The Tax Institute

Tax Update

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Written by:
Brown Wright Stein Lawyers
Level 6, 179 Elizabeth Street
Sydney NSW 2000
P 02 9394 1010

Brown Wright Stein tax partners:

Amanda Comelli	E: akc@bwslawyers.com.au	P: 02 9394 1044
Geoff Stein	E: gds@bwslawyers.com.au	P: 02 9394 1021
Matthew McKee	E: mpm@bwslawyers.com.au	P: 02 9394 1032
Michael Malanos	E: mlm@bwslawyers.com.au	P: 02 9394 1024
Rachel Vijayaraj	E: rlv@bwslawyers.com.au	P: 02 9394 1049
Suzie Boulous	E: sjm@bwslawyers.com.au	P: 02 9394 1083

www.bwslawyers.com.au

About Brown Wright Stein

Brown Wright Stein is a medium-sized commercial law firm based in Sydney. We provide legal advice in the following areas:

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

Contents

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

1. Tax Update Pitstop

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

Tax Update Matter	Impact Summary	Further Detail
Item 2.1 Morton	**What happened?** The Full Federal Court dismissed the ATO's appeal and confirmed that land sold by the taxpayer remained on capital account, notwithstanding a large-scale, staged subdivision carried out under a development agreement. The Court held the sales were a mere realisation of a long-held capital asset, not the carrying on of a business or a profit-making scheme. **Why it matters?** The decision reinforces that scale alone is not determinative. Even extensive subdivision and development works will not convert land to trading stock where the landowner remains largely passive, does not fund or control development, and does not assume commercial risk.	Page 8
Item 2.2 SEPL	**What happened?** The Full Federal Court held that luxury vehicles provided to directors of a corporate trustee were not subject to FBT because the directors were not employees, and the benefits arose from their status as beneficiaries/controllers, not from employment. Section 137 of the FBTAA was confirmed to be a limited safeguarding rule, not a deeming provision that automatically creates employment. **Why it matters?** The decision draws a critical boundary between employment remuneration and benefits flowing from ownership or beneficiary status, particularly in private group and trust structures.	Page 10
Item 2.4 Thynne v Jevny	**What happened?** The NSW Court of Appeal confirmed that trust distributions made to an individual and a company were unauthorised because they were never validly added as beneficiaries (the power required exercise by deed). However, the trustee was relieved from liability under section 85 of the *Trustee Act 1925* (NSW) and no order for account was made. Limitation defences also applied. **Why it matters?** The case underscores the strictness with which courts enforce formal requirements for exercising trust powers and the need ensure distributions are made persons falling within the class of beneficiaries.	Page 11
Items 4.2 & 5.1–5.4	**What happened?** Payday Super Regulations were made on 23 February 2026, supported by four draft ATO Law Companion Rulings. Together, they	Pages 35, 42, 44, 46 & 48

Payday Super – Regulations and ATO guidance	implement a shift from quarterly SG obligations to daily assessment based on “qualifying earnings” (QE days), with new rules for eligible contributions, administrative uplift, and transitional arrangements from 1 July 2026. **Why it matters?** The reforms fundamentally change cash-flow, payroll systems and compliance risk for employers, with penalties accruing on a day-by-day basis rather than quarterly.	
Items 7.1 Part IVA and property development arrangements	**What happened?** The ATO released draft PCG 2026/D2 outlining its compliance approach to Part IVA risks in property development arrangements, particularly where landowners and developers (often related parties) fragment activities to defer income recognition or generate tax losses. **Why it matters?** The PCG signals heightened scrutiny of related-party development structures, especially where developers deduct costs progressively but defer income until completion and the landowner avoids trading stock treatment.	Pages 73

2. Detailed case summaries

2.1 Morton – capital vs revenue

Facts

In the mid-1950s, Colin Morton acquired approximately 344 acres of land in Tarneit, Victoria, later combined with a 40-acre parcel owned by his wife. The land, known as the Morton Farm, was used for farming sheep and later cattle.

In 1973, Colin subdivided a 10-acre parcel known as “Dave’s Block”, which was purchased by his son, David, in 1980 for $13,500. Following Colin’s death in 1996, David continued farming the land until 2015, primarily growing cereal crops.

In 2008, proposed expansion of Melbourne’s Urban Growth Boundary led David to anticipate rezoning. In 2010, Dave’s Block was rezoned residential, increasing holding costs and reducing farming viability.

On 23 November 2012, David entered into a development agreement granting Tarneit East Development Project Pty Ltd exclusive rights to develop Dave’s Block. The agreement included a limited power of attorney enabling the developer to carry out owner-only actions, while expressly denying any broader agency or joint venture. Similar agreements were executed for other parts of the Morton Farm held on trust. Between 2014 and 2017, variations adjusted the fee structure, funding arrangements and control over englobo sales.

Planning approval was granted in November 2014, with a planning permit issued in January 2016. Construction commenced in stages from 2016, with bulk earthworks beginning in 2017 and works completed in late 2018. Dave’s Block was subdivided into 48 residential lots and two commercial lots as part of a much larger multi-stage development across the Morton Farm.

Lots were sold between 2019 and 2021.

David lodged his tax returns on the basis that the lots were on capital account and were pre-CGT assets.

In August 2022, the ATO issued amended assessments treating the proceeds as assessable income. David’s objections were disallowed and he appealed to the Federal Court.

The ATO contended that David was carrying on a business of property development or a profit-making scheme, relying on the scale of the project, the 2012 development agreement and David’s ongoing involvement. Alternatively, the land was said to have become trading stock.

David argued that the sales constituted a mere realisation of a long-held capital asset acquired for farming purposes, invoking the pre-CGT asset exemption. He emphasised his passive role, lack of financial risk, and the developer’s control under the agreement. In the alternative, he submitted that any trading stock treatment could only arise at a later stage once subdivision or development approvals occurred.

At first instance, the Federal Court held that the lots were on capital account. The Court applied established principles distinguishing a mere realisation of a capital asset from income derived from business or profit-making activity, drawing on authorities such as *Californian Copper Syndicate (Ltd and Reduced) v Harris* (1904) 5 TC 159, *Scottish Australian Mining Co Ltd v Federal Commissioner of Taxation* (1950) 81 CLR 188, *Statham v Federal Commissioner of Taxation* (1988) 20 ATR 228, *Casimaty v Federal Commissioner of Taxation* (1997) 37 ATR 358 and *Federal Commissioner of Taxation v Williams* (1972) 127 CLR 226. Those cases emphasise that substantial subdivision or development activity does not, of itself, convert a capital asset into trading stock where the landowner remains largely passive and does not assume commercial risk.

The Federal Court, at first instance, found that David acquired and held Dave's Block for farming purposes. The subsequent subdivision followed rezoning and declining farming viability, rather than the commencement of any land-dealing business. David's involvement in the development process was limited. He did not fund the project, did not bear development risk, and delegated operational matters to an independent developer. The Court considered that seeking to maximise sale proceeds was viewed as consistent with prudent asset management.

The Federal Court considered that the development agreement was significant. It confirmed that the developer acted independently, that no partnership or joint venture existed, and that David's interest was confined to land ownership. The scale of the overall project was not regarded as determinative.

The ATO appealed to the Full Court of the Federal Court. There was no dispute on appeal that the Full Court was required to undertake a real review, or independent assessment, of the evidence to determine whether the primary judge had erred.

Issue

Was the gain made on the sale of subdivided lots assessable income under section 6-5 of the ITAA 1997?

Decision

The primary issue before the Full Court was whether the land had been committed to a business or profit-making undertaking, or whether the sales amounted to no more than the realisation of a capital asset to best advantage.

The Full Court reaffirmed that whether a taxpayer carries on a business, or embarks on a profit-making undertaking, is a question of fact and degree, to be determined by reference to all the circumstances. Relevant considerations include the taxpayer's intention at acquisition, the purpose for which the land was held, the level of involvement in development activities, the assumption of commercial risk, the presence or absence of repetition, and whether the taxpayer's activities exhibit the characteristics of a business.

It was accepted that the development agreement entered into by David involved a commercial transaction, that he expected the land to increase in value as a result of subdivision, and that substantial works were undertaken to convert the land to residential use. It was also accepted that the developer undertook extensive development activities pursuant to the agreement. However, the Full Court rejected the ATO's submission that these matters, either individually or collectively, established that David had committed the land to a business or profit-making scheme.

The Full Court found that David acquired Dave's Block for farming purposes and used it for that purpose for many years. The decision to subdivide followed rezoning, increased holding costs, and the declining commercial viability of farming, rather than an intention formed at acquisition to profit from development. David did not fund the development, did not borrow, did not assume development risk, and did not actively participate in the carrying out of the works. David's role was largely passive, and the development was undertaken by an independent developer acting in its own commercial interests.

The ATO's reliance on agency principles was not accepted. While the developer was appointed as David's agent for limited purposes, including the execution of documents necessary to give effect to the development agreement, the Full Court held that the existence of an agency relationship for those purposes did not mean that the developer's business activities should be attributed to David. The relevant inquiry was not whether the developer acted "on behalf of" David in a general sense, but whether, in substance, David himself was carrying on a business or profit-making scheme.

The Full Court also rejected a contention by the ATO that the scale of the development was determinative. The magnitude of the subdivision was explained by the size of the land and prevailing market conditions, and was

not sufficient, without more, to convert a capital realisation into income. While the absence of repetition was noted, it was treated as largely neutral rather than decisive.

Having regard to the totality of the facts, the Full Court concluded that the subdivision and sale of Dave's Block constituted the realisation of a capital asset and not the carrying on of a business or a profit-making undertaking.

COMMENT – the decision reinforces that even large-scale, staged subdivisions involving extensive works may not, without more, convert a long-held asset into trading stock or a profit-making scheme. Courts continue to prioritise intention at acquisition, the purpose for which land was held, and whether the landowner assumed development risk, rather than the magnitude of the development itself.

TIP – development agreements are pivotal evidence in supporting a "mere realisation" argument. Careless drafting or incremental concessions in variations may materially alter the characterisation.

TRAP – while *Morton* confirms that engaging a developer does not of itself convert a capital asset into trading stock, the position is significantly more vulnerable where the developer is a related party. In those cases, the ATO may look past contractual labels and examine whether control, decision-making or risk has in substance been retained within the landowning group, increasing the risk that development activities are attributed to the landowner rather than characterised as a mere realisation.

TRAP – while *Morton* confirms that large-scale subdivision does not of itself convert a long-held capital asset into trading stock, the converse is equally important: a small or modest subdivision carried out by the owner personally may still amount to a profit-making undertaking. Scale is not determinative. Where the landowner undertakes planning, engages consultants, funds works, manages the subdivision process or otherwise assumes development risk, even a limited number of lots can point to a profit-making scheme.

Citation *Commissioner of Taxation v Morton* [2026] FCAFC 31 (O'Callaghan, Derrington and McEvoy JJ, Melbourne)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCAFC/2026/31.html

2.2 SEPL – FBT on use of vehicle by trustee directors

Facts

SEPL Pty Ltd was the corporate trustee of the SFT Trust, established in 1987. The trust operated a large national convenience retail business, including petrol stations, fast-food outlets, and tobacco and gift stores, employing between 3,000 and 4,000 staff across extensive operations.

SEPL's directors were three brothers. The trust was established by their parents and permitted distributions to a wide class of beneficiaries, including family members and associated entities. Following the father's death in 2009 and the mother's retirement in 2014, the brothers became the sole directors and shareholders of SEPL and, together with their mother, remained eligible beneficiaries.

Under the trust deed, the trustee was authorised to permit beneficiaries to use trust property, including chattels. SEPL acted as the principal operating entity within the group, employing most staff, providing shared services, and receiving profits from other operating companies.

From 2016 to 2020, the brothers served as executive directors, holding titles such as CEO, Managing Director and Executive Director. They were actively involved in day-to-day operations, working extensive hours and exercising collective and individual oversight of the business.

Both the trust deed and corporate constitution authorised the employment and remuneration of directors, including remuneration in non-salary forms. While no formal remuneration resolutions were made, these instruments contemplated compensation linked to business operations.

The brothers were not paid salaries. Instead, they benefited via distributions to family trusts and exclusive access to over 40 luxury vehicles owned by SEPL, used for personal and business purposes. Vehicle expenses were debited to their mother's loan account and later offset through distributions grossed-up for tax.

Between 2016 and 2018, SEPL made deductible superannuation contributions for each brother. From 2019, contributions were treated as personal contributions.

The ATO included the taxable value of the private use of the vehicles in amended FBT assessments, asserting that the brothers were employees for the purposes of the *Fringe Benefits Tax Assessment Act 1986* (Cth) (**FBTAA**) and that the vehicle use constituted a benefit provided in respect of employment.

The ATO's position involved a consideration of various definitions contained in section 136(1) of the FBTAA are as follows:

> *"current employee" means a person who receives, or is entitled to receive, salary or wages.*
>
> *…*
>
> *"employee" means:*
>
> *(a) a current employee;*
>
> *(b) a future employee; or*
>
> *(c) a former employee.*
>
> *…*
>
> *"employment", in relation to a person, means the holding of any office or appointment, the performance of any functions or duties, the engaging in of any work, or the doing of any acts or things that results, will result or has resulted in the person being treated as an employee.*
>
> *…*
>
> *"fringe benefit", in relation to an employee, in relation to the employer of the employee ... means a benefit ... provided to the employee ... by the employer ... in respect of the employment of the employee ...*
>
> *…*
>
> *"salary or wages" means:*
>
> *(a) a payment from which an amount must be withheld (even if the amount is not withheld) under a provision in Schedule 1 to the Taxation Administration Act 1953 listed in the table, to the extent that the payment is assessable income; and*

The relevant table items in Schedule 1 to the TAA 1953 are as follows:

Withholding payments covered		
Item	***Provision***	***Subject matter***

1	*Section 12-35*	*Payment to employee*
2	*Section 12-40*	*Payment to company director*
3	*Section 12-45*	*Payment to office holder*

Section 137 of the FBTAA then provides as follows:

137 Salary or wages

(1) For the purpose only of ascertaining whether a person is an employee or an employer within the meaning of this Act, where:

(a) a benefit is provided by a person (in this subsection referred to as the first person) to, or to an associate of, another person (in this subsection referred to as the second person);

(b) but for this subsection, the benefit would not be regarded as having been provided in respect of the employment of the second person; and

(c) either of the following conditions is satisfied:

(i) if the benefit were provided by the first person by way of a cash payment to the second person, the payment would constitute salary or wages paid by the first person to the second person;

(ii) ...

a definition in subsection 136(1) applies as if the benefit were salary or wages paid to the second person by:

(d) in a case to which subparagraph (c)(i) applies—the first person;

(e) ...

On 9 March 2022, the ATO disallowed SEPL's objection to amended FBT assessments, maintaining that the relevant benefits were provided to employees. SEPL applied to the ART for review, arguing that the directors managed the business as directors or as owners and trust beneficiaries, not as employees. Alternatively, SEPL submitted that any benefits were not provided in respect of employment but were accessed in their capacity as directors or beneficiaries.

At hearing, there was limited evidence of formal decisions authorising the provision of vehicles to the brothers as beneficiaries. The private use of vehicles was not treated as distributions to the brothers, with vehicle benefits instead debited to their mother's beneficiary account.

The ART found that the absence of employment contracts, lack of control, and the directors' position at the apex of the business pointed away from an employment relationship. The directors behaved as owners with substantial autonomy. Even if an employment relationship existed, the ART concluded that the vehicles were accessed as beneficiaries, not in respect of employment.

Both before the ART and the Federal Court, the ATO disavowed reliance on section 12-40 of Schedule 1 of the TAA but, instead, relied solely on section 12-35 of Schedule 1 of the TAA.

The Federal Court, at first instance, held that the ART erred in concluding that the directors were not employees for the FBTAA, noting that this did not depend on whether they were employees at common law. Instead, the Federal Court, at first instance. found that section 137 of the FBTAA deemed them to be employees, given that the directors had exclusive and personal use of high-value motor vehicles provided by the company. The Federal Court considered that the term "employment" 'necessarily encompasses directors of a company who hold an office, regardless of the fact that the company acts as trustee'. The Court noted that,

had the same value been provided to them as a cash allowance as was provided through the use of the cars, it would have fallen within the withholding obligations under sections 12-35 or 12-40 of Schedule 1 to the TAA.

In relation to whether there was a sufficient connection between the provision of the benefits, the ART had found that the directors accessed the vehicles as a reflection of their status as beneficiaries and not as compensation for work performed. It relied on *J & G Knowles and Associates Pty Ltd v Commissioner of Taxation* [2000] FCA 196 to suggest that the provision of benefits was driven by personal belief in entitlement rather than any link to employment. The Federal Court rejected the ART's focus on the directors' subjective belief of entitlement. The test is objective and requires a sufficient or material connection between the benefit and employment. The brothers were actively involved in managing the business, held executive roles under a formal delegation framework, and did not receive the vehicle benefits as trust distributions. Instead, the structure of the arrangements demonstrated a clear connection between the benefits and the performance of their functions.

The Federal Court concluded that the provision of vehicles arose "by reason of" or "in relation to" employment within the meaning of section 136. The absence of formal resolutions was not determinative.

SEPL appealed to the Full Court of the Federal Court.

Issues

1. Were the directors' "employees" of SEPL for the purposes of the FBTAA?
2. If so, were the cars a non-cash benefit paid to the directors "in respect of" their employment?

Decision

The Full Court noted that the question for the primary judge in relation to both issues was not whether a different conclusion was preferable, but whether the ART's conclusion was not open as a matter of law.

Issue 1: Whether the directors were employees

The Full Court considered that the primary judge in Federal Court has misapprehended the FBTAA in four ways.

"Employment" is not the operative concept

The primary judge erred by treating the existence of "employment" as an anterior or independent inquiry. The definition of "employment" does not expand the meaning of "employee"; it merely describes the state of affairs that exists if a person is an "employee". The correct inquiry is whether a person is an "employee" within the meaning of the legislation.

Proper operation of section 137

Section 137 of the FBTAA is not a free-standing deeming provision that converts all non-cash benefits received by persons performing work into salary or wages. Its function is limited. It operates as a safeguarding mechanism where remuneration is provided solely in non-cash form. It does not itself deem the existence of an employment relationship.

The primary judge erred by concluding that section 137(1)(c) of the FBTAA was satisfied without explaining why a hypothetical cash payment would have been made to the brothers "as employees". That conclusion was inconsistent with the ART findings that any such payment would have been made to the brothers in their capacity as proprietors, controllers, or beneficiaries, rather than as employees.

The ART correctly approached section 137 on the basis that it did not supply the meaning of “employee” and that the hypothetical cash payment test depended on whether such a payment would have been made “as an employee”. On the facts found, that condition was not met.

Ordinary meaning of “employee”

The word “employee” in section 12-35 bears its ordinary, common law meaning. That meaning is engaged through the statute and cannot be disregarded. The ART correctly applied the High Court’s guidance in *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* [2022] HCA 1 and *ZG Operations Australia Pty Ltd v Jamsek* [2022] HCA 2 when determining whether the brothers were employees within the meaning of the FBTAA.

The primary judge erred in concluding that common law concepts had no role to play. Although the FBTAA extends the scope of who may be an employee in certain cases, the application of section 12-35 required an assessment of whether a hypothetical cash payment would have been made to the brothers “as employees” in the ordinary sense.

Reliance on section 12-40

The primary judge also erred in relying on section 12-40 of Schedule 1 of the TAA. That provision was not relied upon by the ATO in the objection decision, was not before the ART, and was expressly disavowed in the Federal Court at first instance.

In any event, reliance on section 12-40 would have raised unresolved issues as to entity capacity, given SEPL’s dual role as trustee and body corporate. The Full Court noted that, for FBT purposes the definition of “entity” in section 136(1) of the FBTAA adopts section 960-100 of the ITAA 1997, which treats a company acting as trustee as two separate entities: one in its capacity as a body corporate, and another in its capacity as trustee. Importantly, section 960-100(4) provides that where a provision refers to an entity of a particular kind, it applies only to the entity acting in that specific capacity, and not in any other capacity. The Full Court did not consider it necessary to resolve this question given the manner in which the ATO had conducted the litigation.

The Full Court concluded that it was open to the ART, on its findings of fact, to conclude that the brothers were not employees of SEPL for the purposes of the FBTAA.

Issue 2: "In respect of employment"

Given the findings on Issue 1, it was not necessary for the Full Court to consider Issue 2 but it considered it preferable to address it.

The Full Court noted that the definition of fringe benefit requires that the benefit be provided "in respect of the employment of the employee'".

The Full Court held that the definition of “in respect of employment” is broad but not determinative by mere causation. While employment may be one contributing circumstance to the provision of a benefit, the statutory test requires a sufficient or material connection having regard to the object and structure of the FBT regime: *J & G Knowles & Associates v Commissioner of Taxation* [2000] FCA 196.

That object is to ensure that all forms of employee remuneration bear an appropriate tax burden. The inquiry therefore focuses on whether the benefit is, in substance, part of the employee’s remuneration package, or otherwise a product or incident of the employment relationship.

Section 148(1) of the FBTAA confirms that a benefit may be provided for multiple reasons, including non-employment reasons, without being excluded from the regime. However, as *J & G Knowles* makes clear, this does not dispense with the need to identify a material employment connection.

The capacity in which a benefit is received is relevant. Where benefits arise because of ownership or beneficiary status, the employment connection may be insufficiently material. By contrast, where benefits arise as an agreed incident of holding office, they may properly be characterised as employment-related.

Here, as in *J & G Knowles*, the ART was required to choose between competing explanations. The ATO contended that the benefits arose from the brothers' operational and managerial roles. SEPL contended, and the ART found, that the benefits arose from their status as beneficiaries, proprietors and controlling family members, and that any employment connection was not sufficiently material.

The ART approached the task correctly by asking whether the employment relationship explained the benefit in any sufficient or material way. It considered the trust funding mechanism, the absence of evidence that the vehicles were provided in lieu of remuneration, the brothers' beneficiary and proprietorial status, and the consistency of the arrangements with longstanding family practice. On that evidence, it was open to conclude that the benefits arose from the trust and family relationship rather than from employment.

The appeal was allowed.

TIP – the lack of employment contracts, remuneration resolutions or formal benefit policies does not eliminate FBT risk. While informality may support an argument that benefits arise from ownership or control rather than employment, it also leaves arrangements vulnerable if the factual matrix points to remuneration for services.

COMMENT – a further point highlighted by *SEPL* is the potential significance of section 12-40 of Schedule 1 to the TAA, which requires PAYG withholding from payments made to a director of a company. In *SEPL* the Full Court considered there was an unresolved question as to whether section 12-40 can cause a director of a corporate trustee to be an employee of the company acting in its capacity as trustee. The Full Court did not consider it necessary to resolve this question as the ATO had repeatedly disavowed reliance on section 12-40.

COMMENT – the Full Court's narrower construction of section 137 of the FBTAA is consistent with the ATO's views as set out in *Miscellaneous Taxation Ruling* MT 2019 and *Miscellaneous Taxation Ruling* MT 2021. Both of these rulings are non-binding as they pre-date the introduction of the binding public ruling system. *SEPL* appears to be another case where the ATO is conducting litigation in a manner contrary to long standing non-binding public positions: see *XLZH and Commissioner of Taxation (Taxation)* [2025] ARTA 2154. When the ATO adopts such an approach, it is unclear if it is doing so because of a change in its public position or merely to be successful in the particular case.

TRAP – avoiding FBT by arguing a benefit is not employment-related may simply shift the exposure with the benefit being assessable for the recipient (such as under Division 7A) and non-deductible for the payer. It can also result in the payer being denied input tax credits. This may produce a worse after-tax outcome than FBT.

Citation *SEPL Pty Ltd as trustee of the SFT Trust v Commissioner of Taxation* [2026] FCAFC 36 (Perry, O'Callaghan and Thawley JJ, Adelaide)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCAFC/2026/36.html

2.3 Living Works Education – employee vs contractor for payroll tax

Facts

Living Works Education (Australia) Pty Ltd provides suicide intervention training to trainers.

Under its "train the trainer" model, Living Works trained individuals through its LivingWorks Training for Trainers program, accredited them as registered trainers, and supplied them with course materials to deliver workshops to end users. Once accredited, trainers could be engaged under various contractual arrangements to deliver

workshops either as part of Living Works' direct client engagements or through opportunities they generated themselves.

The key terms of the contracts with the trainers included the following:

1. qualifications and status: the trainer is represented as having the requisite skills and experience and being registered as a LivingWorks trainer;
2. nature of engagement: the trainer provides services on a non-exclusive basis for a fixed term, subject to LivingWorks' operational needs. Services include specified workshops such as safeTALK and ASIST;
3. payment structure: trainers are paid a fixed fee per workshop plus expenses as set out in the Schedule, described as consideration for proper provision of the services and said to reflect the trainer's experience;
4. invoicing and tax: trainers must issue tax invoices quoting their ABN and including GST where applicable;
5. Policy compliance: trainers must comply with LivingWorks' policies, including those relating to bullying and harassment;
6. control over content: trainers are required to use LivingWorks' prescribed training and workshop materials;
7. provision of equipment: trainers supply and use their own presentation equipment, such as laptops and audiovisual tools;
8. reporting obligations: trainers must liaise with and report to LivingWorks, including providing participant details and sign-in sheets upon request;
9. insurance: trainers are responsible for maintaining legally required and LivingWorks-mandated insurance and providing evidence of cover;
10. expenses: certain travel and accommodation costs are covered by LivingWorks;
11. relationship clause: the agreement expressly characterises the relationship as principal and independent contractor, not employment or partnership;
12. liability and indemnity: trainers indemnify LivingWorks for loss, damage, or injury arising from the trainer's negligent acts or omissions; and
13. assignment: the agreement cannot be assigned by the trainer.

Importantly, there was no clause specify the hours that each trainer was required to work or mandating them to work in any way.

To meet its contractual obligations to major clients such as NSW Health, Living Works arranged for accredited trainers to deliver workshops on its behalf, while also encouraging trainers to promote and generate their own workshops to help meet overall delivery targets. Over time, Living Works used different forms of agreements with trainers, including an earlier independent contractor agreement, a service agreement dated 17 May 2023, and a revised independent contractor agreement dated 1 January 2024.

On 30 September 2023, Revenue NSW determined that Living Works had a payroll tax liability in respect of payments made to trainers and issued payroll tax assessments for the financial years ending 30 June 2022, 30 June 2023 and 30 June 2024. The assessments were issued on the basis that the trainers were employees, or alternatively that the contractual arrangements constituted relevant contracts under the *Payroll Tax Act 2007* (NSW) (**PTA**).

On 29 November 2024, Living Works objected to the assessments. On 26 March 2025, the objections were disallowed.

On 23 May 2025, Living Works commenced proceedings in NCAT seeking review of the decision.

Under the PTA, payroll tax is imposed on taxable wages paid or payable by an employer. Taxable wages generally include wages, salary and other remuneration paid to employees, and can also extend to certain

payments made under contracts for services where the payments are attributable to labour. If a person is an employee at common law, payments to them are taxable wages without further analysis.

Even where a worker is not an employee, payments may still be treated as taxable wages if they arise under a “relevant contract”, unless a specific statutory exemption applies.

Revenue NSW argued that payroll tax applied because the trainers were effectively working as employees of Living Works. It said Living Works retained a right of control over the trainers by requiring them to be trained and accredited, prescribing the content and materials used in workshops, enforcing compliance with its policies, and reserving rights to attend and assess training sessions. Revenue NSW also relied on restrictions on subcontracting, delegation and assignment, arguing these showed Living Works controlled who performed the work and how it was carried out.

Alternatively, Revenue NSW argued that even if the trainers were not employees, the arrangements were still taxable as “relevant contracts” under the PTA.

Living Works argued that the trainers were not common law employees and that the agreements were excluded from the "relevant contracts" definition under section 32(1) of the Payroll Tax Act, on the basis that the trainers provided services for less than 90 days in a financial year in accordance with section 32(2)(b)(iii) of the Payroll Tax Act.

Issues

1. Are the trainers employees of Living Works at common law?
2. Alternatively, did the trainers provide their services under "relevant contracts" within the meaning of section 32 of the PTA?

Decision

Are the trainers employees of Living Works?

The NCAT considered a number of cases which looked at the common law meaning of "employee", including *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* [2022] HCA 1, which indicated that it was the terms of the contract, and the extent to which the contractual terms allowed the employer direction and control over a person, which determined whether or not the person was an employee.

The NCAT accepted that several contractual features were consistent with an employment relationship. These included Living Works requiring trainers to complete its accreditation process, mandating the use of prescribed course content and materials, requiring compliance with organisational policies, and reserving rights to attend and assess workshops. These factors demonstrated a level of control over what services were delivered and the standards to which they were delivered. However, the NCAT considered that control of this kind was equally capable of being explained by the need to protect intellectual property and ensure consistent delivery of accredited training, and was not determinative of employment.

Greater weight was given to features pointing away from employment. The NCAT examined the agreements and found that the following terms from the agreements showed that Living Works did not have direction and control over the trainers:

1. the trainers could refuse work. In this respect, the NCAT noted as follows:
   (a) although the agreements are for a fixed term, they do not specify the quantity or frequency of services to be provided during that period;

(b) there is no guaranteed minimum amount of work or benchmark level of services that LivingWorks must offer to any trainer; and
(c) the amount of work performed by each trainer is instead determined from time to time by agreement, indicating flexibility and limiting LivingWorks' control over the trainers' workload;

2. the trainers were required to hold their own insurance and indemnify Living Works;
3. fees were paid per workshop delivered, not based on hours worked;
4. Living Works controlled the content and methodology of training, however not how trainers delivered workshops;
5. the trainers could charge GST to Living Works; and
6. the trainers could subcontract.

Balancing these factors, the NCAT concluded that the trainers were not employees at common law. While there were elements of control, they were outweighed by the trainers' ability to refuse work, the allocation of commercial risk to trainers through insurance and indemnities, and the task-based fee structure.

Were the contracts with the trainers 'relevant contracts'

Living Works accepted that its agreements with trainers fell within the positive limbs of a 'relevant contract', as they involved the supply of services in the course of its business. The key issue was whether the contracts were excluded from being a relevant contract under the 90-day exemption in section 32(2)(b)(iii).

Living Works argued that the exemption applied because trainers individually did not provide services for more than 90 days in any financial year. However, the evidence showed that at least one contractor provided services for more than 90 days in certain years. The NCAT noted that the statutory test requires consideration not only of the length of service, but also whether the services were "similar services" to those provided by other contractors to the same business. On this point, the evidence was incomplete. Because Living Works bore the onus of proof, the NCAT was not satisfied that the conditions for the exemption were met in respect of all relevant payments.

As a result, while the NCAT found that the trainers were not employees, it did not finally determine the payroll tax liability under the relevant contract provisions. Instead, it remitted the assessments to Revenue NSW for reconsideration in accordance with its reasons, leaving open the possibility that some payments may still be taxable where the 90-day exemption cannot be established on proper evidence.

TRAP – *Living Works* reinforces that, if the intention is for a worker not to be an employee, the drafting of the contract must be undertaken with direct regard to the common law employee tests, not merely by labelling the arrangement as "independent contracting". Contracts that do not clearly address matters such as control, delegation, allocation of risk, remuneration structure and independence — or that are inconsistent with how the relationship operates in practice — can undermine the intended characterisation.

COMMENT - a notable procedural aspect of *Living Works* is the NCAT's decision to remit the matter to Revenue NSW on the "relevant contract" issue, rather than simply dismissing the application on the basis that the taxpayer had not discharged its onus of proof in relation to the 90-day exemption. At first glance, this may seem surprising, given that the taxpayer bears the onus and the NCAT found the evidentiary record incomplete. However, the approach is sensible. Remitting the matter avoided the artificial outcome of sustaining an assessment that may not reflect the proper operation of the relevant contract provisions. The approach ensures that the liability is ultimately determined on the correct basis.

Citation *Living Works Education (Australia) Pty Ltd v Chief Commissioner of State Revenue* [2026] NSWCATAD 80 (Senior Member MacIntyre, Sydney)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCATAD/2026/80.html

2.4 Stonier – joint ownership for land tax

Facts

On 2 December 2020, Lynda Stonier's husband passed away, at a time when Lynda and her husband jointly owned three properties as joint tenants, two located on Watson Street and Enerton Street in Newmarket, and a third at Belmore Terrace in Sunshine Beach.

On 3 November 2021, QRO issued a land tax assessment for the 2021 to 2022 financial year on the basis that Lynda and her late husband were co-owners, each holding a half interest in the relevant properties, resulting in an assessed land tax liability of $6,867.

On 20 December 2021, Lynda sold the Watson Street property and subsequently purchased a replacement property on Cook Street in Northgate, which later became her principal place of residence.

On 1 November 2022, QRO issued a further land tax assessment for the 2022 to 2023 financial year, again treating Lynda and her late husband as co-owners of the Enerton Street and Belmore Terrace properties, while assessing Lynda as the sole owner of the Cook Street property, with total land tax assessed at $8,932.

On 28 April 2023, QRO issued a reassessment for the 2021 to 22 financial year. It treated Lynda as the sole owner of the Enerton Street, Watson Street and Belmore Terrace properties, on the basis that ownership vested in her immediately on her husband's death. Although the Watson Street property was treated as exempt as her former home, the reassessment aggregated the full taxable value of the remaining properties in her name, rather than half interests. This resulted in a revised land tax liability of $17,480.

On 2 May 2023, QRO issued a further reassessment for the 2022 to 23 financial year, again treating Lynda as the sole owner of the Enerton Street, Belmore Terrace and Cook Street properties, with the Cook Street property treated as exempt as her home, increasing the assessed land tax liability to $20,890.

On 29 June 2023, Lynda lodged a formal objection to both reassessments under the *Taxation Administration Act 2001* (Qld), disputing the QRO's approach to ownership and the timing of when sole ownership was taken to arise.

On 9 October 2023, QRO disallowed Lynda's objection and confirmed the reassessments in full. Lynda applied to the QCAT to review the Commissioner's decision.

Lynda argued that she should not have been assessed as the sole owner of the properties for land tax purposes immediately on her husband's death. She said land tax should only have accrued once her sole ownership was formally registered with Titles Queensland, not from the date of death. She also relied on alleged advice that there was a two-year grace period to finalise joint assets, delays in information being passed between Titles Queensland and the revenue authority, and guidance on revenue websites. In addition, she argued that land tax should be treated consistently with capital gains tax rules for joint tenants on death, and that Commonwealth law should prevail if there was any inconsistency.

Issue

Did ownership of the jointly held properties vest immediately in Lynda on her husband's death by operation of the right of survivorship, making her solely liable for land tax from that point?

Decision

The QCAT explained that a defining feature of joint tenancy is the right of survivorship. At general law, when one joint tenant dies, their interest does not pass to their estate but is immediately extinguished and vests in the surviving joint tenant by operation of law. This occurs automatically on death and does not depend on any later administrative step, such as registering a change of title.

The QCAT rejected Lynda's argument that ownership only vested once her sole ownership was registered with Titles Queensland. It emphasised that registration is an administrative process that records ownership, rather than creating it in circumstances where survivorship applies. Because the husband's interest was extinguished on death, the properties never formed part of his deceased estate and there was no interim period of shared or estate ownership.

The QCAT also found that nothing in the Land Tax Act displaced this general law position. Provisions dealing with deceased estates were not engaged because the land never passed into the estate, and analogies drawn from capital gains tax or statements on revenue websites could not alter the legal effect of joint tenancy.

The QCAT therefore concluded that ownership of the jointly held properties vested immediately in Lynda Stonier on her husband's death by operation of the right of survivorship, making her solely liable for land tax from that point.

TIP – under joint tenancy, co-owners hold an undivided interest in the whole asset with a right of survivorship. On death, a joint tenant's interest automatically passes to the surviving joint tenant(s), outside the deceased's estate. Under tenancy in common, each owner holds a distinct fractional interest and no right of survivorship applies. Each interest can be dealt with separately and passes under the owner's will.

COMMENT – For CGT purposes, joint tenants are treated as each owning a separate CGT asset comprising an equal interest in the underlying property: section 108-7 of the ITAA 1997. Mere severance of a joint tenancy is not, of itself, a CGT event. Severance changes the form of ownership (to tenants in common) but does not necessarily involve a disposal of a beneficial interest. On death, section 128-50 applies: the deceased joint tenant is taken to have disposed of his or her interest immediately before death, but any capital gain or loss is disregarded. The surviving joint tenant does not acquire the deceased's interest at market value, unless that interest was in respect of a pre-CGT asset. Instead, the survivor inherits the deceased's cost base, even if the asset was the main residence of the deceased. This contrasts with assets passing to a beneficiary under section 128-15 of the ITAA 1997.

COMMENT – the relevant land tax taxing date is 31 December for NSW and Victoria, and 30 June for Queensland, Western Australia, South Australia, and Tasmania. Land tax in the ACT is assessed quarterly and the Northern Territory does not levy land tax.

Citation *Stonier v Commissioner of State Revenue* [2026] QCAT 155 (Member Munasinghe, Brisbane)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QCAT/2026/155.html

2.5 Thynne v Jevny – trust distributions to a non-beneficiary

Facts

Jim Thynne was born in 1944, the only child of Bernard and Leonne Thynne, cattle farmers on the mid-north coast of New South Wales. Jim became a solicitor and joined Allen, Allen and Hemsley in the mid-1970s, becoming a partner in 1979 and later serving as chairman of partners in 2005, with a long and highly distinguished legal career.

Jim was married three times. His first marriage ended without children; his second marriage to Catherine Sharp produced one son, Harry, born in 1983, before ending in divorce in 1991. Jim's third marriage was to Victoria, also a lawyer, whom he met at Allens and married in 1996. They had a son, Patrick, born later that year.

The Thynne Family Trust was settled in late 1970s as a discretionary family trust, principally to acquire and hold a cattle farming property at Elanora and to enable income and capital to be applied flexibly within the family. The original trust deed was lost, but in 1996 Jim executed a statutory declaration attaching a

reconstructed deed (**Recording Deed**), which the parties accept accurately reflected the Trust's terms, subject to a critical qualification concerning the existence of an Appointor.

Elanora Farming Pty Ltd was a company used in connection with the operation of the farming business conducted at the Elanora farming property owned by the Trust. The company was wholly owned and controlled by Victoria, who was its sole shareholder and director.

Under the Recording Deed, the Trust was fully discretionary as to income and capital. However, neither Victoria nor Elanora Farming was originally named as a beneficiary. They could only become beneficiaries if additional powers were exercised with the consent of the Appointor.

The Recording Deed defined the Appointor by reference to a schedule, but that schedule was left blank, giving rise to a central contention that no Appointor ever existed, and therefore that no valid power existed to amend the Trust or add new beneficiaries.

In 1997, shortly after Jim and Victoria married, Jim took steps intended to amend the Trust to add Victoria as a beneficiary. Jim created a three-page document (**Amending Document**). The document was not executed as a deed, was unsigned, and did not expressly state any intention to vary the trust. It comprised a copy of the power to add beneficiaries and an extracted definition of "Beneficiary" from another trust deed that included a spouse within the beneficiary class.

From at least the early 1990s onward, the trustee made annual distributions of net income to various persons, including Jim and later Victoria. The Trust did not operate a bank account; instead, distributions were recorded as loan book entries in favour of the relevant beneficiaries, with no actual cash paid. Trust accounts and tax returns show distributions of income across many years, although some years had no income or no distribution. From Jim's death, Victoria caused the trustee to make distributions to Elanora Farming until 2020.

Following Jim's death in June 2011, Victoria and Harry maintained a close and supportive relationship for many years. Harry frequently lived overseas but remained in regular contact with Victoria, visiting her in Australia and spending time with Patrick. Victoria provided Harry with significant financial and personal support, including funding travel, holidays and other assistance. In 2012, Harry obtained legal advice and executed a deed confirming that he would not challenge Jim's will, without impacting their relationship. However, tensions emerged in around 2020 to 2021 when financial issues arose between them.

Harry alleged that, because there was no valid Appointor and because a 1997 attempt by Jim to amend the Trust was ineffective, the distributions to Victoria and related entities were unauthorised and constituted breaches of trust. Harry eventually commenced proceedings in the Supreme Court of New South Wales.

At first instance, Hmelnitsky J held Jim was the Appointor of the Trust, despite not being named in the schedule in the Recording Deed. However, his Honour also held the Amending Document was ineffective to add Victoria or Elanora Farming as a valid beneficiary of the Trust. His Honour accepted that a deed is not always required to amend a deed, but drew a distinction between varying a trust deed as an instrument and validly exercising a trust power that must be by deed. In this case, the powers to amend the trust and to add beneficiaries were expressly conditioned on being exercised "by deed", and those powers governed substantive changes to the trust relationship, not merely the wording of the document. While a trust deed may sometimes be amended informally by agreement, a trust power that requires exercise by deed cannot be exercised in any other way. As the Amending Document was unsigned, informal, and not a deed, and did not clearly purport to exercise the relevant powers, it was incapable of effecting a valid addition of beneficiaries.

Justice Hmelnitsky held that although distributions to Victoria and Elanora Farming were unauthorised, the trustee was relieved from liability to repay the post-2011 distributions under section 85 of the *Trustee Act 1925* (NSW), which allows a court to relieve a trustee from personal liability for a breach of trust where the trustee has acted honestly and reasonably and ought fairly to be excused.

An order for account is an equitable court order requiring a trustee (or other fiduciary) to set out and justify all money received and paid in that role, so the court can determine whether any amount must be repaid to restore the trust to its proper financial position.

Justice Hmelnitsky also refused to make an order for account. His Honour noted that all distributions were already fully recorded in the Trust's loan accounts. An account would not reveal any new information or serve a practical corrective purpose. His Honour noted that an account is an equitable remedy granted at the Court's discretion. In the circumstances, ordering one would have been disproportionate and unnecessary. His Honour considered it appropriate for the trustee, having the benefit of the Court's declarations, to decide what (if any) corrective steps were required, rather than imposing a court-supervised accounting exercise.

Harry appealed the Court's decision to not order an account to the Court of Appeal.

Issue

Should an account be ordered?

Decision

The Court dismissed the appeal and upheld the primary judgment, concluding that no further relief was warranted.

Although unauthorised trust distributions had occurred, the Court held that the trustee was properly relieved from personal liability for post-2011 distributions under section 85 of the Trustee Act because those distributions were made honestly and reasonably. For distributions made before that time, the Court held that any entitlement to relief was time-barred under the *Limitation Act 1969* (NSW), with the effect that the appellant's causes of action were extinguished before proceedings commenced.

The Court also confirmed that an order for an account is not granted as of right and that it was open to the primary judge to decline to order one where the relevant financial dealings had already been fully examined in a contested hearing and an account would serve no practical utility.

In light of the statutory defences and the way the case had been conducted at trial, the Court held that declaratory relief sufficiently vindicated the appellant's right to due administration of the trust.

Accordingly, the appeal was dismissed with costs.

COMMENT – in *Thynne*, the Court did not simply invalidate the historical trust distributions outright, notwithstanding that Victoria and Elanora Farming were not beneficiaries. This likely reflects that the distributions were voidable rather than void: they were acts within the trustee's powers, but affected by deficiencies that could be addressed through relief (including statutory relief and limitation defences), rather than being treated as decisions that never occurred: see *Pitt v Holt* [2013] UKSC 26. This contrasts with cases involving a failure to comply with an essential procedural requirement for the exercise of a trust power — such as the requirement in *Thynne* that amendments or additions of beneficiaries be made by deed. Where such a condition is not satisfied, there is no valid exercise of power at all, meaning there is no operative decision to cure, ratify or relieve against. The question is, if a decision to distribute to a person who is not a beneficiary is merely voidable and not void, is the mistaken beneficiary still presently entitled to a share of the income of the trust estate as at the end of the income year under section 97 of the ITAA 1936? The ATO's approach is that they are not.

COMMENT – it is also worth noting that, under the trust deed for the Trust, Harry was an income default beneficiary. Harry did not assert that the effect of Victoria and Elanora Farming not being beneficiaries was that he became entitled to a share of the income each year. Presumably, this was because the trustee did exercise the power to distribute the income, even if manner of the exercise of the power was in breach of trust.

Citation *Thynne v Jevny Pty Ltd* [2026] NSWCA 40 (Leeming, Mitchelmore and Adamson JJA, Sydney)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCA/2026/40.html

3. Cases in brief

3.1 Boga v 15 Gelenburnie Rd – proving a loan

On 28 October 2019, Thomas entered into a loan agreement with 15 Glenburnie Rd Pty Ltd, with the company borrowing $1.9 million to purchase a property in Beveridge. The loan was guaranteed by Ahmad Sakr and secured by a mortgage over the Beveridge site. This arrangement included an earlier $150,000 advanced to Ahmad personally, which was rolled into the November 2019 loan.

The relationship between Thomas and Ahmad was longstanding and included various property developments, including projects at Wollert and Craigieburn. Anthill Construction, owned by Ahmad's wife and for which Ahmad was a shadow director, performed building work on these projects. Thomas also made various payments to Anthill Construction over time, including progress payments unrelated to the loan agreement.

The present dispute centred on three payments made by Thomas to Anthill Construction between December 2019 and July 2021, totalling $700,000. Thomas claimed these were additional loan advances covered by the loan agreement with 15 Glenburnie, whereas 15 Glenburnie argued they were simply funds paid towards construction costs on unrelated developments.

In September 2025 the Supreme Court rejected Thomas's claim that these payments were loans covered by the deed, finding insufficient evidence they were made to 15 Glenburnie or on the terms of the loan agreement. Thomas appealed in April 2026.

Thomas accepted that he needed to prove three elements for each disputed payment:

1. it was a loan;
2. the loan was made to 15 Glenburnie; and
3. it fell within the terms of the 2019 loan agreement.

The Court emphasised that Thomas bore the onus of proof and that shortcomings in the 15 Glenburnie's case could not remedy gaps in his own evidence.

The Court held that Thomas failed to establish any connection between the disputed payments and 15 Glenburnie. His evidence showed only that Ahmad personally requested funds, which Thomas then transferred to Anthill Construction. There was no evidence that 15 Glenburnie benefited from these payments or that they related to the Beveridge property, which was the sole subject of the loan agreement.

The Court also rejected the argument that a course of dealings or an estoppel by convention meant the payments should be treated as loan advances. The evidence instead showed inconsistent treatment of payments between the parties. Thomas himself acknowledged that several advances to Ahmad were personal loans and not covered by the deed, and he made progress payments to Anthill Construction for the Wollert project that were unrelated to any loan.

Compounding the difficulties for Thomas, the disputed sums were not recorded as loans, not demanded for years, and not pleaded until 2024.

The Court dismissed the appeal, confirming that none of the three payments constituted loans to 15 Glenburnie or fell under the loan agreement. Thomas was ordered to pay 15 Glenburnie's costs.

TRAP – this case highlights a key Division 7A risk. Where clients rely on a loan facility agreement, they must be able to show that every payment, credit or advance that could trigger Division 7A was intended to fall under that facility. If amounts are not contemporaneously supported as being a "loan" under the agreement, or if

dealings are inconsistent, the taxpayer may be unable to demonstrate that the facility agreement applies to the payment, credit or advance. The result is that the amounts paid out of the company will be deemed dividends rather than complying Division 7A loans.

Citation *Boga v 15 Glenburnie Rd Pty Ltd* [2026] NSWCA 23 (Bel CJ, Mitchelmore and Adamson JJA)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCA/2026/23.html

3.2 SoClean – employment agency and payroll tax

SoClean Pty Ltd operates a commercial cleaning business servicing shopping centres.

From 2019 to 2023, it provided day-to-day cleaning services through its employees and “specialised” cleaning services (such as high cleaning, deep hygiene cleaning and floor treatments) through subcontractors. Payments of approximately $30 million were made to subcontractors for the specialised services.

The Chief Commissioner assessed the subcontractor payments as taxable wages under the employment agency provisions of the *Payroll Tax Act 2007* (NSW) (**PTA**) and imposed penalty tax of 25% plus interest. SoClean appealed to the Supreme Court of New South Wales.

SoClean argued that its “specialised cleaning services” (such as high-level cleaning, deep hygiene cleaning and floor treatments) were not supplied under its client contracts and therefore did not fall within the employment agency provisions of the PTA. It contended that these services were either performed voluntarily to satisfy client expectations, supplied under separate informal arrangements, or arranged at SoClean’s own cost and discretion, and that liability could not arise unless individual workers performing the services could be identified and shown to be working regularly and under client control.

SoClean also argued that the employment agency provisions could not apply unless the Court first identified the individual workers who actually performed the cleaning work and established that those individuals worked with the requisite regularity, continuity, and degree of client control, akin to employees of the client. SoClean relied on section 39 for this contention, which provides that "*[f]or the purposes of this Act, the person who performs work for or in relation to which services are supplied to the client under an employment agency contract is taken to be an employee of the employment agent.*" SoClean contended that, because the evidence did not reveal who specifically performed the subcontracted work or how often particular individuals attended each site, the statutory preconditions had not been met and the assessments must fail.

The Court held that all specialised services were procured to enable SoClean to meet its contractual obligations to clients, even where costs were absorbed rather than separately invoiced. The services were therefore supplied “under” the client contracts. The Court rejected SoClean's characterisation, holding that the specialised services were procured in order to enable SoClean to meet its contractual obligations, were contemplated or priced into the cleaning contracts, and were performed with sufficient regularity and continuity at the clients’ premises to be properly regarded as supplied “in and for” the conduct of the clients’ businesses.

The Court held that the client contracts were employment agency contracts because they were arrangements under which SoClean procured labour to perform cleaning work in and for the conduct of its clients’ businesses,. The contracts imposed standards and requirements, and SoClean met those obligations by arranging for work to be performed at clients’ premises on a regular basis and subject to client expectations and control.

The Court firmly rejected that submission. Justice Hmelnitsky explained that section 39 of the PTA does not operate as a threshold condition to liability but as a deeming provision, which works in tandem with section 40 to cause payments to be taxable wages base once an employment agency contract is established. His Honour

emphasised that the onus lay on the taxpayer to prove the assessments were excessive, and the absence of evidence identifying the workers did not assist SoClean.

The Court found no basis to remit penalty tax or the market rate of interest. SoClean had not shown it took reasonable care, and the liability arose from arrangements within its control.

COMMENT – in *SoClean*, the taxpayer sought to distinguish between "specialised" cleaning services and its ordinary day-to-day cleaning activities, arguing that the specialised services fell outside the employment agency provisions because they were not supplied under its client contracts. That distinction failed on the facts. The Court found that the specialised cleaning was procured to enable SoClean to meet its contractual obligations to clients, was contemplated or priced into those arrangements, and was carried out with sufficient regularity to be regarded as supplied under the same contractual framework. Where specialised services are genuinely supplied under separate contracts, are optional, ad hoc or independently negotiated, and are not integral to meeting core client obligations, a distinction may still be available.

Citation *SoClean Pty Ltd v Chief Commissioner of State Revenue* [2026] NSWSC 161 (Hmelnitsky J. Sydney)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2026/161.html

3.3 Dattani – penalties and interest (NSW)

On 15 January 2020, Maya Dattani and her husband purchased a residential property in New South Wales. Maya was a Canadian citizen living in Australia on a bridging visa and had applied for permanent residency. On the same day, she informed her solicitor of her Canadian citizenship and provided full visa details, including VEVO records and her visa grant number. On 30 January 2020, the solicitor prepared an updated Purchaser Declaration recording

The solicitor advised on stamp duty and assessed duty under the *Duties Act 1997* (NSW), but did not assess surcharge purchaser duty. The assessed duty was paid and the transfer was registered in February 2020. In December 2024, Revenue NSW commenced an investigation.

On 26 February 2025, Revenue NSW issued a reassessment including surcharge purchaser duty, penalty tax at 20%, and interest. Maya objected on 12 March 2025, but the objection was disallowed on 26 May 2025. She paid the penalty tax in July 2025 but disputed liability for penalty tax and interest, bringing the matter to the NCAT.

Maya accepted that surcharge purchaser duty was payable but challenged the penalty tax and interest. She argued that she had made full disclosure to her solicitor, relied on professional advice, and had therefore taken reasonable care.

Under section 27(3)(a) of the *Taxation Administration Act 1996* (NSW) a failure by a "person acting on behalf of the taxpayer" to take reasonable care is treated in the same way as a failure by the taxpayer.

The NCAT accepted that Maya had made full and accurate disclosure to her solicitor before the transaction completed and that she was entitled to rely on her solicitor to identify and advise on surcharge purchaser duty. However, the legislation required consideration of whether reasonable care was taken by either the taxpayer or a person acting on their behalf.

The NCAT found that, while Maya herself took reasonable care, her solicitor did not. The solicitor had sufficient information to correctly identify her status but wrongly described her as an exempt permanent resident, leading to the failure to assess surcharge purchaser duty. Because the lack of reasonable care by the solicitor was attributable to Maya, there was no basis to remit penalty tax. The 20% penalty tax was upheld.

The NCAT upheld the assessment of market rate interest. It reiterated that market rate interest is compensatory in nature, designed to compensate the Chief Commissioner for the loss of use of funds.

The NCAT noted that such interest should rarely be remitted unless the Chief Commissioner has contributed to the delay or default, which was not the case here. No exceptional circumstances were identified, and the market rate interest remained payable.

However, the NCAT allowed for the remission of the premium rate interest. The NCAT observed that premium interest is penal rather than compensatory. It placed weight on the fact that Maya had made full disclosure, relied on professional advice, and that the error arose from her solicitor's incorrect classification of her residency status.

The NCAT also noted that the fact that nearly five years had elapsed before the reassessment was issued was entirely outside Maya's control. Premium rate interest was remitted in full.

COMMENT – the decision illustrates that a liability for penalty tax in NSW can arise based on the conduct of a "person acting on behalf of" the taxpayer, even if the taxpayer themselves exercised reasonable care. Even where a taxpayer makes full and accurate disclosure and personally takes reasonable care, errors by a solicitor acting in the transaction may still be attributed to the taxpayer, with adverse consequences for penalties. Reliance on professional advice does not, of itself, prevent attribution of the adviser's conduct.

TIP – had Maya's solicitor recommended that Maya obtain specialist duties advice, reliance on such advice would likely have constituted reasonable care. It is doubtful that the specialist duties advisor would have been regarded as acting on Maya's behalf in merely providing her with advice.

Citation *Dattani v Chief Commissioner of State Revenue* [2026] NSWCATAD 65 (Senior Member EA MacIntyre, Sydney)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCATAD/2026/65.html

3.4 Delma – land tax and primary production exemption (Vic)

Delma Investments Pty Ltd owned a 310-acre property at Woodstock, Victoria, which had been used for cattle farming by the Douglas family since the 1960s. The land was in an urban zone in greater Melbourne and was assessed for land tax for the 2020 and 2021 land tax years. David Douglas, a director and shareholder of Delma was an experienced farmer. David carried out most of the physical cattle farming work on the Woodstock land, spending about 24 hours per week there, plus limited offsite administrative work. He also operated a separate cattle breeding business on another property, and roughly divided his overall working time between the two enterprises.

The *Land Tax Act 2005* (Vic) provides an exemption from land tax for land used for primary production, but imposes particularly strict conditions where the land is located in an urban zone in greater Melbourne. Under section 67, the land must be used solely or primarily for a primary production business. Where the owner is a proprietary company, section 67B adds further requirements, including that the company's principal business is primary production and that at least one relevant person is "normally engaged in a substantially full-time capacity" in the primary production business carried out on the land.

Delma objected to the land tax assessments, claiming the primary production exemption applied. The Victorian SRO disallowed the objections, and the assessments were confirmed at first instance by the Supreme Court of Victoria.

The primary judge accepted that the land was used solely or primarily for the business of primary production and that Delma's principal business was that farming activity. However, the judge found that Delma failed to

satisfy the further requirement for urban land that at least one relevant person be "normally engaged in a substantially full-time capacity" in the primary production business carried out on the land.

Delma sought leave to appeal to the Court of Appeal of the Supreme Court of Victoria, arguing that the phrase "substantially full-time capacity" should be assessed by reference to the requirements of the particular farming business. Delma submitted that, because the Woodstock operation only required around 24 hours of work per week to function as a business, David's level of involvement should qualify as substantially full-time.

The Court of Appeal rejected that construction and refused leave to appeal. The Court held that the statutory text focuses on the personal level of engagement of the individual, not on the scale or needs of the business. The phrase "substantially full-time capacity" was described as an ordinary expression, to be understood by reference to common community standards of full-time work. It did not import any inquiry into whether the business itself required more or fewer hours.

On the facts, David spent only about half of his working time on Delma's farming business, with the remainder devoted to his separate enterprise. That level of engagement fell well below what could ordinarily be regarded as substantially full-time. The Court also rejected concerns that this approach would disadvantage small farmers, noting that Parliament had deliberately imposed stringent requirements for the exemption in urban areas.

COMMENT – *Delma* shows that tax law will often apply statutory tests strictly to the facts, even where the taxpayer's conduct is commercially sensible. Although the farming activity was genuine and efficiently managed, the legislation required a person to be engaged on a substantially full-time basis by ordinary standards. Even where arrangements are commercially rational, tax laws may still deny concessional treatment if the facts do not fit within the specific legislative requirements.

Citation *Delma Investments Pty Ltd v Commissioner of State Revenue* [2026] VSCA 53 (Niall CJ, Beach and Kennedy JJA, Melbourne)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSCA/2026/53.html

3.5 Appeal updates

Geocon

The High Court has refused the ATO's application for special leave against the decision of the Full Federal Court in *Geocon Land Holdings No. 5 Pty Ltd v Commissioner of Taxation* [2025] FCAFC 172 (see our February 2026 Tax Training Notes).

The case concerned the application of the refund of excess GST rules in Division 142 of the GST Act.

Citation *Commissioner of Taxation v Geocon Land Holdings No. 5 Pty Ltd as trustee for the Geocon Land Holdings No. 5 Unit Trust* [2026] HCADisp 47
w https://classic.austlii.edu.au/au/cases/cth/HCADisp/2026/47.html

Nova

The Chief Commissioner of State Revenue has been unsuccessful in an appeal against a decision of the NCAT, which held that Nova did not procure subcontractors under an employment agency contract for the purposes of the PTA. The case involved circumstances where the taxpayer procured security guards for end clients that were not security companies. The NCAT, at first instance, held that the security guards were not procured 'in and for' the conduct of the business of the end clients.

The NCAT Appeal Panel has upheld the original decision.

Citation *Chief Commissioner of State Revenue v Nova Security Group Pty Ltd* [2026] NSWCATAP 99 (Deputy President Seiden SC DCJ and Senior Member J Redfern PSM, Sydney)
w https://classic.austlii.edu.au/au/cases/nsw/NSWCATAP/2026/99.html

3.6 Other tax and super related cases from 10 Mar 2026 to 7 Apr 2026

Citation	Date	Headnote	Link
Deputy Commissioner of Taxation v Wynyard [2026] NSWSC 175	10 March 2026	TAXATION – PAYG withholding amounts – director penalty	https://classic.austlii.edu.au/au/cases/nsw/NSWSC/2026/175.html
DEPUTY COMMISSIONER OF TAXATION -v- SADLEIR [2026] WASC 73	10 March 2026	Practice and procedure - Summary judgment - Application for leave to apply for summary judgment pursuant to O 14 r 1 Rules of the Supreme Court 1971 (WA) - Turns on own facts	https://classic.austlii.edu.au/au/cases/wa/WASC/2026/73.html
Deputy Commissioner of Taxation v Oldfields Holdings Ltd, in the matter of Oldfields Holdings Ltd [2026] FCA 247	10 March 2026	CORPORATIONS – winding up in insolvency – review of decisions under s 35A of the Federal Court of Australia Act 1976 (Cth); and application for a stay of the winding up under s 482 of the Corporations Act 2001 (Cth), so as to allow time for a capital raising to occur in circumstances where it is common ground that the companies are insolvent – Court not satisfied that allowing further time for such a capital raising is more advantageous to creditors than winding up – winding up orders affirmed	https://classic.austlii.edu.au/au/cases/cth/FCA/2026/247.html
Verona Hill Holdings Pty Ltd ATF Roveto Family Trust v Chief Commissioner of State Revenue [2026] NSWCATAD 69	11 March 2026	TAXATION – Land tax – Surcharge land tax – Foreign person – Taxable event – Whether a foreign person is a potential beneficiary – Whether the trust deed is capable of being amended to allow a foreign person as a beneficiary. TRUST DEED – Effect of deed of ratification and amendment – Applicability of principles of equitable rectification – Effect of severance clause in trust deed	https://classic.austlii.edu.au/au/cases/nsw/NSWCATAD/2026/69.html
Verma and Commissioner of Taxation (Taxation) [2026] ARTA 343	13 March 2026	TAXATION – administrative penalties – whether applicant liable for administrative penalties on the basis of intentional disregard – where applicant gave his personal information to acquaintance and allowed acquaintance to lodge false and misleading Business Activity Statements resulting in fraudulent GST refunds – where applicant claims to be victim of scam – whether penalties imposed were excessive or incorrect – whether penalties should be wholly or partly remitted – objection decision affirmed	https://classic.austlii.edu.au/au/cases/cth/ARTA/2026/343.html

Citation	Date	Headnote	Link
Haines and Commissioner of Taxation (Taxation) [2026] ARTA 498	13 March 2026	TAXATION – onus of proof – deductions – whether expenses incurred by taxpayer – whether incurred in gaining or producing assessable income – scope of income producing activities – sole trader activities – director of company – whether incurred to soon – substantiation – apportionment – deferral of loses – business income – imposition of penalty – recklessness – remission of penalty – decision affirmed	https://classic.austlii.edu.au/au/cases/cth/ARTA/2026/498.html
Tempone v Chief Commissioner of State Revenue [2026] NSWCATAD 74	16 March 2026	ADMINISTRATIVE LAW - administrative review - assessment - objection - review by Civil and Administrative Tribunal STATE TAXES - surcharge duty - whether applicant a "foreign person" - statutory purpose - substantial compliance - hardship STATE TAXES - interest - market rate - premium rate - penalty tax - remission - discretion - reasonable care - "TAA 001: Remission of Interest Guidelines"	https://www.caselaw.nsw.gov.au/decision/19ce4f072146a4b208e1a6df
McEwan v Commissioner of Taxation [2026] QSC 42	16 March 2026	ESTOPPEL – ESTOPPEL BY JUDGMENT – ISSUE ESTOPPEL – GENERAL PRINCIPLES – where the applicant was prosecuted by the eighth, ninth and eleventh defendants (State defendants) for a charge of fraud under s 408C(1) of the Criminal Code (Qld) (State Charge) – where the prosecution of the State Charge was discontinued – where the bringing and continuing of the State Charge is the basis for the applicant's claims in this proceeding for malicious prosecution and misfeasance in public office against the State defendants – where the applicant was also prosecuted under ss 11.1 and 134.2(1) of the Criminal Code (Cth) (Commonwealth Charge) by the third defendant (CDPP) – where in ordering the permanent stay of the prosecution of Commonwealth Charge the Court made findings relating to prosecution of the State Charge (State Charge Findings) –	https://classic.austlii.edu.au/au/cases/qld/QSC/2026/42.html
Birdseye v Commissioner of Taxation [2026] FCA 339	17 March 2026	ADMINISTRATIVE LAW – powers of review of the Administrative Review Tribunal – whether the Tribunal has jurisdiction to review a decision of the Commissioner of Taxation to vote against a corporate restructure plan proposed under Pt 5.3B of the Corporations Act 2001 (Cth) and Pt 5.3B of the Corporations Regulations 2001 (Cth) – Tribunal concluding the	https://classic.austlii.edu.au/au/cases/cth/FCA/2026/339.html

Citation	Date	Headnote	Link
		decision was not reviewable – proposed appeal from Tribunal's decision having no reasonable prospects of success – application for an extension of time to appeal from Tribunal's decision refused	
Cathro v Chief Commissioner of State Revenue, in the matter of Cubic Interiors NSW Pty Ltd (in liquidation) [2026] FCA 275	17 March 2026	COSTS – plaintiffs' application for costs thrown away by reason of amendments to defences – plaintiffs' further application for costs of a separate question that was avoided by reason of those amendments – where amendment of defences, and consensual resolution of separate question application, gave effect to defendants' decision to admit allegations of insolvency – timing and availability of information to enable an assessment of insolvency allegations to be made – where all parties share responsibility for the way in which circumstances unfolded – whether it is appropriate to depart from the ordinary position that the amending party pays the costs thrown away by reason of their amendment – necessity to consider individual procedural steps in the context of the proceedings as a whole	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2026/275.html
Valuer General of New South Wales v Esperia Court Pty Ltd [2026] NSWCA 30	17 March 2026	Valuation of land – appeal – decision on question of law – whether identified – weight to be given to comparable sales – whether valuation principle – whether error in valuation principle an error on a question of law – calculation of median and mean of values – whether valuation principle – adequacy of reasons	https://classic.austlii.edu.au/au/cases/nsw/NSWCA/2026/30.html
Owusu v Commissioner of State Revenue [2026] QCAT 143	19 March 2026	ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNAL – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – review of a decision under the First Home Owner Grant and Other Home Owner Grants Act 2000 (Qld) – where an applicant had applied for a home builder grant under the Act	https://classic.austlii.edu.au/au/cases/qld/QCAT/2026/143.html
Deputy Commissioner of Taxation v Ho [2026] NSWSC 247	20 March 2026	CIVIL PROCEDURE — application for a stay of tax recovery proceedings — where Part IVC appeals and judicial review proceedings are pending in the Federal Court and Administrative Review Tribunal — whether the defendant taxpayer would suffer extreme personal hardship — clear legislative policy that Commissioner be free to pursue recovery proceedings despite outstanding appeals and reviews — whether granting the stay	https://classic.austlii.edu.au/au/cases/nsw/NSWSC/2026/247.html

Citation	Date	Headnote	Link
		would facilitate the just, quick and cheap resolution of the real issues in dispute	
Deputy Commissioner of Taxation v CCZ26 [2026] FCA 320	23 March 2026	PRACTICE AND PROCEDURE – application by the respondents for suppression order over documents filed in the proceedings and for identification of parties by pseudonym after access request by media – where freezing orders in the public domain but not yet reported upon – where the Commissioner issued assessments alleging serious misconduct by the first respondent – where the first respondent cannot challenge the validity of those assessments in these proceedings pursuant to cl 350-10 of Schedule 1 of the Tax Administration Act 1953 (Cth) – "open justice" principle not to be pursued inflexibly without regard to context or circumstances – interests of justice to be achieved by suppression orders and pseudonym orders regarding identity of parties and redaction of various documents on the court file – parties to provide consent orders reflecting reasons	https://classic.austlii.edu.au/au/cases/cth/FCA/2026/320.html
Liberty Constructions Pty Ltd ATF Tringas Family Trust v Valuer General of New South Wales [2026] NSWLEC 1148	24 March 2026	VALUATION APPEAL – land valuer – conciliation conference – agreement between the parties – orders	https://classic.austlii.edu.au/au/cases/nsw/NSWLEC/2026/1148.html
Ogden and Commissioner of Taxation (Practice and procedure) [2026] ARTA 479	24 March 2026	PRACTICE AND PROCEDURE – where proceedings commenced more than six years ago – non-compliance by applicant with directions – numerous attempts at alternative dispute resolution – where Tribunal was advised the dispute had been settled and hearing was vacated – where lengthy delays – where applicant requested further time to prepare calculations for further negotiations with respondent – inadequate explanations and justifications given for extensive delays – no indication of what needed to be done for applications to proceed to hearing – proceedings dismissed for failure of applicant within a reasonable time to both proceed with the applications and to comply with the Administrative Review Tribunal Act 1975 (Cth) and orders of the Tribunal	https://classic.austlii.edu.au/au/cases/cth/ARTA/2026/479.html
Partnership of Thi Hoa Huynh and Van Han	26 March 2026	TAXATION – BURDEN OF PROOF - where applicants failed to disclose cash sales – whether burden of proving sales	https://classic.austlii.edu.au/au/cases/cth/ARTA/2026/43

Citation	Date	Headnote	Link
Nguyen trading as Golden Dragon BBQ and Seafood House and Commissioner of Taxation (Taxation) [2026] ARTA 436		discharged by expenditure-based reconstruction or evidence regarding percentage of cash sales in the restaurant industry – whether witness possessed relevant expertise - penalties for shortfalls – assessment of base penalty amounts - penalty for possession of Electronic Sales Suppression Tool – whether remission of penalties appropriate – whether Tribunal has jurisdiction to review decision not to remit shortfall interest charge	6.html
Tabcorp Maxgaming Holdings Limited v Commissioner of Taxation [2026] FCAFC 30	26 March 2026	TAXATION – appeal from the decision of the primary judge dismissing an appeal under s 14ZZ of the Taxation Administration Act 1953 (Cth) – where appellant claimed deduction for a loss under Div 230 of the Income Tax Assessment Act 1997 (Cth) (ITAA 1997) – whether the appellant had a "financial arrangement" as defined in s 230-45 of the ITAA 1997	https://classic.austlii.edu.au/au/cases/cth/FCAFC/2026/30.html
Collie and Commissioner of Taxation (Taxation and business) [2026] ARTA 328	27 March 2026	TAXATION – INCOME TAX – whether the applicant obtained tax benefits under Part IVA of the Income Tax Assessment Act 1936 from the identified schemes – whether remittal of tax benefit question includes quantum of tax benefit – whether applicant may succeed based on a counterfactual which itself would be subject to a Part IVA determination – whether applicant has proved availability of carry forward tax losses – decision set aside – decision substituted allowing reductions in tax benefit amounts	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/328.html
Campbelltown Central 2 Pty Ltd v Chief Commissioner of State Revenue (No 2) [2026] NSWSC 305	31 March 2026	COSTS — Party/Party — General rule that costs follow the event — Application of the rule and discretion — Where plaintiffs in revenue proceedings successful in revoking assessments under challenge — Where issues raised in appeal statements abandoned at hearing — Whether successful plaintiffs should be ordered to pay unsuccessful defendant's costs of abandoned issues — Whether plaintiffs should otherwise be deprived of some of their costs by reason of the abandonment of issues — No issue of principle	https://classic.austlii.edu.au/au/cases/nsw/NSWSC/2026/305.html
Wu v Chief Commissioner of State Revenue [2026] NSWCATAD 88	1 April 2026	Administrative Review - Principal place of residence at Taxing date	https://classic.austlii.edu.au/au/cases/nsw/NSWCATAD/2026/88.html

Citation	Date	Headnote	Link
PAPPAS v COMMISSIONER FOR ACT REVENUE (Appeal) [2026] ACAT 17	2 April 2026	APPEAL – revenue – duty payable in relation to deceased estate – transfer of dutiable property to give effect to share of residual estate – conformity with trusts in a will – transfer of part of a residual estate not in conformity – decision correct but for different reasons	https://classic.austlii.edu.au/au/cases/act/ACAT/2026/17.html
R.C. Land Management Pty Ltd v Commissioner of State Revenue (No 2) [2026] VSC 179	2 April 2026	COSTS – Offer of compromise – Calderbank offer	https://classic.austlii.edu.au/au/cases/vic/VSC/2026/179.html

4. Legislation

4.1 Progress of legislation

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

4.2 Payday Super Regulations

On 23 February 2026, the *Treasury Laws Amendment (Payday Superannuation) Regulations 2026* were made. The Regulations support the implementation of the Payday Super reforms by making consequential and substantive amendments to a number of regulations administered under the superannuation, taxation and bankruptcy frameworks.

Qualifying earnings

The Regulations amend the *Superannuation Guarantee (Administration) Regulations 2018* to align core concepts with the new Payday Super architecture. In particular, references to 'ordinary time earnings' are replaced with 'qualifying earnings', and new definitions are inserted to support the calculation of superannuation guarantee liabilities on a QE day basis rather than quarterly.

The Regulations also repeal outdated concepts tied to the former quarterly system, including definitions of ordinary time earnings and final ordinary time earnings.

The Regulations prescribe additional exclusions from qualifying earnings for specific classes of employees and payments, as contemplated by the primary legislation. These include:

1. certain senior executives holding specified temporary visas;
2. part-time employees under 18; and
3. a range of payment types such as parental leave payments, certain community service and defence force payments, fringe benefits, and prescribed foreign or exempt employment arrangements.

These exclusions operate to refine the scope of daily superannuation guarantee obligations.

Reduction of administrative uplift amount

The Regulations prescribe the kinds of exceptional circumstances that may extend the time for making eligible contributions, including natural disasters and widespread technology outages.

The Regulations also provide a 20% reduction of the administrative uplift amount where no Commissioner-initiated assessment or estimate has been made within the preceding 24 months.

The administrative uplift amount is also reduced where employer lodges a valid voluntary disclosure statement within prescribed timeframes as follows:

Reductions in percentage if a voluntary disclosure statement is lodged for the QE day		
	Column 1	**Column 2**
Item	**Reduce the percentage by:**	**… if the lodgment day is:**
1	40%	before the end of the 30-day period starting on the QE day.
2	35%	during the period: (a) starting immediately after the end of the period mentioned in item 1; and (b) ending at the end of the 60-day period starting on the QE day.
3	30%	during the period: (a) starting immediately after the end of the period mentioned in item 2; and (b) ending at the end of the 120-day period starting on the QE day.
4	15%	after the end of the 120-day period starting on the QE day.

Defined benefit schemes

A revised framework is established for determining notional employer contribution rates for defined benefit members. The Regulations prescribe circumstances in which a member is taken to be a defined benefit member for superannuation guarantee purposes and update the methodology for calculating notional employer contribution rates and related earnings factors, substituting qualifying earnings as the relevant base.

w https://www.legislation.gov.au/F2026L00133/asmade/text

4.3 Div 296 exposure draft regulations

Exposure draft Regulations to support the implementation of the Division 296 tax introduced by the *Treasury Laws Amendment (Building a Stronger and Fairer Super System) Act 2026* have been introduced.

The Regulations amend the *Income Tax Assessment (1997 Act) Regulations 2021* to prescribe valuation methods, attribution rules and transitional arrangements required to calculate an individual's liability for Division 296 tax where their total superannuation balance (**TSB**) exceeds $3 million.

The Regulations are divided into four Schedules, each addressing a distinct element of the new regime.

Schedule 1 inserts Division 296 into the Principal Regulations, setting out detailed operational rules for determining an individual's relevant superannuation earnings for Division 296 tax purposes.

The Regulations declare certain interests to be Division 296 excluded interests, meaning earnings attributable to those interests are outside the scope of the tax. These include:

1. interests in constitutionally protected funds held by current or former State higher level office holders; and
2. certain judicial pensions payable under section 123 of the *Federal Circuit and Family Court of Australia Act 2021*.

Transitional capital gains adjustment

For the first four income years of operation (2026–27 to 2029–30), prescribed factors are introduced to partially discount capital gains included in Division 296 fund earnings for large APRA-regulated funds and pooled superannuation trusts.

The factors increase progressively from 0.2 to 0.8, reflecting the proportion of gains accruing after commencement.

Attribution of fund earnings

The Regulations prescribe how Division 296 fund earnings are to be attributed to members.

The general rule is that earnings are attributed on a fair and reasonable basis having regard to characteristics of the interest, period held, associated earnings, changes in value, investment options and consistency across members.

In the case of small superannuation funds, a mandatory formula-based attribution method applies, apportioned by average TSB values across fund members, generally certified by an actuary.

Certain interests do not use the general fund-earnings attribution method. Instead, earnings are calculated using a TSB-based formula. These include:

1. defined benefit interests not in the retirement phase;
2. non-account-based retirement income streams (such as lifetime pensions and annuities);
3. specified defence force and invalidity pensions; and
4. certain reversionary interests and notional interests arising from family law splits.

Schedule 1 prescribes:

1. a prescribed factor of 0.825 to moderate earnings calculated under the TSB-value formula;
2. detailed definitions of contributions total and withdrawals total, ensuring contributions, rollovers, benefit commencements, withdrawals and reductions are appropriately neutralised or recognised in earnings calculations; and
3. modifications where a member dies during the income year, ensuring earnings up to final distribution or commencement of a death benefit pension are included once, and allocated appropriately.

Definition and valuation of total superannuation balance

Schedule 2 inserts new rules into Subdivision 307-D to prescribe TSB values for interests where the default withdrawal benefit valuation is inappropriate.

Defined benefit interests not in retirement phase are valued using an approved family law valuation method, unless an alternative valuation method applies under an actuary's certificate, or for certain lower-value lump-sum-only interests, the vested benefits total.

Interests supporting non-account-based pensions are valued using family law methods or approved alternative methods, with account-based pensions continuing to rely on withdrawal benefit values.

Trustees may rely on actuarial certificates permitting an alternative valuation method where it produces values within 90% - 110% of family law values. Certificates apply for up to three years, may be withdrawn if no longer appropriate, and cannot retrospectively alter values already reported to the Commissioner.

Specific transitional provisions ensure:

1. continuity of TSB values across the move to the new valuation framework;
2. differences arising solely from valuation changes are treated as contributions or withdrawals for earnings calculations; and
3. special treatment for retirement phase interests measured by transfer balance account values immediately before commencement.

Family law payment splits

Where a defined benefit interest cannot be physically split under a family law order or agreement, the Regulations:

1. deem the non-member spouse to hold a notional superannuation interest; and
2. modify both spouses' TSB values annually to reflect the notional division.

Separate rules apply depending on whether the split is a base amount split, adjusted annually under family law rules, or a percentage split, either dynamic or "locked" depending on benefit design.

Once benefits commence, withdrawals and payments are adjusted so that:

1. amounts received by each spouse are reflected in their respective withdrawals totals; and
2. artificial increases or decreases in earnings due solely to notional splits are neutralised.

Earlier splits take precedence where multiple splits apply, and effective waiver notices operate to reduce the non-member spouse's TSB value to nil while preserving reductions to the member spouse's interest.

w https://consult.treasury.gov.au/c2026-750935

4.4 New trust reporting and removal of $2 DGR threshold

The *Treasury Laws Amendment (Delivering an Efficient and Trusted Tax System) Bill 2026* was introduced to implement a package of targeted tax law reforms aimed at improving system efficiency, integrity and fairness, and partially gives effect to measures announced in the 2024-25 MYEFO.

The key amendments are set out below.

Removing the $2 threshold for deductible gifts

Schedule 1 amends the ITAA 1997 to remove the longstanding $2 minimum threshold for tax-deductible gifts to DGRs. This change encourages low-value and micro-donations, including point-of-sale round-ups and online giving, and implements a recommendation from the Productivity Commission's philanthropy review.

The amendment applies retrospectively from 1 July 2024.

Modernising tax administration systems (trust TFN reporting)

Schedule 2 reforms the way trustees of closely held trusts report beneficiary TFNs. Instead of quarterly TFN reports, trustees will be required to report beneficiary TFNs at the time the trust tax return is lodged for income years in which the beneficiary is presently entitled to trust income. The changes improve ATO data matching and prefilling of beneficiary tax returns, reduce compliance costs, and support correct taxation outcomes.

The new reporting regime applies to trust income years starting on or after 1 July 2026, with transitional arrangements preserving existing quarterly reporting obligations for earlier periods.

Excluding tobacco and gambling R&D from the R&D Tax Incentive

Schedule 4 amends the ITAA 1997 to exclude R&D activities related to gambling and tobacco (including nicotine and vaping products) from eligibility for the R&D Tax Incentive for income years starting on or after 1 July 2025. An exception is retained for activities undertaken solely for harm minimisation, such as gambling harm reduction or nicotine cessation research.

The Bill has been referred to the Senate Economics Legislation Committee for inquiry, with a report expected by 30 April 2026.

w https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;page=0;query=BillId%3Ar7457%20

4.5 Superannuation advertising ban draft regulations

Treasury has released exposure draft regulations to support recent amendments banning the advertising of superannuation products during employee onboarding.

The draft rules explain that advertising during employee onboarding is generally banned, but allow limited advertising of a MySuper product in narrow circumstances. Where this exception applies, the advertisement must be clearly identifiable as advertising, must not be given greater visual or positional emphasis than the employee's existing stapled fund or the employer's default fund, and must be clearly separated from information about those funds. The advertiser must also provide standardised disclosures, including explaining what the employee's stapled fund is, disclosing any payments or benefits received for promoting the MySuper product, and directing the employee to independent tools such as myGov (to find and consolidate existing super accounts) and the YourSuper comparison tool (to compare fund performance, fees and features).

Consultation is open until 17 April 2026, with the regulations proposed to commence six months after passage of the enabling legislation.

w https://consult.treasury.gov.au/c2026-754407

4.6 Child sexual abuse victims to perpetrator superannuation access

The *Treasury Laws Amendment (The Survivors Law) Bill 2026* was introduced to establish a targeted framework allowing survivors of child sexual abuse to access limited superannuation contributions of perpetrators to satisfy unpaid, court-ordered compensation.

Survivors may request the ATO to disclose capped information about a perpetrator's super contributions (subject to strict criteria), then apply to the Federal Circuit and Family Court for an order authorising release. If granted, the ATO issues release authorities to superannuation providers and pays amounts directly to the survivor up to the lesser of disclosed contributions or the outstanding compensation.

Released amounts are not assessable income to the survivor and reduce the perpetrator's compensation debt.

The Bill will commence the day after Royal Assent, with requests to commence from 12 months after commencement, and applies to contributions made before or after commencement.

w https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;page=0;query=BillId%3Ar7453%20

4.7 Legislative instrument domestic top up tax

Treasury has made administrative amendments to the domestic minimum tax rules to align Australia's framework with updated OECD Pillar Two guidance and ensure the rules operate consistently with the GloBE model. These rules apply to large multinational enterprise groups with consolidated annual revenue of at least €750 million that fall within the OECD Pillar Two global minimum tax regime.

The amendments clarify how the domestic top-up tax applies to stateless and hybrid entities, how liabilities are allocated within Australian consolidated groups, and how covered taxes are attributed for calculation purposes. They also address interactions with the Qualified Domestic Minimum Top-up Tax safe harbour and confirm the foreign currency translation method for calculating top-up tax amounts in Australian dollars.

w https://www.legislation.gov.au/F2026L00371/asmade/text

4.8 PAYG withholding variation for payments to religious practitioners

The *Taxation Administration (Withholding Variation for Certain Payments to Religious Practitioners) Legislative Instrument 2026* updates PAYG withholding and reporting obligations for specific payments made to religious practitioners.

The instrument varies withholding to nil in defined circumstances and replacing a previous instrument.

The instrument provides nil withholding outcomes for three main categories of payments.

1. first, withholding is reduced to nil for certain work-related and travel allowances, including car, domestic travel and overseas travel allowances, where the allowance does not exceed amounts the Commissioner considers reasonable and the payer reasonably expects the practitioner to incur deductible expenses equal to the allowance;
2. second, withholding is varied to nil for limited locum services, where a religious practitioner temporarily relieves another practitioner for no more than two days in a quarter. Payments for locum services exceeding this threshold remain subject to standard PAYG withholding; and
3. third, the instrument applies a nil withholding variation for certain low-value payments for work or services, including chaplaincy and counselling services, where payments are made by entities that are not religious institutions and fall below specified thresholds. These thresholds increase from 1 July 2026, reflecting updated income levels.

Where nil withholding applies under the low-value payment rules, the instrument also provides an exemption from payment summaries, annual reporting and STP reporting.

w https://www.legislation.gov.au/F2026L00251/

4.9 AML/CTF legislative instruments

The *Anti-Money Laundering and Counter-Terrorism Financing Transitional Rules 2026* commenced on 31 March 2026 and set out transitional timing rules to support the staged implementation of the AML/CTF reforms introduced by the *AML/CTF Amendment Act 2024*, including the extension of the regime to Tranche 2 entities (such as accountants, lawyers, real estate professionals and trust and company service providers).

The Rules commenced on 31 March 2026, but are primarily concerned with managing the lead-in to substantive compliance from 1 July 2026.

When do Tranche 2 obligations start?

1 July 2026 is the critical commencement date for Tranche 2 entities.

From that date, Tranche 2 entities must:

1. have an AML/CTF program in place;
2. conduct customer due diligence;
3. comply with reporting and record-keeping obligations; and
4. appoint and notify AUSTRAC of an AML/CTF compliance officer.

The Transitional Rules do not delay the 1 July 2026 start date for Tranche 2 obligations. Instead, they ensure that other parts of the reformed regime commence in a coordinated and workable way alongside Tranche 2.

What the Transitional Rules do (and do not) do for Tranche 2

No ACIP transition relief

The three-year transition period allowing continued use of pre-reform applicable customer identification procedures (**ACIP**) does not apply to Tranche 2 entities, as they were not previously regulated. Tranche 2 entities must apply the new initial customer due diligence framework from day one (1 July 2026).

Staggered independent evaluation timing

Newly regulated entities, including Tranche 2 entities, are given extended and staggered timeframes for their first independent AML/CTF evaluation. In practice, the first deadline by which a business may be required to complete an independent evaluation will be July 2029. Further evaluation deadlines will be staggered at 6-month intervals from this date based on the whether the last two digits of the AUSTRAC enrolment number are even, odd, or a combination of odd and even. This avoids immediate evaluation obligations soon after commencement.

Existing reporting entities that have recently undertaken an independent review will also be granted an extended period for their first post-reform independent evaluation. This will be based on how recently they have undergone an independent review.

Compliance officer notification flexibility

Tranche 2 entities have a later deadline to notify AUSTRAC of their AML/CTF compliance officer. Notification is due by the later of 29 July 2026 or 14 days after enrolment, rather than immediately on commencement.

Reporting system deferrals

The deferral of the new international value transfer services (IVTS) reporting regime to 31 March 2029 is primarily relevant to existing financial sector reporters and some virtual asset service providers. For most Tranche 2 professional service providers, these reporting deferrals will have limited or no practical impact.

w https://www.legislation.gov.au/F2026L00393/asmade/text

5. Rulings

5.1 Payday Super – qualifying earnings

The ATO has released draft *Law Companion Ruling* LCR 2026/D1, which sets out the Commissioner's preliminary views on what amounts count as 'qualifying earnings' under the Payday Super reforms.

Qualifying earnings (**QE**) are used as the single earnings base for calculating daily superannuation guarantee obligations and largely build on existing Ordinary Times Earnings (**OTE**) principles, but with some important extensions and clarifications.

What is included?

A person's QE are exhaustively defined under subsection 10A(1) of the SGAA. They are amounts covered by one or more of paragraphs 10A(1)(a) to (h) as follows:

1. OTE;
2. all commissions payable to the person;
3. all payments for the performance of the person's duties as a member of the executive body (whether described as the board of directors or otherwise) of a body corporate;
4. all payments under a contract referred to in subsection 12(3) that are in respect of the person's labour under the contract;
5. all remuneration of the person as a member of the Parliament of the Commonwealth or a state or the Legislative Assembly of a territory;
6. all payments to the person for work referred to in section 12(8), which includes entertainers, artists, musicians, sports persons and others;
7. all remuneration of the person in circumstances referred to in section 12(9) or (10), for example, public office holders; and
8. amounts of a person's QEs sacrificed in exchange for additional superannuation contributions.

<u>OTE</u>

The Draft Ruling confirms that the concept of OTE remains unchanged. Earnings are treated as relating to ordinary hours unless they are solely referable to non-ordinary hours, such as clearly identifiable overtime. This means that where an employee receives a single undissected salary that recognises additional hours being worked on a non-specific basis, the entire amount will generally be QE.

Example 3 – no ordinary hours of work stipulated

135. Kim is employed under a contract requiring her to work a minimum number of hours per week in a call centre. By agreement between her and the employer, she may work additional shifts as is mutually convenient. She often does so, though there is no clear and consistent pattern to this.

136. There is no award or agreement governing Kim's employment that specifies her ordinary hours of work, nor do the extra shifts worked attract any overtime penalties or other higher payments.

137. As there are no stipulated ordinary hours of work, and no readily discernible pattern of customary, regular, normal or usual hours, all of Kim's hours actually worked are ordinary hours of work. Therefore, all of her wages are OTE and are included in her qualifying earnings.

By contrast, where awards or agreements clearly identify overtime hours paid at higher rates, amounts paid solely for those hours are excluded.

Commissions

The Draft Ruling states that commissions will always be QE, even to the extent they relate to work performed outside ordinary hours. Directors' fees are also treated as QE in full.

Bonuses

The Draft Ruling makes clear that performance bonuses, sign-on bonuses and even so-called ex gratia or Christmas bonuses will usually be included where they are, in substance, a reward for services. Only in rare cases will a bonus be excluded, such as where it is clearly a personal gift unconnected with employment, or where it is solely referable to work performed entirely outside ordinary hours.

Example 25 – bonus in respect of overtime only

204. Robert is an employee of SRP Co. In addition to his normal duties, Robert is asked to work overtime hours on 5 consecutive weekends for the specific purpose of writing a staff training manual about a piece of newly enacted legislation.

205. Robert's manual is distributed by SRP Co to other companies within the industry, all of which pay fees to SRP Co for its use. SRP Co passes on a portion of these receipts to Robert in the form of a bonus.

206. On these unusual facts, the services which Robert provides are all identifiably performed outside of Robert's ordinary hours of work. The bonus payment is not OTE and is not included in Robert's qualifying earnings.

Salary sacrifice arrangements

Where an employee sacrifices part of their earnings in return for additional employer superannuation contributions, the sacrificed amount is still treated as QE. This prevents employers reducing the superannuation base by routing remuneration through salary sacrifice.

Example 27 – qualifying earnings includes reduction for sacrificed contributions

211. Andrew is paid $80,000 in earnings, plus $9,600 in employer superannuation contributions, in the 2026–27 income year.

212. In the same income year, Andrew enters into a salary sacrifice arrangement to reduce his earnings to $75,000, and a $5,000 sacrificed contribution is made by his employer to his complying superannuation fund.

213. The reduction in Andrew's earnings, being equivalent to the sacrificed contribution amount of $5,000, is counted in Andrew's qualifying earnings because it is deducted from his earnings. This amount is specifically included in qualifying earnings under paragraph 10A(1)(h).

What is excluded?

The Draft Ruling sets out a wide range of exclusions that will continue to apply. These include expense reimbursements, redundancy payments, unfair dismissal compensation, workers' compensation paid when the employee is not required to work, certain prescribed parental leave and community service payments, and fringe benefits and other non-cash benefits.

Remuneration paid to local government councillors is excluded unless the relevant council has made a unanimous resolution for PAYG withholding to apply.

Maximum contributions base

The Draft Ruling explains how the maximum contributions base will operate under Payday Super. From 1 July 2026, the cap applies on an annual basis to QE rather than quarterly. Once an employee's QE exceed the annual cap, any further payments for that year are treated as nil for superannuation guarantee purposes.

The Draft Ruling also outlines the operation of employer shortfall exemption certificates for employees with multiple employers, allowing QE to be treated as nil for specified periods to prevent excess concessional contributions.

The Draft Ruling is open for public comment until 1 May 2026.

ATO Reference *LCR 2026/D1*
w https://www.ato.gov.au/law/view/document?docid=COD/LCR2026D1/NAT/ATO/00001

5.2 Payday Super – eligible contributions

The ATO has released draft *Law Companion Ruling* LCR 2026/D2, which sets out the Commissioner's views on what superannuation contributions qualify as eligible contributions under the Payday Super reforms.

Eligible contributions are the amounts an employer can rely on to reduce or extinguish a superannuation guarantee shortfall arising on a day when qualifying earnings are paid. The Draft Ruling explains both what types of contributions qualify and the timeframes within which they must be received.

What is an eligible contribution?

An eligible contribution can be any of the following amounts:

1. an actual contribution made by the employer;
2. a payment made to the legal personal representative of a deceased employee; or
3. a notional contribution for a defined benefit member of a defined benefit superannuation scheme.

To be an eligible contribution, an actual contribution must:

1. be made to a complying superannuation fund or a retirement savings account; and
2. be able to be allocated for the benefit of the employee.

A contribution is not an eligible contribution if it is made for a defined benefit member of a defined benefit scheme, or if it is made while a conversion notice is in effect for the fund.

Where an employer is not closely related to the trustee of the fund, the ruling confirms that employers can rely on a conclusive presumption that a fund is complying if they have obtained a written statement from the trustee confirming the fund's complying status. This statement must be obtained at or before the time the contribution is made. The presumption is not available if the employer reasonably believes the fund is non-complying or operating in breach of the superannuation law.

A contribution is only eligible once it is able to be allocated by the fund to the employee. This requires that the fund can identify the employee and that no rule or legislative restriction prevents the fund from accepting and allocating the contribution.

The Draft Ruling makes clear that allocation does not need to have occurred. It is sufficient that the contribution can be allocated once it is received. However, contributions will not be eligible where errors or omissions in the information provided by the employer prevent allocation, such as incorrect employee details. If a contribution is ultimately rejected by the fund and never allocated, it is not an eligible contribution at all.

On-time and late contributions

On-time contributions reduce an employer's individual base SG shortfall for a QE day. Late contributions may still reduce the final SG shortfall, but only if they are received before an assessment is issued. Importantly, contributions are not applied by employer choice. Eligible contributions are applied automatically under the law, in the order they are received, to the earliest QE day with an outstanding shortfall.

When on-time contributions are received

A contribution can be on-time if it is received:

1. in the 12-month period ending before the QE day;
2. within the usual period ending 7 business days after the QE day; or
3. within an 'allowable longer period', where one applies.

The Draft Ruling explains that accumulated, unapplied contributions from earlier periods can be carried forward and applied to later QE days.

Allowable longer periods apply in the following limited circumstances:

Situation	***Allowable longer period***
New worker engagement	*The period starting on the QE day and ending on the 20th business day after the QE day (extended usual period).*
Change of superannuation fund or RSA	*The extended usual period for the QE day.*
Out-of-cycle payment of qualifying earnings	*The period starting on the QE day and ending at the same time as the end of the usual period for the next QE day that does not involve an out-of-cycle payment.*
Exceptional circumstances determination	*The period starting on the QE day and ending at the end of the later of the following periods:* *• the extended usual period for the QE day* *• the period of 20 business days starting the day after the determination is made.*

Exceptional circumstances, the bunching rule and late contributions

Where the Commissioner makes an exceptional circumstances determination, such as following natural disasters or widespread technology outages, contribution deadlines can be further extended.

The Draft Ruling also introduces a "bunching rule", which allows later QE days to share the same extended deadline where their usual periods would otherwise expire earlier.

Late contributions are those received after the final on-time period but before an assessment of the SG shortfall is made. Once an assessment is issued, no further contributions can reduce the shortfall for that QE day.

The Draft Ruling is open for public comment until 1 May 2026.

ATO Reference *LCR 2026/D2*
w https://www.ato.gov.au/law/view/document?docid=COD/LCR2026D2/NAT/ATO/00001

5.3 Payday Super – calculation and assessment of the SGC

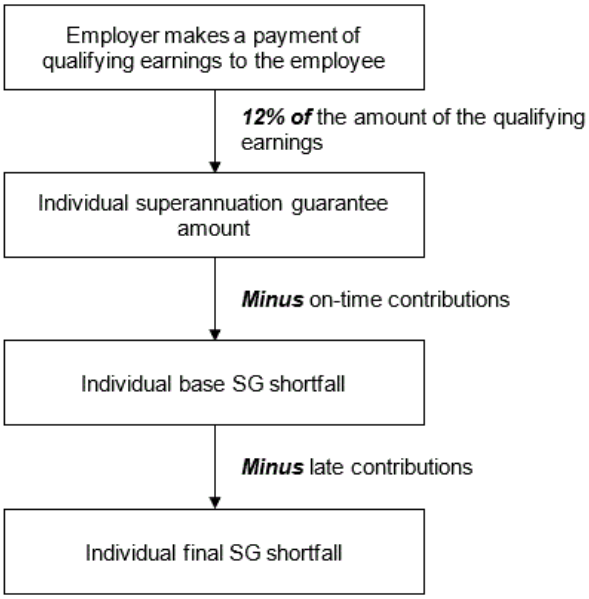
The ATO has released draft *Law Companion Ruling* LCR 2026/D3, which explains how the superannuation guarantee charge is calculated and assessed under the Payday Super reforms. The ruling brings together the concepts of qualifying earnings and eligible contributions and sets out how shortfalls, penalties and interest arise on a day-by-day basis.

Under Payday Super, obligations are assessed by reference to a 'QE day'. A QE day is any day on which an employer makes a payment of qualifying earnings to or for an employee. Each day a payment of qualifying earnings is made is a separate QE day, even if multiple employees are paid on that day or the payment is processed through payroll systems on a different date.

For each QE day, an employer has an individual superannuation guarantee amount for each employee. This is calculated as 12% of the total qualifying earnings paid to or for the employee on that day. Where more than one payment of qualifying earnings is made to an employee on the same day, those amounts are aggregated to determine the individual SG amount.

Individual base SG shortfall

An employer's individual base SG shortfall for an employee on a QE day is the difference between the individual SG amount and the eligible contributions received on time for that QE day.



If on-time eligible contributions equal or exceed the individual SG amount, the individual base SG shortfall is nil.

If an individual base SG shortfall remains after the on-time period, the employer may still reduce the shortfall by making late contributions. Late contributions reduce the individual final SG shortfall if they are received before an assessment is made. However, even where late contributions reduce the individual final SG shortfall to nil, the employer will still have an SG shortfall for that QE day because other components of the charge continue to apply.

Individual notional earnings component

Where an employer has an individual base SG shortfall for a QE day, an individual notional earnings component arises. This compensates for lost earnings on unpaid superannuation and accrues daily at the general interest charge rate on a compounding basis.

The notional earnings component runs from the start of the late period until the earlier of the day the individual final SG shortfall is reduced to nil or the day before an assessment is made.

Example 8 – individual notional earnings component period

72. *Employer Co has an individual base SG shortfall for Moana for the 7 September 2028 QE day of $120. As Employer Co has an individual base SG shortfall for Moana, it also has an individual notional earnings component for Moana for the QE day.*

73. *Employer Co makes a late contribution of $120 which is received by Moana's superannuation fund, and is allocable to her account, on 20 October 2028.*

74. *Employer Co's individual notional earnings component for Moana accrues from 19 September 2028 (the beginning of the late period) to 20 October 2028 (being the last day Employer Co had an individual final SG shortfall greater than nil in relation to Moana for the QE day).*

Administrative uplift amount

The administrative uplift amount is intended to reflect the cost of compliance and encourage early disclosure. It is calculated as 60% of the total of individual final SG shortfalls and individual notional earnings components for the QE day, subject to reductions.

The uplift can be reduced where the employer lodges a voluntary disclosure statement before an assessment is made, with the size of the reduction depending on how soon after the QE day the statement is lodged. Further reductions apply where the employer has not had a Commissioner-initiated assessment or estimate issued in the preceding 24-month period. These reductions may apply separately or cumulatively, and in some cases can reduce the uplift to nil.

Choice loading

A choice loading applies where an employer makes eligible contributions that do not comply with the choice of fund requirements. The choice loading for a QE day is the lesser of 25% of the non-complying contributions or $1,200, subject to a cumulative cap applying over a notice period.

Repeated failures to comply with choice of fund requirements can lead to cumulative choice loading liabilities across multiple QE days.

Assessment and payment

Where an employer has one or more individual base SG shortfalls or choice loadings for a QE day, an SG shortfall arises and the employer is liable to pay SG charge equal to that shortfall.

The Commissioner may assess the SG charge at any time, either based on a voluntary disclosure statement or on the Commissioner's own initiative using available data such as STP and superannuation fund reporting.

The SG charge becomes payable on the day the assessment is made. General interest charge accrues on any unpaid SG charge from that date until payment is made in full.

The Draft Ruling is open for public comment until 1 May 2026.

ATO reference *LCR 2026/D3*
w https://www.ato.gov.au/law/view/document?docid=COD/LCR2026D3/NAT/ATO/00001

5.4 Payday Super – application and transitional provisions

The ATO has released draft *Law Companion Ruling* LCR 2026/D4, which explains how the Payday Super reforms apply and how the transition from the quarterly superannuation guarantee regime to daily assessment is intended to operate. The ruling focuses on application provisions, savings provisions and a series of targeted transitional rules designed to manage overlap and timing issues.

The new Payday Super regime applies to QE days on or after 1 July 2026. This is the case even where the qualifying earnings paid on a QE day relate to work performed before that date or arise under arrangements entered into before commencement.

At the same time, the ruling confirms that the old SG regime continues to apply in full to quarters ending before 1 July 2026. This includes the calculation of SG shortfalls, lodgment of SG statements and payment of SG charge, regardless of whether those obligations arise before or after the commencement of Payday Super.

Example 1 – continued operation of the old Act

13. *Jeremy employs Malia in his landscaping business. Jeremy does not make any SG contributions for the benefit of Malia for the quarter 1 April 2026 to 30 June 2026 by the due date of 28 July 2026.*

14. *Under the old Act, Jeremy is required to lodge an SG statement and pay the SG charge by 28 August 2026. Although the new Act is in operation by 28 August 2026, the savings provisions mean that the old Act will continue to apply to require the lodgment of the SG statement and the payment of the SG charge for this quarter, even though both occur after the commencement of Payday Super.*

To the extent that excess contributions were not applied under the old Act, either to reduce the charge percentage or as a late payment offset, they may be treated as eligible contributions under the new Act if they fall within the 12-month period prior to a QE day.

Cessation of the late payment offset

The Draft Ruling confirms that the late payment offset under section 23A of the old Act only applies to contributions made before 1 July 2026. Contributions made on or after that date cannot be elected to offset SG charge liabilities arising under the old Act.

This means the last quarter for which the late payment offset can apply is the quarter ending 31 March 2026. For the quarter ending 30 June 2026, any late contributions made after 28 July 2026 cannot be offset.

Contributions made between 1 July 2026 and 28 July 2026

A key transitional rule governs how contributions made during the overlap period from 1 July 2026 to 28 July 2026 are applied. Where an employer still has an SG shortfall for the quarter ending 30 June 2026, contributions made during this period are first applied under the old Act to reduce the charge percentage for that quarter. Only once that liability is extinguished can any remaining contribution amounts be applied to QE days under the new Act.

Example 3 – 1 July 2026 to 28 July 2026 period

30. *Sarita operates a small local café. Sarita employs Gianna as a barista and pays her $3,000 in ordinary time earnings monthly. In order to avoid having to pay SG charge under the old Act for the quarter ending 30 June 2026, Sarita needs to make contributions to Gianna's nominated superannuation fund of $1,080 by 28 July 2026 (12% of $9,000).*

31. *The first payment of qualifying earnings to Gianna on or after 1 July 2026 occurs on 2 July 2026, when Gianna is paid $3,000. Sarita will have an individual SG amount for the QE day of 2 July 2026 of $360 (12% of $3,000).*

32. *In order to avoid the liability to SG charge for the quarter ending 30 June 2026 under the old Act and the QE day of 2 July 2026 under the new Act, Sarita makes a contribution of $1,440 for the benefit of Gianna which is received by her fund on 9 July 2026.*

33. *Under the transitional rule, the $1,440 is allocated so that $1,080 of the contribution is applied first against the quarter ending 30 June 2026 and the remaining $360 is then applied against the QE day of 2 July 2026.*

Reversal of pre-1 July 2026 sacrificed contributions

The Draft Ruling confirms that where a salary-sacrificed superannuation contribution made before 1 July 2026 is reversed on or after that date, the resulting payment to the employee is excluded from qualifying earnings. This prevents the same amount being counted under both the old and new SG regimes.

Ending notice periods

All notice periods issued under the old Act in relation to limits on shortfall increases for choice of fund breaches cease at the end of 30 June 2026. New notice periods under the Payday Super regime apply separately from 1 July 2026 onwards.

Repayments of overpaid shortfall components

The Draft Ruling explains amendments that expand the Commissioner's ability to recover overpayments of shortfall components. Recovery may occur from a successor fund or, in some cases, directly from the employee where amounts have already been paid out as benefits. These recovery provisions apply regardless of whether the original payment occurred before or after 1 July 2026.

The Draft Ruling is open for public comment until 1 May 2026.

ATO reference *LCR 2026/D4*
w https://www.ato.gov.au/law/view/document?docid=COD/LCR2026D4/NAT/ATO/00001

5.5 Transfer Balance Cap – indexation and successor fund transfers

The ATO has released draft *Law Companion Ruling* LCR 2016/9DC, being a draft consolidation of LCR 2016/9, which updates and expands the Commissioner's guidance on the operation of the transfer balance cap regime.

The draft consolidation primarily clarifies the proportional indexation of the transfer balance cap, the treatment of superannuation income streams affected by commutation authorities, and the application of the general principles to successor fund transfers. It also reflects legislative changes increasing the maximum allowable number of members in certain superannuation funds.

Proportional indexation

The draft consolidation expands and clarifies the way proportional indexation operates. Individuals who have not fully used their personal transfer balance cap retain an entitlement to partial indexation when the general cap increases. However, where an individual's transfer balance has equalled or exceeded their personal cap at any point, they permanently forfeit any future indexation entitlement.

Example A1 – Personal transfer balance cap proportional indexation

17D. Ryuk commences a superannuation income stream on 1 March 2018 valued at $1.4 million. His transfer balance account commences on this date and is credited with $1.4 million.

17E. Ryuk's personal transfer balance cap is equal to the general transfer balance cap for the financial year in which the account commenced, which is $1.6 million. Ryuk has a transfer balance of $1.4 million and available cap space of $200,000. No further credit or debit events occur in Ryuk's transfer balance account at this time.

17F. On 1 July 2021, the general transfer balance cap is increased as a result of indexation by $100,000 to $1.7 million. Ryuk's personal transfer balance cap is indexed proportionally, based on his remaining cap space.

17G. Ryuk's personal transfer balance cap is calculated as follows:

- *unused cap percentage: $1.4 million (highest balance) ÷ $1.6 million = 0.875*
- *expressed as a percentage and rounded down = 87%*
- *subtract 87% from 100% = 13%*
- *transfer balance increase: $100,000 × 13% = $13,000*

17H. On 1 July 2021, Ryuk's personal transfer balance cap is indexed to $1.613 million. Ryuk has available cap space of $213,000, being the difference between Ryuk's indexed personal transfer balance cap of $1.613 million and his transfer balance of $1.4 million.

17I. On 31 December 2022, Ryuk commenced another superannuation income stream. The value of the superannuation interest that supports this new income stream is $125,000. Ryuk's transfer balance account is credited with $125,000, taking his transfer balance to $1.525 million.

17J. On 1 July 2023, the general transfer balance cap is increased again due to indexation, this time by $200,000 to $1.9 million. Ryuk's personal transfer balance cap is indexed proportionally, based on his remaining cap space.

17K. Ryuk's personal transfer balance cap is now calculated as follows:

- *unused cap percentage: $1.525 million (highest balance) ÷ $1.613 million = 0.945*
- *expressed as a percentage and rounded down = 94%*
- *subtract 94% from 100% = 6%*
- *transfer balance increase: $200,000 × 6% = $12,000*

17L. On 1 July 2023, Ryuk's personal transfer balance cap is indexed by a further $12,000 to $1.625 million ($1.613m + $12,000 = $1.625m). Ryuk now has available cap space of $100,000, being the difference between Ryuk's further indexed personal transfer balance cap of $1.625 million and his transfer balance of $1.525 million.

Credits and debits

The draft consolidation consolidates guidance on when credits and debits arise in a transfer balance account. Credits generally arise when an individual becomes a retirement phase recipient of a superannuation income stream, including on commencement and in certain death benefit scenarios. Debits arise on commutations, structured settlement contributions, certain compliance failures, bankruptcy-related reductions and relationship breakdown payment splits.

Importantly, the draft consolidation confirms that investment earnings, losses and pension drawdowns do not affect an individual’s transfer balance. Only discrete credit and debit events are relevant.

Successor fund transfers

The draft consolidation clarifies the interaction between successor fund transfers and the transfer balance cap. Where a retirement phase income stream ceases as part of a successor fund transfer, a debit arises in the member's transfer balance account at the time of cessation. If a new income stream commences in the successor fund, a corresponding credit arises based on the value of the new interest.

Example 3D – Successor fund transfer – cessation of a superannuation income stream

55P. *Twice Super and Mika Super funds have agreed to enter a successor fund transfer under which the benefits of members of Twice Super will be transferred to Mika Super.*

55Q. *A Deed is prepared by the parties setting out the obligations of both parties under the successor fund transfer. This includes Mika Super providing equivalent superannuation income streams to those currently payable to members of Twice Super. The Deed specifies the transfer will occur on 1 August 2023.*

55R. *On 1 August 2023:*

- *the assets supporting superannuation income streams payable to the members of Twice Super, and corresponding obligations, are transferred to Mika Super*
- *the superannuation income streams cease for income tax purposes for each of the members of Twice Super*
- *a debit arises in the transfer balance account for each member who was receiving a retirement phase superannuation income stream from Twice Super, equal to the value of the superannuation interest that supported it*
- *the transfer results in an involuntary roll-over superannuation benefit to Mika Super in respect of each member*
- *a new superannuation income stream commences from Mika Super for each member who had received a superannuation income stream from Twice Super, and*
- *if the new superannuation income stream in Mika Super is in retirement phase, a credit arises in the new member's transfer balance account, equal to the value of the superannuation income interest that supports it.*

Submissions on the Draft Consolidation are open until 8 May 2026.

ATO reference *LCR 2016/9DC*
w https://www.ato.gov.au/law/view/document?DocID=DCC/LCR20169DC1/NAT/ATO/00001

5.6 New residential premises

The ATO has finalised addenda to two GST rulings relating to residential premises to align with the ART's decision in *Domestic Property Developments Pty Ltd a/t for Dals Property Trust v FC of T* [2022] AATA 4436 (**Domestic Property**).

In *Domestic Property*, the taxpayer was a property developer that constructed a development promising seven home units. The Domestic Property rented two of the newly constructed units to tenants for approximately five years before selling them..

The sale of each unit would have been input taxed supply if they had only been used for making input taxed rental supplies for a period of at least five years, in accordance with section 40-75(2)(a) of the GST Act.

The ART determined that actively marketing the premises for sale in the course of the developer's enterprise was considered a 'use' for the purpose of section 40-75(2)(a) of the GST Act, with the result being the premises were not only used to make input tax rental supplied and they remained new residential premises.

Refer to our August 2025 notes regarding the ATO's proposed updates to the GST rulings and our February 2023 notes for our review of the AAT's ruling in *Domestic Property*.

Addendum to GSTR 2003/3

GSTR 2009/4 concerns the meaning of new residential premises.

The addendum to GSTR 2003/3 focuses on the 5-year period in section 40-75(2). In *Domestic Property,* the ART stated that the 5-year period begins when premises become new residential premises. The ATO considers that the decision in *Domestic Property* is consistent with the ATO's longstanding view that the continuous 5-year period may commence any time since (or after) the premises become new residential premises.

The addendum clarifies that a continuous period would not include periods when the premises are used for a private purpose, or left vacant with no attempt to lease, hire or licence. The continuous period also does not include periods during which premises are used to make GST-free supplies or when premises are held for sale or marketed for sale.

Addendum to GSTR 2009/4

GSTR 2009/4 concerns adjustments of new residential premises for a change in creditable purpose.

The addendum to GSTR 2009/4 states that in *Domestic Property* the ART confirmed the ATO's view that marketing premises for sale is a 'use' of those premises. However, the ART stated that the meaning of 'used' in section 40-75 and 'applied' in Division 129 of the GST Act should not be interpreted consistently as a matter of course, and that 'used' takes it ordinary meaning.

The addendum explains that, if an entity has applied new residential premises for a creditable purpose in accordance with Division 129, the premises will also have been used other than for making input taxed supplies under section 40-35(1)(a) and the requirements of the 5-year rule in section 40-75(2) will not be satisfied.

Both addenda apply retrospectively.

ATO reference *GSTR 2009/4A3 – Addendum*
w https://www.ato.gov.au/law/view/view.htm?docid=GST/GSTR20094A3/NAT/ATO/00001
ATO reference *GSTR 2003/3A5 – Addendum*
w https://www.ato.gov.au/law/view/vie.htm?docid=GST/GSTR20033A5/NAT/ATO/00001

5.7 Duties aggregation and the domestic builder exception (Vic)

The State Revenue Office of Victoria has released two draft revenue rulings dealing with the aggregation of dutiable transactions under the *Duties Act 2000* (Vic).

Draft Revenue Ruling DA-026v3

DA-026v3 updates and expands the existing guidance on when multiple transactions, such as transfers of land and fixtures, may be aggregated and assessed as a single transaction for duty purposes.

DA-026v3 explains that transactions may be treated as forming “substantially one arrangement” where there is an essential unity or unifying connection between them, assessed by reference to all the surrounding circumstances.

DA-026v3 notes that the focus is on the relationship and interdependence between transactions rather than simply the identity of the parties. The draft ruling outlines a range of relevant factors, including how transactions were negotiated and documented, whether there were conditions or understandings linking them, the presence of package pricing or discounts, and whether assets were genuinely available for separate acquisition.

DA-026v3 clarifies that fixtures can be aggregated even if acquired outside the usual 12-month window. It also imposes disclosure obligations where aggregation applies, includes worked examples, and notes interactions with other duty regimes.

Once finalised, DA-026v3 will replace Revenue Ruling DA-026v2.

Draft Revenue Ruling DA-071

This ruling is a new ruling that explains when registered domestic builders may qualify for an exception from aggregation when acquiring multiple parcels of vacant land in accordance with section 24(2) of the *Duties Act 2000* (Vic).

DA-071 states that each acquiring entity must itself be registered as a domestic builder and meet the definition of a builder, and that a director's or related entity's registration is not sufficient. It is not relevant that another person or entity associated with the transferee is registered as builder.

Vacant land is given its ordinary meaning, subject to a limited statutory allowance for heritage remnants. DA-071 requires that, at the time of each acquisition, there is a genuine intention to construct residential premises for sale to the public, supported by evidence such as approvals, project documentation, or an established development track record.

DA-071 explains when duty may later be recalculated on an aggregated basis, including where land is on-sold before residential construction, non-residential premises are built, or five years pass without residential premises being ready for occupation, and provides a step-by-step methodology for recalculating and apportioning additional duty.

The State Revenue Office has indicated that DA-071 will apply to contracts entered into, and dutiable transactions occurring, on or after 1 June 2026, but not where a transaction occurs after that date under a contract entered into before 1 June 2026.

Comments on both draft rulings are invited by 21 April 2026.

w https://www.sro.vic.gov.au/about-us/laws-legal-cases-and-rulings/draft-rulings/aggregation-dutiable-transactions
w https://www.sro.vic.gov.au/about-us/laws-legal-cases-and-rulings/draft-rulings/exception-aggregation-domestic-builders

6. Private Rulings

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

6.1 SGAA for medical workers

Facts

The taxpayer operates a technology-based business in the health industry. Its business model is to provide a digital platform that connects medical professionals with patients, together with associated administrative and payment processing services. The taxpayer does not itself provide medical services to patients.

To facilitate the provision of medical consultations via the platform, the taxpayer engages individual clinicians as independent contractors operating as sole traders. All clinicians hold their own ABNs and are required to maintain appropriate professional insurance at their own cost.

Clinicians are engaged under a standard form services agreement, which may provide for remuneration on either a per-consultation or per-hour basis. Each engagement is also accompanied by a deed poll, which extends the contractual obligations to any individuals the clinician engages through delegation.

Patients using the platform make a single upfront payment to the taxpayer at the time of booking a consultation. This payment covers the clinician's fee, a platform or administration fee payable to the taxpayer, and any additional product or service costs. After a consultation has occurred and the clinician has issued an invoice that is accepted as valid, the taxpayer pays the clinician from the funds received from the patient.

Where clinicians are engaged on a per-hour basis, payments vary depending on the type of consultation performed and the clinician's qualifications, and are intended to reflect prevailing market rates. Where clinicians are engaged on a per-consultation basis, the fee payable is calculated as a percentage of the consultation fee, having regard to the clinician's qualifications. Although remuneration is determined under fixed service arrangements, the taxpayer does not regard these arrangements as involving profit sharing.

Clinicians provide medical services directly to patients. They do not provide services to the taxpayer and do not perform work that assists with the taxpayer's business operations, beyond using the platform to deliver consultations to patients.

Questions

1. Is the taxpayer required to pay superannuation guarantee contributions for individual clinicians because they are common law employees under section 12(1) of the SGAA?
2. If not, is the taxpayer required to pay superannuation guarantee contributions for individual clinicians under the extended definition of employee in section 12(3) of the SGAA??

Ruling

Common law definition of 'employee'

In determining whether the clinicians were employees at common law for the purposes of section 12(1) of the SGAA, the ATO applied the High Court's approach in *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* [2022] HCA 1. Under this approach, the characterisation of the relationship depends on an objective assessment of the rights and obligations created by the written contract, rather than the practical "reality" of how the parties behaved, provided the contract is not a sham and has not been varied.

The ATO characterised the taxpayer's business as providing a digital platform and administrative services, rather than medical services. On that basis, the clinicians were found to provide medical consultations directly to patients, not services to the taxpayer. This distinction was central to the conclusion that the clinicians were independent contractors, as they were viewed as conducting their own medical practices using the taxpayer's platform, rather than working in the taxpayer's business.

The level of contractual control was also considered. While the agreement imposed compliance obligations (such as maintaining registration, insurance, and adherence to legal and professional standards), these were regarded as regulatory and quality-assurance requirements rather than a right to control how the clinicians exercised their professional judgment. Consistent with authorities such as *Zuijs v Wirth Bros Pty Ltd* [1955] HCA 73 and *Stevens v Brodribb Sawmilling Co Pty Ltd* [1986] HCA 1, the absence of a contractual right to direct the manner in which work was performed weighed against an employment relationship.

A further significant factor was delegation. The agreement gave clinicians an express and genuine right to delegate the provision of services to suitably qualified substitutes, reinforced by the associated deed poll. An unfettered right of delegation is a strong indicator of an independent contracting arrangement, as explained in *Australian Mutual Provident Society v Chaplin* (1978) 18 ALR 385 and applied in *On Call Interpreters and Translators Agency Pty Ltd v Commissioner of Taxation (No 3)* [2011] FCA 366. This was inconsistent with the requirement of personal service that is ordinarily central to employment.

Other factors were also considered, including the fact that clinicians supplied their own tools and equipment, bore commercial risk, were required to maintain their own insurance, and indemnified the taxpayer. While none of these factors is determinative on its own, taken together they supported the conclusion that the clinicians were carrying on their own professional enterprises rather than serving in the taxpayer's business. Therefore, the clinicians were not employees at common law under section 12(1) of the SGAA.

Extended definition of 'employee'

The ATO then considered whether the clinicians were employees under the extended definition in section 12(3) of the SGAA. This provision can deem a worker to be an employee where three elements are satisfied:

1. there must be a contract;
2. the contract must be wholly or principally for the labour of the individual; and
3. the individual must work under that contract.

Labour component

Although the clinicians' obligation to provide medical consultations was an obligation to perform labour, the question under section 12(3) of the SGAA is whether the contract was wholly or principally for that labour, assessed from the perspective of the entity obtaining the benefit, consistent with *Dental Corporation Pty Ltd v Moffet* [2020] FCAFC 118. As explained in *Moffet*, a contract may still be principally for labour even where a secondary, non-labour benefit exists, if the benefits are sufficiently intertwined and the labour is the dominant purpose.

In this case, while the taxpayer derived a non-labour benefit in the form of platform-generated income, there was no equipment or other quantifiable non-labour component, and no evidence to support a qualitative assessment that the agreement was principally for labour, as contemplated by paragraph 111 of TR 2023/4 and the Commissioner's Decision Impact Statement on *Jamsek v ZG Operations Australia Pty Ltd (No 3)*.

Right to delegation

Section 12(3) applies only where the individual is required to perform the work personally. An unrestricted right to delegate, even if rarely exercised, indicates the contract is not wholly or principally for the labour of that individual. As clinicians could delegate to other suitably qualified practitioners, the personal labour requirement was not satisfied.

Contract for a result

The ATO also considered whether the agreement was a contract for a result. Although remuneration was calculated on a per hour or per consultation basis, in substance clinicians were engaged to deliver completed medical consultations using their own professional skill and judgment, and could determine the means of performance, including delegation. This supported the conclusion that the contract was not wholly or principally for labour for the purposes of section 12(3).

As not all elements of section 12(3) were satisfied, the clinicians did not fall within the extended definition of employee for SGAA purposes.

COMMENT – the background facts to this ruling state "*Clinicians provide services to patients only. They are not engaged to, nor do they supply any services directly to the Principal*" and "*Clinicians are not providing services that assist with the Principal's business operation*". This is not the view that has been taken in recent payroll tax cases, such as *Thomas and Naaz Pty Ltd v Chief Commissioner of State Revenue* (NSW) [2023] NSWCA 40 and *Optical Superstore Pty Ltd v Commissioner of State Revenue* (Vic) [2019] VSCA 197. The courts found that allied health practitioners provided services to the practice as part of its business operations, notwithstanding that services were delivered to patients. As a result, depending on the jurisdiction, payroll tax may still be payable under the relevant contract provisions, even where a superannuation guarantee liability does not arise.

ATO reference *Edited Private Advice Authorisation No. 1052464690999*
w https://www.ato.gov.au/law/view/document?docid=EV/1052464690999

6.2 PAYG for grassroots footballers

Facts

The taxpayer is a not-for-profit incorporated association operating as a grassroots rugby league club that participates in a local community competition. The club fields both A Grade and Reserve Grade teams, with player numbers capped for each grade per season. Players are required to register with the relevant governing body and may only play for one club during the season.

The rugby league season consists of regular rounds followed by finals. Players enter into written player contracts that set out agreed match payment amounts. Players are not guaranteed selection, are not required to play or train each week, and do not receive payments if they do not participate in matches. No payments are made for pre-season training, training sessions during the season, or attendance at club functions.

Players are responsible for most costs associated with their participation, including personal playing equipment, health or medical insurance and expenses, travel, laundry, gym memberships, and training equipment used outside club activities. Players must also pay registration fees to both the governing body and the club. In

return, the club provides players with a playing uniform for match days (which remains the property of the club), limited strapping and first aid on game days, and club apparel such as a shirt and training shorts.

Match payments are made to players as an incentive to support community participation in local rugby league and are intended to offset participation-related expenses rather than fund general living costs. Payments are only made where a player actually plays in a match.

Certain A Grade players may receive a sign-on bonus to encourage them to commit to the club rather than competing clubs. In addition, the club may pay achievement bonuses to A Grade players who both play in and win a specified number of matches. These incentives are not available to Reserve Grade players.

Players generally have other sources of income and are not financially dependent on the payments received from the club, which are regarded by participants as connected to a leisure activity rather than their primary income source.

Questions

1. Are the match payments subject to PAYG withholding?
2. Are the sign-on bonus payments subject to PAYG withholding?
3. Are the achievement bonus payments subject to PAYG withholding?

Ruling

Match payments

The decision turns on whether the match payments are paid to the footballers in their capacity as employees for the purposes of section 12-35 of Schedule 1 to the TAA 1953. That provision requires an entity to withhold PAYG amounts from salary, wages, commissions, bonuses or allowances paid to an individual as an employee under common law.

As the term “employee” is not defined in the TAA 1953, its meaning is determined by common law principles. Consistent with Taxation Ruling TR 2023/4, the analysis focuses on the totality of the contractual relationship rather than individual indicators in isolation. A key factor was that the footballers were serving in the business of the club by playing organised competition matches, which formed the core activity of the club. This indicated that the players were integrated into the club’s operations rather than providing services to it as independent contractors.

Control was also significant. The club determined when and where matches were played, limited players to playing for only one club during the season, and required players to personally perform their obligations. The players could not delegate or subcontract their role to another person, which is a strong indicator of an employment relationship under common law principles discussed in cases such as *Hollis v Vabu Pty Ltd* (2001) 207 CLR 21.

Although players were responsible for many of their own expenses, including medical costs and personal equipment, this was not sufficient to displace an employment characterisation. TR 2023/4 makes clear that the provision of tools or bearing some expenses does not, of itself, indicate an independent contractor relationship. When weighed against the contractual rights and obligations as a whole, the players were found to be employees. Therefore, the match payments were characterised as salary or wages, and PAYG withholding was required under section 12-35 of Schedule 1 to the TAA 1953.

Sign on bonuses

The sign-on bonus payments were considered in the same legislative context as the match payments. Section 12-35 of Schedule 1 to the TAA 1953 expressly includes bonuses within the types of payments from which PAYG withholding is required when paid to an employee.

The sign-on bonuses were paid to selected A Grade players to secure their commitment to the club over competing clubs. These payments arose directly from the contractual relationship between the club and the players and were contingent on the players entering into, and continuing under, that relationship. As the underlying relationship had already been characterised as one of employment under common law, the sign-on bonuses were regarded as paid in the players' capacity as employees.

The incentive nature of the payment did not alter its character. Under PAYG principles, a bonus paid as a consequence of employment is treated as part of an employee's remuneration, regardless of whether it is paid periodically or as a lump sum. As a result, the sign-on bonuses constituted bonuses paid to employees and were subject to PAYG withholding under section 12-35 of Schedule 1 to the TAA 1953.

Achievement bonuses

The achievement bonuses were only payable where a player both participated in and won a specified number of matches, linking the payment directly to on-field performance within the club's competition activities.

The ATO considered that these payments were clearly connected to the players' services to the club and were made in consequence of the employment relationship. As with other forms of incentive-based remuneration, the contingent or performance-based nature of the payment does not prevent it from being characterised as salary, wages or a bonus for PAYG purposes.

Given that the players were found to be employees under common law principles, the achievement bonuses were bonuses paid to employees within the meaning of section 12-35 of Schedule 1 to the TAA 1953. The club was therefore required to withhold PAYG amounts from these payments when made.

ATO reference *Edited Private Advice Authorisation No. 1052486592649*
w https://www.ato.gov.au/law/view/document?docid=EV/1052486592649

6.3 FITO deemed disposal

Facts

The taxpayer was the sole unitholder of a unit trust and personally owned two Australian residential properties. One of those properties was treated as the taxpayer's main residence at various times.

The taxpayer relocated from Australia to Country A and, during that period, was a tax resident of Country A and a foreign resident of Australia for tax purposes. On permanently returning to Australia, the taxpayer ceased to be a tax resident of Country A.

Under Country A tax law, cessation of residency triggered a deemed disposal of certain worldwide assets, including the taxpayer's Australian properties, at their fair market value immediately before departure. Although no actual disposal occurred, the taxpayer was taken to have derived a capital gain for Country A tax purposes and became liable to Country A capital gains tax. The taxpayer elected to defer payment of that tax until the properties are actually sold.

The taxpayer currently treats one of the properties as their main residence and intends to occupy the other property at a future time.

Question

Is the taxpayer entitled to a foreign income tax offset under Division 770 of the ITAA 1997 for Country A capital gains tax on a deemed disposal, where the tax is deferred until the properties are actually sold and the capital gain is included in Australian assessable income?

Ruling

The foreign income tax offset is only available where there is sufficient nexus between the foreign tax paid and the Australian income derived.

The Country A deemed disposal tax on the properties relates to the same income (capital gain) that will be included in the taxpayer's Australian assessable income in the income year in which the properties are sold. If the Country A tax is deferred until the year of sale, the taxpayer would be eligible to claim a foreign income tax offset (**FITO**), provided the taxpayer has an Australian income tax liability in that income year.

TRAP – where a property is treated as the taxpayer's main residence, some or all of the capital gain may be disregarded under the main residence exemption. To that extent, there is no Australian assessable income, no FITO is available, even though the foreign tax liability arises and must be paid.

TRAP – even where a capital gain is included in Australian assessable income, the amount of any FITO may still be limited by the operation of the CGT discount. Where the taxpayer is eligible for the 50% CGT discount, only 50% of the capital gain is included in assessable income. The decision in *Burton v Federal Commissioner of Taxation* [2019] FCAFC 141 provides that the FITO is limited to the portion of foreign tax that is attributable to the assessable (discounted) capital gain. Foreign tax imposed on the non-assessable portion of the gain does not give rise to an offset.

ATO reference *Edited Private Advice Authorisation No. 1052496538317*
w https://www.ato.gov.au/law/view/document?docid=EV/1052496538317

6.4 Joint tenancy and CGT

Facts

The taxpayer and their spouse are both Australian tax residents.

The taxpayer is a citizen of Country A, and the spouse is a citizen of Country B. Both have lived in Australia for an extended period and are permanent residents.

The taxpayer and the spouse jointly own an overseas-based share portfolio.

The share portfolio was originally held solely in the taxpayer's name and was later converted to joint ownership when the spouse's name was added.

Since the portfolio became jointly owned, the taxpayer and the spouse have consistently returned the income from the portfolio on an equal basis in their respective Australian income tax returns.

The taxpayer proposes to sever the joint ownership of the shares so that the portfolio will go back to being held solely in the taxpayer's name.

The proposed transfer is being undertaken primarily for estate planning purposes.

No consideration will be provided by either party in connection with the transfer of the spouse's interest in the investment portfolio.

Question

Will the severance of the joint ownership of the investment portfolio, resulting in the taxpayer having 100% ownership of the portfolio individually and solely in their own name, constitute a capital gains tax event for the taxpayer?

Ruling

The ATO accepted that the severing the joint ownership results in a change in the legal and beneficial ownership of the shares. However, after the transfer, the taxpayer continues to own the shares and, in fact, holds a greater interest than before. Because the taxpayer does not dispose of any ownership interest to another entity, there is no CGT event for the taxpayer.

Under section 108-7 of the ITAA 1997, individuals who hold a CGT asset jointly are treated as if they each own a separate CGT asset comprising an equal interest in the underlying asset. This treatment applies regardless of the legal form of joint ownership. When the spouse transfers their interest in the share portfolio to the taxpayer, the spouse ceases to own that separate CGT asset. This constitutes a disposal of part of a CGT asset and therefore triggers CGT event A1 for the spouse.

The ATO also considered the consequences of the transfer occurring for no consideration. The market value substitution rule applies where an asset is sold, transferred or gifted for less than its market value, and the parties are not dealing at arm's length. Under section 116-30 of the ITAA 1997, the spouse is taken to have received capital proceeds equal to the market value of their ownership interest at the time of the CGT event, even though no consideration is actually received. The fact that the transfer is between spouses and motivated by estate planning does not prevent the application of this rule.

Section 112-20 of the ITAA 1997 applies to the taxpayer as the recipient of the transferred interest. The first element of the cost base of the 50% interest acquired from the spouse is deemed to be its market value at the time of transfer, while the taxpayer's original 50% interest retains its original acquisition cost.

COMMENT – this private ruling is somewhat confused. It refers to a severance of the joint tenancy when really what happened was that one of the joint tenants transferred their interest to the other joint tenant. While this may have had the effect of severing the joint tenancy, it was also a disposal and, accordingly, CGT event A1 clearly occurred. A mere severance of a joint tenancy where owners go from holding as joint tenants to holding as tenants in common is not a CGT event.

TIP – changes to share portfolio account names are often treated as administrative, but may trigger a CGT event where they result in a change in legal or beneficial ownership. Moving shares to a different HIN (for example, from an individual HIN to joint holders or vice versa) may constitute a disposal of a CGT asset, even if no consideration is paid.

ATO reference *Edited Private Advice Authorisation No. 1052498670867*
w https://www.ato.gov.au/law/view/document?docid=EV/1052498670867

6.5 Mixed supplies

Facts

The taxpayer owned a property comprising a street-front shopfront and a separate residential area located at the rear. The shopfront had historically been used as a milk bar, while the rear area was configured as residential premises containing bedrooms, kitchen, living areas, bathroom facilities and a backyard.

The taxpayer acquired the property as part of a going concern. At the time of acquisition, the entire property was leased. The property was constructed in the mid-20th century, and the residential component did not constitute new residential premises at the time it was acquired.

Following settlement, the shopfront continued to operate as a milk bar for a period before that business ceased trading. After the cessation of the milk bar business, the taxpayer leased the residential portion of the property

for residential accommodation. During this residential leasing period, the taxpayer arranged for the commercial electricity meters to be disconnected and the gas supply to the shopfront to be terminated.

Despite the cessation of the milk bar business, commercial kitchen equipment, including fryers, stoves, range hoods and refrigerators, remained installed at the property. The front shopfront area did not undergo any physical modifications that would alter its physical characteristics from those of a milk bar to premises suitable for residential accommodation.

The taxpayer remained registered for GST due to an intention to redevelop the property by demolishing and rebuilding it. That redevelopment did not proceed due to increased construction costs and a decline in market demand in the area. The taxpayer subsequently entered into a contract to sell the property.

In preparation for the sale, the taxpayer engaged a registered land surveyor who provided a certified floor area drawing identifying the areas attributable to the residential and commercial components of the property. To determine the proportion of the property that was commercial, the taxpayer divided the commercial floor area by the total floor area. This percentage was then applied to the sale price to calculate the portion of the consideration attributable to the commercial premises.

Questions

1. Will the taxpayer make a mixed supply under section 40-65 of the GST Act when the property is sold?
2. If the answer to Question 1 is yes, is the proposed apportionment methodology fair and reasonable for calculating the GST payable amount under section 9-80 of the GST Act?
3. Does the purchaser have a GST withholding obligation under subdivision 14-E of Schedule 1 to the TAA when the property is sold?

Ruling

Mixed supply

The ATO concluded that the sale of the property is a mixed supply because it includes both residential and commercial components that have different GST outcomes. The general requirements for a taxable supply in section 9-5 of the GST Act were met, as the property was sold for consideration, in Australia, in the course of a leasing enterprise, and the taxpayer was registered for GST.

The key issue was whether any part of the property was input taxed under section 40-65 of the GST Act. The ATO applied the principles in GSTR 2012/5, which focus on the physical characteristics of premises rather than how they are used or the owner's intentions. Premises are residential if they provide shelter and basic living facilities and are fit for human habitation.

The rear portion of the property met this test and was neither commercial residential premises nor new residential premises. Its sale was therefore input taxed. The shopfront, however, retained the physical characteristics of a milk bar and had not been converted into residential accommodation. As a result, the shopfront was not residential premises and its sale was taxable.

Apportionment methodology

Where a supply is a mixed supply, section 9-80 of the GST Act requires the taxable part of the supply to be valued as a proportion of the total value. The ATO's approach to apportionment in these cases is set out in GSTR 2001/8. That ruling explains that a mixed supply must be separated into its taxable and non-taxable components and that any apportionment method used must be reasonable, having regard to the specific facts.

GSTR 2001/8 does not prescribe a single apportionment method. Taxpayers may use direct or indirect methods, provided the method reasonably reflects the value of each component and is supported by objective evidence. Direct methods are generally preferred because they more closely link the consideration received to

the taxable part of the supply. Apportionment based on relative floor area may be appropriate, but only if differences in the value of different types of space are properly taken into account.

In this case, the taxpayer engaged a registered land surveyor to identify the floor areas of the residential and commercial parts of the property and apportioned the sale price solely on that basis. While the ATO accepted that the floor area measurements were objective and reliable, this alone was not sufficient. The ATO noted that commercial and residential space is often valued differently, and a reasonable floor area method must also consider relative market values.

Because the proposed method did not include evidence of local commercial and residential values, such as comparable sales or lease data, the ATO considered that it did not reflect the true value of the taxable commercial component. The apportionment was therefore not accepted as fair and reasonable for the purposes of section 9-80 of the GST Act.

Purchaser GST withholding obligations

Subdivision 14-E of Schedule 1 to the TAA imposes a GST withholding obligation on recipients of certain taxable supplies of real property, including taxable supplies of new residential premises. Under subsection 14-250(1) of Schedule 1 to the TAA, the obligation only arises where the supply falls within those specified categories.

The ATO had already concluded, in relation to Question 1, that the residential component of the property was not new residential premises for GST purposes. Instead, the supply consisted of a taxable supply of commercial premises and an input-taxed supply of existing residential premises. As the supply was not a taxable supply of new residential premises, the statutory conditions for purchaser withholding were not satisfied

Therefore, the purchaser was not required to withhold and remit an amount of GST.

COMMENT – there is a separate question whether the taxpayer was required to be registered for GST at the time of sale. Following the cessation of the milk bar business, the taxpayer's enterprise appears to have comprised only input taxed supplies (residential leasing), which do not count towards GST turnover. On that basis, it is arguable the taxpayer was not required to be registered and could have cancelled its registration prior to the sale, potentially affecting the GST outcome.

ATO reference *Edited Private Advice Authorisation No. 1052502956692*
w https://www.ato.gov.au/law/view/document?docid=EV/1052502956692

7. ATO and other materials

7.1 Part IVA and property development arrangements

The ATO has released Draft *Practical Compliance Guideline* PCG 2026/D2, which sets out the Commissioner's compliance approach to the potential application of Part IVA to certain property development arrangements involving property development agreements (**PDAs**) and long-term construction contracts.

The draft Guideline is directed at arrangements where land ownership and development activities are separated, particularly between related parties, in a manner that may defer income recognition, circumvent the trading stock provisions, or generate tax losses that are utilised elsewhere in an economic group.

The draft Guideline does not change the law and does not state when Part IVA will apply. Rather, it provides a risk assessment framework indicating when the ATO is more likely to allocate compliance resources to review an arrangement.

The draft Guideline focuses on arrangements where:

1. a landowner engages a developer under a PDA;
2. development is carried out under a long-term construction contract (construction extending beyond one income year); and
3. income recognition outcomes differ between the landowner and developer.

The ATO acknowledges that PDAs are common in the property sector and states that it does not generally have concerns with this operating model. However, concern arises where entities that are under common ownership or control, or are not dealing at arm's length, are in substance carrying on a single economic activity of property development, but fragment that activity for tax outcomes.

Risk assessment framework

The draft PCG categorises arrangements into two risk zones:

Green zone (low risk)

Arrangements will generally be low risk where income is recognised progressively in line with the economic substance of the development, including where:

1. progress payments are made and the developer recognises income progressively; or
2. income is recognised progressively under TR 2018/3 despite payment being deferred to completion; or
3. the landowner (or a landowner-developer partnership) applies the trading stock provisions, recognising annual increases in land value.

Where an arrangement falls within the green zone, the ATO states it will generally not apply compliance resources beyond verifying that the arrangement meets the relevant criteria.

Red zone (high risk)

Arrangements are likely to be high risk where **all of** the following features are present:

1. the landowner and developer are related or not dealing at arm's length; and
2. a developer is interposed between the landowner and the builder; and
3. the developer claims deductions for construction and development costs as incurred but does not recognise income until project completion; and

4. the landowner does not recognise increases in land value under the trading stock provisions.

The ATO is particularly concerned where this produces tax losses in the developer that are then utilised elsewhere in the group, including through trust distributions or tax consolidation.

Where arrangements fall within the red zone, the ATO indicates it is likely to commence a review or audit and may consider the application of Part IVA, after first examining whether the substantive income recognition or trading stock provisions have been applied correctly.

Examples

The draft Guideline contains detailed worked examples illustrating:

1. low-risk scenarios where income is recognised progressively by either the developer or landowner; and
2. high-risk scenarios involving deferred invoicing, loss utilisation, partnership indicia, or replication of the arrangement across multiple projects within the same economic group.

<u>High risk examples</u>

Example 6 concerns a related-party property development arrangement where invoicing and progress payments are deferred, despite the relevant PDA permitting the developer to invoice the landowner progressively as costs are incurred. In the example, the developer claims deductions for construction costs on a progressive basis but does not recognise income until project completion, resulting in tax losses during the development phase. A family trust distributes trust income to the developer entity during the years in which the developer is making losses. The ATO considers that, based on the contractual terms and substance of the arrangement, income is likely to have been derived progressively by the developer, and states that it would apply compliance resources to the arrangement and may consider the application of Part IVA.

Example 7 considers a related-party property development arrangement where no progress payments are made during the development phase and the developer does not recognise income progressively, but claims deductions for development costs as incurred. This results in the developer being in a tax loss position prior to project completion, with those losses used to offset income from other completed projects within the same developer entity. The example states:

> 48. *The parties do not consider that they are in a general law partnership, however the terms of the contract and the conduct of the parties indicate that there are some indicia of a partnership that exist.*

In these circumstances, the ATO states it would apply compliance resources to the arrangement and may consider both whether the parties are in substance operating as a partnership for trading stock purposes and the potential application of Part IVA.

Example 8 considers a related-party property development structure that is replicated across multiple projects within the same economic group. Each project involves no progress payments to the developer during construction, with the developer claiming deductions for development costs as incurred but deferring income recognition until completion. This results in the developer consistently generating tax losses during development phases, which are then utilised elsewhere in the group, including through tax consolidation or trust distributions. The ATO identifies the systematic replication of the arrangement as a key distinguishing feature, indicating an ongoing strategy to defer tax across the group. In these circumstances, the ATO states it would apply compliance resources to examine the arrangements in detail and may consider the application of Part IVA.

Evidence expectations

An appendix outlines the types of evidence the ATO may request, including:

1. PDAs, building contracts and related agreements;
2. financing documents, guarantees and security arrangements; and
3. financial statements, ledgers and tax reconciliations.

The level of evidence sought will depend on whether the arrangement falls within the green or red zone.

The draft Guideline is open for consultation until 15 May 2026. When finalised, it is proposed to apply to arrangements entered into before and after its date of issue.

COMMENT – this draft Guideline follows the release of *Taxpayer Alert* TA 2026/1 (see our February 2026 Tax Training Notes), which flagged the ATO's concerns with contrived related-party property development arrangements that defer income recognition and exploit tax losses.

ATO reference *PCG 2026/D2*
w https://www.ato.gov.au/law/view/document?docid=DPC/PCG2026D2/NAT/ATO/00001

7.2 Decision impact statement – *PepsiCo*

The ATO has released a Decision Impact Statement in relation to the *Commissioner of Taxation v PepsiCo Inc & Anor* [2025] HCA 30 (see our August and September 2025 notes for a summary of the case).

In *PepsiCo*, the High Court majority held that payments made by an independent Australian bottler for flavour concentrate were not royalties for withholding tax purposes because they were consideration for concentrate only, not for the use of intellectual property. The Court was also unanimous that the amounts were not paid to or derived by PepsiCo entities, so no royalty withholding tax arose in any event. On diverted profits tax (**DPT**), the majority found that the Commissioner failed to identify a reasonable alternative postulate, meaning no tax benefit was established and DPT did not apply. The minority dissented on both points.

The ATO's view of the decision is as follows:

1. fact-specific outcome: the ATO emphasises the decision turns on critical, unusual facts, including arm's-length dealings, market-standard arrangements, and the absence of any pricing contention that concentrate prices were inflated to embed a royalty component. The ATO does not see the decision as broadly limiting royalty or DPT enforcement;
2. royalties can still be identified: the Court did not endorse a narrow, technical contract approach. The ATO will continue to assess the totality of the bargain and substance over labels. Embedded royalties may still be identified where the facts support it, regardless of contractual wording (for example, "royalty-free" labels);
3. payment/derivation remains critical: In *PepsiCo*, there was no antecedent obligation to the IP owner, so no constructive payment. The ATO expects this to be uncommon and will closely scrutinise arrangements where IP is provided but payment routes change or appear to avoid royalty payment; and
4. DPT implications are limited: the majority's finding of no tax benefit relied on unique facts. The ATO considers this analysis to have limited application elsewhere. Taxpayers generally still bear a heavy onus to prove there is no reasonable alternative.

The ATO will continue to examine IP arrangements, especially involving related parties, by testing commercial pricing, economic substance, and whether consideration for IP exists even if not separately itemised.

w https://www.ato.gov.au/law/view/document?docid=LIT/ICD/m98-2024/00001

7.3 Penalties for non-compliance with STP reporting

The ATO has released draft *Practice Statement Law Administration* PS LA 2026/D2 (Single Touch Payroll reporting), providing guidance on how administrative penalties are to be applied where entities fail to meet STP reporting obligations, either because they do not report on time or make a false and misleading statement in their STP reporting.

The penalties for late lodgement or errors in STP reporting are as follows:

1. late lodgement: 1 penalty unit for every 28 days that it is late up to 5 penalty units (**base penalty amount**) but which may be increased as follows:
   (a) the base penalty amount is multiplied by 2 if the entity:
      (i) is a medium withholder in the month the STP reporting was due;
      (ii) has an assessable income for the income year in which the STP reporting was due of more than $1 million but less than $20 million, or
      (iii) has a current GST turnover of more than $1 million but less than $20 million in the month the STP reporting was due;
   (b) the base penalty amount is multiplied by 5 if the entity:
      (i) is a large withholder in the month the STP reporting was due
      (ii) has an assessable income for the income year in which the STP reporting was due of $20 million or more, or
      (iii) has a current GST turnover of $20 million or more in the month the STP reporting was due; and
   (c) the base penalty amount is multiplied by 500 if the entity is a significant global entity (**SGE**).
2. errors (i.e. false and misleading statement:
   (a) if there is intentional disregard of a taxation law by the entity or their agent: the base penalty amount is 75% of the shortfall amount or, if there is no shortfall, 60 penalty units;
   (b) if there is recklessness by the entity or their agent as to the operation of a taxation law: the base penalty amount is 50% of the shortfall amount or, if there is no shortfall, 40 penalty units;
   (c) if the entity or their agent failed to take reasonable care to comply with a taxation law: the base penalty amount is 25% of the shortfall amount or, if there is no shortfall, 20 penalty units;
   (d) if the entity is an SGE, the base penalty amount is doubled.

Under the draft PSLA, ATO officers are required to:

1. identify the relevant penalty (for failure to lodge in the approved form or for false or misleading statements);
2. consider whether legislative protections apply (including reasonable care, grace periods and safe harbours);
3. calculate the base penalty amount; and
4. assess whether penalties should be remitted in whole or in part before issuing a written notice; and
5. issue the written notice of the penalty.

The Draft PSLA notes that an entity is not liable for a penalty if they correct a false and misleading statement within a prescribed period. The prescribed periods are as follows:

Scenario	Start of grace period	End of grace period
The original statement was made in relation to amounts paid to a person that the entity	The grace period starts on the day the entity becomes aware	The grace period ends 14 days later or 14 July immediately

reasonably expects they will not pay amounts to again within the same financial year.	that their statement is false or misleading.	following the end of the financial year, whichever comes first.
The original statement was made in relation to amounts paid to a person that the entity reasonably expects they will pay amounts to again within the same financial year.	The grace period starts on the day the entity becomes aware that their statement is false or misleading.	The grace period ends the day that (having regard to the pattern of payments over the previous 6 months) the entity would ordinarily next pay an amount to that person or 14 July immediately following the end of the financial year, whichever comes first.

The Draft PSLA states:

> *"An entity that corrects a false or misleading statement within the grace period is protected from penalties regardless of whether the false or misleading statement was identified on the entity's own initiative or because we alerted them to the error."*

Various examples are included in the Draft PSLA.

The Draft PSLA is open for comments until 24 April 2026.

ATO reference *PS LA 2026/D2*
w https://www.ato.gov.au/law/view/document?docid=DPS/PSD20262/NAT/ATO/00001

7.4 Penalties for non-compliance with super member account reporting

For entities that are not self-managed super funds, their reporting obligations about member accounts are required to be met using the member account attribute service (**MAAS**) and member account transaction service (**MATS**).

The ATO has released draft *Practice Statement Law Administration* PS LA 2026/D1 providing guidance on how administrative penalties are to be applied where trustees fail to meet MAAS and MATS reporting obligations, either because they do not report on time or make a false and misleading statement in their MAAS and MATS reporting.

The Draft PSLA does not apply to self-managed superannuation funds.

The penalties for late lodgement or errors in MAAS and MATS reporting are as follows:

1. late lodgement: 1 penalty unit for every 28 days that it is late up to 5 penalty units (**base penalty amount**) but which may be increased as follows:
   (a) the base penalty amount is multiplied by 2 if the entity:
      (i) is a medium withholder in the month the MAAS and MATS reporting was due;
      (ii) has an assessable income for the income year in which the MAAS and MATS reporting was due of more than $1 million but less than $20 million, or
      (iii) has a current GST turnover of more than $1 million but less than $20 million in the month the MAAS and MATS reporting was due;
   (b) the base penalty amount is multiplied by 5 if the entity:
      (i) is a large withholder in the month the MAAS and MATS reporting was due

(ii) has an assessable income for the income year in which the MAAS and MATS reporting was due of $20 million or more, or
(iii) has a current GST turnover of $20 million or more in the month the MAAS and MATS reporting was due; and

(c) the base penalty amount is multiplied by 500 if the entity is a significant global entity (**SGE**).

2. errors (i.e. false and misleading statement:
   (a) if there is intentional disregard of a taxation law by the entity or their agent: the base penalty amount is 75% of the shortfall amount or, if there is no shortfall, 60 penalty units;
   (b) if there is recklessness by the entity or their agent as to the operation of a taxation law: the base penalty amount is 50% of the shortfall amount or, if there is no shortfall, 40 penalty units;
   (c) if the entity or their agent failed to take reasonable care to comply with a taxation law: the base penalty amount is 25% of the shortfall amount or, if there is no shortfall, 20 penalty units;
   (d) if the entity is an SGE, the base penalty amount is doubled.

The Draft PSLA states that ATO officers are required adopt a 5 step approach as follows:

1. determine the type of penalty that is applicable to the circumstances;
2. consider whether the law protects the super fund from penalties in the circumstances.
3. determine the extent and amount of penalty, including any increase the base penalty amount;
4. consider penalty remission;
5. issue the written notice of the penalty.

The Draft PSLA notes that section 284-75(9) of Schedule 1 of the TAA provides that an entity is not liable to a false or misleading statement penalty if they correct a false or misleading statement made in their MAAS or MATS reporting within the prescribed period. This period is called a grace period. The Draft PSLA noted that there is currently no grace period that has been prescribed, meaning a superannuation fund is not able to take advantage of a grace period.

Various examples are included in the Draft PSLA.

The Draft PSLA is open for comments until 24 April 2026.

ATO reference *PS LA 2026/D1*
w https://www.ato.gov.au/law/view/document?docid=DPS/PSD20261/NAT/ATO/00001

7.5 Closure of the Small Business Super Clearing House

The ATO has issued guidance for employers and super funds ahead of the permanent closure of the Small Business Super Clearing House on 1 July 2026.

Employers who currently use the SBSCH are encouraged to treat their third quarter superannuation contribution, covering the January to March period and due by 28 April 2026, as their final payment through the service. Employers should download and retain their records before exiting, as access to the SBSCH and historical data will not be available after 1 July 2026.

Super funds may receive enquiries from employers seeking assistance with identifying alternative clearing house providers.

The ATO has published a step-by-step guide to support employers transitioning away from the SBSCH.

w https://www.ato.gov.au/tax-and-super-professionals/for-superannuation-professionals/super-funds-newsroom/guidance-for-super-funds-on-the-closure-of-the-atos-sbsch

7.6 Payday super fact or fiction

The Deputy Commissioner Emma Rosenzweig has published a webpage titled Fact or fiction? What you can expect with Payday Super (updated 2 April 2026), addressing common misconceptions ahead of the commencement of Payday Super on 1 July 2026.

Myth: "There's nothing to do until 1 July 2026"

The Deputy Commissioner emphasises that, while Payday Super commences on 1 July 2026, many employers need to prepare in advance. This may include planning for cash-flow changes, ensuring payroll systems are capable of supporting payday-based super payments, and transitioning away from the ATO's Small Business Superannuation Clearing House (SBSCH).

The SBSCH will permanently close on 1 July 2026, with no read-only access available after that date. Employers are encouraged to download their SBSCH records and transition to a new clearing house provider before closure.

Myth: "I can just change how often I pay my employees"

The guidance confirms that Payday Super does not change pay frequency. How often employees are paid continues to be determined by employment contracts, awards or enterprise agreements.

What changes is the timing of superannuation guarantee contributions. From 1 July 2026, super must be paid each payday, in line with the employer's wage payment cycle (for example, weekly or fortnightly).

Myth: "I'll be penalised straight away if something goes wrong"

The Deputy Commissioner states that the ATO recognises most employers want to comply. Employers who make an honest mistake and take prompt steps to correct it will not be the focus of compliance action in the first year of Payday Super.

w https://www.ato.gov.au/businesses-and-organisations/small-business-newsroom/fact-or-fiction-what-you-can-expect-with-payday-super

7.7 4 tips for FBT success

The ATO has published website guidance setting out four tips for helping employers meet FBT obligations and reduce the risk of errors or penalties:

1. Identify the fringe benefits provided

Employers should clearly identify all benefits provided to employees (and their associates) during the FBT year and determine the correct category of fringe benefit. This includes reviewing common arrangements such as motor vehicles, expense payments, allowances and non-cash perks, and asking targeted questions about how benefits are used in practice.

2. Determine the taxable value

Once benefits are identified, the appropriate valuation method must be applied to each benefit to determine its taxable value. Correct valuation is critical to calculating the overall FBT liability and ensuring exemptions or concessions are applied correctly.

3. Keep accurate records

Adequate and contemporaneous records must be maintained to support FBT calculations and any exemptions or concessions claimed. Record-keeping requirements vary depending on the type of benefit, but generally include evidence of usage, calculations and employee declarations where relevant.

4. Lodge, pay and report on time

Employers must ensure FBT returns are lodged by the relevant due date and that any FBT payable is paid on time. The lodgment and payment due date for the FBT return is 25 June 2026 if lodged electronically, or 21 May 2026 if lodged by paper. Where applicable, reportable fringe benefits amounts must also be included in employee reporting by the required deadline.

w https://www.ato.gov.au/tax-and-super-professionals/for-tax-professionals/tax-professionals-newsroom/the-4-steps-to-fbt-success

7.8 FBT rates and thresholds

FBT rates and thresholds have been updated for the 2026-27 FBT year.

The statutory or benchmark interest rate has decreased to 8.27%, compared to 8.62% in the FBT year ended 31 March 2026.

The record keeping exemption threshold has increased from $10,664 for the FBT year ended 31 March 2026, to $10,962 for the FBT year ended 31 March 2027.

The cents per kilometre rates have also increased slightly:

FBT year ending	0–2500cc	Over 2500cc	Motorcycles
31 March 2027 (TD/2026/1)	70c	82c	20c
31 March 2026 (TD 2025/1)	69c	80c	20c

There has been a slight increase in the reasonable food and drink amounts per week for the purposes of the living-away-from-home allowance.

The car parking threshold rate has not yet been determined.

w https://www.ato.gov.au/tax-rates-and-codes/fringe-benefits-tax-rates-and-thresholds

7.9 Vehicle home charging rates

The ATO has updated *Practical Compliance Guideline* PCG 2024/2 to insert the electric vehicle home charging rate that applies from 1 April 2026. The rate has increased from 4.20 cents per kilometre to 5.47 cents per kilometre for FBT years and income years commencing on or after that date.

PCG 2024/2 sets out the Commissioner's practical compliance approach for calculating electricity costs where electric vehicles or plug-in hybrid electric vehicles are charged at an employee's or individual's home, allowing eligible taxpayers to use a standard cents-per-kilometre rate instead of calculating actual electricity usage.

ATO reference *PCG 2024/2*
w https://www.ato.gov.au/law/view/document?docid=COG/PCG20242/NAT/ATO/00001

7.10 Vacancy fee returns for foreign owners

On 17 March 2026, the ATO updated its guidance on how taxpayers can lodge their vacancy fee returns on the ATO website.

A vacancy fee applies if an Australian residential property is vacant for 183 days (6 months) or more in a vacancy year. A vacancy fee may not apply if the property is residentially occupied or it is genuinely made available for rent.

The fee amount is based on the foreign investment application fee and will double for vacancy years starting from 9 April 2024.

A vacancy fee return is an online form that foreign owners of residential property in Australia must lodge annually using the Online services for foreign investors. The return reports how many days the property was occupied or genuinely available for rent during the vacancy year. Occupied days include those when the owner lived in the property or when it was rented to a tenant.

Foreign owners must lodge the vacancy fee return within 30 days from the end of each vacancy year. If the property is owned by joint tenants, only one return is required. If owned as tenants in common, each owner must lodge their own return.

Failure to lodge on time may result in penalties and liability to pay the vacancy fee regardless of the number of days the dwelling was residentially occupied during the vacancy year.

w https://www.ato.gov.au/individuals-and-families/investments-and-assets/foreign-resident-investments/foreign-investment-in-australia/vacancy-fee-return-for-foreign-owners

7.11 Changes to trustee reporting

The ATO is progressively implementing reforms under the Modernisation of Tax Administration Systems (**MTAS**) program to improve trust reporting, data integrity and prefilling for beneficiaries, with changes to be implemented in the Tax Time 2026 and Tax Time 2027 programs.

The program builds on earlier trust reporting reforms announced in the 2022 Federal Budget and delivered from Tax Time 2024, including the trust income schedule and expanded CGT labels in trust tax returns.

Key objectives of the MTAS program are to:

1. streamline the lodgment experience for trustees, beneficiaries and agents;
2. improve the accuracy, consistency and integrity of trust and beneficiary reporting; and
3. better target ATO compliance and assurance activities through data matching.

Tax Time 2026 – foundation changes

From 1 July 2026, trust statement of distribution data will be used to pre-fill individual beneficiaries' income tax returns. This is intended to:

1. reduce errors and mismatches between trust and beneficiary reporting;
2. improve validation of digitally lodged trust returns; and

3. give agents greater visibility of trust distributions for their clients.

Tax Time 2027 – further enhancements

From Tax Time 2027, the ATO will:

1. extend prefilling of trust distribution data to non-individual beneficiaries;
2. introduce interactive validations that check trust return data against ATO-held information at lodgment; and
3. remove existing software limits on the number of beneficiaries that can be included in electronic trust lodgments, to ease compliance for larger trusts.

Trust TFN reporting reform

Separate to the systems changes, legislation has been introduced to modernise beneficiary TFN reporting for closely held trusts. From income years starting on or after 1 July 2026, trustees will report beneficiary TFNs at the time the trust tax return is lodged, rather than through quarterly TFN reports, where the beneficiary is presently entitled to trust income. Transitional arrangements preserve the existing quarterly regime for earlier periods.

Practical implications

Trustees and advisers should ensure:

1. trust distribution data is accurate, complete and finalised earlier in the tax cycle;
2. beneficiary records (including TFNs) are up to date; and
3. systems and processes are prepared for increased reliance on prefilling and real-time validation from Tax Time 2026 onward.

w https://www.ato.gov.au/businesses-and-organisations/trusts/modernising-tax-administration-systems
w https://www.ato.gov.au/businesses-and-organisations/trusts/modernising-trust-administration-systems
w https://www.ato.gov.au/businesses-and-organisations/business-bulletins-newsroom/spotlight-what-s-on-the-horizon-for-trusts-administration

7.12 Business benchmarks

The ATO has published over 100 small business benchmarks for 2023-24.

The ATO uses this data to track small business income and expenditure. If a particular business reports expenses that fall outside the industry benchmark range, the ATO may seek to review whether tax return disclosures have been made correctly.

Reporting above benchmarks

When a business reports above an industry benchmark range, this an indicator that expenses are high relative to sales for that type of business. While this does not necessarily mean that the tax return is incorrect, it may prompt the ATO to review whether income and expenses have been recorded and classified properly, and whether the results can be explained by the circumstances of the business. Reporting above the benchmark can reflect genuine commercial factors, but it can also point to recordkeeping issues or errors in reporting.

When a business reports above a benchmark range, it may indicate the following:

1. expenses are disproportionately high compared with sales, suggesting inefficiencies in cost management;
2. wastage levels are higher than is typical for the industry;
3. business stock has been used for private purposes but treated as a business expense;
4. input costs are higher than competitors' due to less favourable purchasing arrangements;
5. rent or labour costs are high relative to sales volumes, including overstaffing during quieter periods;
6. mark-ups are lower than industry norms;
7. sales income has not been fully or accurately recorded; and
8. internal cash controls are weak, particularly where cash taken for expenses is not properly recorded as sales.

Reporting below benchmarks

When a business reports below an industry benchmark range this an indicator that expenses are low relative to sales for that type of business. This outcome may reflect genuine commercial efficiency or higher profit margins, but it can also raise questions about whether all expenses have been correctly recorded and classified. Where a business reports below the benchmark, the ATO may expect the result to be explainable and supported by appropriate records.

When a business reports below a benchmark range, it may indicate the following:

1. expenses have been recorded under incorrect labels e.g. costs of sales being classified as other expenses;
2. some expenses have not been recorded at all, including wages or other cash payments;
3. mark-ups are higher than those of competitors; and
4. the business is operating more efficiently than others in the industry.

w https://www.ato.gov.au/businesses-and-organisations/small-business-newsroom/where-does-your-business-stand-with-our-benchmarks
w https://www.ato.gov.au/businesses-and-organisations/income-deductions-and-concessions/small-business-benchmarks/what-it-means-to-be-outside-the-benchmark-range

7.13 Tips for correct base rate entity status assessment

The ATO has published website guidance highlighting common errors made by companies when determining whether they qualify as a base rate entity for company tax rate purposes. The ATO reiterates that base rate entity status must be assessed separately for each income year and depends on both of the following:

the company's aggregated turnover being below the relevant threshold (currently $50 million); and
80% or less of the company's assessable income being base rate entity passive income.

The ATO identifies a number of recurring problem areas and provides the following tips:

- ***Include all connected and affiliated entities.*** *When calculating aggregated turnover, make sure you include all connected and affiliated entities, including international entities. Omitting entities is a common cause of incorrect base rate entity outcomes.*

- ***Include capital gains in base rate entity passive income calculations.*** *You need to include net capital gains when working out base rate entity passive income. This includes capital gains from assets used within your business, even if they're considered to be 'active assets'. Only capital gains that are disregarded for the purpose of calculating your net capital gain, such as capital gains from assets eligible for the small business 15-year exemption, are excluded.*

- ***Include all base rate entity passive income types when determining eligibility.*** *You need to include rent, royalty, interest and some dividend income amounts, as these are often missed.*

- ***Re-assess base rate entity status every year.*** *You need to review base rate entity status annually. Don't assume last year's outcome still applies – changes in turnover, income sources, or group structure (including newly-acquired entities or shareholder changes) can affect the result.*

- ***Calculate base rate entity passive income even if turnover is under $50 million.*** *If aggregated turnover is less than $50 million, you still need to calculate base rate entity passive income. This step is required to confirm base rate entity status eligibility but is sometimes overlooked.*

The ATO cautions that these issues commonly lead to incorrect company tax rate outcomes and emphasises the importance of reassessing base rate entity status each year to avoid processing delays and the need for amendments.

w https://www.ato.gov.au/businesses-and-organisations/business-bulletins-newsroom/tips-to-get-your-base-rate-entity-status-correct

7.14 Temporary relief for fuel-dependent businesses

The ATO has announced targeted, time-limited support for businesses experiencing difficulty meeting tax obligations due to high fuel costs. The measures apply for a three-month period, currently running until 30 June 2026, and are directed at eligible businesses able to demonstrate a reduced capacity to pay as a result of fuel price impacts.

Key elements of the response include:

1. streamlined access to a temporary fuel response payment plan, allowing up to 36 monthly instalments, no upfront payment; and
2. potential remission of GIC where payment terms are complied with and lodgments are brought up to date within three months.

GIC and penalty remission requests will also take high fuel costs into account more broadly.

Eligible businesses may also request variations to PAYG instalments where taxable income has declined due to fuel-related cost pressures. Applications for the fuel response payment plan are made through ATO online services and must be lodged by 30 June 2026. The ATO has indicated it will continue to monitor conditions and may adjust its approach beyond that date.

w https://www.ato.gov.au/media-centre/ato-responds-to-impacts-of-high-fuel-costs
w https://www.ato.gov.au/individuals-and-families/financial-difficulties-and-disasters/ato-fuel-response
w https://www.ato.gov.au/individuals-and-families/financial-difficulties-and-disasters/ato-fuel-response/ato-fuel-response-payment-plan

7.15 Disaster relief for flooding in Queensland

The Queensland Revenue Office announced targeted relief for individuals and businesses experiencing financial hardship due to the March 2026 flooding in Queensland, offering assistance with state taxes, unpaid fines, and penalties for those in declared flood-affected areas.

Available support includes flexible payment arrangements, remission of interest and penalties where appropriate, and extensions of time to meet existing obligations, with relief assessed on a case-by-case basis. Affected taxpayers are encouraged to contact QRO directly if flooding has impacted their capacity to comply with state revenue requirements.

w https://qro.qld.gov.au/2026/03/flooding-queensland-march-2026/

7.16 Australia's R&D system

On 17 March 2026, an independent panel chaired by Robyn Denholm released the *Ambitious Australia: Strategic Examination of Research and Development* report, commissioned by the Federal Government as part of the 2024–25 Budget. The report examines Australia's research and development (**R&D**) system and provides 20 recommendations aimed at reforming the national R&D framework and strengthening Australia's long-term innovation capability.

The report focused on six elements:

1. achieving greater focus and scale for research, development and innovation (**RD&I**) impact;
2. building a world-class foundational research system to create knowledge and expertise;
3. strengthening incentives to grow the RD&I businesses and industries of the future;
4. increasing investment and capital to support the innovation cycle;
5. developing the workforce capability needed to power RD&I; and
6. ensuring government leads and champions national RD&I efforts.

The release was announced by the Minister for Industry and Innovation and accompanied by a report package published by the Department of Industry, Science and Resources. The government is currently considering the recommendations.

w https://www.minister.industry.gov.au/ministers/timayres/media-releases/ambitious-australia-release-strategic-examination-research-and-development-report
w https://www.industry.gov.au/publications/ambitious-australia-strategic-examination-research-and-development-final-report

7.17 Thin capitalisation guidance for foreign banks

The ATO has published *Draft Practical Compliance Guideline* PCG 2026/D1 regarding attribution of risk-weighted assets to Australian branches of foreign banks for thin capitalisation purposes.

The Draft Guidance addresses a thin capitalisation issue impacting foreign banks that conduct their banking business in Australia through a branch.

The Draft Guidance is open for comments until 8 May 2026.

ATO Reference *PCG 2026/D1*
w https://www.ato.gov.au/law/view/document?docid=DPC/PCG2026D1/NAT/ATO/00001

8. Tax Professionals

8.1 TPB guidance on use of AI

The Tax Practitioners Board has released *Exposure Draft Information Sheet* TPB(I) D62/2026, setting out how the existing Code of Professional Conduct applies where registered tax and BAS agents use artificial intelligence (including generative AI tools) in the provision of tax agent services.

The Draft Guidance does not change the law and does not regulate AI use as such. Instead, it explains how the TPB expects existing obligations under the Code of Professional Conduct (in s 30-10 of the *Tax Agent Services Act 2009*) and the *Tax Agent Services (Code of Professional Conduct) Determination 2024* to operate where AI tools are used as part of tax compliance, advice, review or research processes. The Draft Guidance also notes that, while not binding on all tax practitioners, Accounting Professional and Ethical Standards Board (APESB) standard APES 110 Code of Ethics for Professional Accountants also provides expectations regarding behaviour of members using technology.

The Draft Guidance suggests:

> *…tax practitioners may wish to consider the following general factors:*
>
> - *the nature of the activity to be performed by the AI*
> - *how information is being stored and accessed*
> - *the expected use of, or extent of reliance on, the output of the AI*
> - *the competency and ability of the AI being used and the purposes for which it is being used*
> - *the processes in place for the tax practitioner to review the output of the AI tools before the output is used in professional practice*
> - *the appropriateness of the data inputs to the AI tool and decisions made by tax practitioners while using the AI tool.*

The Draft Guidance emphasises that, regardless of the extent to which AI is used, the tax practitioner remains solely responsible for the accuracy, correctness and appropriateness of the services provided. AI outputs must not be relied on as a substitute for professional judgement.

Competency and reasonable care

The Draft Guidance highlights that obligations relating to competency, reasonable care and supervision (Code items 7 to 10 and the Determination) apply in full where AI tools are used. In practice, this means practitioners are expected to:

1. understand the capabilities and limitations of the AI tools they use;
2. determine whether the task being performed by the AI is appropriate given the nature of the engagement;
3. critically review, verify and, where necessary, correct AI-generated outputs before relying on them; and
4. maintain systems of quality management and supervision that explicitly account for AI use, including record-keeping.

The Draft Guidance notes that large language models may produce biased, incomplete or factually incorrect outputs and lack transparency. Failure to identify or remediate such issues may result in a failure to take reasonable care, even where reliance on an AI tool was well-intentioned.

Confidentiality and data handling

A central focus of the draft guidance is confidentiality under Code item 6. The TPB cautions that using AI tools may involve disclosure of client information to third parties, including offshore entities, depending on how the tool is configured and where data is stored.

Where AI use involves the disclosure of client information, the TPB expects practitioners to:

1. obtain client permission before disclosure;
2. clearly explain the nature, purpose and destination of the disclosure (including data storage arrangements); and
3. ensure appropriate safeguards are in place to protect client information.

The Draft Guidance also highlights the interaction with obligations under the *Privacy Act 1988* (Cth), including additional requirements where tax file numbers are involved.

Other Code obligations

The Draft Guidance confirms that AI use must also comply with broader Code requirements, including honesty and integrity, independence, supervision of entities providing services on the practitioner's behalf, and maintenance of appropriate professional indemnity insurance. The Draft Guidance notes that guidance from recognised professional bodies (such as APES 110) may assist but does not displace TPB expectations.

The Draft Guidance is open for consultation until 20 April 2026.

w https://www.tpb.gov.au/exposure-draft-tpbi-d622026-use-artificial-intelligence-and-code-professional-conduct

8.2 TPB and offshoring

The Tax Practitioners Board has released an updated fact sheet summarising TPB(PN) 2/2018 *Outsourcing and offshoring of tax services*, outlining key considerations for practitioners when entering into outsourcing or offshoring arrangements, the relevant Code of Professional Conduct obligations, and the consequences of inadequate arrangements.

The Fact Sheet distinguishes between outsourcing, where services are performed by a third party, and offshoring, where services are performed outside Australia (which may or may not involve outsourcing).

The Fact Sheet states that, when entering into an outsourcing or offshoring arrangement, practitioners should consider the following matters, among other things:

1. clearly defined duties, obligations and responsibilities of parties;
2. how information is stored, accessed, transferred and archived;
3. protections to prevent service access disruption;
4. details of liability and indemnity insurance arrangements;
5. security protocols to safeguard unauthorised access;
6. dispute resolution processes for client information;
7. competency of outsourced providers;
8. processes for evaluating, overseeing, amending or exiting the arrangement; and
9. legislative and regulatory requirements for holding information offshore.

Although the Code of Professional Conduct in section 30-10 of the *Tax Agent Services Act 2009* does not specifically address outsourcing or offshoring, several Code items that may be relevant. These include the obligation not to disclose client information to third parties without consent (Code item 6), the requirement to

ensure services provided on one's behalf are provided competently, including services provided by unregistered contractors domestically or offshore (Code item 7), the duty to take reasonable care in ascertaining a client's state of affairs and ensuring taxation laws are correctly applied (Code items 9 and 10), and the requirement to maintain appropriate professional indemnity insurance (Code item 13).

The Fact Sheet notes that inadequate outsourcing arrangements may lead to administrative sanctions, including cautions, orders, or suspension or termination of registration. Poor practices may also result in breaches of other laws, such as the *Privacy Act 1988* (Cth) and the *Corporations Act 2001* (Cth).

w https://www.tpb.gov.au/sites/default/files/2025-12/Outsourcing%20and%20offshoring_Factsheet.pdf

8.3 TPB and public register changes

From 1 April 2026, registered tax practitioners will be able to choose which contact details appear on the public TPB Register record. Registered agents can now choose and update their published contact details at any time via My Profile, including physical addresses, email addresses and phone numbers, subject to the requirement that at least one contact detail remain publicly available under the Tax Agent Services Regulations 2022. New applicants will also be able to select their preferred published contact details when submitting a registration application.

The changes are intended to support practitioner safety and strengthen cyber security, including by reducing risks associated with data scraping and phishing. A CAPTCHA step has also been introduced for users accessing practitioner contact details on the Register.

w https://www.tpb.gov.au/tpb-strengthens-tax-practitioner-safety-greater-flexibility-and-security-features-tpb-public-register-0

8.4 Payment-only deferral requests

The ATO has updated its website guidance on payment-only deferral requests for registered agents. A *payment-only deferral* is a deferral of the time for payment of an existing tax liability, without deferring lodgment obligations. Where granted, the due date for payment is formally pushed back, rather than the liability being paid late under a payment arrangement.

Registered agents may request a payment-only deferral for income tax, activity statement liabilities and FBT, provided the request relates to an existing client and only covers liabilities that have been lodged and processed.

A payment-only deferral will only be considered where the client is affected by exceptional or unforeseen circumstances beyond their control, consistent with PS LA 2011/14. Agents must set out the circumstances preventing payment by the due date, the steps taken to mitigate their impact, and why the client will be able to meet ongoing obligations and make full payment once the circumstances are resolved. Where relevant, agents must also explain any existing payment arrangements and why the request is being made after the original due date.

Requests for significant global entities or large businesses will be considered by the ATO's large business specialists, and further information may be requested. The recent webpage update includes information about deferral requests for combined global and domestic minimum tax returns, in relation to Pillar Two lodgment obligations.

Payment-only deferrals must be requested by completing the "Payment-only deferral application – Registered agent only" form and lodging it through Online Services for Agents via Practice Mail. A separate form is required for each client unless entities are linked. Incomplete applications may be rejected, with agents given two business days to respond.

Processing may take up to 28 days, and agents are cautioned not to resubmit requests for the same client during that period. Outcomes are communicated through Online Services for Agents, with deferred due dates updated once processing is complete.

w https://www.ato.gov.au/tax-and-super-professionals/for-tax-professionals/payment-interest-and-penalties/payment-only-deferral-requests-for-registered-agents

8.5 Tax Ombudsman review of Online Services for Agents (OSfA)

The Taxation Ombudsman has commenced a targeted review of the ATO's OSfA and its integrated communication channel, Practice Mail, to assess whether these systems adequately support the day-to-day operational needs of tax and BAS agents.

The review follows the earlier examination of the Registered Agent Phone Line, which found that a large proportion of agent phone contact arises from functionality gaps, usability issues and processing delays within online systems, rather than a preference for phone interaction.

Building on those findings, the current review will examine how OSfA can be enhanced to better enable agents to manage client affairs efficiently, including whether the system delivers the functionality, timeliness and reliability required to meet client expectations. It will also assess whether Practice Mail, or a potential replacement channel, provides effective, timely and secure two-way communication with the ATO, particularly as an alternative to post and fax.

A further focus of the review is identifying priority system improvements that reduce duplication, minimise delays and decrease reliance on phone and paper-based contact, while also considering whether the ATO has robust processes for capturing agent feedback, prioritising improvements and implementing changes that appropriately reflect user experience and support needs.

Consultation is open to agents and professional bodies until 10 April 2026.

w https://taxombudsman.gov.au/reviews_reports/review-ato-online-services-for-agents/

8.6 AML/CTF program starter kits

AUSTRAC has released a program starter kit to assist industry in understanding and meeting their obligations under the Anti-Money Laundering and Counter-Terrorism Financing (**AML/CTF**) laws. The starter kit will be progressively updated as new guidance is issued to support entities in complying with their AML/CTF obligations.

The guidance explains AUSTRAC's interpretation of the AML/CTF Act, associated rules and regulations. The Courts retain ultimate authority in interpreting the law and determining whether any provision has been contravened.

While AUSTRAC's scenarios and examples are designed to help reporting entities understand practical application, they are not exhaustive, and do not cover all potential situations.

AUSTRAC emphasises that the material provides general guidance only and is not a substitute for legal advice. Entities are expected to consider their own operational risks and obtain independent advice where necessary to ensure compliance with their AML/CTF obligations.

w https://www.austrac.gov.au/reforms/program-starter-kits