160.....	299		
s 40-165(1).....	299		
s 40-165(1)(c).....	299		
s 40-165(4).....	299		
s 93-5.....	435, 436		
s 115-30.....	373		
s 195-1.....	373		
A New Tax System (Tax Administration) Bill (No. 2) 2000	24		
Administrative Appeals Tribunal Act 1975			
s 41(2).....	7		
Administrative Decisions (Judicial Review) Act 1977	5, 273		
s 3(1).....	277		
s 5(1).....	277		
Sch 1.....	273		
Administrative Review Tribunal Act 2024			
s 19.....	276, 277		
s 20(2).....	277		
s 32(2).....	7		
s 49.....	277		
s 52.....	277		
s 54.....	277		
s 172.....	230, 306		
s 174(1).....	277		
s 174(2).....	277		
Administrative Review Tribunal and Other Legislation Amendment Bill 2025	298		
Administrative Review Tribunal Bill 2024	277		
Anti-Money Laundering and Counter-Terrorism Financing Act 2006			
s 6.....	444, 445		
s 41.....	448		
s 242.....	448		
s 251.....	445		
Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024	445		
Australian Apprenticeship Support Loans Act 2014			
s 47A.....	85		
Australian Charities and Not-for-profits Commission Act 2012	191		
Australian Securities and Investments Commission Act 2001			
s 19.....	448		
Biodiversity Conservation Act 2016 (NSW)	412		
s 5.10.....	408		
s 6.21(3).....	412		
Code of Federal Regulations (US)			
26 CFR (2025)			
- § 301.7701-7.....	206		
Commonwealth of Australia Constitution Act			
s 51(ii).....	465		
s 51(xxix).....	465		
s 51(xxxi).....	465, 466		
s 75(v).....	273		
s 109.....	463-467		
Construction Industry Long Service Leave Act 1983 (Vic)	115		
Conveyancing Act 1919 (NSW)			
s 24.....	121		
s 25.....	373		
s 66G(1).....	324		
Corporations Act			
2001.....	180, 191, 209, 323		
s 127(2).....	440		
s 201D.....	136		
s 201F.....	131		
s 201F(2).....	130		
s 295(3A).....	191, 192		
s 295(3A)(a).....	192		
s 766B.....	7		
s 1070A(3)(a).....	325		
Crimes Act 1958 (Vic)	125		
s 71.....	125		
Criminal Code Act 1995	447		
Disability Services Act 1986	31		
s 8(1).....	33		
Duties Act 1997 (NSW)	118		
Ch 4			
- Pt 3.....	120		
s 8.....	119		
s 8(1)(a).....	118		
s 8(1)(b).....	118		
s 8(1)(b)(i).....	119, 120		
s 8(1)(b)(iii).....	119-121		
s 8(1)(b)(ix).....	118-120		
s 147.....	120		
s 158.....	120		
s 158A.....	120		
s 159.....	120		
s 274.....	457, 462		
s 274(4A).....	462		
Duties Act 1999 (ACT)			
s 6.....	453, 457		
s 230.....	457		
Duties Act 2000 (Vic)			
s 3(1).....	453, 458		
s 56.....	457, 462		
s 69AA.....	457		
s 69AA to 69AI.....	462		
s 69AI.....	457		
s 282A.....	468		
Duties Act 2001 (Qld)			
s 96 to 107.....	457		

Duties Act 2001 (Tas)			
s 3	453		
s 30	457		
s 30E	457		
s 93	457		
s 225	388, 457, 462		
s 226	457, 462		
s 226(4)	462		
Duties Act 2008 (WA)			
s 99 to 106	457		
s 101A	453		
s 104	462		
Duties (Intergenerational Rural Transfer Guidelines) Determination 2017 (No 1) (ACT)			
s 5	462		
Evidence Act 1995	274		
s 140(1)	439		
s 140(2)	439		
Fair Work Act 2009	110		
s 15AA	111		
s 15AA(1)	111		
s 15AA(2)	111		
Family Law Act 1975	30		
s 4	210		
s 79	210-212		
s 79(1)(d)	212		
s 79(4)	212		
Family Trust Distribution Tax (Primary Liability) Act 1998	295		
Federal Court of Australia Act 1976			
s 20(2)	277		
s 21	273		
s 24	274		
s 37AG	277		
s 43(1)	277		
Federal Court Rules 2011			
r 1.39	277		
r 36.03(a)	277		
Finance Act 2005 (India)	397		
Foreign Acquisitions and Takeovers Act 1975	450		
Fringe Benefits Tax Assessment Act 1986	180		
Pt XII	14		
s 8A	399		
s 41	195, 197		
s 57A	195		
s 58	396		
s 58P	197		
s 58ZE	396		
s 59	396		
s 65A	396		
s 132	66		
s 136(1)	11, 13, 198, 399		
s 137(1)	13		
s 137(1)(a)	13		
s 137(1)(b)	13		
s 137(1)(c)(i)	13		
s 137(1)(d)	13		
s 138B	14		
Guardianship and Administration Act 1990 (WA)	48		
Pt 9	47		
s 102	48		
s 104	47, 48		
s 104A	47, 48		
s 104A(2)	47		
s 105	48		
Guardianship and Administration Act 2019 (Vic)			
s 50	379		
Higher Education Support Act 2003	81		
Pt 4-2	81		
s 3-1	81		
s 36-10(2)	85		
s 87-1	81		
s 96-1	81		
s 137-20	83		
s 140-5	85		
s 148-3	85		
s 154-18	83		
Income Tax Act 1961 (India)			
s 17(2)	400		
Income Tax Act 2007 (NZ)			
s RD 26(1)	400		
s RD CX 2(1)(b)(ii)	400		
Income Tax Act 2007 (UK)			
s 475	206		
s 476	206		
Income Tax Assessment (1936 Act) Regulation 2015			
reg 14	471		
Income Tax Assessment (1997 Act) Regulations 2021			
reg 31-15.03(1)	411		
reg 31-15.08(1)	411		
reg 302-200.01	32		
reg 302-200.02	32		
Income Tax (Earnings and Pensions) Act 2003 (UK)			
s 201	400		
Income Tax (Pay As You Earn) Regulations 2003 (UK)			
reg 61A	400		
reg 61B	400		
reg 69A	400		
Income Tax Rates Act 1986	43		
Income Tax (Transitional Provisions) Act 1997			
s 296-1(3)	414		
s 328-180	295		
s 328-181	254		
Internal Revenue Code (US)	204		
26 IRC (1986)			
- § 678	206		
International Tax Agreements Act 1953	463		
s 3(1)	468		
s 5	466		
s 5(1)	463-465		
s 5(3)	464-466		
Interpretation Act 1987 (NSW)			
s 21	454		
ITAA36			
Pt III			
- Div 6	205		
- Div 6E	392		
- Div 7	225		
- Div 7A	53, 57, 58, 73-79, 143, 159, 161, 186, 225, 228, 239-241, 247, 251, 295, 320, 366, 461, 469-471		
- Div 8	225		
Pt IIIA	303		
Pt IVA	20, 89, 113, 161, 172, 180, 181, 183-187, 250, 256, 257, 261-263, 265, 271, 275, 365, 366, 434		
Div 152	238		
Subdiv EA	74, 79		
s 6(1)	67, 191, 193, 258, 259, 471		
s 21	407		
s 21A	407		
s 23AH	191		
s 26(e)	394, 395		
s 44	240		
s 47	248		
s 95	382		
s 95(2)	206		
s 97	144, 383		
s 97 to 99A	204		
s 97(1)	381		
s 98(3)	206		
s 99B	204, 206		
s 100A	78, 79		
s 102AG	341		
s 102AG(2)	341		
s 102AG(2)(c)(v)	341, 342		
s 109C	79		
s 109C(4)	251		
s 109CA	79		
s 109D	75, 79, 143, 469, 471		
s 109D(1)	58, 75, 469		
s 109D(3)	74, 75, 79, 247		
s 109D(3)(b)	79		
s 109D(3)(d)	79		
s 109E	470, 471		
s 109E(5)	58		
s 109F	75, 79, 469-471		
s 109F(1)	470		
s 109F(1)(a)	470		
s 109F(8)	470		
s 109G(3)	75, 470		
s 109K	254		
s 109N	228, 469, 471		
s 109N(1)(b)	58		
s 109R	79, 161		
s 109RB	471		
s 109S	254		
s 109T	161		
s 109U	228		
s 109U(1)(a)	228		
s 109U(1)(c)	228		
s 109UB	73, 74		
s 109W	161		
s 109W(3)	161		
s 109XA	79		
s 109XA(1)	79		
s 109XA(2)	79		
s 109XA(3)	79		
s 109XB	58		
s 109Y	470		
s 109ZD	471		
s 128B(2B)	163, 164		
s 160L	306		
s 160ZH(12)	94		
s 160ZH(13)	94		
s 160ZH(14)	94		
s 167	114		
s 170	8		
s 170(10AA)	254		
s 177C(1)(bc)	261-263		
s 177C(1)(g)	263		
s 177C(2)(a)	250		
s 177CB	265		
s 177CB(3)	261, 263		
s 177CB(4)(a)(i)	265		
s 177J	163, 164		
s 177J(1)(a)	261		
s 177J(2)	261, 263		
s 260	172, 180, 365		
s 262A	62		
s 273	43, 97-99		
s 273(2)(a) to (f)	98		
Sch 2F	99		
- s 272-60(1)(a)	313		
ITAA97			
Pt 2-42	365		
Pt 3-1	20, 143, 144, 303, 305		
Pt 3-3	303		
Pt 3-30	43		
Div 31	401, 402, 404, 406		
Div 40	246		
Div 43	366		
Div 84	172		
Div 84 to Div 87	172		
Div 85	173, 179		
Div 86	173, 179, 365		
Div 87	173		
Div 121	62		
Div 122	249, 310, 312		
Div 128	113, 205		
Div 149	304, 306		
Div 152	241, 243-245, 249, 309-312, 367, 373, 407, 408		
Div 152-C	314		
Div 296	278, 280		
Div 392	254		
Div 615	310		
Div 775	127		
Subdiv 30-B	402		
Subdiv 86-B	180		
Subdiv 115-C	392		
Subdiv 118-B	93, 95, 373		
Subdiv 122-A	238, 241, 245, 247, 249, 311, 312		
Subdiv 122-B	238, 245, 246, 312		
Subdiv 124-M	310		
Subdiv 124-N	244, 245, 310, 312		
Subdiv 149-B	305		
Subdiv 152-A	243, 309		
Subdiv 152-B	243, 244, 309, 310		
Subdiv 152-C	243, 244, 309, 310, 314		
Subdiv 152-D	243, 244, 309, 310, 315		
Subdiv 152-E	243, 244, 309, 310		
Subdiv 207-B	392		
Subdiv 302-B	33		
Subdiv 302-C	33		
Subdiv 328-D	246, 247		
Subdiv 328-G	238, 241-245, 249, 310-312		
Subdiv 385-F	239		
Subdiv 385-G	239		
Subdiv 768-G	191		
Subdiv 815-E	59		
Subdiv 900-B	58		
s 4-5	85		
s 6-5	19, 20, 89, 404, 407, 412		
s 8-1	19, 89, 179, 345, 404, 407, 413, 431, 439, 441		
s 15-2	399		
s 20-20(2)	404		
s 25-5	4, 180		
s 25-5(1)	4, 161		
s 25-10	366		
s 25-35	254		
s 26-5	4		
s 26-5(1)(a)	4		
s 26-5(1A)	161		
s 26-31	366		
s 26-50	366, 430, 431		
s 26-50(1)	431		
s 26-50(3)(b)(ii)	431		
s 26-55	412		
s 26-102	366		
s 30-248(3)	412		
s 30-248(4)	412		
s 30-249	412		
s 31-5	402, 403		
s 31-5(1) to (4)	401		
s 31-5(2)(b)	406		
s 31-5(5)	401, 405		
s 40-25	366		
s 40-285	246		
s 40-340	245, 247, 251, 312		
s 40-340(1)	246, 247		
s 40-340(2)(b)	246		
s 40-340(3)	250		
s 40-345	246		
s 70-10	254		
s 70-10(1)(b)	246		
s 70-90	245, 246, 251, 254, 311, 312		
s 70-95	254		
s			

§ 108-5	125, 127, 143, 254, 412	§ 152-325(2)	313	§ 30A	453	§ 17A(2)	132
§ 108-5(1)	95, 254	§ 152-325(3)	315	§ 30B	456	§ 17A(3)	33, 130
§ 108-5(1)(a)	412	§ 152-325(4)	315	§ 30C	462	§ 17A(4)	33
§ 108-5(2)(a)	95	§ 152-325(5)	315	§ 30D	462	§ 17B	26, 346
§ 108-7	325, 372	§ 152-325(7)	315	Land Tax Management Act 1956 (NSW)		§ 17B(2)	27
§ 110-25	252	§ 152-325(8)	315	§ 10AA	452, 454, 455	§ 35C	39
§ 110-25(2)	145, 254, 406, 412	§ 207-58	392	§ 10AA(3)	454, 459	§ 38A	147
§ 110-25(4)	431	§ 207-159	227	Land Tax Regulation 2021 (Qld)	455	§ 66	39
§ 110-35	412	§ 290-150(4)(b)	315	§ 2	452	§ 71(1)(g)	39
§ 112-20	45	§ 290-550(3)(a)	98	Law of Property Act 1936 (SA)		§ 82	39
§ 112-20(1)(a)(i)	145	§ 290-550(3)(a) to (f)	98	§ 61	324	§ 82 to 85	39
§ 112-20(1)(a)(ii)	145	§ 291-20	254	§ 62	324	§ 83	39
§ 112-20(3)	252	§ 291-265	141	Legal Profession Uniform Law (NSW & Vic)		§ 109	39
§ 112-25	94, 95	§ 292-100	243, 311, 314	§ 10	448	§ 118	136
§ 112-25(4)	94, 95	§ 292-100(1)	315	§ 25	446	§ 160	227
§ 115-25(3)(a)	412	§ 292-100(4)(b)(i)	315	Nature Repair Bill 2023	412	Superannuation Industry (Supervision) Regulations 1994	36, 227
§ 115-215	79	§ 292-100(4)(c)	315	Nature Repair (Consequential Amendments) Bill 2023	412	Div 6.3	138
§ 115-228	392	§ 292-465	139, 141	New Business Tax System (Alienation of Personal Services Income) Bill 2000	187	reg 1.04AAA	30
§ 116-20(1)	145, 412	§ 295-490(1)	7	Payroll Tax Act 1971 (NSW)	225	reg 6.17A	33, 385
§ 116-20(1)(b)	412	§ 295-545	43, 345	Payroll Tax Act 2007 (NSW)	200, 295	reg 6.21	33
§ 116-30	315	§ 295-545(2A)	43	§ 48(1)(c)	200	reg 6.22	33, 340, 342
§ 116-30(1)	145	§ 295-545(2A)(b)	43	§ 48(2)	200	reg 6.22(2)	340
§ 116-30(2C)	45	§ 295-550	43, 97-99, 344	Payroll Tax Act 2007 (Vic)		reg 7.04	138
§ 116-105	403, 404	§ 295-550(1)	43-45, 148	§ 32(1)(a)	110	reg 7.04(4)	138, 139
§ 118-20	144, 145, 407	§ 295-550(1)(a)	39	§ 32(2)(b)(ii)	111	reg 7.04(4)(a)	138, 141
§ 118-20(1A)	145	§ 295-550(1)(b)	39, 344	Powers of Attorney Act 1980 (NT)	48	reg 7.04(4)(b)	138, 141
§ 118-115	93, 95	§ 295-550(1)(c)	39, 344	§ 6A	48	reg 8.02B	39
§ 118-120	95	§ 295-550(2)	43, 97-99	Powers of Attorney Act 1998 (Qld)	48	reg 13.18AA(7)	39
§ 118-120(5)	95	§ 295-550(3)	43, 97, 99	§ 34	48	Supreme Court (General Civil Procedure) Rules 2025 (Vic)	
§ 118-120(6)	95	§ 295-550(4)	43, 97-99	Sch 3	48	r 54.02	388
§ 118-130	95	§ 295-550(5)	43, 97-99	Powers of Attorney Act 2000 (Tas)	48	r 63.26	392
§ 118-145	431	§ 295-550(8)	39, 43, 44, 146, 147, 344	§ 42	48	Tax Agent Services Act 2009	4, 23, 56, 58, 62, 163, 446
§ 118-190	431	§ 295-550(9)	39, 43, 44, 146, 147, 344	Powers of Attorney Act 2003 (NSW)	47	Div 30	231
§ 118-192	431	§ 302-10	340	§ 8	48	§ 20-5(3)(d)(i)	168
§ 118-195	93, 113, 434	§ 302-60	340, 342	§ 21(1)	47	§ 30-10	231
§ 118-195(1)	434	§ 302-140	342	§ 25	48	§ 30-10(1)	168
§ 118-200	93, 434	§ 302-145	342	Powers of Attorney Act 2006 (ACT)	48	§ 30-10(2)	168
§ 118-200(2)	434	§ 302-195	33, 340	§ 89	48	§ 30-10(4)	168
§ 118-205	93	§ 302-200	33	Powers of Attorney Act 2014 (Vic)	48, 379	§ 30-10(7)	168
§ 122-15	245	§ 304-10(4)	141	§ 138	48	§ 30-10(9)	231
§ 122-20	312	§ 307-10(e)	7	Powers of Attorney and Agency Act 1984 (SA)	48	§ 30-10(10)	231
§ 122-20(1)	245	§ 328-180	254	§ 14	48	§ 30-10(14)	168
§ 122-20(3)	245	§ 328-180(1)	254	§ 14(4)	48	§ 30-15	167, 233
§ 122-25(1)	245, 246, 254	§ 328-200	254	Powers of Attorney Regulations 2024 (NSW)		§ 30-15(2)(a)	169
§ 122-25(2)	254	§ 328-210(2)	254	§ 5	48	§ 30-20	167
§ 122-25(3)	246	§ 328-243	247, 254	Sch 2	48	§ 40-5	167
§ 122-25(5)	245	§ 328-245(2)	254	Property Law Act 1958 (Vic)		§ 40-15	167
§ 122-25(6)	245	§ 328-245(3)	254	§ 53(1)(c)	391	§ 50-20	231
§ 122-25(7)	245	§ 328-250	254	Property Law Act 1974 (Qld)	320	§ 50-30	231
§ 122-35	246	§ 328-255	254	§ 210	324	Tax Agent Services (Code of Professional Conduct) Determination 2024	62
§ 122-37	246	§ 328-440	254	Property Law Act 2023 (Qld)		§ 30	62-64
§ 122-37(3)	246	§ 385-160(2)	254	§ 201	324	Tax Laws Amendment (2004 Measures No. 1) Act 2004	79
§ 122-40(1)	254	§ 392-25	254	§ 203	324	Tax Laws Amendment (2011 Measures No. 5) Bill 2011	399
§ 122-45	254	§ 393-10(4)	240	Short Stay Levy Act 2024 (Vic)	430	Tax Laws Amendment (Small Business Restructure Roll-over) Bill 2016	242
§ 122-45(1)	254	§ 775-15(2)	127	Stamp Duties Act 1923 (SA)		Taxation Administration Act 1953	233
§ 122-50	254	§ 955-1	471	§ 2	453	Pt IIA	4
§ 122-55	254	§ 960-100	469	§ 71CC	457, 462	Pt IVC	89, 268-270, 273, 274
§ 122-60	254	§ 995-1	44, 99, 127, 370, 399	Stamp Duty Act 1978 (NT)		§ 3DB(5)	59
§ 122-70	248	§ 995-1(1)	254	§ 4(1)	453	§ 3DB(6)	59
§ 122-70(3)	248	Judiciary Act 1903		§ 87	457, 462	§ 14ZL	277
§ 128-50(1)	373	§ 39B	273	Student Loans (Overseas Debtors Repayment Levy) Act 2015		§ 14ZQ	277
§ 128-50(2)	373	§ 39B(1)	273	§ 5	85	§ 14ZS	5
§ 128-50(3)	373	§ 39B(1A)	273	Superannuation Guarantee (Administration) Act 1992		§ 14ZY	277
§ 149-15(4)	305	Land Tax Act 1936 (SA)		§ 12(1)	110	§ 14ZZ	441
§ 149-15(5)	305	§ 2	453	§ 12(2)	199	§ 14ZZ(1)	277
§ 149-20(2)	306	§ 5(10)(g)	455	§ 12(3)	110	§ 14ZZC(1)	276
§ 149-30(1)	305	Land Tax Act 1956 (NSW)	455	§ 12(8)	110	§ 14ZZE	277
§ 149-30(2)	305, 306	Land Tax Act 2000 (Tas)		Superannuation Guarantee (Administration) Regulations 2018	202	§ 14ZZK	66, 441
§ 152-10(1)(a)	243, 309, 404	§ 7	455, 462	Superannuation Guarantee Charge Amendment Bill 2025	201	§ 14ZZN	276
§ 152-10(1)(b)	243, 309	§ 7(1)(a) to (d)	462	Superannuation Industry (Supervision) Act 1993	7, 36, 385	§ 14ZZO	66, 439, 441
§ 152-10(1)(c)	243, 309	§ 7(2)	453	§ 10	136, 340	§ 14ZZZ(b)	276
§ 152-10(1)(d)	243, 309, 404	§ 8	455	§ 10(1)	33	Sch 1	
§ 152-10(2)	243, 309, 316, 317	Land Tax Act 2002 (WA)	455	§ 10A	33	- Pt 4-25	21
§ 152-12	404	Land Tax Act 2004 (ACT)	453	§ 17A	26, 27, 29, 133, 135, 346	- Div 284	21
§ 152-20	368	§ 10	455	Supernation Guarantee Industry (Supervision) Act 1993	7, 36, 385	- Div 290	23
§ 152-35	404	§ 10(2)	462	§ 10	136, 340	- s 12-35	13
§ 152-40	407	Land Tax Act 2005 (Vic)	464	§ 10(1)	33	- s 12-40	13, 199
§ 152-40(1)(b)	407	§ 64	453	§ 10A	33	- s 260-140	471
§ 152-105	313	§ 64 to 70	455	§ 17A	26, 27, 29, 133, 135, 346	- s 280-50	4
§ 152-110	313	§ 65 to 67	458, 462				
§ 152-110(1)(d)	313	§ 67	461				
§ 152-125	314	§ 68	462				
§ 152-125(2)	314	§ 106A	468				
§ 152-125(3)	314	Land Tax Act 2010 (Qld)	464				
§ 152-305(2)(b)	315	§ 53	452, 455				
§ 152-310	315	§ 104	468				
§ 152-315(5)	315	Land Tax Assessment Act 2002 (WA)					
§ 152-320	315	§ 29 to 30	455				
§ 152-325(1)	315						
§ 152-325(1)(a)	317						

- s 280-103.....	21	Treasury Laws Amendment (Tax Incentives and Integrity) Act 2025	4, 161	PBR 1052231682732.....	469	Foreign Investment Review Board	
- s 284-15.....	22	Sch 2.....	4	PBR 1052286890635.....	94	FIRB Guidance Note 3.....	461
- s 284-75(1).....	21	Trustee Act 1925 (NSW)		PBR 1052294374162.....	314	FIRB Guidance Note 10.....	461
- s 284-75(2).....	21	s 86C.....	392	PCG 2016/5.....	43	Queensland Revenue Office	
- s 284-90(1).....	21	Trustee Act 1936 (SA)		PCG 2016/16.....	99	DA 105.1.3.....	457
- s 284-225.....	91	s 59C(2).....	392	PCG 2017/13.....	79	DA 105.2.3.....	457
- s 284-225(5).....	91	Trustee Act 1958 (Vic)	40, 383	PCG 2018/4.....	471	LTA053.1.3.....	455
- s 285-145.....	21	s 36(2).....	392	PCG 2018/9.....	190-192	Revenue NSW	
- s 350-10(1).....	276, 277	s 63A.....	40, 41, 388-390, 392	PCG 2020/5.....	43, 44	DUT 050v2.....	457
- s 357-55.....	88	s 63A(1).....	389, 392	PCG 2021/4.....	172, 180, 184-186	LT 097v3.....	455
- s 359-5(1).....	88	s 63A(1)(d).....	40	PCG 2021/D2.....	184	RevenueSA	
- s 359-40.....	88	Trustees Act 1962 (WA)		PCG 2022/2.....	78	SDA007.....	457
- s 359-45.....	89	s 90.....	41, 379	PCG 2024/D2.....	172, 180-182, 184, 186	RevenueWA	
- s 359-60.....	89	Trusts Act 1973 (Qld)	132	PCG 2025/1.....	7	DA 51.0.....	457
- s 359-65.....	90	s 5.....	136	PCG 2025/3.....	227	LT17.1.....	455
- s 359-70.....	90	s 12.....	136	PCG 2025/5.....	365, 366	State Revenue Office of Victoria	
- s 382-5.....	62	Universities Accord (Student Support and Other Measures) Bill 2024	85	PCG 2025/D5.....	295	LTA-006v2.....	455
- s 390-115.....	137	Variation of Trusts Act 1958 (UK)	40	PCG 2025/D6.....	366, 430, 431	LTA-010.....	455
Taxation Administration Act 1996 (NSW)		Variation of Trusts Act 1994 (Tas)		PCG 2025/D7.....	366, 430	LTA-011.....	455
s 97.....	119	s 13(4).....	392	PS LA 2005/24.....	265	Superannuation Complaints Tribunal	
Taxation Administration Act 1997 (Tas)		s 13(5).....	392	PS LA 2006/8.....	5	Determination D06-07129.....	138
s 19(3).....	458	VET Student Loans Act 2016		PS LA 2008/1.....	139	Tax Practitioners Board	
Taxation Laws Amendment Act (No. 2) 2001	403	s 23EC.....	85	PS LA 2008/5.....	23	TPB(I) 17/2013.....	231, 232
Taxation Laws Amendment Act (No. 3) 1998	79	Rulings and other materials		PS LA 2010/4.....	74, 75, 79	TPB(I) 18/2013.....	231, 232
Taxation (Multinational – Global and Domestic Minimum Tax) Imposition Act 2024	225	Accounting Professional and Ethical Standards Board		PS LA 2011/4.....	164, 276	TPB(I) 47/2024.....	63
Taxation of Chargeable Gains Act 1992 (UK)		APES 110.....	39, 233	PS LA 2011/12.....	5	TPB(PN) 3/2019.....	233
s 87.....	206	APES 220.....	65, 233	PS LA 2011/27.....	89	Territory Revenue Office (NT)	
Threatened Species Conservation Act 1995 (NSW)	412	APES 320.....	65	PS LA 2021/D3.....	139	CG-SD-003.....	457
Treasury Laws Amendment (2018 Superannuation Measures No. 1) Bill 2019	43	ACT Revenue Office		PS LA 2025/D1.....	59	Cases	
Treasury Laws Amendment (2022 Measures No. 4) Bill 2022	399	DAA002.1.....	457	PS LA 2025/D2.....	227	A	
Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023	34	DI2017-230.....	457	QC 66042.....	95	Abbott v CSR [1985] VR 164.....	462
Div 296.....	34	Australian Prudential Regulation Authority		TA 2013/3.....	184	Abotomey and FCT [2025] ARTA 719.....	61
s 296-30.....	414	ARS 750.0.....	330	TA 2015/2.....	227	Addy v FCT [2021] HCA 34.....	463, 464
Treasury Laws Amendment (Better Targeted Superannuation Concessions) Bill 2023	278	SPG 270.....	138, 141	TA 2015/4.....	254	Ahmad and FCT [2025] ARTA 1907.....	228
Div 296.....	207-209	Australian Securities & Investments Commission		TA 2025/2.....	113	Air Jamaica Ltd v Charlton [1999] 1 WLR 1399.....	318
s 296-55(1)(d).....	414	RG 277.....	138	TA 2025/2.....	113	Alan Synman Family Trust, In the matter of [2013] VSC 264.....	324
Treasury Laws Amendment (Better Targeted Superannuation Concessions) Bill 2025	413	Australian Taxation Office		TA 2026/1.....	433, 434	Alan Synman Family Trust, Re [2013] VSC 364.....	389
Div 296.....	413-415	CR 2009/77.....	406, 407	TD 8.....	94, 95	Alcoa of Australia Ltd and FCT [2025] ARTA 482.....	271, 275
s 296-50.....	414	GSTD 2004/4.....	314	TD 93/187.....	89	Allnutt v Wilding [2007] EWCA Civ 412.....	325
s 296-50(1)(b).....	414	ID 2002/172.....	254	TD 94/20W.....	89	AMP Ltd v Chubb Insurance Australia Ltd (No. 2) (evidence by AVL) [2025] NSWSC 789.....	275
Sch 1.....	414	ID 2002/471.....	471	TD 95/10.....	254	Angus; FCT v [1961] HCA 18.....	470
Treasury Laws Amendment Bill 2025	201	ID 2002/678.....	402	TD 96/3.....	250	Annat v Commr of State Revenue [2020] VSC 108.....	455
Treasury Laws Amendment (Foreign Investment) Act 2024		ID 2002/741.....	470	TD 1999/69.....	93-95	APRA v Derstepanian [2005] FCA 1121.....	44
Sch 1.....		ID 2003/203.....	250	TD 2002/25.....	125	Arthur Brady Family Trust, Re [2015] 2 Qd R 172.....	324
- s 2.....	468	ID 2010/104.....	139	TD 2003/28.....	145	Ashton, TM and Ashton, PLA [1986] FamCA 20.....	212
Treasury Laws Amendment (Making Multinationals Pay Their Fair Share – Integrity and Transparency) Act 2024	189, 225	ID 2012/77.....	470	TD 2004/63.....	73, 79	Attorney-General (NT) v Maurice (1986) 161 CLR 475.....	448
Treasury Laws Amendment (More Cost of Living Relief) Act 2025	296	IT 2340.....	303	TD 2006/77.....	316	Australia Investment Holding Group Pty Ltd and FCT [2025] ARTA 1185.....	115
Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Act 2024	225	IT 2622.....	471	TD 2021/25.....	127	Australian Investment & Development Pty Ltd v Commr of State Revenue [2025] VSCA 47.....	460
Treasury Laws Amendment (Strengthening Financial Systems and Other Measures) Bill 2025	161, 295	LCG 2016/3.....	242	TD 2025/4.....	58, 59	Auz Taxation Pty Ltd and Tax Practitioners Board [2025] ARTA 1711.....	166, 229, 233
Sch 7.....	295	LCR 2016/3.....	254	TD 2025/5.....	161	AWB v Cole [2006] 152 FCA 1234.....	448
Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Act 2023	344	LCR 2021/2.....	36, 44, 45, 147	TD 2025/6.....	228	B	
Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Bill 2023	44	LCR 2021/2DC.....	147, 148, 344	TD 2025/7.....	299	Baba v Sheehan [2021] NSWCA 58.....	136
		LI 2025/D22.....	299, 300	TD 2026/D1.....	434	Baird v BCE Holdings Pty Ltd [1996] NSWSC 376.....	138
		MT 2006/1.....	301	TR 92/3.....	412	Bamford; FCT v [2010] HCA 10.....	320, 381
		MT 2008/1.....	21, 233	TR 93/12.....	264	Barth Family Trust (Trustee) v FCT [2025] FCA 1693.....	434
		MT 2008/2.....	22, 23	TR 93/32.....	254, 373	Bayeh v DCT [1999] FCA 1194.....	276, 277
		MT 2012/3.....	91	TR 94/4.....	89	Beck v Colonial Staff Super Pty Ltd [2015] NSWSC 723.....	392
		MT 2024.....	396	TR 95/25.....	254	Beck v Henley [2014] NSWCA 201.....	325
		PBR 1012545708356.....	138	TR 95/35.....	145	Bellinz Pty Ltd v FCT [1998] FCA 284.....	89
		PBR 1012557133149.....	145	TR 97/11.....	254, 371, 373, 412, 452	Bellinz Pty Ltd v FCT [1998] FCA 615.....	89
		PBR 1012571177732.....	145	TR 97/17.....	196	Benaroon Pty Ltd v Larmar [2020] QCA 62.....	321
		PBR 1012648073225.....	145	TR 2001/8.....	176	Bendel and FCT [2023] AATA 3074.....	143
		PBR 1012767930109.....	138	TR 2004/15.....	189, 190	Bendel; FCT v [2025] FCAFC 15.....	53, 57, 73, 75-79, 143, 186, 225, 239, 295
		PBR 1013123836003.....	471	TR 2004/18.....	107		
		PBR 10151533271418.....	471	TR 2005/12.....	252-254		
		PBR 10151705944220.....	471	TR 2005/13.....	402		
		PBR 10151782123023.....	412	TR 2006/7.....	97-99		
		PBR 10151831742603.....	412	TR 2010/1.....	139		
		PBR 10151865289508.....	412	TR 2010/3.....	74, 75, 79		
		PBR 10151875359264.....	412	TR 2010/4.....	266		
		PBR 10151883788251.....	412	TR 2018/5.....	190, 191		
		PBR 10151976577326.....	407, 412	TR 2021/D4.....	264		
		PBR 1052083545411.....	412	TR 2022/3.....	173, 174, 176-178, 180, 187		
		PBR 1052090528673.....	31	TR 2023/1.....	67, 68		
		PBR 1052097327812.....	31	TR 2023/4.....	187		
		PBR 1052110338557.....	254, 313, 314	TR 2024/D1.....	264		
		PBR 1052118885373.....	313	TR 2025/D1.....	366, 430		
		PBR 1052190586791.....	470	Double tax agreements			
		PBR 1052195584659.....	470	Australia-Germany			
		PBR 1052216694007.....	94	- art 24.....	464		
				Australia-NZ			
				- art 24.....	464		
				Australia-UK			
				- art 25.....	463		
				Vienna Convention			
				- art 26.....	468		
				- art 27.....	468		
				- art 60.....	468		

Bennetts and FCT [2025] ARTA 1092..... 115	Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd [2022] HCA 1.....110, 111, 174, 175, 199	Galland; FCT v [1986] HCA 83..... 185	Liang; FCT v [2025] FCAFC 4..... 66
Benz v Armstrong [2022] NSWSC 534.....28	Corporate Initiatives Pty Ltd v FCT [2005] FCAFC 62..... 75	Gartside v Inland Revenue Comms [1968] AC 553.....145	Lowther Park Pty Ltd as trustee for the Lowther Park Family Trust v Simon Della Marta [2023] NSWSC 1555..... 324
Binetter v FCT [2016] FCAFC 163.....471	Cox and Railton; R v (1884) 14 QBD 153.....448	GE Capital Finance Australasia Pty Ltd v FCT [2011] FCA 849..... 325	LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2024] HCA 12..... 275
Blenkinsop v Herbert [2017] WASCA 87.....377	CPDV Pty Ltd v Commr of State Revenue [2017] VSCA 89.....462	Gengoult-Smith Family Trust, Re [2024] VSC 189..... 319	LT King Pty Ltd v Besser [2002] VSC 354.....448
BQKD and FCT [2024] AATA 1796.....14, 203	CPT Custodian Pty Ltd v Commr of State Revenue [2005] HCA 53.....99, 324, 392	George Hardi Family Trust, In the matter of [2021] NSWSC 1584..... 392	Lunn and Tax Practitioners Board [2025] ARTA 697..... 7
Briginshaw v Briginshaw [1938] HCA 34.....439	Craddock Brothers v Hunt [1923] 2 Ch 136.....325, 392	George v Kollias [2007] VSC 46..... 389	Lygon Nominees Pty Ltd v Commr of State Revenue [2005] VSC 247..... 212
BRK (Bris) v FCT [2001] FCA 164.....382	Crawford and FCT [2026] ARTA 90.....434	George v Rockett (1990) 170 CLR 104.....448	M
Brown; DCT v [1958] HCA 2.....471	Creation Pty Ltd and FCT [2002] AATA 1121.....179	Glencore International AG v FCT (2019) 265 CLR 646.....448	Macquarie Bank Ltd v FCT [2013] FCAFC 119.....24, 89
Bywater Investments Ltd v FCT; Hua Wang Bank Berhad v FCT [2016] HCA 45.....190-193	CT v Steeves Agnew & Co (Vic) Pty Ltd [1951] HCA 26..... 314	Glencore Investment Pty Ltd v FCT [2019] FCA 1432.....272	MacRobertson Miller Airline Services v Commr of State Taxation (WA) (1975) 133 CLR 125.....121
C	D	Glencore Investment Pty Ltd; FCT v [2020] FCAFC 187.....276	Mak v Juventus Pty Ltd [2024] WASC 409.....377
Caldwell & Caldwell [2025] FedFamCIF 506.....210, 212	Dalby and FCT [2025] ARTA 1060.....114	Godolphin Australia Pty Ltd v Chief Commr of State Revenue [2024] HCA 20.....454	Manufacturers Mutual Insurance Ltd v Motor Accidents Authority of NSW [1991] NSWCA 187.....441
Cameron Brae Pty Ltd v FCT [2007] FCAFC 135.....22	Dalco; FCT v (1990) 168 CLR 614.....439	Granby Pty Ltd v FCT [1995] FCA 1217.....44	McDonald; FCT v [1987] FCA 200.....370
Cameron v FCT [2012] FCAFC 76.....176	Darrelen Pty Ltd v FCT [2010] FCAFC 35.....98	Greenhatch; FCT v [2012] FCAFC 84.....383	McGowan & Valentini Trusts, Re [2021] VSC 154.....324, 384, 392
Carpenter v Carpenter Grazing Co Pty Ltd (1987) 5 ACLC 506.....440, 441	David Securities Pty Ltd v Commonwealth Bank of Australia [1992] HCA 48.....139	Grofam Pty Ltd v FCT [1997] FCA 660.....91	McIntosh v McIntosh [2014] QSC 99.....30
Carter and Tax Practitioners Board [2025] ARTA 632.....1	De Lorenzo v De Lorenzo [2020] NSWCA 351.....323	Guardian AIT Pty Ltd; FCT v [2023] FCAFC 3.....265	McLean Bros & Rigg Ltd v James Grice [1906] HCA 1.....440, 441
Carter v FCT [2001] FCA 575.....277	Delma Investments Pty Ltd v Commr of State Revenue [2024] VSC 649.....455, 461	GYBW and FCT [2019] AATA 4262.....98	McMahon; FCT v [1997] FCA 1087.....90
Carter; FCT v [2022] HCA 10.....382	Denton v Donner (1856) 23 Beav 285.....121	H	McNee v Lachlan McNee Family Maintenance Pty Ltd [2020] VSC 273.....40, 41
CDPV Pty Ltd v Commr of State Revenue [2016] VSC 322.....461	Denver Chemical Manufacturing Co v FCT (NSW) [1949] HCA 25.....9	Halloran v Minister Administering National Parks and Wildlife Act 1974 [2006] HCA 3.....438	Melbourne Corporation of Australia Pty Ltd v FCT [2022] FCA 972.....439
CE Brencley Family Trust, In the matter of [2019] NSWSC 1602.....392	Dion Investments Pty Ltd, Re [2014] NSWCA 367.....324, 390	Harding v FCT [2018] FCA 837.....61	Mercanti v Mercanti [2015] WASC 297.....384
Celermajer Holdings Pty Ltd v Kopas [2011] NSWSC 304.....441	Dixon and Consulting Pty Ltd and FCT [2007] AATA 1786.....177	Hart; FCT v [2004] HCA 26.....187	Mercanti v Mercanti [2016] WASCA 206.....384, 439
Charles Apartments Pty Ltd v FCT [2025] FCAFC 180.....359, 438, 439, 441	Doma ACT Pty Ltd v LN Sydney Pty Ltd [2024] ACTSC 270.....321	Hill v Zuda Pty Ltd [2021] WASCA 59.....30	Merchant v FCT [2024] FCA 498; [2025] FCAFC 56.....272
Charles v FCT [1954] HCA 16.....383	Domazet v Jure Investments Pty Ltd [2016] ACTSC 33.....318, 325	Hill v Zuda Pty Ltd [2022] HCA 21.....30, 385	Miller v Race (1758) 1 Burrow 452.....126
Cherry Tree Investments Ltd v Landmain Ltd [2013] Ch 305.....325, 392	Donovan v Donovan [2009] QSC 26.....30	Hollis v Vabu Pty Ltd [2001] HCA 44.....110, 174	Minerva Financial Group Pty Ltd v FCT [2022] FCA 1092; [2024] FCAFC 28.....272
Chevron Australia Holdings Pty Ltd v FCT [2015] FCA 1310; [2017] FCAFC 62.....272	Dougllass v FCT [2019] FCA 1246.....175	Holloway v Commr of State Revenue [2024] TASSC 45.....388, 392	Minister Administering National Parks and Wildlife Act 1974 v Halloran [2004] NSWCA 118.....119, 120
Chief Commissioner of State Revenue (NSW) v Dick Smith Electronics Holdings Pty Ltd [2005] HCA 3.....266	Drake v Minister for Immigration and Ethnic Affairs (1979) 46 FLR 409.....277	Holmden's Settlement Trusts, Re [1968] AC 685.....41	Minister for Immigration and Border Protection v SZVFW (2018) 264 CLR 541.....274, 277
Chief Commissioner of State Revenue v Metricon Qld Pty Ltd [2017] NSWCA 11.....454, 461	Dryandra Investments Pty Ltd v Hardie [2024] WASC 248.....41, 379	Homes v Thorpe [1925] SASR 286.....448	Mochkin; FCT v [2003] FCAFC 15.....181, 183
Chief Commissioner of State Revenue v Uber Australia Pty Ltd [2025] NSWCA 172.....296	Duke of Norfolk's case: Howard v Duke of Norfolk (1682) 3 Ch Cas 1.....318	Hopkins v Edwards [2020] VSC 456.....392	Morris v Kanssen [1946] 1 All ER 586.....440
Cisera v Cisera [2023] NSWSC 1507.....391	Dulux Holdings Pty Ltd & Orca Ltd; FCT v [2001] FCA 1344.....143, 145	Howard v Duke of Norfolk (1682) 3 Ch Cas 1.....318	Morton v FCT [2025] FCA 336.....301
Cisera v Cisera Holdings Pty Ltd [2018] NSWCA 286.....392	Dundee General Hospitals Board of Management v Walker [1952] 1 All ER 896.....392	HWFX and FCT [2025] ARTA 680.....9	Moss v Hancock [1899] 2 QB 111.....127
Citigroup Pty Ltd v National Australia Bank Ltd [2012] NSWCA 381.....140	E	I	Mount Bruce Mining Pty Ltd v Wright Prospecting Pty Ltd [2015] HCA 37.....258, 264
Clerk v Equity Trustees Executors and Agency Co Ltd (1913) 15 CLR 625.....325	Eichmann v FCT [2020] FCAFC 155.....306	Idenix Pharmaceuticals LLC v Gilead Sciences Pty Ltd (No. 2) [2018] FCAFC 7.....277	MS [2025] WASAT 49.....45
Coghlan, Re; Merriman v Attorney-General (No. 2) [2020] VSC 668.....387	Electricity Generation Corporation v Woodside Energy Ltd [2014] HCA 7.....258, 264	Ippollo & Hesford v Conti [2013] WASC 389.....30	Mubarak v Mubarak [2008] JCA 196.....392
Cohen's Will Trusts, Re [1959] 1 WLR 865.....389	EM McPherson Settlement, Re [2024] VSC 744.....320, 390	IRG Technical Services Pty Ltd v DCT [2007] FCA 1867.....175	Mullen & De Bry [2007] FMCAfam 10.....448
Colonial First State Investments Ltd v FCT [2011] FCA 16.....99, 392	Esso Australia Resources v FCT [1999] HCA 67.....448	J	Munro v Munro [2015] QSC 61.....30
Commissioner of Inland Revenue v Ward [1970] NZLR 1.....254	Estate of Henry Brough Smith, Re; Perpetual Trustee Co Ltd v Uniting (Victoria and Tasmania) Ltd [2020] VSC 378.....386	J & G Knowles and Associates v FCT [2000] FCA 196.....13, 14, 203	N
Commissioner of Stamp Duties (NSW) v Carlenka Pty Ltd (1995) 41 NSWLR 329.....325, 391	Estate of Stagliano, Re [2025] VSC 39.....322, 471	Jenkins v Ellett [2007] QSC 154.....392	NBT Pty Ltd, Application of [2023] NSWSC 919.....392
Commissioner of Stamp Duties (Qld) v Livingston [1965] AC 694.....392	Evangelista Family Trust, Re [2025] QSC 83.....319	Jowett; Federal Commissioner of Land v [1930] HCA 51.....436	Nemesis Australia Pty Ltd v FCT [2005] FCA 1273.....318
Commissioner of State Revenue (Vic) v Royal Insurance Australia Ltd [1994] HCA 61.....142	Evans and FCT [2025] ARTA 824.....60	K	Nguyen and FCT [2025] ARTA 1262.....164
Commissioner of State Revenue v Rojoda Pty Ltd [2020] HCA 7.....325	Everett; FCT v [1980] HCA 6.....185	Karger v Paul [1984] VR 161.....380	Northern Territory v Sangare [2019] HCA 25.....277
Commonwealth Director of Public Prosecutions v William Wheatley (unreported, Victorian County Court, May 2025, No. CR-24-00217).....125, 127	F	Katz v Grossman [2005] NSWSC 934.....30	Nullagine Investments Pty Ltd v Western Australian Club Inc [1993] HCA 45.....325
Commonwealth v New South Wales [1923] HCA 34.....461	Fischer v Nemeske Pty Ltd [2016] HCA 11.....254	Keadly Pty Ltd [2015] SASC 124.....392	Nyasa No. 19 Pty Ltd, In the Application of [2023] NSWSC 578.....389
Compania General de Tabacos de Filipinas v Collector of Internal Revenue (1927) 275 US 87.....399	Fisher v McGee [1974] VLR 324.....448	Kearns v Hill (1990) 21 NSWLR 107.....392	O
Conexa Sydney Holdings Pty Ltd v Chief Commr of State Revenue (NSW) [2025] NSWCA 20.....120	Fortunatow; FCT v [2020] FCAFC 139.....176	Kendell v Sweeney [2005] QSC 64.....441	Official Receiver in Bankruptcy v Schultz [1990] HCA 45.....325
Constantinou, In the Estate of [2012] 2 QSC 332.....322	Futuris Corporation Ltd; FCT v [2008] HCA 32.....277	Kennon v Spry [2008] HCA 56.....210	Oil Basins Ltd v Commonwealth (1993) 178 CLR 643.....277
	G	Kilgour v FCT [2024] FCA 687.....45	Olow and FCT [2025] ARTA 1924.....301
	G Global 120E T2 Pty Ltd v Commr of State Revenue [2025] HCA 39.....463-467	Kilgour v FCT [2025] FCAFC 183.....367	Oracle Corporation Australia Pty Ltd v FCT [2024] FCA 1262.....277
	Gainer Associates Pty Ltd, In the matter of [2024] NSWSC 1138.....26	Kirtlan and FCT [2025] ARTA 539.....8, 67, 69	Oracle Corporation Australia Pty Ltd v FCT [2025] FCAFC 145.....264, 296
		Klug v Klug [1918] 2 Ch 67.....392	
		Krstic v State Trustees Ltd [2012] VSC 344.....392	
		L	
		Leda Manorstead Pty Ltd v Chief Commr of State Revenue [2011] NSWSC 867.....454, 461	
		Lee v Lee [2019] HCA 28.....277	
		Leppington Pastoral Co Pty Ltd v Chief Commr of State Revenue [2017] NSWSC 9.....454	
		Les Laboratoires Servier v Apotex Pty Ltd [2016] FCAFC 27.....277	

Oshlack v Richmond River Council [1998] HCA 11.....277	Shand v Chief Commr of State Revenue [2025] NSWSC 818.....118, 121	Yalos Engineering Pty Ltd; FCT v [2009] FCA 1569.....176	- Powers of attorney and foreign jurisdictions.....46
Owies v JJE Nominees Pty Ltd [2022] VSCA 142.....325, 380	Sinclair v Moss [2006] VSC 130.....392	Yazbek v FCT [2013] FCA 39.....471	
P	Singapore Telecom Australia Investments Pty Ltd v FCT [2021] FCA 1597; [2022] FCA 260; [2024] FCAFC 29.....272	Z	
Partridge v Equity Trustees Executors and Agency Co Ltd (1947) 75 CLR 149.....392	Skiba and FCT [2007] AATA 1705.....175	ZG Operations Australia Pty Ltd v Jamsek [2022] HCA 2.....110, 111, 174, 175, 199	
Peabody; FCT v [1994] HCA 43.....187	Smith and FCT [2026] ARTA 25.....436	Zhou and FCT [2026] ARTA 16.....427	
PepsiCo, Inc v FCT [2023] FCA 1490.....164, 258, 264, 272	SNA Group Pty Ltd; FCT v [2026] FCAFC 10.....448	Authors	
PepsiCo, Inc v FCT [2024] FCAFC 86.....164, 256, 272	Spence v FCT [1967] HCA 32.....370	A	
PepsiCo, Inc; FCT v [2025] HCA 30.....163, 256, 261, 264-266, 276, 296	Spencer v Commonwealth [1907] HCA 82.....368	Abdalla, J	
Perenna Nominees Pty Ltd, Application by [2022] VSC 193.....390, 392	Stagliano, Re Estate of [2025] VSC 39.....381	Head of Tax & Legal's Report - 2025: the year in review.....294	
Perpetual Trustees Victoria Ltd v Barns [2012] VSCA 77.....392	Suncorp Insurance and Finance v Commr of Stamp Duties [1998] 2 Qd R 285.....120	- The imminent need for holistic tax reform.....56	
Personalised Transport Services Pty Ltd v AMP Superannuation Ltd [2006] NSWSC 5.....137	Sunna v FCT [2025] FCA 1499.....359	- A new era for rental property tax compliance.....430	
Phillips, Petitioners 1964 SC 141.....392	T	- Tax Reform Roundtables: the future of tax policy.....158	
Pickering Family Trusts, Re [2024] VSC 5.....324, 389	Taneja and FCT [2009] AATA 87.....175	B	
Pitt v Holt [2013] UKSC 26.....325	Thomas Hare Investments Ltd v Hare [2012] VSC 200.....390	Backhaus, S	
Plator Nominees Pty Ltd, Re [2012] VSC 284.....324, 389	Thomason v Chief Executive, Dept of Lands [1995] QLAC 4.....454	Superannuation - Revised Div 296 super tax from 1 July 2026.....278	
Popovic v Tanasijevic (No. 5) [2000] SASC 87.....440, 441	Tilli and FCT [2026] ARTA 80.....434	Bender, P	
Premier Bay Pty Ltd v Commr of State Revenue [2024] VSC 447.....460	Tito v Waddell (No. 2) [1977] Ch 106.....119	Taxation of trusts: common issues in preparing trust deeds.....376	
Prygodiczv Commonwealth (No. 2) [2021] FCA 634.....140	Trail Bros Steel & Plastics Pty Ltd; FCT v [2010] FCAFC 94.....261	Blackwood, C	
PTBS and FCT [2025] ARTA 1262.....164	Travelax Ltd v FCT [2008] FCA 1961.....126	PepsiCo: a guide to the ongoing implications.....256	
Public Servant and FCT [2014] AATA 247.....90	Trustee for Goldenville Family Trust A/C Xiangming Huang and FCT [2025] ARTA 1355.....325	Boyle, C	
Public Trustee v Smith [2008] NSWSC 397.....321	Trustee for MH Ghali Superannuation Fund and FCT [2012] AATA 527.....45, 99	PepsiCo: a guide to the ongoing implications.....256	
Pulbrook, Re; Pulbrook v Pulbrook (1937) 37 SR (NSW) 345.....325	Trustee for the Michael Hayes Family Trust v FCT [2019] FCA 426.....392	Briglia, P	
Q	Trustee for the Michael Hayes Family Trust; FCT v [2019] FCAFC 226.....392	A Matter of Trusts - Superannuation proceeds trusts.....340	
Queensland Trustees Ltd v Commr of Stamp Duties [1952] HCA 52.....145	Turner v Turner [1984] Ch 100.....392	Brydges, N	
R	U	A Matter of Trusts - UPEs and CGT: it's not all about Bendel.....143	
R & D Holdings Pty Ltd v DCT [2006] FCA 981.....233	Uber Australia Pty Ltd v Chief Commr of State Revenue [2024] NSWSC 1124.....296	Burgess, M	
R & D Holdings Pty Ltd; FCT v [2007] FCAFC 107.....233	University of Adelaide v Attorney-General (SA) [2018] SASC 82.....392	Holistic tax and estate planning: a guide for 2026.....318	
RCI Pty Ltd; FCT v [2011] FCAFC 104.....261, 262, 265	University of Wollongong v Metwally [1984] HCA 74.....465	Butler, D	
Rentis Pty Ltd, Re [2023] QSC 252.....26	V	Superannuation - Division 296: revised \$3m+ super tax.....413	
Ridgewell v Ridgewell [2007] EWHC 2666.....324	van Camp v Bellahealth Pty Ltd [2024] NSWSC 7.....27	- Is the Div 296 tax another ABUM?.....207	
Roberts; FCT v; FCT v Smith (1992) 23 ATR 494.....254	Vanderstock v Victoria [2023] HCA 30.....467	- NALI and NALE - ATO finalises NALI ruling: part 4.....344	
Robodebt case: Prygodiczv Commonwealth (No. 2) [2021] FCA 634.....140	VGM Holdings Ltd, Re [1942] Ch 235.....325	- NALI and NALE - dividend, fixed and non-fixed NALI: part 2.....97	
Rondel v Worsley [1969] 1 AC 191.....448	Vidler v FCT [2010] FCAFC 59.....436	- NALI and NALE - NALI still needs fixing: part 1.....43	
Rosgoe Pty Ltd v FCT [2015] FCA 1231.....90	VL Finance Pty Ltd v Legudi [2003] VSC 57.....438, 441	- NALI and NALE - the new general NALE provisions: part 3.....146	
Roth, Re [2022] VSC 511.....325	VZFS and FCT [2025] ARTA 2013.....300	- Revised Div 296 super tax from 1 July 2026.....278	
Roxborough v Rothmans of Pall Mall Australia Ltd [2001] HCA 68.....142	W	C	
Ruhamah Property Co Ltd v FCT [1928] HCA 22.....20	Walker Corporation Pty Ltd, Application of [2022] NSWSC 1609.....391	Chamberlain, M	
Rule v Mallon [2000] NSWSC 346.....325	Wall and Secretary, Dept of Education, Employment and Workplace Relations [2011] AATA 433.....436	Corporate tax residency: should we care?.....189	
Ryan and FCT [2008] AATA 383.....392	Walstern v FCT [2003] FCA 1428.....22	Clements, J	
S	Weston's Settlement, Re [1969] 1 Ch 223.....324	Foreign surcharges and Australia's tax treaties.....463	
Safety Beach Estate Pty Ltd v Commr of Land Tax (NSW) (1979) 9 ATR 451.....461	Whiting; FCT v [1943] HCA 45.....471	Collins, B	
Sandini Pty Ltd v FCT [2017] FCA 287.....277	Williams v Scott [1900] AC 499.....121	Understanding and managing tax uncertainty: part 1.....19	
Saunders v Vautier [1841] EWHC J82.....341, 387	Williams v Williams [2023] QSC 90.....28	Understanding and managing tax uncertainty: part 2.....87	
Scimitar Systems Pty Ltd and DCT [2004] AATA 720.....175, 178	Wood Trading Co Ltd, Re (1927) 28 SR (NSW) 106.....325	D	
Scott and Australian Securities and Investments Commission [2009] AATA 798.....8	Woodcock & Woodcock (No. 2) [2022] FedCFamC1F 173.....212	Dallas, N	
SEPL Pty Ltd as trustee of the SFT Trust; FCT v [2025] FCA 581.....11, 53	Woolwich Equitable Building Society v Inland Revenue Commrs [1993] AC 70.....142	Loss of trustee capacity in SMSFs.....129	
Serious Fraud Office v Litigation Capital Ltd [2021] EWHC 1272.....392	Wooster v Morris [2013] VSC 594.....30	Donlan, T	
Service v FCT [2000] FCA 188.....438	WorkPac Pty Ltd v Rossato [2021] HCA 23.....174	Successful Succession - Don't forget the trust's purpose.....210	
Shaaban bin Hussien v Chong Fook Kam [1969] 3 All ER 1626.....448	X		
	XLZH and FCT [2025] ARTA 2154.....303, 306		

Mascolo, S	
An old chestnut revisited: is Bitcoin money?	125
Monotti, W	
A Matter of Trusts	
– The powers of the court in varying trusts	40
N	
Nufer, C	
Dealings with Australian agricultural land	450
P	
Pascale, J	
Bendel goes to the High Court: critical issues for private groups	73
R	
Reynolds, K	
Member Spotlight	124
S	
Sandow, T	
President's Report	
– An Institute larger than the sum of its parts	360
– Challenges in trusts	2
– Creating the Institute we want to see	222
– The pursuit of perfection	156
– Reflecting on 2025 and what it meant to the industry	292
– The Tax Summit: shaping our moment together	108
– The Tax Summit: shaping the industry together	54
– Thank you for your insight	428
Schaefer, S	
Estate planning	26
Super and SMSFs: where are the goal posts?	34
Slegers, P	
Bendel goes to the High Court: critical issues for private groups	73
Stead, F	
Superannuation	
– NALI and NALE – ATO finalises NALI ruling: part 4	344
– NALI and NALE – dividend, fixed and non-fixed NALI: part 2	97
– NALI and NALE – NALI still needs fixing: part 1	43
– NALI and NALE – the new general NALE provisions: part 3	146
Storey, J	
Tax Counsel's Report	
– 50% CGT discount in the spotlight	362
– Harmonising the definition of "employee"	110
Swadling, C	
Litigating tax disputes: key issues	268
T	
TaxCounsel Pty Ltd	
Tax News – what happened in tax?	
– June 2025	6
– July 2025	58
– August 2025	113
– September 2025	161
– October 2025	227
– November 2025	298
– December 2025	365
– February 2026	433
Tax Tips	
– "Agreement" issues	118
– Co-ownership: residential premises	370
– FBT issues	11
– Informality and regularity	438
– Investigation: caution not termination	166
– Pre- or post-CGT asset?	303
– Reasonable care: TPB code of conduct	231
– Taxation records: tax agent issues	62
Tranzillo, J	
Litigating tax disputes: key issues	268
Treath, S	
CEO's Report	
– Building a stronger, better future together	361
– Changes for a sustainable future	3
– Great leaders invest in knowledge	157
– Member consultations	429
– Our growth in the last financial year	223
– Shaping the moment at The Tax Summit 2025	109
– The Tax Summit: shape your moment	55
– Wrapping up a year of sharing knowledge	293
Tucker, J	
Employment benefit myths and misconceptions	194
V	
van Zyl, C	
Reimagining land use: sustainability and tax	401
W	
Wedd-Elliott, S	
A Matter of Trusts	
– Cross-border considerations for TDTs and the estate plan	204
Wilmore, A	
Member Spotlight	17

Giving back to the profession

The Tax Institute would like to thank the following presenters from our February 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.

Julie Abdalla, FTI
The Hon. Bruce Billson
Neil Brydges, CTA
Jacquii Burnham, CTA
Graeme Colley
Bruce Collins, CTA
Tracey Dunn
Billy-Jo Famlonga, FTI
Karen Goodfellow, CTA
Amanda Guruge, CTA
Emily Halloran, ATI
Jane Harris, CTA
Fletch Heinemann, CTA

Laura Hussey, ATI
John Ioannou, CTA
Dung Lam, CTA
Sarah Lancaster
Jenny Lin
Melinda Peters, CTA
Alexandra Plumb
Sally Preston, CTA
Hugo Southcott
Murray Thornhill
Mark West, CTA
Bradley White

Contacts

National Council

Chair

Clare Mazzetti

President

Tim Sandow, CTA

Vice President

Paul Banister, CTA

National Councillors

Todd Want, CTA

Leanne Connor, CTA

Ian Heywood, CTA

Modiesha Stephens, CTA

Rae Ni Corraidh, CTA

National Office

CEO: Scott Treatt, CTA

Level 21, 60 Margaret Street
Sydney, NSW 2000

T 1300 829 338

E tti@taxinstitute.com.au

State Offices

New South Wales and ACT

Chair: Alison Stevenson, CTA

Vice Chair: Kristie Schubert, CTA

Level 21, 60 Margaret Street
Sydney, NSW 2000

T 02 8223 0000

E nsw@taxinstitute.com.au

Victoria

Chair: Dioni Perera, FTI

Vice Chair: Frank Hinoporos, CTA

Level 3, 530 Collins Street
Melbourne, VIC 3000

T 03 9603 2000

E vic@taxinstitute.com.au

Queensland

Chair: Kim Reynolds, CTA

Vice Chair: John Middleton, CTA

310 Edward Street
Brisbane, QLD 4000

T 07 3225 5200

E qld@taxinstitute.com.au

Western Australia

Chair: Ross Forrester, CTA

Vice Chair: Billy-Jo Famlonga, FTI

152 St Georges Terrace
Perth, WA 6000

T 08 6165 6600

E wa@taxinstitute.com.au

South Australia and Northern Territory

Chair: George Hodson, CTA

75-77 Dale Street
Port Adelaide, SA 5015

T 1300 829 338

E sa@taxinstitute.com.au

Tasmania

Chair: Simon Clark, CTA

Vice Chair: Ron Jorgensen, CTA

E tas@taxinstitute.com.au

Taxation *in* Australia

ISSN 0494-8343

Publishing House

The Tax Institute
ABN 45 008 392 372

Level 21, 60 Margaret Street
Sydney, NSW 2000

Editorial Board (appointed September 2021)

Michael Walpole, CTA, Professor,
UNSW (Chair)

David W Marks KC, CTA, Queensland Bar

Helen Hodgson, CTA, Professor,
Curtin University

Paul O'Donnell, CTA, Principal, Deloitte

Content Marketing Specialist

Thomas Fitzgerald-White

Editorial Adviser

Professor Bob Deutsch, CTA

Managing Editor

Deborah Powell

Graphic Designers

Claudio Palma, Michael Foody and Mei Lam

Typesetter

Midland Typesetters, Australia

Advertising

Business Relationship Manager

02 8223 0003

© 2026 The Tax Institute

This journal is copyright. Apart from any fair dealing for the purpose of private study, research, criticism or review, as permitted under the Copyright Act, no part may be reproduced by any process without written permission.

Disclaimer

Unless otherwise stated, the opinions published in this journal do not express the official opinion of The Tax Institute. The Tax Institute accepts no responsibility for accuracy of information contained herein. Readers should rely on their own inquiries before making decisions that touch on their own interests.

