

Tax Update

August 2026



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
Jane Harris	E: jeh@bwslawyers.com.au	P: 02 9394 1006
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: riv@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:

- Tax
- Dispute Resolution
- Corporate & Commercial
- Franchising
- Property
- Employment
- Estate Planning
- Elder Law
- Intellectual Property
- Corporate Governance
- Insolvency & Bankruptcy

Our lawyers specialise in working with business owners and their business advisors, such as accountants, financial consultants, property consultants and IT consultants – what we see as our clients' 'business family'. We develop long-term relationships which give our lawyers a deep understanding of our clients' business and personal needs. Over the years we have gained a unique insight into the nature of operating owner-managed businesses and the outcome is that we provide practical commercial solutions to business issues.

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.

This paper has been prepared for the purposes of general training and information only. It should not be taken to be specific advice purposes or be used in decision-making. All readers are advised to undertake their own research or to seek professional advice to keep abreast of any reforms and developments in the law. Brown Wright Stein Lawyers excludes all liability relating to relying on the information and ideas contained within.

All rights reserved. No part of these notes may be reproduced in any form or by any means, electronic or mechanical, including photocopying or recording, without prior written permission from Brown Wright Stein Lawyers.

These materials have been prepared based on the law as it stood on 12 August 2026. Copyright © Brown Wright Stein Lawyers 2026.

Liability limited by a scheme approved under professional standards legislation

Contents

1. Tax Update Pitstop	6
2. Detailed case summaries	8
2.1 Evolution Mining Limited – cancelling losses and consolidation	8
2.2 Department of Education – ordinary time earnings and SGC	9
2.3 Radanov – distribution of a superannuation death benefit	12
2.4 Premier Aviation – GST and creditable acquisitions	14
2.5 Barratt Nominees – amending the vesting date of a trust	17
2.6 Boyd – NSW land tax and PPR exemption across adjoining lots	19
3. Cases in brief	23
3.1 BHZD – GST penalty remission and tax agent safe harbour	23
3.2 Barron – release of tax liabilities for hardship	24
3.3 Hasan – derivation of income	26
3.4 Stock v Neal – royalties as trust capital	27
3.5 One Solar Power – payroll tax and door-to-door sales exemption	29
3.6 Chamoun – NSW director liable for company payroll tax	30
3.7 Ivo Holdings – time of liability for landholder duty in NSW	31
3.8 ISPT – landholder duty and aggregation of separate transactions	33
3.9 Ackinclose – land tax aggregation in QLD	34
3.10 Kelly v Lask Nominees – quorum for a shareholders meeting	34
3.11 Stonepoint Capital Management Pty Ltd – advisors and broader arrangements with clients	35
3.12 Other tax and super related cases from 8 July 2026 to 10 Aug 2026	36
4. Federal Legislation	38
Progress of legislation	38
4.1 2026 Federal Budget reforms – CGT Tranche 2	38
4.2 Interaction with exemptions and concessions	39
4.3 2026 Federal Budget reforms – CGT alternative valuation method	41
4.4 2026 Federal Budget reforms – Negative Gearing Tranche 2	42
4.5 2026 Federal Budget reforms – New residential dwelling	44

4.6	PAYG withholding variation for FRCGW.....	46
5.	Rulings	48
5.1	ATO's approach to private rulings.....	48
5.2	Substantiation relief where records are lost.....	48
5.3	Recipient created tax invoices	49
5.4	ATO finalises Payday Super rulings	51
5.5	Duty for incorporated associations and amalgamations (Vic).....	53
5.6	Assumed tax liability amounts and consideration for duties (Vic).....	54
5.7	Tasmania First Home Owner Grant – guidelines released	55
5.8	NT payroll tax exemption for maternity, paternity and adoption leave	56
6.	Private Rulings	57
6.1	Two dwellings, one main residence?	57
6.2	Record keeping and CGT	58
6.3	GST groups and registration.....	59
6.4	Creditable acquisition legal fees	61
6.5	Foreign income tax offset on foreign capital gains	63
7.	ATO and other materials.....	65
7.1	Interim Decision Impact Statement – <i>Department of Education</i>	65
7.2	Update to decision impact statement on Shaw.....	65
7.3	When the ATO may move a business to monthly GST reporting	66
7.4	ATO expands pre-fill data for contractors	66
7.5	ATO updates transfer balance cap guidance	67
7.6	ANAO audit of ATO regulation of SMSFs	69
7.7	Changes to SMSF limited recourse borrowing arrangements	69
7.8	ATO commences electoral roll data-matching program	70
7.9	Tax Ombudsman review highlights bias risk in ATO decision-making	70
8.	Tax professionals.....	72
8.1	TPB Corporate Plan 2026–27	72
8.2	Treasury consultation on TPB sanctions reform	72
8.3	TPB finalises guidance on responsible AI use for tax practitioners	73

8.4 Navigating super payments in July and August.....74

8.5 Check property manager reports to reduce incorrect claims74

8.6 What happens after lodging a tax return.....75

8.7 ATO Commissioner addresses practitioner concerns75

Our tax training notes are prepared by Matthew McKee, Jane Harris, Gillian Tam, Marianne Dakhoul, 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 Evolution Mining	What happened? The Federal Court held that Evolution Mining’s later choice in its 2014 income tax return was not effective to cancel the transfer of losses from Conquest Mining under section 707-145 of the ITAA 1997. The Court found that the choice had to be made in relation to the joining year, being the income year in which Conquest joined Evolution’s tax consolidated group. Why it matters? The decision is important for consolidated groups because the choice to cancel transferred losses can affect the allocable cost amount, tax cost setting outcomes and available fractions. It shows that the absence of an express deadline does not necessarily mean a tax choice can be made at any time. Advisers should identify and document loss transfer and cancellation choices at the joining time, particularly as preserving losses may reduce the ACA but cancelling them means the losses are lost permanently.	Page 8
Item 2.2 Department of Education	What happened? The Federal Court held that Victorian teachers’ annual salary loading allowance was not included in their notional earnings base before 1 July 2008 and was not ordinary time earnings after 1 July 2008. The Court found that the allowance was, in substance, a recreation leave allowance under the earlier Victorian superannuation legislation and, after the SGAA amendments, was a distinct annual payment rather than earnings in respect of ordinary hours of work. Why it matters? The decision is important for employers and advisers because it shows that not every allowance connected with employment forms part of OTE. The character of the payment, the instrument under which it is paid and its connection with ordinary hours of work all matter. The case also has broader significance for Payday Super and the new qualifying earnings concept, and it is a reminder that historical SG exposure can remain significant because there is no general time limit on the Commissioner issuing an SGC assessment unless an assessment has already been issued.	Page 11
Item 2.4 Premier Aviation	What happened? The ART held that Premier Aviation was not entitled to input tax credits for legal fees incurred in shareholder oppression proceedings concerning Skytraders. The Tribunal found that Premier was not carrying on an aviation consulting enterprise	Page 20

Tax Update Matter	Impact Summary	Further Detail
	during the relevant period. Its relevant activity was holding shares and receiving dividends. The legal fees were therefore not acquired in carrying on an enterprise. Why it matters? The case is a useful GST reminder that registration and payment of GST-inclusive costs are not enough to obtain input tax credits. The acquisition must be made in carrying on an enterprise and must not relate to input taxed supplies. Here, even if Premier had made the acquisition in carrying on its enterprise, the legal services related to proposed dealings with shares, which are input taxed supplies.	
Item 3.7 Ivo Holdings	What happened? NCAT held that landholder duty arose where a transfer of units in a unit trust and the trust's acquisition of land occurred on the same calendar day. The NCAT accepted that "date" in section 161 of the <i>Duties Act 1997</i> (NSW) means a calendar day, not a precise moment in time. Why it matters? The case is important for landholder duty (including in States other than NSW that have an equivalent provision to section 161) as sequencing an acquisition earlier on the same day as acquiring land may not prevent landholder duty arising. If a significant interest is acquired in an entity that is also acquiring land, advisers should allow at least a full calendar day between the acquisition of the interest and the execution of the contract to purchase the land. Later duty transactions can also trigger a review of earlier dealings, so the transaction history should be reviewed before seeking a ruling or implementing a later transfer.	Page 38
Item 4.2 2026 Federal Budget Reforms	What happened? Treasury released further tranche 2 materials for the 2026 Federal Budget reforms. The materials deal with how deferred CGT gains interact with exemptions and concessions, an alternative valuation method for estimating 30 June 2027 values, negative gearing changes for transfers on death and relationship breakdown, and the definition of a new residential dwelling for negative gearing and housing-related CGT concessions. Why it matters? The measures are important because they affect how pre- and post-1 July 2027 gains are divided, when exemptions such as the main residence exemption and small business CGT concessions are tested, and whether grandfathered negative gearing or new residential dwelling treatment is preserved. Advisers may need to compare formal valuations with the statutory alternative method, check whether transfers preserve grandfathered treatment, and test whether projects genuinely increase housing supply and satisfy the separate legal interest and occupancy certificate requirements.	Pages 49–57

2. Detailed case summaries

2.1 Evolution Mining Limited – cancelling losses and consolidation

Facts

On 2 November 2011, Evolution Mining Limited acquired all shares in Conquest Mining Limited. Conquest then became a subsidiary member of Evolution's tax consolidated group. Conquest had incurred tax losses for the income years ended 30 June 2007 to 30 June 2010 totalling \$31,292,880.

Under Subdivision 707-A of the ITAA 1997, losses made by a joining entity before joining a consolidated group are automatically transferred to the head company at the joining time if the statutory transfer conditions are satisfied. However, section 707-145 allows the head company to choose to cancel the transfer of a loss. If the transfer is cancelled, the loss cannot be used by any entity, but the cancellation can affect the group's allocable cost amount and the available fractions for other transferred loss bundles.

On 25 June 2014, Evolution lodged its 2012 income tax return. It did not choose to cancel the transfer of the Conquest losses in that return. Evolution adopted the same position in its 2013 income tax return, lodged on 22 August 2014.

On 13 March 2015, Evolution lodged its 2014 income tax return. In that return, it recorded the cancellation of the transfer of losses, including the Conquest losses. Evolution later sought to use some of those losses in the income year ended 30 June 2017. The Commissioner opposed that use.

The proceedings involved a separate question. The question was whether the choice made in Part B of the losses schedule to Evolution's 2014 income tax return was effective for section 707-145 purposes to cancel the transfer of the Conquest losses.

Issue

Was Evolution's choice, made in its 2014 income tax return, effective under section 707-145 to cancel the transfer of the Conquest losses?

Decision

Justice Jackman held that the 2014 choice was not effective. The choice to cancel the transfer of a loss under section 707-145 must be made in relation to the joining year, being the income year in which the joining entity became a member of the consolidated group.

The Court accepted that section 707-145 does not expressly prescribe the time or form of the choice. However, the provision had to be construed in context. The transfer of losses occurs automatically at the joining time under section 707-120. A choice under section 707-145 cancels the transfer of the loss, rather than cancelling the loss itself. The consequences of the transfer, and of any cancellation, take root in the joining year.

A central reason for that construction was the surrounding consolidation regime. If transferred losses are not cancelled, they reduce the allocable cost amount for the joining entity under Division 705. That affects the tax cost setting amounts for the joining entity's assets, and may also affect capital gains, capital allowance deductions, trading stock and revenue asset outcomes. Transferred losses also enter bundles for available fraction purposes under Subdivision 707-C.

The Court considered it significant that the legislation contains no mechanism to unscramble those consequences if a head company later seeks to cancel a transfer in a later income year. There is no express mechanism for recalculating the allocable cost amount because of a later section 707-145 choice, no available

fraction adjustment event for that kind of later choice, no equivalent to Subdivision 705-E, and no exception in section 170 of the ITAA 1936 allowing the Commissioner to amend assessments out of time for such a later cancellation.

The Commissioner has appealed the decision to the Full Court.

TIP – When an entity joins a tax consolidated group, the head company needs to decide whether it is better to preserve transferred losses or cancel their transfer. If the losses are preserved, the group may be able to utilise them in later income years, subject to the loss transfer and available fraction rules. However, the transferred losses reduce the allocable cost amount (**ACA**) for the joining entity under step 6 of the ACA calculation, which can reduce the tax cost setting amounts of the joining entity's assets and may increase future taxable gains or reduce future deductions. If the transfer is cancelled, the losses are effectively lost and cannot be used by any entity, but the group avoids the step 6 ACA reduction. Cancelling losses may therefore be attractive where the losses are unlikely to be usable, heavily restricted, uncertain, or less valuable than preserving a higher ACA for assets with future depreciation, revenue or capital gains consequences. The choice requires a comparison between the expected value of the losses and the tax benefit of higher tax cost setting amounts.

COMMENT – The decision may have broader significance for other choices under tax law where the legislation does not specify a time for making the choice. The absence of an express deadline will not necessarily mean that a taxpayer can make the choice at any time. The Court's approach suggests that the timing of a choice may be implied from the statutory context, including the income year to which the choice relates, the consequences that flow from making or not making the choice, and whether the legislation contains mechanisms to adjust prior-year outcomes if the choice is made later. Advisers should therefore be cautious about assuming that a choice remains open indefinitely merely because the provision is silent as to timing.

COMMENT – The case is also a useful reminder that statutory words cannot be read in isolation. Even where the text of a provision appears broad or silent on an issue, its meaning may be confined by the statutory context, including the structure of the legislative regime. This could be seen from the recent High Court decision in *Commissioner of Taxation v Bendel* [2025] HCA 34.

Citation *Evolution Mining Limited v Commissioner of Taxation* [2026] FCA 935 (Jackman J, Sydney)
w <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2026/935.html>

2.2 Department of Education – ordinary time earnings and SGC

Facts

Annual salary loading allowances in Victoria

In Victoria, teachers receive an annual salary loading allowance equal to 17.5% of four weeks' salary, subject to specified caps and eligibility requirements.

For the period before 1 July 2008, this salary loading allowance was granted under Ministerial Order No. 186 (2004), which was titled the *Teaching Class (Employment Conditions, Salaries, Allowances and Selection) Order 2004 (Order 186)*. Under this order, a teacher employed on 30 June of any year who at that date completed one year of paid service was entitled to receive an annual salary loading allowance equal to 17.5% of four weeks of the total salary he or she was entitled to at that date.

For the period from 1 July 2008, this salary loading allowance is granted under instruments which were substantively on the same terms, including the Victorian Government Schools Agreement 2022. This agreement provides that an employee is entitled to be paid a salary loading allowance each year of an amount equivalent to either 17.5% of four weeks of the total salary to which the employee is normally entitled as at 1

December of the year in which the allowance is paid, or \$1,402 in 2022, \$1,430 in 2023, \$1,459 in 2024 and \$1,488 in 2025, whichever is the lesser.

Changes to the superannuation guarantee charge laws

Before 1 July 2008, superannuation guarantee amounts were calculated by reference to an employee's "notional earnings base" under section 23(2) of the *Superannuation Guarantee (Administration) Act 1992* (Cth) (**SGAA**). There was no single earnings base that applied to all employees. Instead, an employer's superannuation guarantee obligations were generally calculated by reference to earnings bases established under superannuation arrangements that existed on 21 August 1991.

The "notional earnings base" required consideration of the *State Employees Retirement Benefits Act 1979* (Vic) and the *State Superannuation Act 1988* (Vic). Both Acts defined "salary" and expressly excluded a "recreation leave allowance" from that definition. The *State Superannuation Act 1988* (Vic) also excluded from the "salary" definition payments of a temporary character.

Following amendments to the SGAA in 2004, which came into effect on 1 July 2008, employers' superannuation obligations were calculated by reference to "ordinary time earnings" (**OTE**), which were standardised. Pre-21 August 1991 superannuation entitlements were no longer used for determining liability for the superannuation guarantee charge.

The statutory definition of OTE required consideration of the total of the "earnings in respect of ordinary hours of work".

Amended assessments issued to the Department of Education

The Commissioner issued amended assessments to the Department of Education (**Department**) for superannuation guarantee charges pursuant to the SGAA in respect of each quarter between 1 April 2004 and 31 December 2022. This was on the basis that the employees' "notional earnings base" (for periods before 1 July 2008) and "ordinary time earnings" (for periods from 1 July 2008) included annual salary loading allowances.

The Department lodged objections to these amended assessments, however, these objections were disallowed by the Commissioner. The Department then initiated proceedings in the Federal Court of Australia against the objection decision.

The Department argued that:

1. the salary loading allowance should not have been included in the notional earnings base for superannuation guarantee purposes prior to 1 July 2008 as the salary loading allowance did not form part of "salary" under Victorian superannuation legislation. This was because the salary loading allowance was effectively an annual leave loading and therefore excluded as a "recreation leave allowance", or it was a payment of a "temporary character"; and
2. the allowance should not have formed part of OTE from 1 July 2008 because it was not earnings "in respect of ordinary hours of work" and, alternatively, was not paid at the ordinary rate of pay.

Issue

Should the salary loading allowance have been included in "notional earnings base" (before 1 July 2008) and "ordinary time earnings" (from 1 July 2008) for superannuation guarantee purposes?

Decision

Is the salary loading allowance included in the “notional earnings base”?

Justice Button accepted the Department's argument that the salary loading allowance was a recreation leave allowance.

Justice Button considered the context in which the *State Employees Retirement Benefits Act 1979* (Vic) and the *State Superannuation Act 1988* (Vic) operated. In that context, Button J found that the expression “recreation leave allowance” was to be construed as capturing an allowance that was, in substance, an allowance in respect of recreation leave.

Although called a “salary loading allowance” and paid differently from ordinary annual leave loading arrangements, Button J held that, in substance, the salary loading allowance was a recreation leave allowance. Accordingly, it was not included in “salary” as defined in the *State Employees Retirement Benefits Act 1979* (Vic) and the *State Superannuation Act 1988* (Vic) for the purpose of calculating the notional earnings base.

Is the salary loading allowance a part of OTE?

Justice Button also accepted the Department's argument that after 1 July 2008, the allowance was a distinct annual payment that could not be characterised as earnings “in respect of ordinary hours of work”.

Relying on the Full Federal Court's reasoning in *BlueScope Steel (AIS) Pty Ltd v Australian Workers Union* [2019] FCAFC 84, Button J emphasised that OTE is concerned with earnings in respect of ordinary hours of work. Button J did not consider that a payment, to which a teacher would be entitled if employed on a certain day of the year, but to which the teacher would not be entitled if he or she had resigned prior to that date, could be characterised as earnings in respect of ordinary hours of work. Rather, the payment was made in addition to the payments made to teachers by way of salary, in respect of their ordinary hours of work.

Therefore, the salary loading allowance was not a part of OTE.

Conclusion

The Court held that Victorian teachers' annual salary loading allowance was neither part of their notional earnings base prior to 1 July 2008 nor part of their OTE after that date. Consequently, the amended assessments issued by the Commissioner were held to be excessive.

COMMENT – the ATO has issued an interim decision impact statement in relation to this decision (see Item 6.1 of these notes) and has appealed the decision.

COMMENT – The decision is also relevant to the new “qualifying earnings” concept relevant to the Payday Super regime. The Court's approach suggests that a payment may fall outside OTE where it is characterised as an additional amount payable under an industrial instrument rather than part of the employee's ordinary salary, even if it is connected with ordinary employment and does not relate to overtime. If upheld on appeal, the decision may have implications beyond annual leave loading arrangements and could affect the superannuation treatment of a range of allowances and supplementary employment payments.

TRAP – There is no general time limit under the SGAA on the Commissioner issuing an SGC assessment. A limitation period only starts once an assessment has been issued for a period, in which case the Commissioner has 4 years to amend the assessment. Unless an SG assessment has been issued for a period, historical superannuation guarantee shortfalls can remain exposed, even for very old quarters.

COMMENT – Even if the Commissioner is unable to amend an SGC assessment, or does not issue an assessment, advisers should separately consider whether affected employees have a contractual or industrial right to seek payment of the superannuation contribution shortfall from the employer. The SGAA assessment and recovery regime does not necessarily exhaust the employee's rights. Depending on the employment

contract, enterprise agreement, award or applicable industrial instrument, the employee may have a separate claim that the employer failed to pay the superannuation contributions promised as part of the employee's remuneration package.

Citation *Department of Education v Commissioner of Taxation* [2026] FCA 898 (Button J, Melbourne)
w <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2026/898.html>

2.3 Radanov – distribution of a superannuation death benefit

Facts

On 7 November 2021, Kylie Hrysanidis died.

At the time of her death, Kylie was a member of the Retail Employees Superannuation Trust and a death benefit of approximately \$348,600 became payable under the governing rules of the fund.

Kylie was survived by her estranged spouse, Athanase Hrysanidis, her three adult children, Caitlin, Alexandra and Christopher Hrysanidis, and her de facto partner, Veljko Radanov.

From at least October 2019, Kylie and Veljko were living together in a de facto relationship. They shared a residence, maintained a sexual relationship, jointly met household expenses and had a degree of financial interdependence.

Kylie faced significant health challenges, having suffered a stroke in her mid-thirties and later being diagnosed with congestive heart failure or severe cardiomyopathy. Her financial circumstances were also difficult, and there was evidence that Veljko had financially supported her in the months immediately preceding her death. More specifically, Veljko had effectively shared his entire pay packet with Kylie after she became redundant shortly before her death.

Kylie died without making a binding death benefit nomination. Under the governing rules of the fund, the trustee had a broad discretion to distribute the death benefit amongst the deceased's dependants and legal personal representative in such proportions as it considered appropriate.

In October 2022, the trustee of the fund exercised its discretion under the trust deed and determined to pay the entirety of the death benefit to Veljko. The trustee reconsidered the matter in January 2023 and affirmed that decision.

In February 2023, Alexandra lodged a complaint with the Australian Financial Complaints Authority (**AFCA**). She argued that the trustee's decision was not fair and reasonable and that the death benefit should not have been paid entirely to Veljko.

Under the Corporations Act, AFCA was required to determine whether the trustee's decision was fair and reasonable in its operation in relation to all affected parties. AFCA's review was conducted on a 'de novo' basis, meaning it was required to form its own view rather than merely review the trustee's reasoning.

AFCA ultimately concluded that the trustee's decision was not fair and reasonable. While AFCA accepted that Veljko was a dependant and that the deceased's children were also dependants for superannuation purposes, it found that Veljko was only partially financially dependent on Kylie and had only a limited expectation of future financial support from her. AFCA also considered evidence that Kylie wished to leave assets to her children.

AFCA set aside the trustee's decision and substituted its own determination that the death benefit be divided equally between Veljko and the three children, with each receiving 25% of the benefit.

Veljko appealed to the Federal Court under section 1057 of the Corporations Act. Such an appeal is confined to questions of law and does not permit the Court to conduct its own merits review of AFCA's decision. A Court can only consider whether AFCA's findings were legally unreasonable, irrational, illogical, unsupported by evidence, or otherwise involved legal error.

Issue

Did AFCA commit an error of law by concluding that the trustee's decision to pay the entire death benefit to Veljko was not fair and reasonable, and by substituting a decision to divide the benefit equally between Veljko and the deceased's three children?

Decision

The Court rejected Veljko's challenge to AFCA's finding that he was only partially financially dependent on Kylie. AFCA had evidence before it that, immediately before her death, Kylie was financially dependent on Veljko rather than the other way around. AFCA was entitled to consider that circumstance, together with the broader financial relationship between the parties, when assessing the extent of dependency. The Court held that the finding was clearly open on the evidence and was neither irrational nor unsupported.

The Court also upheld AFCA's conclusion that Veljko's expectation of future financial support from Kylie was limited. AFCA was entitled to consider the deceased's significant health issues, uncertain future earning capacity and overall financial position. Those matters provided an evidentiary basis for AFCA's assessment and there was nothing illogical or unreasonable about that conclusion.

The Court further rejected the argument that AFCA failed to consider the purpose of superannuation death benefits. AFCA's reasons expressly referred to the purpose of death benefits and recognised that they are primarily intended to support those who were financially dependent on the deceased and who might reasonably have expected continuing support. However, AFCA was not required to distribute the benefit solely on the basis of financial dependency. The governing rules conferred a broad discretion and AFCA was entitled to take into account other factors, including the deceased's expressed wishes and the interests of her children.

Importantly, the Court noted that AFCA's own guidance contemplates situations where a financially dependent beneficiary may not receive the entire death benefit and where adult children may properly receive part of a benefit where the amount available exceeds what is reasonably necessary to meet another dependant's expectation of future support. AFCA's allocation of 25% to Veljko and 25% to each child was therefore a result that was reasonably open to it.

Accordingly, no error of law was established, and Goodman J dismissed the appeal with costs.

COMMENT – AFCA's role in determining superannuation death benefit disputes is broad. AFCA must undertake its own assessment and determine whether the trustee's decision is fair and reasonable in its operation for all affected parties. As a result, a trustee decision may be set aside even where it was a decision reasonably available to the trustee.

COMMENT – Financial dependency remains an important consideration when determining how a superannuation death benefit should be distributed, particularly where a beneficiary had a reasonable expectation of continuing financial support from the deceased. However, it is not determinative. Trustees and AFCA may also consider the extent of dependency, future financial expectations, the deceased's wishes and the competing claims of other non-financial dependants when determining a fair and reasonable outcome.

Citation *Radanov v Australian Financial Complaints Authority* [2026] FCA 929 (Goodman J, Queensland)
w <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2026/929.html>

2.4 Premier Aviation – GST and creditable acquisitions

Facts

On around June 2003, Terrence Vickers was approached by Norman Farquhar Mackay and Skytraders Pty Ltd to assist in securing a contract for intercontinental transport services between Australia and Antarctica. The tender was successful, and around the same time Terrence was appointed an executive director, Director of Operations and Chief Pilot of Skytraders. Premier Aviation Holdings Pty Ltd, as trustee of the Premier Aviation Holdings Unit Trust, acquired 60 shares in Skytraders, representing approximately 30.8% of the company. In July 2003, the Trust registered for GST.

On the establishment of these arrangements in 2003, Terrence became the sole director and shareholder of Premier. Although he held senior operational and management roles within Skytraders, he did not receive a salary or director's fees. Instead, it was agreed among the shareholders that benefits would be received through their shareholdings.

On dates throughout the following years, Skytraders secured further government contracts and expanded its business, eventually employing more than 100 staff and generating substantial revenue. During this period, Terrence and Norman worked together in developing and operating the aviation business.

On 1 July 2015, the Trust began receiving monthly payments of \$20,000 from Skytraders, which were reported as taxable supplies in its BAS. On around July 2016, Skytraders paid its first dividend, and annual dividends continued thereafter. Loan balances between the parties were progressively reduced through dividend payments.

From late 2016 onwards, the relationship between Terrence and Norman deteriorated. Terrence became concerned about the management of Skytraders and sought legal advice. Disputes involving both shareholders, their family members and employees contributed to increasing conflict within the business.

On 26 August 2019, Terrence and Norman had a heated discussion. Shortly afterwards, Terrence ceased involvement in operational matters and cleared out his office. Disagreement followed as to whether he had resigned or was merely taking leave to consider his position.

On 13 September 2019, Norman directed Terrence not to participate in Skytraders' operational or management affairs and instructed that he was no longer to act as Chief Pilot or Director of Operations.

On 1 October 2019, Premier commenced proceedings in the Supreme Court of Victoria alleging oppressive conduct by Skytraders' majority shareholders and related parties. The claims centred on the loss of Terrence' operational positions, his exclusion from management, alleged financial irregularities and interference with business operations.

On 14 October 2019, Terrence was removed as a director of Skytraders at a shareholder meeting that had been requisitioned earlier in September 2019. Following that date, he performed no further operational or board roles for Skytraders.

During 2020, Terrence pursued mediation aimed at achieving one of three possible outcomes: a purchase of Premier's shares by the other shareholders, Premier acquiring control of Skytraders, or the introduction of revised governance arrangements.

On 28 July 2022, the Supreme Court of Victoria dismissed Premier's oppression proceedings. On 7 September 2022, costs were ordered against Premier.

On 21 October 2023, the Trust lodged 13 BAS covering the period from 1 July 2020 to 30 June 2023. Those BAS claimed GST refunds based on legal fees totalling approximately \$3.92 million incurred in connection with the litigation.

On 2 November 2023, the ATO notified the Trust that the BAS claims would be reviewed because the refund amounts were unusual compared with earlier periods.

On 5 December 2023, the ATO advised that the legal expenses appeared to be private in nature or alternatively related to the holding of shares, which would constitute input taxed activities. On 11 December 2023, Premier disputed that position.

On 12 January 2024, the ATO issued an audit position paper maintaining that the legal expenses did not give rise to entitlement to input tax credits. On 9 February 2024, Premier responded with further submissions opposing that conclusion.

On 21 June 2024, the ATO finalised the audit and maintained the view that the legal fees did not qualify for input tax credits. The ATO issued an assessment reducing the claimed GST refund by \$321,286, although tax shortfall penalties were remitted.

On 24 June 2024, Premier lodged an objection to the assessment and provided further submissions concerning the GST treatment of the legal expenses.

On 14 March 2025, the ATO issued a discussion paper setting out a preliminary view on the objection. On 19 March 2025, Premier provided a further response. On 26 March 2025, the ATO disallowed the objection and upheld the assessment.

On 21 May 2025, Premier, as trustee of the Premier Aviation Holdings Unit Trust, commenced proceedings in the ART seeking review of the objection decision.

Premier argued that it carried on an enterprise by supplying aviation expertise to Skytraders Pty Ltd through Terrence's roles as Chief Pilot, Director of Operations and board member. It said the oppression proceedings were brought to protect that enterprise, preserve its profit stream and address alleged mismanagement within Skytraders. Premier contended that the enterprise continued after 2019 and that the legal fees were incurred in carrying on, or winding up, that enterprise. It also argued that the legal fees did not relate to an input taxed financial supply because they arose from alleged oppressive conduct, not a proposed disposal of shares. Any share sale, buy-back or winding up order was merely a potential remedy.

The Commissioner argued that Premier was not carrying on an enterprise during the relevant period. After October 2019, neither Premier nor Terrence provided services to Skytraders. Premier's only connection with Skytraders was as a shareholder receiving dividends. The Commissioner submitted that the litigation was brought in Premier's capacity as a shareholder seeking to protect or realise the value of its investment. The legal fees therefore did not arise from carrying on an enterprise. In any event, they related to proposed dealings with Premier's shares in Skytraders, which would be input taxed financial supplies. For that reason, no input tax credits were available.

Issues

1. Did Premier acquire the legal services in the course of carrying on an enterprise?
2. Did the legal services relate to input taxed financial supplies, namely Premier's dealings with its Skytraders shares, meaning that input tax credits were not available?

Decision

Did Premier acquire the legal services in the course of carrying on an enterprise?

The ART began by identifying the enterprise that Premier said it carried on. Premier argued that it supplied aviation expertise to Skytraders Pty Ltd through Terrence Vickers' roles as Chief Pilot, Director of Operations and director. The ART accepted that Terrence performed those roles for many years and played an important part in Skytraders' business.

However, the ART found that the evidence did not support the existence of a separate enterprise conducted by Premier. There was no written agreement under which Premier supplied aviation consulting services to Skytraders, no invoices issued by Premier for those services and no direct consideration paid to Premier for Terrence's work. Instead, Premier received the economic benefit of its shareholding through dividends. Those dividends were paid according to Premier's ownership interest in Skytraders, not according to the services Terrence performed.

The ART also considered the timing of the legal expenses. Terrence ceased his operational roles in August and September 2019 and was removed from the board in October 2019. The claimed input tax credits related to legal fees incurred from July 2020 onwards. By then, neither Terrence nor Premier was providing services to Skytraders.

Premier alternatively argued that it carried on an enterprise through the litigation itself. The ART rejected that characterisation. It found that the oppression proceedings were brought because Premier was a shareholder in Skytraders and wished to protect its investment. Conducting litigation to preserve or maximise the value of an investment did not amount to carrying on a separate enterprise.

The ART therefore concluded that Premier's relevant activity was holding shares in Skytraders and receiving dividends, not carrying on an aviation consulting enterprise or a litigation enterprise. The legal services were not acquired in the course of carrying on an enterprise.

Did the legal services relate to input taxed financial supplies?

Although its conclusion on the first issue was sufficient to decide the case, the ART considered the second issue as well. It noted that the inquiry was objective. The question was not why Premier incurred the legal fees, but what supply those fees related to.

Premier argued that the legal fees were incurred because of alleged oppressive conduct by Skytraders and were directed to protecting its business interests. The ART accepted that the alleged conduct was the reason the dispute arose. However, it considered that the legal fees were incurred to obtain relief from that conduct, not merely to complain about it.

The ART then examined the relief sought in the Victorian Supreme Court proceedings. It noted that Premier did not seek Terrence's reinstatement to his operational or board roles. Instead, the principal remedies sought were orders requiring the purchase of Premier's shares, a share buy-back or the winding up of Skytraders. Each of those remedies focused on Premier's position as a shareholder and involved the disposal or termination of its shareholding interest.

The ART therefore found a direct connection between the legal services and proposed dealings with Premier's shares. Because shares are financial supplies for GST purposes, any disposal of those shares would be an input taxed supply. The legal fees accordingly related to input taxed financial supplies.

The ART concluded that, even if Premier had been carrying on an enterprise, the legal fees were not a creditable acquisition because they related to input taxed financial supplies. Input tax credits would therefore still have been unavailable.

TRAP – For an acquisition to be a creditable acquisition, it is not enough that the recipient is registered for GST and has paid GST-inclusive costs. The recipient must be carrying on an enterprise, and the thing acquired must be acquired in carrying on that enterprise. The acquisition must also not be wholly private or domestic in nature, and must not relate to making input taxed supplies, such as financial supplies involving shares. Legal fees, in particular, need to be tested by reference to the objective connection between the services acquired and the supplies or activities to which they relate.

COMMENT – In recent years, there have been a number of cases where input tax credits have been denied because the technical requirements for a creditable acquisition were not satisfied.

Citation *Trustee for the Premier Aviation Holdings Unit Trust and Commissioner of Taxation* (Taxation and business) [2026] ARTA 1468 (General Member M Stratos, Melbourne)
w <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/1468.html>

2.5 Barratt Nominees – amending the vesting date of a trust

Facts

The Barratt Property Trust was established on 2 May 1977 as a discretionary family trust, with Barratt Nominees Pty Ltd as trustee.

The trust deed provided that the trust would terminate on the "Distribution Date", being the earliest of three possible dates:

1. 50 years from the date of settlement (2 May 2027);
2. 21 years after the death of the last surviving lineal descendant of King George VI who was alive when the trust was created; or
3. an earlier date nominated by the trustee.

On 20 November 2020, the trustee executed a deed poll that purported to amend the trust deed. It replaced the 50-year period with an 80-year period, so that the first potential vesting date moved from 2 May 2027 to 2 May 2057.

The deed gave the trustee a broad power to vary, amend or add to its provisions. However, that power was subject to a number of express limitations, including a prohibition on any amendment that would "extend the Distribution Date beyond the latest date provided by this Deed".

As uncertainty arose regarding the validity of the 2020 amendment, the trustee commenced proceedings in the Supreme Court seeking judicial advice under section 86A of the *Trustee Act 1925* (NSW). It sought confirmation that it would be justified in continuing to administer the trust.

The trustee relied heavily on two earlier Supreme Court decisions, *In the matter of the Kien Trust (No 1)* [2019] NSWSC 1601 and *In the matter of the CE Brenchley Family Trust* [2019] NSWSC 1602. In those cases, Sackar J held that amendments affecting a trust's vesting date were permissible where they did not extend the trust beyond the latest date contemplated by the deed.

The trustee submitted that the same reasoning should apply here. It argued that the trust deed's amendment power prohibited only an extension of the Distribution Date beyond the latest date provided by the deed. Because the royal lives period remained unchanged and was likely to expire after the amended fixed date of 2 May 2057, the amendment did not extend the trust beyond the ultimate period already contemplated by the deed. In substance, the trustee contended that the amendment merely altered the fixed vesting date while leaving the trust within the outer limits established by the royal lives clause.

Issue

Did the trustee's power of amendment permit the 2020 amendment extending the trust's fixed vesting period from 50 years to 80 years?

Decision

The trust deed allowed the trustee to vary the deed, but not in a way that extended the Distribution Date beyond “the latest date provided by” the deed. The Court considered that this limitation had to be applied at the time the power was exercised, because the amendment power was ambulatory. That meant the question was not simply what dates were written into the deed in 1977, but what the deed provided as the outer limit when the trustee acted in November 2020.

At that time, there were still descendants of King George VI alive who had been living when the trust was established in May 1977. This meant the royal lives period would certainly run until at least November 2041, well beyond the original fixed date of 2 May 2027. However, it was not certain that the royal lives period would continue beyond the proposed new fixed date of 2 May 2057. There remained a possibility that the royal lives period could expire first.

Because of that uncertainty, Parker J held that extending the fixed period to 80 years was impermissible. The amendment created the possibility that the trust could continue beyond the latest date actually provided by the deed. It also risked breaching the old common law rule against perpetuities, which still applied to this trust.

The Court distinguished the earlier decisions in *In the matter of the Kien Trust (No 1)* [2019] NSWSC 1601 and *In the matter of the CE Brenchley Family Trust* [2019] NSWSC 1602. In those cases, the amendments deleted the fixed period and left the royal lives period as the controlling outer limit. Here, by contrast, the trustee had not deleted the fixed date. It had extended it by 30 years, which meant the fixed date might outlast the royal lives period.

The Court therefore ordered that Barratt Nominees Pty Limited would not be justified in managing and administering the trust on the basis that the deed poll had validly amended the fixed distribution date.

The Court observed that other avenues remained available, including rectification of the deed or an application for court-approved amendment. The trustee was therefore given a limited opportunity to return to the Court and seek alternative relief.

TIP – The amendment may have worked if the trustee had simply deleted the fixed 50-year date, rather than replacing it with an 80-year date. That would have left the royal lives clause as the controlling outer limit, avoiding the risk that the amended fixed date might extend the trust beyond the latest date permitted by the deed.

COMMENT – The decision shows that deed amendments need to be tested carefully against the exact words of the relevant amendment power in the deed. A trustee may have a broad power to amend a trust deed, but that power is not unlimited. Where the deed contains a prohibition on extending the vesting or distribution date beyond the latest date provided by the deed, advisers need to identify the latest date with precision. It is not enough to say that the royal lives clause will probably run longer than the amended fixed date. If there is a real possibility that the amended date could exceed the perpetuity period, the amendment may be invalid.

TRAP – The decision is most relevant to older trusts established before modern perpetuity reforms. The “perpetuity period” is the maximum period for which a trust can remain unvested. Most Australian jurisdictions now permit fixed perpetuity periods of up to 80 years (including NSW and Victoria), Queensland permits a period of up to 125 years, and South Australia has effectively abolished the rule against perpetuities. However, many older trusts remain subject to the former common law rule of a “life in being” plus 21 years. Advisers should therefore check both the trust deed and the governing law before assuming a vesting date can be extended. The applicable perpetuity period is generally determined by the governing law of the trust, not necessarily the State in which the trustee or assets are located.

Citation *Application of Barratt Nominees Pty Ltd* [2026] NSWSC 860 (Parker J, Sydney)
w <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2026/860.html>

2.6 Boyd – NSW land tax and PPR exemption across adjoining lots

Facts

Alexander Boyd purchased a property on the Northern Beaches in or about 1974 (**Lot 43**). Lot 43 was his principal place of residence from 1978 to the present day. Lot 43 contained a freestanding two and a half storey house with a single garage that has capacity for one compact sized vehicle.

From 1985, the neighbouring lot (**Lot 45**) was occupied by Alexander's neighbour. The neighbour sold Lot 45 to Alexander in around September 2012. Alexander stated that he acquired Lot 45 to use as storage for his vintage car and other personal items, as there was not sufficient storage space in Lot 43. Lot 45 included a dwelling which encroached onto Lot 43. At the time that Alexander purchased the lot, the dwelling was run-down and the garden was overgrown. Alexander had never occupied the Lot 45 dwelling and had used it solely for storage.

The Chief Commissioner issued a land tax assessment to Alexander for the 2024 land tax year in respect of Lot 45. Alexander lodged an objection to this assessment, although outside of the prescribed period owing to his ongoing recovery from an illness. He later received a land tax assessment for the 2025 land tax year, to which he objected. This objection was disallowed, and Alexander sought review of the decision by the ART.

Principal place of residence exemption – residence across adjoining lots

This case centred on whether the primary place of residence exemption was available to Alexander in respect of both Lot 43 and Lot 45. Clause 13 of Schedule 1A of the *Land Tax Management Act 1956* (NSW) (**LTMA**) outlines how this exemption applies in respect of a residence that is comprised of two or more lots (other than strata lots):

- (1) The principal place of residence exemption does not extend to a parcel of residential land that is comprised of 2 or more lots of land, and that is used and occupied by the owner of the lots (or by one of them) as a principal place of residence, unless—*
 - (a) the lots are adjoining, and*
 - (b) the lots are in the same ownership, and*
 - (c) the lots are the site of a single residence (excluding any additional residential occupancy that may be disregarded under clause 4).*
- (1A) Lots are in the same ownership if—*
 - (a) the lots are owned by the same person or, if any of the lots are jointly owned, the lots are all jointly owned by the same persons, or*
 - (b) each lot is beneficially owned by the same person or, if any of the lots have more than one beneficial owner, each lot is beneficially owned by the same persons (subject to clause 11).*
- (2) For the purposes of this clause—*
 - (a) separate lots are not to be regarded as adjoining merely because one lot has a single corner point on its boundary that is common to the boundary of another lot, and*
 - (a1) separate lots that are divided by a fence, wall or other structure are not to be regarded as adjoining unless access is readily available between the lots, by means of gates, doors, steps, stiles, elevators or openings or by similar means, and*
 - (b) separate buildings erected on separate lots are not to be regarded as a single residence if the buildings are separately occupied or capable of being used for separate occupation.*

It was accepted by all parties that the two lots were adjoining. Both parties adduced expert witness evidence regarding the habitability of the dwelling constructed on Lot 45 to determine if it was "capable of being used for separate occupation".

Alexander expert evidence

Alexander relied on expert evidence of Dan Drexler, a building expert and a member of the Master Builders Association of NSW. Mr Drexler prepared a report regarding the dwelling on Lot 45 dated 14 January 2026 based on his inspection undertaken on 6 December 2025. He found that the dwelling was dilapidated and not fit for habitation on the basis that:

1. the interior and exterior of the property was "covered in mould";
2. the three bathrooms, laundry and kitchen were non-functional as the water had been disconnected;
3. the ground floor balcony had deteriorated and was unsafe and the mid-floor balcony was incomplete and unsafe;
4. the electrical wiring was unsafe;
5. the plumbing was old and in poor condition; and
6. the windows and doors had rotted.

Mr Drexler estimated the total value of necessary repairs as approximately \$460,000, plus amounts for preliminaries, contingencies, builder's margin, insurance and GST.

On cross-examination, Mr Drexler conceded that he had not found mould in every room, and that he had concluded that the waterproofing membranes had failed based on the age of the building and the presence of mould rather than inspecting the membranes. He also conceded that some portions of his assessment were based on the current building code, which did not apply to existing structures.

Chief Commissioner's expert evidence

The Chief Commissioner relied on evidence of Mathew Dale, a building expert with 28 years of experience in the building industry. He prepared a report dated 19 March 2026 following his inspection which concluded that the building was in serviceable condition. While there were necessary remediation works required to be carried out, he was of the view that these could be conducted while the resident was staying in the habitable sections of the building. Mr Dale disagreed with Mr Drexler's report on the following issues:

1. he did not agree that the walls and ceilings throughout were covered in mould, but agrees that some areas have mould;
2. he accepted that the water ingress and damp throughout the building would not meet the current performance requirements in the national building code, but stated that it did not apply retrospectively. He also did not agree that the exterior showed signs of mould;
3. he did not accept that the building was uninhabitable, on the basis that the damp and mould issues were contained to specific areas and could be remedied while residents and their belongings could be contained to other parts of the building;
4. he did not agree that the balcony rails were required to be replaced, nor that the bathrooms, laundry and kitchen were in such a poor condition that they were required to be replaced; and
5. he did not agree that the electrical wiring was required to be replaced.

Mr Dale estimated the total costs for building on Lot 45 to be made fit for purpose and occupancy to be \$82,077.56. On cross-examination, he confirmed that Lot 45 would not be fit for occupation unless remediation as outlined in his report was undertaken.

Issues

1. Did clause 13(2)(b) of the LTMA apply to the two buildings on the separate lots?
2. If clause 13(2)(b) is engaged, was Lot 45 capable of being used for separate occupation?

Decision

Did clause 13(2)(b) of the LTMA apply to the two buildings on the separate lots?

Clause 13(2)(b) of the LTMA provides that "*separate buildings erected on separate lots are not to be regarded as a single residence if the buildings are separately occupied or capable of being used for separate occupation.*" Alexander argued that this clause did not apply as the building on Lot 45 was not 'erected on a separate lot' but actually encroached onto Lot 43. The Chief Commissioner accepted that part of the building on Lot 45 encroached onto the adjoining lot, but contended that this was minor and the buildings still constituted dwellings which were 'erected on separate lots' within the meaning of the clause.

NCAT determined that Alexander's interpretation of the wording of this clause was too narrow and focused on the literal meaning of the words – the wording of 'separate' lots was intended to distinguish between the relevant adjoining lots, not to impose a limitation that required the separate building to be erected entirely within the separate lot. Clause 13(2)(b) was therefore relevant in determining whether the principal place of residence exemption applied.

If clause 13(2)(b) is engaged, was Lot 45 capable of being used for separate occupation?

Both parties relied on the evidence of their respective expert witnesses. While similar issues were identified by both expert witnesses, they had opposing views on the habitability of the Lot 45 property – Mr Drexler concluded that it was wholly uninhabitable and required extensive renovation works, while Mr Dale concluded that less significant remediation works were required which could be carried out while a resident remained in the unaffected portions of the house.

NCAT emphasised that the matters identified by the expert witnesses were not minor and were relevant to the question of whether the building could function as a separate dwelling. Expert witness evidence was given substantial weight as the statutory test regarding the habitability of the residence was an objective one. Alexander bore the onus of proof to show that the dwelling on Lot 45 was not habitable.

The question of whether Lot 45 was capable of being used for separate occupation was a question of fact, and the consideration of expert witness evidence was critical to this finding. It was not necessary for the NCAT to make determinations about the precise cost which would have been required to make Lot 45 suitable for separate occupation.

A relevant and significant area of disagreement between the expert witnesses was in respect of the mould, water ingress and damp issues identified in the property. The NCAT considered these issues significant as they went directly to the issue of health and safety – an essential part of the common law test for the habitability of premises.

It was accepted by NCAT that mould, damp and water ingress (a related issue which often leads to mould) are health and safety issues. NCAT was not convinced that remediation of the areas of concern identified by Mr Dale, requiring the use of chemicals and repainting over a period of 12 days, could be completed while a resident remained at the property. NCAT did accept that some sealed windows would need to be unsealed to allow airflow (for health and safety) and that the unsafe balconies would need to be repaired. However, NCAT did not agree that there was sufficient evidence to show that the electrical wiring, plumbing, gas services, bathrooms, kitchen and laundry needed to be entirely replaced before occupation.

Based on the necessary remediation works, the NCAT was satisfied that there were significant defects in the dwelling on Lot 45 that required rectification before it could be separately occupied. Lot 45 was therefore not capable of being used for separate occupation, so clause 13(2)(b) did not prevent the two lots from being treated as the site of a single residence for the principal place of residence exemption.

COMMENT – Clause 13 of Schedule 1A to the *Land Tax Management Act 1956* (NSW) applies a "unity" requirement where a principal place of residence is spread across more than one lot. The lots must be

adjoining, in the same ownership, and together form the site of a single residence. However, the clause also requires more than common ownership and personal use. If there are separate buildings on separate lots, the lots will not be treated as one residence if those buildings are separately occupied or capable of separate occupation.

Citation *Boyd v Chief Commissioner of State Revenue* [2026] NSWCATAD 209 (Senior Member J Redfern PSM, Sydney)

w <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCATAD/2026/209.html>

3. Cases in brief

3.1 BHZD – GST penalty remission and tax agent safe harbour

The Administrative Review Tribunal considered whether BHZD, a family partnership, was entitled to the tax agent "safe harbour" provisions or remission of a GST shortfall penalty arising from the sale of newly constructed residential premises. The partners of the partnership were a family, being Mr B, Ms H, Ms Z and Mr D.

In July 2015, BHZD acquired a property and later developed two townhouses, being 10A X Street and 10B X Street. Between 2018 and 2020, BHZD claimed approximately \$217,281 in GST input tax credits relating to the development. After construction, family members occupied both properties before they were sold to unrelated third parties.

On 16 July 2020, BHZD entered into a contract to sell 10B X Street. Settlement occurred on 26 October 2020 and the purchaser withheld GST of \$93,568. Following settlement, BHZD's tax agent, Mr N, sought a refund of the withheld GST on the basis that the property was a principal place of residence. The Commissioner rejected that position, commenced an audit and ultimately concluded on 2 June 2021 that GST was payable because the property was new residential premises and had been sold within five years of its construction.

On 17 March 2021, BHZD entered into a contract to sell 10A X Street. Before settlement, BHZD instructed its conveyancer to issue a notice to the purchaser stating that GST withholding was not required because the property was existing residential premises. Settlement occurred on 21 July 2021 and no GST was withheld. BHZD later accepted that GST should have been paid on the sale.

In October 2021, BHZD terminated the services of Mr N and engaged a new tax agent, Mr G. Mr B gave evidence that he provided Mr G with a manilla folder containing all relevant taxation information, however, a copy of those documents could not, and ultimately were not, located.

On 24 January 2023, Mr G lodged the September 2021 BAS reporting no GST on the sale of 10A X Street. Mr G gave evidence that he did so because BHZD had instructed him that the Commissioner had previously agreed GST was not payable on the sale. Mr G did not make any enquiries as to the accuracy of that statement.

On 7 November 2023, the Commissioner issued an amended assessment imposing GST on the sale of 10A X Street. BHZD did not dispute that assessment. On 10 November 2023, the Commissioner issued a shortfall penalty assessment of \$54,965.50, calculated at 50% for recklessness. The Commissioner later disallowed BHZD's objection.

The primary issue before the ART was whether BHZD qualified for the tax agent safe harbour in section 284-75(6) of Schedule 1 to the TAA. BHZD argued that it had provided all relevant taxation information to Mr G and therefore should not be liable for penalties. The Commissioner contended that BHZD had not discharged its burden of proving that all relevant information had been provided.

The ART found that BHZD failed to establish that it had given Mr G all relevant taxation information. General Member Dunne held that neither BHZD nor Mr G could identify exactly what documents had been transferred from the previous tax agent and that the evidence did not establish what information Mr G possessed when he prepared the BAS. The ART also found that BHZD had provided Mr G with an inaccurate understanding of the GST position and that an incorrect summary of facts could not constitute all relevant taxation information for the purposes of the safe harbour provisions. As a result, the safe harbour defence was unavailable.

The ART then considered whether the penalty should be remitted. General Member Dunne accepted that BHZD genuinely believed the sale of 10A X Street was not subject to GST and noted concerns regarding the conduct of both tax agents. The ART was also critical of the Commissioner's objection decision because it referred to an "exceptional circumstances" test and failed to adequately consider health and financial difficulties affecting the taxpayers. However, the ART found that BHZD had contributed to the situation by failing to properly question an obviously inconsistent GST outcome and by instructing the conveyancer not to apply GST withholding.

The ART concluded that full remission was not justified. However, it found that the penalty should be reduced to reflect the unusual circumstances, the taxpayers' health issues and the involvement of professional advisers. The Tribunal set aside the Commissioner's decision on remission and directed the Commissioner to issue an assessment imposing a shortfall penalty of 35% instead of 50%. All other aspects of the Commissioner's decision were affirmed.

COMMENT – A taxpayer cannot rely on the tax agent safe harbour merely because a registered tax agent prepared and lodged the return or activity statement. The taxpayer must prove that all relevant and accurate taxation information was provided to the adviser. Further, the tax agent must not be reckless. Where a taxpayer provides incomplete or inaccurate information, the safe harbour will not apply, even if the adviser may also have acted inadequately. At paragraph [85], the ART stated: *"If there is a lesson from this case for tax agents, it is that a new tax agent cannot approach a new client file by saying 'well I wasn't on board then, so it's the earlier tax agent's problem, not mine' or by saying 'well that might be right' without checking the matter at all."*

TRAP – The ART emphasised that the question of whether all relevant information was supplied is an objective test. It is not enough that the taxpayer genuinely believed they had provided enough information. The taxpayer must provide all accurate information that would reasonably be expected to be necessary for the agent to perform the tax service correctly.

Citation *BHZD and Commissioner of Taxation (Taxation)* [2026] ARTA 1376 (General Member J Dunne, Melbourne)

w <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/1376.html>

3.2 Barron – release of tax liabilities for hardship

Paul Barron, a 76-year-old film and television producer, sought review of a decision refusing to release him from outstanding tax liabilities under Division 340 of Schedule 1 to the TAA. Paul owed two broad categories of tax debt. The first was an income tax debt of \$128,581 relating to his personal tax affairs for the 2005, 2006, 2008, 2010, 2011, 2012 and 2014 income years. That debt included a significant amount of general interest charge (**GIC**), which was approximately \$49,000 by 1 April 2026. The second was a director penalty liability relating to taxation obligations of Great Western Entertainment Pty Ltd, of which he was a director from 2009 to 2020.

The background revealed a lengthy history of non-compliance. Paul lodged income tax returns late for every year from 2005 to 2020 and, in some instances, only after ATO compliance action. Administrative penalties were imposed for a number of those late lodgments. Despite this poor compliance history, the evidence also showed that more recent tax returns had been lodged on time and that Paul had engaged with a financial counsellor in an effort to improve his affairs.

On 4 August 2023, Paul applied to the ATO for release from both the income tax debt and the director penalty debt, arguing that payment would cause serious financial hardship. The ATO refused the application on 23 February 2024, taking the view that release was not justified having regard to Paul's compliance record and the circumstances of the debt. An objection was subsequently disallowed on 26 November 2024, leading Paul to seek review in the ART.

The central issue was whether Paul satisfied the statutory test for serious hardship and, if so, whether the discretion to grant relief should be exercised in respect of the income tax liabilities.

The ART noted that there is no statutory definition of “serious hardship”, but the authorities establish that:

1. the relevant hardship is financial hardship, not physical or social hardship;
2. the hardship must be serious, although it need not amount to destitution;
3. the question is assessed by reference to the individual taxpayer’s circumstances;
4. the taxpayer’s current circumstances are relevant, including any changes since the original application or refusal decision; and
5. relevant factors include assets, liabilities, earning capacity, living expenses and the ability to meet basic necessities.

The ART considered Paul’s age, health, and financial position. Evidence showed that he and his household were experiencing ongoing financial stress, with debts being serviced through credit cards and payday lending arrangements used to meet ordinary living expenses. The ART accepted that these circumstances pointed strongly towards serious hardship.

The more difficult question was whether Paul would suffer serious hardship if required to satisfy the income tax debt, or whether he would be in serious hardship regardless of that debt because of his other liabilities.

The ART accepted that the director penalty debt could not be released and that Paul had other debts. However, it found that if no part of the income tax debt were released, it was almost certain that Paul would be unable to address his current financial circumstances, including servicing his overall debts while meeting basic necessities. The ART found that there was some prospect of Paul earning modest income in the short to medium term as a contractor, consultant or employee on future productions. That income could allow him to address some of his debts.

The Commissioner argued that relief should nevertheless be denied because of Paul’s prolonged failure to meet his tax obligations and because he had prioritised other debts over tax liabilities. While the ART accepted that these matters weighed against relief, it found they were not decisive. Importantly, it accepted that recent improvements in Paul’s compliance behaviour and his efforts to engage with the ATO demonstrated a more responsible approach than in earlier years.

The ART ultimately concluded that a complete release would be inappropriate because of fairness to other taxpayers and Paul’s own acknowledged shortcomings in managing his tax affairs. However, it considered partial relief justified. The decision under review was set aside and replaced with a decision releasing Paul from the GIC component of the income tax debt, representing slightly more than one-third of the total liability. The balance of the debt, including the director penalty liability, remained payable.

TRAP – A release application under Division 340 of Schedule 1 of the TAA can only apply to eligible tax liabilities. Director penalty liabilities are not eligible for release, even where a taxpayer can demonstrate serious hardship.

COMMENT – The requirements for release on grounds of hardship are quite difficult to satisfy. In this case, the ART noted that:

1. age and poor health are not, of themselves, reasons to release a taxpayer from a tax liability;
2. an inability to pay a tax debt does not automatically justify release; and
3. taxpayers are generally expected to meet their tax liabilities, even in difficult circumstances.

Citation *Barron and Commissioner of Taxation (Taxation)* [2026] ARTA 1330 (General Member C Willis, Perth) w <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/1330.html>

3.3 Hasan – derivation of income

The taxpayers have been partially successful in their appeal to the decision of the ART in *BHMH and Commissioner of Taxation (Taxation and business)* [2025] ARTA 996 (see our July 2025 tax training notes for a full summary of the facts and the ART decision).

This case concerned whether a family day care trust derived the total child care fees reported to the government department, or only the administration fees retained after subsidy amounts were passed on to educators. Oday Hasan and Coryn Flood established the trust in December 2011, with a corporate trustee controlled by them. The trust was approved in 2012 to operate a family day care service and, at its peak, engaged hundreds of educators and provided care to thousands of children, mainly in low-income areas.

The trustee charged an administration fee and received Child Care Benefit and Child Care Rebate payments under the Family Assistance Laws. It retained its administration fee and paid the balance to educators. After departmental reviews identified reporting inaccuracies and widespread discrepancies, approval for the service was cancelled on 13 August 2015. The trustee was later deregistered and the trust vested.

The ATO audited the trust and assessed it on the basis that the total child care fees charged to parents were assessable income, including both government subsidies and gap payments. The Commissioner issued amended and alternative assessments to the trust and beneficiaries, including Oday, Coryn and Muna Hasan, Oday's sister, totalling about \$9.9 million. Oday, Coryn and Muna argued that the trust acted merely as agent or conduit for educators and derived only the administration fees it retained. They said the educators contracted directly with parents, set their own fees, and were entitled to the balance of the subsidies and gap payments.

The ART rejected that characterisation. Although the educators were contractors, the Family Assistance Laws treated the approved child care service operated by the trust as the relevant service provider. The trust reported the fees to the government department, controlled or influenced fee setting, and was legally responsible for the accuracy of the amounts reported. The parents' liability was to the approved service, not directly to the educators. On an accruals basis, the trust derived the total fees when the recoverable debt against parents arose and the subsidy payment was triggered.

The ART also rejected the argument that any right to gap payments had been assigned to educators. There was no legal or factual foundation for a valid assignment, and no evidence that the necessary preconditions for assignment existed. The gap payments therefore remained part of the trust's assessable income.

On deductions, the ART accepted that payments to educators were deductible in principle, but not to the full extent claimed. The Commissioner had allowed 70% of those payments because the records were incomplete and unreliable. The ART agreed that the lack of complete records justified the reduced allowance. Other business expenses were allowed only to the extent substantiated.

On appeal, Derrington J held that the ART made a material error of law in the way it used the Family Assistance Law (**FAL**) to identify the contractual relationship between parents and Kids First. The ART was entitled to consider the FAL as part of the factual and commercial context, including the fact that Kids First and its controllers had acknowledged that they understood and intended to comply with the FAL. However, the ART went too far when it treated section 43 of the *A New Tax System (Family Assistance) Act 1999* (Cth) as creating or imposing a liability on parents to pay Kids First. Section 43 did not create that liability. It was an eligibility provision that assumed an antecedent liability already existed.

The Federal Court otherwise rejected most of the taxpayers' challenges. It accepted that there was evidence from which the ART could have concluded that the parents contracted with Kids First, and it rejected the taxpayers' arguments on derivation, deductions, procedural fairness, penalties, safe harbour and credibility. However, because the ART's conclusion on the identity of the contracting party was materially affected by its erroneous construction of section 43, the appeal was allowed, the ART's decision was set aside and the matter was remitted to the ART for determination according to law.

COMMENT – *Hasan* is a further example of taxpayers encountering difficulty because the legal documentation did not clearly achieve the commercial and tax effect they asserted. The taxpayers said the educators contracted directly with parents and that the approved service merely acted as an agent or conduit. However, the contemporaneous documents, enrolment forms, policies, reporting to the Department and incomplete contractual records did not clearly support that structure. If a taxpayer wants a particular commercial and tax outcome, the legal documents need to establish that outcome from the start, including the identity of the contracting parties, who is entitled to payment, who bears obligations to customers, and whether any agency, trust or assignment arrangement is intended to exist. Retrospective characterisation is difficult where the documents and conduct point in a different direction.

Citation *Hasan v Commissioner of Taxation* [2026] FCA 1072 (Derrington J, Brisbane)
w <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2026/1072.html>

3.4 Stock v Neal – royalties as trust capital

The English High Court recently considered whether royalty payments from the *Thomas the Tank Engine* books were capital or income for trust law purposes. The issue arose because the characterisation affected how a family trust should be administered. The parties accepted that the royalties were income for income tax purposes. The dispute concerned their treatment under trust law.

On 16 October 1985, Wilbert Vere Awdry, author of the *Railway Series* books, assigned copyright in those works to his publisher in return for an ongoing royalty stream. On 10 March 1987, he established a settlement for his grandchildren. The settlement transferred one-half of all future royalties to the trustees. Beneficiaries became entitled to trust income from age 21. They became absolutely entitled to their share of trust capital at age 45.

Importantly, the settlement did not transfer any copyright to the trustees. The copyrights had already been assigned to the publisher. The trustees therefore acquired only a right to receive part of the royalty stream. They never owned the underlying intellectual property that generated the royalties.

Anna Louise Wensley Stock, Veronica Chambers and Alfred John Fortnam, acting as trustees, sought directions from the Court on whether the royalties should be treated as capital or income. HMRC argued that the royalties were trust income. Andrew John Kenneth Neal was appointed to represent interests that might benefit from that outcome.

Mr Justice Richards held that the royalties were capital for trust law purposes. The wording of the settlement distinguished between the "Trust Fund" and the "income thereof". In the judge's view, the deed's natural reading was that the royalty receipts themselves formed part of the trust fund. Income was limited to returns generated from investing those receipts.

The Court considered that interpretation consistent with the structure of the settlement. Beneficiaries received income from age 21 but did not receive their capital entitlement until age 45. Treating the royalties themselves as income would have substantially reduced the practical significance of reaching age 45.

The Court's reasoning came from a line of authorities dealing with what constitutes trust income. Several cases, including *Re Fisher* [1943] Ch 377, *Re Hey's Settlement Trusts* [1945] Ch 294 and *Re Guinness's Settlement* [1966] 1 WLR 1355, describe income as the "fruit" of a capital asset, often described as the "tree". A receipt can be trust income only if it represents the return produced by a capital asset that forms part of the trust fund.

HMRC argued that the relevant "tree" was the trust's equitable right to receive future royalties. The settlement did not transfer copyright. It transferred part of Reverend Awdry's contractual entitlement to receive royalty

payments. On that analysis, the trust owned a chose in action. The royalties paid from time to time were the fruits of that chose in action and therefore trust income.

Mr Justice Richards rejected that analysis. He considered it excessively reductionist because almost every payment can ultimately be traced to a contractual right to receive payment. If that approach were correct, the established trust law distinction between capital and income would have little practical operation.

Instead, the Court focused on the underlying economic source of the royalty stream. The royalties were generated by the copyright in the *Railway Series* books. The copyright was therefore the relevant tree. However, the trust never owned that copyright. The copyright had been assigned to the publisher before the settlement was created. The trustees held only a right to receive payments calculated by reference to exploitation of an asset owned by someone else.

The Court drew support from *Freer's Trustees v Freer* (1897) 24 R 437. In that case, a deceased estate had a contractual entitlement to a share of future business profits but no ownership interest in the business itself. The Court of Session held that the payments were capital because the underlying profit-producing asset did not belong to the estate. Mr Justice Richards considered the royalties in the present case analogous. The copyright was the profit-producing asset. Because that asset was not trust property, the royalties could not be characterised as income arising from trust property. They therefore formed trust capital.

In substance, the Court's reasoning was that the trust owned a right to receive the royalty stream, but did not own the asset producing the royalty stream. The royalty receipts therefore represented capital realisations of the trust's asset rather than income generated by trust property.

The Court also considered *PL Travers Will Trust v HMRC* [2014] SFTD 265, a decision of the First-tier Tribunal (Tax Chamber) concerning royalties from the Mary Poppins works. In that case, the First-tier Tribunal held that royalties could be income where they were generated by copyright owned by the trust. Royalties could also be capital where they represented consideration for the disposal or exploitation of copyright rights held as trust assets.

Mr Justice Richards regarded *PL Travers* as consistent with, rather than contrary to, his conclusion. The critical distinction was that the trustees in *PL Travers* owned the underlying copyright. Here, the trustees never owned the *Railway Series* copyright. They owned only a right to receive a share of royalty payments. Once that distinction was recognised, *PL Travers* tended to support the view that the royalties were capital in the trustees' hands.

COMMENT – The decision is not binding in Australia, but it is a useful reminder for Australian tax professionals dealing with trusts, intellectual property and assigned income streams. It reinforces the need to separate tax characterisation from trust law characterisation. A receipt may be assessable as income for tax purposes, yet still be capital under the trust deed. That distinction can have significant practical consequences. It may affect the amounts beneficiaries can request to be paid to them from the trust, the operation of life and remainder interests, trust accounting income, present entitlement, streaming and the scope of powers to distribute or advance capital. The case also illustrates how the ownership of the underlying income-producing asset, rather than merely a right to receive payments, can influence whether a receipt is treated as trust income or trust capital.

COMMENT – The approach to take in Australia can be seen from the High Court's decision in *Commissioner of Taxation v Bamford* (2010) 240 CLR 481. The starting point is the trust deed and accounting principles. The trust deed identifies the rights of beneficiaries and any power of the trustee to determine or modify income. Ordinary accounting principles then inform the calculation of that income unless the deed provides otherwise. The High Court said that the "income of the trust estate" means "income according to the general law of trusts", and that this directs attention to "the trust instrument and the general law of trusts, including the principles of accounting for trust purposes". A receipt may therefore be income tax income but still be capital for trust law purposes, depending on the deed and the accounting character of the receipt. Once the

trust's distributable income is identified, beneficiaries' present entitlements are expressed as proportions of that income, and those proportions are then applied to the trust's section 95 net income.

Citation *Anna Louise Wensley Stock v Andrew John Kenneth Neal* [2026] EWHC 1823 (Ch) (Mr Justice Richards, England)
w <https://caselaw.nationalarchives.gov.uk/ewhc/ch/2026/1823>

3.5 One Solar Power – payroll tax and door-to-door sales exemption

One Solar Power Pty Ltd (**One Solar Power**) is a business that designs, supplies and installs solar energy systems across Queensland, New South Wales and the Australian Capital Territory.

One Solar Power used Handy Solar, an online advertising platform, to place targeted digital advertisements on Facebook, Instagram and Google directed to residential homeowners. Those advertisements invited customers to complete an online eligibility quiz. Once prospective customers completed a quiz, One Solar Power then passed the resulting lead data to a contractor, who then attended the customer's address based on the company-assigned lead.

On 17 May 2023, the Queensland Chief Commissioner commenced an investigation into One Solar Power's payroll tax liabilities for the financial years ending 30 June 2019 to 30 June 2022. Following that investigation, the Chief Commissioner issued reassessments and default assessments which included payments made to four sales contractors as taxable wages under the relevant contract provisions of the *Payroll Tax Act 1971* (Qld) (**PTA**). Penalty tax and unpaid tax interest were also imposed.

One Solar Power objected to the assessments, arguing that payments made to the contractors were exempt from payroll tax under the "door-to-door sale of goods" exemption under s 13B(2)(d)(iii) of the PTA (**D2D Exemption**). The Chief Commissioner rejected the objection on the basis that the company failed to satisfy 3 of the 8 criteria set out in Public Ruling PTA007.2.

Public Ruling PTA007.2 sets out the Chief Commissioner's view of the criteria for the D2D exemption. It provides that the D2D Exemption will only apply if all eight criteria at paragraph 6(a) to 6(h) are satisfied. In particular, 6(e), 6(f) and 6(g) provide that the D2D Exemption is satisfied under the following conditions:

6(e): where the sale is made away from the vendor's trade premises, this cannot have been made as a consequence of the request of the customer or the agent of the customer;

6(f): the original approach (i.e. the initial physical attendance, not a telephone contact) leading to the sale was not made at the vendor's premises; and

6(g): the goods purchased must be used by the purchaser solely for domestic purposes, and must not include goods purchased to be further processed in the course of manufacture or goods purchased for commercial or industrial purposes.

On 21 May 2024, One Solar Power applied to the Queensland Civil and Administrative Review Tribunal (**QCAT**) for review of the objection decision under section 69 of the *Taxation Administration Act 2001* (Qld).

The QCAT found that One Solar Power had not satisfied criteria 6(e), 6(f) and 6(g) of PTA007.2.

Criterion 6(e) of PTA007.2 was not satisfied because the sales made by the contractors were made as a result of prior customer requests, not as a consequence of unsolicited door-to-door canvassing by the contractors.

Criterion 6(f) of PTA007.2 was not satisfied because the contractor agreement precluded the contractors from making any unsolicited physical approach to customers.

Criterion 6(g) of PTA007.2 was not satisfied because the evidence submitted to the QCAT was insufficient to establish that the goods were used solely for domestic purposes.

Therefore, the D2D exemption in section 13B(2)(d)(iii) of the PTA did not apply to the payments made to the contractors in the financial years ending 30 June 2019 to 30 June 2022. The QCAT confirmed the objection decision.

COMMENT – Although the relevant contract provisions were intended to operate as part of a broadly harmonised payroll tax regime, the door-to-door sale of goods exclusion is not uniform across all jurisdictions. The exclusion appears in Queensland, Victoria, South Australia and the Northern Territory. Tasmania previously had the exclusion, but it was removed with effect from 31 October 2016. New South Wales does not include an equivalent exclusion in section 32 of the *Payroll Tax Act 2007* (NSW), the ACT does have a door-to-door exclusion in section 32 of the *Payroll Tax Act 2011* (ACT), and Western Australia is not harmonised with the relevant contract regime.

TRAP – Payroll tax is often described as harmonised, but it is not uniform. Businesses operating across multiple States and Territories cannot assume that a payroll tax outcome in one jurisdiction will apply nationally. Relevant contract exemptions, employment agency rules, grouping provisions, contractor degrouping rules, nexus rules, interest and penalty regimes, and administrative practices can all differ between jurisdictions. National businesses should therefore review payroll tax exposure on a jurisdiction-by-jurisdiction basis, rather than relying on a single “harmonised” analysis.

Citation *One Solar Power Pty Ltd v Commissioner of State Revenue* [2026] QCAT 313 (Member Cosgrave, Brisbane)

w <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QCAT/2026/313.html>

3.6 Chamoun – NSW director liable for company payroll tax

Sami Chamoun was associated with E Group Security, E Group Protective Services and a related entity, companies that have been involved in significant payroll tax litigation with Revenue NSW over several years. Revenue NSW had issued payroll tax assessments to those entities on the basis that they formed a payroll tax group.

Under section 47B of the *Taxation Administration Act 1996* (NSW), the Chief Commissioner may issue a Directors' Compliance Notice (**DCN**) to make a director personally liable for certain unpaid State tax liabilities of a corporation. The regime is broadly similar to the Commonwealth director penalty regime and is intended to assist Revenue NSW in recovering unpaid tax from those responsible for the management of a corporation.

On 9 July 2026, the Chief Commissioner issued a DCN to Sami seeking to make him personally liable for approximately \$13.25 million of unpaid payroll tax. Sami disputed the validity of the DCN. He contended, among other things, that he was not a director when the relevant payroll tax liabilities first arose and that the statutory provisions relied on by the Chief Commissioner did not permit personal liability to be imposed on him in the circumstances.

Sami commenced proceedings in the Supreme Court seeking declarations that the DCN was invalid and should be quashed. Pending final determination of those proceedings, he sought interlocutory relief restraining Revenue NSW from taking any steps to enforce the DCN or otherwise recover the alleged liability.

The Court said that, before granting an interlocutory injunction, Sami had to show a serious question to be tried, meaning an arguable case with a real prospect of success. If that threshold was met, the Court then had to consider whether the balance of convenience favoured preserving the status quo, including factors such as

hardship to Sami, the adequacy of damages, alternative remedies, any delay, the strength of the Chief Commissioner's position and any undertakings offered.

The Court accepted that the challenge to the DCN raised questions that would need to be determined at a final hearing. However, it emphasised that New South Wales taxation legislation reflects a long-standing policy that assessed tax liabilities remain recoverable notwithstanding pending objections, review proceedings or other challenges. The Court noted that the public interest in protecting the revenue weighs heavily against interlocutory orders preventing tax recovery.

A significant difficulty for Sami was the absence of evidence demonstrating hardship. Although he asserted that enforcement of the DCN would cause severe prejudice, the Court found that there was little concrete evidence of his financial position. The evidence showed that Sami had received approximately \$20.3 million in April 2025 from the sale of his interests in E Group Protective Services. Under the share sale agreement, Sami was entitled to receive payments of \$568,216 and \$19,713,199 on settlement. Bank records indicated that the amounts, totalling \$20,281,415, were received at or about that time. The Court observed that this amount was sufficient to satisfy the disputed \$13.25 million liability while still leaving substantial funds available. There was no adequate explanation as to the current position of those funds, nor any persuasive evidence that payment of the liability would cause exceptional hardship.

The Court held that the mere obligation to pay disputed tax is not, by itself, a sufficient basis for interlocutory relief. In the absence of compelling evidence of hardship or other exceptional circumstances, the balance of convenience favoured allowing Revenue NSW to continue recovery action pending the final hearing. The application for interlocutory relief was dismissed and Sami was ordered to pay the Chief Commissioner's costs.

COMMENT – This was an interlocutory hearing, not a final hearing. The Court was not required to determine whether the Directors' Compliance Notice was valid. Instead, it was required to decide whether Revenue NSW should be temporarily prevented from enforcing the notice until the substantive dispute is determined. In making that decision, the Court may consider the relative strength of the parties' cases, but it does not finally determine disputed factual or legal issues.

TRAP – State revenue authorities have powerful debt enforcement tools that can operate in a similar way to ATO recovery powers. These can include director liability notices or compliance notices that are functionally similar to director penalty notices, as well as garnishee-style powers allowing amounts owed to a taxpayer to be redirected to the revenue authority. A client who receives such a notice should obtain prompt advice. The timing, validity and response options can be critical, including whether the notice can be challenged, whether payment or security is required, whether recovery can proceed despite an objection or review, and whether any personal liability exposure can still be managed.

Citation *Chamoun v Chief Commissioner of State Revenue* [2026] NSWSC 946 (Slattery J, Sydney)
w <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NWSC/2026/946.html>

3.7 Ivo Holdings – time of liability for landholder duty in NSW

In this case, NCAT considered when landholder duty arose where the transfer of units in a unit trust and the trust's acquisition of land occurred on the same calendar day.

The Ivo Hong Unit Trust was established on 4 November 2020 with Ivo Australia Pty Ltd as trustee. Richesse Management Group Pty Ltd held all 1,000 units. Mr and Mrs Hong controlled the relevant entities, including RMG, Ivo Holdings Pty Ltd and Ivo Australia.

Mr and Mrs Hong intended to acquire an Eastwood property for their legal and accounting practices. After the unit trust was established, they became concerned that RMG, as a company, would not obtain the 50% CGT discount. They therefore decided to transfer the units to Ivo Holdings as trustee of a discretionary trust.

On 4 November 2020, RMG executed a Unit Trust Sale Agreement and transfer under which it agreed to sell all units in the unit trust to IVO Holdings for \$1,000. Mr Hong said those documents were executed in the morning. Later that afternoon, Ivo Australia entered into a contract to purchase the Eastwood property for \$2.1 million.

On 16 December 2020, the unit transfer was registered in the unit trust register and settlement of the property purchase occurred. In 2024, Mr Hong sought a private ruling from Revenue NSW about a proposed transfer of the Eastwood property. That prompted Revenue NSW to review the 2020 transactions and consider whether the earlier unit transfer had given rise to landholder duty.

The Chief Commissioner initially assessed the applicant on the basis that the relevant acquisition occurred on 16 December 2020. By the hearing, however, the parties agreed that the agreement liability date under section 161 of the *Duties Act 1997* (NSW) was 4 November 2020.

The central issue was whether “date” in section 161 meant a calendar day, or whether NCAT had to identify the precise point in time on 4 November 2020 when the unit sale documents and the land purchase contract were executed. Ivo Holdings argued that the units were transferred before the property contract was entered into, so the unit trust was not yet a landholder at the point of acquisition. The Chief Commissioner argued that “date” meant the calendar day, making the order of events within 4 November irrelevant.

NCAT accepted the Chief Commissioner’s construction. The word “date” in section 161 referred to a calendar day, not a particular moment during that day. Section 161(2) identified the date on which the relevant triggering event first occurred; it did not require the Chief Commissioner or NCAT to divide a day into fractions or determine the precise chronology of events occurring on that day.

NCAT considered that this construction was supported by practical and commercial considerations. Transaction documents ordinarily record dates, not times. It would be difficult and uncertain to assess liability years later if taxpayers, advisers and Revenue NSW had to reconstruct the order of events within a single day. A calendar-day approach provided greater administrative certainty and allowed duty consequences to be determined from the transaction documents.

Because the unit transfer and the property acquisition both occurred on 4 November 2020, Ivo Holdings was taken to acquire an interest in a landholder on that date. It was unnecessary to establish whether the unit sale documents were executed earlier in the day than the property contract. Landholder duty therefore arose.

NCAT then considered interest. It refused to remit the market rate component because that component is compensatory and reflects the State’s loss of use of money that should have been paid when due. The failure to pay duty arose from Mr Hong’s mistaken view that duty was not payable, rather than any delay caused by Revenue NSW.

COMMENT – The case illustrates the importance of the agreement liability date in determining whether there is a relevant acquisition in a landholder. Section 161 deems the purchaser to acquire an interest in the landholder from the agreement liability date. The critical question is therefore whether, on that date, the entity whose shares or units are being acquired is a landholder. In *Ivo Holdings*, the timing mattered because the unit transfer and the property acquisition occurred on the same calendar day. The NCAT treated “date” as a calendar day, so it was unnecessary to prove the precise order of events within that day. Once the unit trust held, or was taken to hold, the relevant landholding on the same date as the unit acquisition, there was a relevant acquisition for landholder duty purposes.

TIP – The decision in *Ivo Holdings* suggests that, in order to prevent landholder duty arising, any acquisition of a significant interest in any entity that is in the process of acquiring land must occur at least a full calendar day prior to the contract for the purchase of land being entered into.

TRAP – Later dutiable transactions can prompt a historical review of earlier dealings in the same structure. In practice, a request for a ruling, transfer or other duty assessment may cause Revenue NSW to examine prior share, unit or property transactions and identify an earlier landholder duty liability that was not recognised at the time. Advisers should therefore review the full transaction history before approaching Revenue NSW or implementing a later dutiable transaction. If necessary, a voluntary disclosure should be made.

Citation *Ivo Holdings Pty Ltd v Chief Commissioner for State Revenue* [2026] NSWCATAD 206 (Senior Member DH Mulligan)

w <https://www.caselaw.nsw.gov.au/decision/19f4993c2aa4f1fe1363785c>

3.8 ISPT – landholder duty and aggregation of separate transactions

ISPT Pty Ltd as trustee for ISPT Retail Australia Property Trust v Commissioner of State Revenue concerned Victorian landholder duty on two acquisitions of units in the Fort Street Real Estate Capital Fund. ISPT acquired 75.8% of the units in February 2022, when the fund was a public unit trust scheme and the 90% public landholder threshold was not met. That acquisition nevertheless caused the fund to cease being widely held and become a private unit trust scheme. ISPT then acquired a further 19.46% in July 2022, taking its total interest to 95.26%. The Commissioner assessed duty by aggregating the February and July acquisitions under section 78(1)(a)(ii) of the *Duties Act 2000* (Vic), rather than treating the July acquisition as only a further interest under section 78(1)(b).

Nichols J dismissed ISPT's appeal. Her Honour held that section 78 focuses on acquisitions, not merely on the holding of a significant interest. Because the February acquisition was not itself a relevant acquisition when made, the July acquisition could not be treated as the acquisition of a further interest after an earlier paragraph (a) acquisition. Instead, the July acquisition was the point at which the earlier February interest could be aggregated with the July interest so that ISPT acquired a significant interest in the landholder. Duty was therefore correctly charged on the aggregated 95.26% interest. Her Honour also accepted that, when testing whether the February acquisition was a relevant acquisition, the fund's status was tested before that acquisition, not by reference to the change in status caused by the acquisition itself.

The Victorian decision reaches the same outcome as the earlier New South Wales decision on the same transaction, *ISPT Pty Ltd as trustee for ISPT Retail Australia Property Trust v Chief Commissioner of State Revenue* [2026] NSWSC 424 (see our May 2026 Tax Training Notes). The statutory routes differed: the New South Wales decision turned on the three-year statement rule in the NSW landholder regime, whereas the Victorian decision turned on the aggregation and further-interest provisions in sections 78 and 86 of the Victorian Act. However, both decisions rejected ISPT's attempt to confine duty to the later 19.46% acquisition and treated the earlier 75.8% acquisition as relevant to the duty calculation once the later acquisition occurred.

COMMENT – *ISPT*, together with *Ivo Holdings*, demonstrates the technical operation of the landholder duty provisions. Duty outcomes can turn on the precise manner in which a transaction is implemented, including the sequencing of acquisitions, the timing of land ownership, whether interests are aggregated and the status of the landholder at the relevant time. Small differences in transaction structure can produce materially different duty outcomes.

Citation *ISPT Pty Ltd as trustee for ISPT Retail Australia Property Trust v Commissioner of State Revenue* [2026] VSC 480 (Nichols J, Melbourne)

w <https://www.austlii.edu.au/au/cases/vic/VSC/2026/480>

3.9 Ackinclose – land tax aggregation in QLD

Ackinclose concerned Queensland land tax aggregation rules for trustees of multiple trusts. Paul and Carley Ackinclose were trustees of both a discretionary trust, which owned land at Meridian Plains, and their self-managed superannuation fund, which owned other Queensland land.

The Commissioner aggregated the land under section 20(2)(b) of the *Land Tax Act 2010* (Qld), on the basis that the same persons were trustees of both trusts and Paul and Carley were beneficiaries of each trust. The Commissioner argued that the provision required only an identity of beneficiaries, not an identity of their beneficial interests.

Paul and Carley argued that section 20(2)(b) required a comparison of the “interests of the beneficiaries”. In the discretionary trust, income had been distributed equally between them. In the superannuation fund, however, their member balances were unequal, with Paul holding 48% and Carley holding 52%.

The QCAT accepted Paul and Carley’s construction. The phrase “the interests of the beneficiaries” required more than identifying whether the same persons were beneficiaries of both trusts. It required a comparison of the nature and extent of their interests, including by reference to the statutory rules for calculating trust interests in sections 18F and 18G.

Because Paul and Carley held equal interests in the discretionary trust but unequal interests in the superannuation fund, their interests were not the same. The QCAT also noted that membership interests in a regulated superannuation fund differ materially from interests under a discretionary trust because superannuation benefits are subject to access restrictions under the *Superannuation Industry (Supervision) Act 1993* (Cth).

The QCAT set aside the Commissioner’s decision. The land held by the discretionary trust and the superannuation fund was not required to be aggregated for Queensland land tax purposes.

COMMENT – The case is a reminder that land tax aggregation rules need to be carefully considered, including across each relevant jurisdiction. This is particularly important where the same individuals are trustees or controllers of multiple trusts, SMSFs or companies. The aggregation rules differ between States and Territories, and an outcome under the Queensland provisions will not necessarily follow in New South Wales, Victoria or another jurisdiction. For clients with land in multiple States, land tax should be reviewed jurisdiction by jurisdiction, including trust surcharge rules, grouping or aggregation rules, absentee and foreign owner surcharges, principal place of residence or primary production concessions, and notification obligations.

Citation *Ackinclose v Commissioner of State Revenue* [2026] QCAT 312 (Member McVeigh, Brisbane) w <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QCAT/2026/312.html>

3.10 Kelly v Lask Nominees – quorum for a shareholders meeting

This case concerned the validity of a shareholders’ meeting held without the quorum required by a shareholders’ agreement. Evolution Hardware Pty Ltd had a constitution requiring two members for a quorum, but the shareholders’ agreement required attendance by shareholders holding at least 50% of the company’s shares and provided that it prevailed over the constitution in the event of inconsistency.

By September 2025, the shareholders were divided into two groups. Marcus Kelly’s group held a narrow majority. Nathan Newman and Lask Nominees, which together held just under 50%, convened a meeting seeking to remove Marcus as managing director and appoint replacement officeholders. Marcus’s group objected to the meeting and did not attend. Nathan and Lask Nominees proceeded with the meeting, relying on

the company constitution rather than the shareholders' agreement, and purported to pass resolutions removing Marcus and appointing new officeholders.

The Supreme Court of Tasmania held that the shareholders' agreement governed the quorum requirement. Because the agreement expressly prevailed over the constitution, and required shareholders holding at least 50% of the shares to be present, the meeting was inquorate.

The Court accepted that the absence of a quorum was a procedural irregularity for the purposes of section 1322 of the *Corporations Act 2001* (Cth), because the statutory definition expressly includes a quorum defect. However, section 1322 did not save the resolutions. The irregularity caused substantial injustice because the minority shareholders knowingly proceeded in the absence of the majority, despite knowing that the majority opposed the proposed resolutions. The meeting undermined the agreed governance structure and purported to remove Marcus from office.

The Court declared that the meeting and all resolutions passed at it were invalid and of no legal force or effect. Relief under section 1322(4) was unavailable because no application had been made and, in any event, the finding of substantial injustice would have precluded validation.

COMMENT – The decision is a useful reminder that company decisions must be made in accordance with all constituent documents, not just the constitution. Where a shareholders' agreement regulates governance matters such as quorum, voting thresholds or appointment rights, those requirements need to be checked before meetings are convened or resolutions are passed. A failure to follow the agreed governance framework may mean that the decision is invalid, even where the company's constitution appears to permit the meeting or resolution.

Citation *Kelly & Anor v Lask Nominees Pty Limited & Anor* [2026] TASSC 43 (Brett J, Hobart)
w <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/tas/TASSC/2026/43.html>

3.11 Stonepoint Capital Management Pty Ltd – advisors and broader arrangements with clients

This case concerned the collapse of the Stonepoint Capital Fund, an unregistered managed investment scheme promoted to investors by their accountant and financial adviser. The investors invested about \$17.9 million after being told that the fund was secure, involved short-term secured lending, would pay returns of up to 2% per month and could be redeemed on 7 days' notice.

In reality, almost all investor funds were lent to Fortico, a related company controlled by the same principals, on a practically unsecured basis. Fortico used the money for foreign exchange trading through automated algorithms. The trading failed, and large amounts were lost or used for fees, distributions, travel and entertainment expenses.

Peden J held that the accountant, his accounting practice, his AFSL entity and Stonepoint engaged in misleading or deceptive conduct. The representations in the information memorandum and the accountants' oral and written statements were fundamentally inconsistent with the true operation of the fund. Broad disclaimers and risk warnings did not prevent the representations being misleading.

The Court also found that the accountant and his accounting practice owed duties of care because they acted as trusted advisers and gave investment advice intended to induce the plaintiffs to invest. Those duties were breached because no reasonable adviser could have represented the fund as safe, secure or suitable in light of how it was actually operated.

COMMENT – The case illustrates the difficulties that can arise where advisers mix their professional relationship with clients into broader investments and commercial arrangements. Where an accountant, financial adviser or lawyer recommends an investment in which they, their related entities or close commercial associates have an interest, the relationship can shift from independent advice to conflicted promotion very quickly. A trusted adviser relationship can increase, rather than reduce, the risk of liability because the client may rely heavily on the adviser's judgment and assume the adviser is acting solely in the client's interests.

Citation *Garan Holdings Pty Ltd v Stonepoint Capital Management Pty Ltd (in liq) (No 2)* [2026] NSWSC 373 (Peden J, Sydney)

w <https://www.austlii.edu.au/au/cases/nsw/NSWSC/2026/373>

3.12 Other tax and super related cases from 8 July 2026 to 10 Aug 2026

Citation	Date	Headnote	Link
<i>Shell Energy Holdings Australia Limited v Commissioner of Taxation (Costs)</i> [2026] FCA 882	7 July 2026	COSTS – where applicant seeks indemnity costs – where judgment more favourable than rejected offer of compromise – presumption of entitlement to indemnity costs from two days after offer was served – where offer was substantial compromise – where no evidence that point of law in dispute was an important point of law – indemnity costs ordered from two days after offer was served	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2026/882.html
<i>Rainn Pty Ltd v Commissioner of State Revenue (No. 2)</i> [2026] VCAT 546	16 July 2026	CATCHWORDS General Review – Land Tax Act 2005 (Vic), ss 67 and 67D – Whether applicant's land is exempt land for land tax purposes on basis that it is primary production land – Assessment of credibility of witnesses – Impact of adverse credibility assessment on evidence in general – Whether transcribed diary entries recording activities of relative of beneficiary of discretionary trust is reliable and corroborated by the photographic evidence – Tribunal not satisfied that applicant has discharged burden of proof – Assessments confirmed.	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCA/2026/546.html
<i>Hadzic v Commissioner of Taxation</i> [2026] FCA 930	17 July 2026	TAXATION – appeal from a decision of the Administrative Appeals Tribunal disallowing objections to notices of assessment issued by the respondent Commissioner to the applicant – whether the Tribunal erred in law in numerous respects – no error of law established – appeal dismissed	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2026/930.html
<i>Cerisewin Pty Ltd atf Mastercare Administrative Services</i>	23 July 2026	TAXES AND DUTIES — Payroll tax — Liability — Employment agent — Where plaintiff is part of a group of companies that conducts a	https://www.caselaw.nsw.gov.au/decision/19f8bf9d60261432181decba

Citation	Date	Headnote	Link
<i>Trust v Chief Commissioner of State Revenue</i> [2026] NSWSC 877		commercial cleaning business — Where plaintiff is the designated group employer under s 80 of the Payroll Tax Act 2007 (NSW) — Where the main entity in the group (MAPL) entered into contracts with retail, logistics and healthcare clients for the provision of cleaning services — Where another group entity (DCPL) entered into contracts with corporate contractors who supplied workers to perform cleaning services at the clients' premises — Whether assessments were excessive — Whether contracts with MAPL and/or DCPL were 'employment agency contracts' for the purposes of s 37 of the Payroll Tax Act — Whether cleaning services were provided 'in and for' the conduct of the clients' businesses — Whether all amounts paid to corporate contractors are taken to be wages by reason of s 40(1)(a) of the Payroll Tax Act TAXES AND DUTIES — Payroll tax — Assessment — Interest — Whether assessment of interest should be revoked or reduced TAXES AND DUTIES — Payroll tax — Assessment — Penalty tax — Whether assessment of penalty tax should be revoked or reduced	
<i>Commissioner of Taxation and KYWNY (Guidance and Appeals Panel)</i> [2026] ARTA 1547	10 August 2026	PRACTICE AND PROCEDURE – Tribunal's jurisdiction – whether reviewable objection decision – whether respondent is a person dissatisfied with an assessment – lodgement of business activity statements in name of respondent – applicant paid GST refund amounts to a bank account – applicant conducted audit – notices of amended assessment issued by applicant to respondent revising GST net amount to nil – respondent says he is a victim of identity theft and did not authorise lodgement of business activity statements or receive GST refunds – issue of Tribunal's jurisdiction being determined prior to hearing of evidence relating to whether respondent authorised lodgements – Tribunal has jurisdiction	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/1547.html

4. Federal Legislation

Progress of legislation

Title	Introduced House	Passed House	Introduced Senate	Passed Senate	Assented
Treasury Laws Amendment (Strengthening Accountability for Tax Adviser Misconduct and Other Measures) Bill 2026	2/7				
Treasury Laws Amendment (Tax Reform No. 2) Bill 2026	25/6				

4.1 2026 Federal Budget reforms – CGT Tranche 2

Treasury has released an exposure draft of the Treasury Laws Amendment (Tax Reform No. 3) Bill 2026: CGT adjustments (tranche 2). The draft is the second tranche of legislation supporting the CGT reforms enacted in June 2026. It primarily addresses technical issues arising from those reforms and extends the new regime to more complex structures and circumstances.

The draft legislation would:

1. extend the CGT reforms to attribution managed investment trusts (AMITs);
2. clarify how the reforms operate for trusts, including managed investment trusts;
3. allow some trusts to choose not to apply indexation where no beneficiary could benefit from it;
4. ensure trusts and AMITs can continue to access the CGT discount for new residential dwellings and affordable housing;
5. refine the deferred gain regime that applies on and after 1 July 2027;
6. exempt certain gains of testamentary trusts, deceased estates and special disability trusts from the 30% minimum CGT tax;
7. provide pro-rated CGT outcomes for foreign and temporary residents; and
8. make a range of consequential and integrity amendments.

The amendments apply for assessments for the income year that includes 1 July 2027 and later income years.

Extension of the CGT reforms to AMITs

The first tranche of CGT reforms largely focused on individuals, ordinary trusts and partnerships. The exposure draft extends those rules to AMITs, ensuring that the deemed disposal and reacquisition rules, deferred gain rules and minimum CGT tax regime operate consistently for AMIT members.

The amendments also modify Division 276 so that capital gains calculated using cost base indexation are effectively "grossed up" when attributed to members who would not have been entitled to indexation had they held the asset directly. This is intended to preserve the principle that members determine their own entitlement to indexation.

Trusts may choose not to apply indexation

The exposure draft introduces a new election allowing a trustee not to use cost base indexation where all beneficiaries or members would be unable to benefit from indexation if they had made the gain directly.

The Explanatory Memorandum states that this measure is intended to reduce compliance costs. It is directed at situations where applying indexation at the trust level would provide no practical benefit because the economic owners of the gain are entities such as companies, superannuation funds or foreign residents who would not be entitled to indexation in any event.

Trust access to housing-related CGT discounts

The first tranche retained the CGT discount for qualifying gains from:

1. new residential dwellings; and
2. affordable housing.

The exposure draft restructures these provisions so they operate both at the individual level and the trust level. It also extends the concessions to AMITs.

The amendments allow trustees to choose between applying the 50% CGT discount or applying indexation, where the relevant housing concession is available.

Deferred gains and deferred losses

The exposure draft narrows the types of CGT events that trigger recognition of deferred gains and losses arising under the 1 July 2027 deemed disposal regime.

A new concept of a "deferral realisation event" is introduced. Various CGT events that do not involve a substantive disposal of the underlying asset are excluded. The excluded events include:

1. CGT event F3 (lessor paying a lessee to vary a lease) and CGT event F5 (lessor receiving a payment to vary a lease);
2. CGT event H2 (events affecting an asset that do not otherwise have CGT consequences);
3. various foreign exchange and adjustment events, including CGT events K2, K5 and K9-K12;
4. consolidation-related events L1-L8;
5. option and rights creation events, including CGT events D1, D2 and D3;
6. CGT event F1 (granting a lease);
7. CGT event E9 (creating a trust over future property);
8. CGT event H1 (forfeited deposits);
9. CGT event K1 (certain emissions units); and
10. CGT event K6 (disposals of pre-CGT shares that derive value from post-CGT property).

The Explanatory Memorandum states that deferred gains are intended to crystallise only when a substantive realisation of the relevant asset occurs.

EXAMPLE – The Explanatory Memorandum gives the example of a landlord who owns a rental property before 1 July 2027 and pays a tenant after that date to agree to an early lease termination. The payment gives rise to CGT event F3. Under the exposure draft, the deferred gain on the property is not recognised because CGT event F3 is not a deferral realisation event and does not represent a substantive disposal of the property itself.

4.2 Interaction with exemptions and concessions

The draft also changes the way deferred gains interact with various CGT exemptions.

For certain exemptions, including:

1. the main residence exemption;

2. the small business 15-year exemption and retirement exemption provisions in Subdivision 152-B; and
3. the foreign resident exemption in section 855-10,

eligibility is tested at the time of the later realisation CGT event, not at the time the deferred gain arose on the deemed disposal on 30 June 2027. The deemed sale and reacquisition are disregarded when determining whether the exemption applies. As a result, the deferred gain and the gain or loss arising on the eventual disposal are effectively treated as a single gain or loss made at the time of the realisation event.

TIP – This clarification ensures that the “first used to produce income” rule does not cause a dwelling acquired and used as an individual's main residence before 12 May 2026 to be treated as having been acquired after 12 May 2026 merely because it is first used to produce income after 12 May 2026.

COMMENT – The treatment of deferred gains where assets are transferred under a rollover remains unresolved. Treasury has acknowledged that there are additional complexities and, as a result, these amendments have been deferred to a future tranche of legislation. Uncertainty remains regarding the interaction between the deferred gain regime and common rollovers, especially where the asset to which the deferred gain relates is transferred to another entity or replaced as a result of the roll-overs.

Exemption from the 30% minimum CGT tax

The exposure draft introduces an exemption from the 30% minimum CGT tax for genuine testamentary trusts, deceased estates and special disability trusts.

For testamentary trusts and deceased estates, the exemption generally applies only where:

1. the gain is made by a beneficiary of a trust estate (or deceased estate);
2. the gain relates to assessable income that is excepted trust income under para 102AG(2)(a) of the ITAA 1936 in relation to that beneficiary; and
3. the gain is not excluded by the integrity rules.

The draft includes two integrity rules. The exemption is denied where income is derived under a scheme entered into for the purpose, or a purpose, of obtaining the concession, or where property becomes part of a deceased estate under a scheme designed to secure access to the exemption. The Explanatory Memorandum states that these rules are intended to confine the concession to gains genuinely connected with assets of the deceased estate and prevent the use of testamentary trusts or deceased estates to shelter gains on externally introduced assets.

Foreign and temporary residents

The first tranche of the CGT reforms effectively denied access to post-1 July 2027 cost base indexation for foreign and temporary residents. The exposure draft proposes to repeal those restrictions and replaces them with an apportioned approach.

The amendments would:

1. remove restrictions that prevented foreign and temporary residents from obtaining indexation in mixed-residency scenarios;
2. introduce an apportioned indexation formula based on periods of Australian residency;
3. extend the 1 July 2027 deemed disposal regime to certain taxable Australian property held by mixed residents; and
4. preserve pro-rated CGT discount outcomes for pre-1 July 2027 gains.

Under the proposed amendments, the ordinary indexation factor is adjusted according to the proportion of the post-1 July 2027 ownership period during which the taxpayer was an Australian resident (other than a temporary resident). In effect, only the Australian resident portion of the post-1 July 2027 ownership period

attracts indexation. A taxpayer who is an Australian resident for half of that period receives approximately half of the available indexation benefit. A taxpayer who is a foreign resident or temporary resident throughout the entire period receives no indexation.

The Explanatory Memorandum notes that further work is proposed in later tranches of legislation, particularly regarding gains derived indirectly through trusts and other more complex mixed-residency scenarios.

COMMENT – The methodology is conceptually similar to the existing foreign resident CGT discount apportionment rules. However, instead of pro-rating the CGT discount, they pro-rate the post-1 July 2027 indexation benefit based on Australian residency days, while quarantining pre-1 July 2027 gains under the existing CGT discount regime.

Future reform tranches

Treasury indicates that further exposure drafts are expected to address:

1. rollovers and similar concessions;
 2. additional foreign resident and temporary resident issues;
 3. interactions with the value shifting rules;
 4. consolidated groups;
 5. listed investment companies;
 6. employee share schemes;
 7. demergers;
 8. options; and
 9. various cost base and acquisition timing issues arising from the deemed disposal regime.
-
1. The draft legislation is open for consultation until 21 August 2026.

w <https://consult.treasury.gov.au/c2026-792170>

4.3 2026 Federal Budget reforms – CGT alternative valuation method

Treasury has released an exposure draft determination prescribing an alternative method for determining the deemed 30 June 2027 value of certain assets. The method is intended to reduce the need for formal valuations by estimating how much of the overall capital gain or loss accrued before and after 1 July 2027.

Assets covered

The methodology is available for:

1. real property; and
2. CGT assets that do not have a readily ascertainable market value at 30 June 2027 and whose cost base is not otherwise determined by reference to market value under another provision of the tax law.

The draft Explanatory Statement notes that listed shares would generally not qualify because their market value can be readily determined.

How the methodology works

Rather than obtaining a market valuation at 30 June 2027, the methodology assumes that the asset increased or decreased in value at a constant compounded daily rate throughout the entire ownership period. That growth rate is then used to estimate the asset's value at 30 June 2027.

Broadly, the methodology:

1. works out the total growth or decline in value between acquisition and ultimate disposal;
2. calculates an implied daily growth rate across the entire ownership period;
3. estimates the asset's value at 30 June 2027 using that growth rate;
4. calculates the pre-1 July 2027 gain or loss using the estimated value; and
5. uses the estimated value as the starting cost base for the post-1 July 2027 gain or loss.

EXAMPLE -The Explanatory Statement includes an example where Zoe acquires artwork on 1 July 2016 for \$522,000 (including acquisition costs) and sells it on 30 June 2034 for \$1.5 million. Rather than requiring a valuation at 30 June 2027, the methodology assumes the artwork increased in value at a constant compounded rate over the entire ownership period. Applying that assumption, the artwork is deemed to have been worth approximately \$993,430 on 30 June 2027.

The methodology therefore treats Zoe as having:

1. made a pre-1 July 2027 gain of approximately \$471,430, being the difference between the original cost base of \$522,000 and the deemed 30 June 2027 value of \$993,430;
2. disposed of, and immediately reacquired, the artwork for \$993,430 on 30 June 2027;
3. obtained a new cost base of \$993,430 from 1 July 2027; and
4. made a separate post-1 July 2027 gain of approximately \$316,161 when the artwork was eventually sold in 2034, after applying the available indexation to the deemed cost base.

The effect is that the total economic gain of \$978,000 is divided into:

1. a gain of approximately \$471,430 attributable to the period before 1 July 2027, which remains subject to the pre-reform CGT rules; and
2. a gain of approximately \$316,161 attributable to the period after 1 July 2027, which is calculated using the new indexation regime. The difference largely reflects the benefit of post-1 July 2027 indexation.

The methodology can also be used where the asset has declined in value. The Explanatory Statement includes a second example in which the same artwork is sold for \$440,000, producing separate capital losses for the periods before and after 1 July 2027.

The result is a deferred gain or loss attributable to the pre-1 July 2027 period and a separate gain or loss attributable to the post-1 July 2027 period.

COMMENT – The methodology is not based on the asset's actual value at 30 June 2027. Instead, it retrospectively estimates a 30 June 2027 value by reference to the asset's eventual disposal value and an assumed constant growth rate over the entire ownership period. This may produce significantly different outcomes from a market valuation where gains accrue unevenly, for example where a property experiences substantial growth before or after 1 July 2027. Taxpayers will therefore need to compare the statutory methodology against the cost and expected outcome of obtaining a formal valuation.

The draft legislation is open for consultation until 21 August 2026.

w <https://consult.treasury.gov.au/c2026-792170>

4.4 2026 Federal Budget reforms – Negative Gearing Tranche 2

Treasury has released a second tranche of negative gearing amendments addressing situations where an ownership interest in a residential dwelling changes hands because of death, survivorship or a relationship breakdown. The amendments are intended to preserve grandfathered negative gearing treatment and, for new

residential dwellings, preserve access to the housing-related CGT concessions introduced under the CGT reforms.

Under the first tranche of reforms, residential dwellings acquired after 7.30pm (AEST) on 12 May 2026 are generally subject to the loss quarantining rules. Broadly, net rental losses from those dwellings cannot be offset against salary, wages or other non-rental income. Exceptions apply for:

1. residential dwellings acquired before 7.30pm (AEST) on 12 May 2026; and
2. new residential dwellings.

Treasury identified a number of situations where existing CGT acquisition rules could have caused a person to lose grandfathered treatment even though they acquired the ownership interest from a spouse, co-owner or former spouse.

Acquisition from a deceased spouse

The exposure draft provides that where:

1. a surviving spouse acquires an ownership interest from a deceased spouse; and
2. the deceased spouse's ownership interest qualified for grandfathered negative gearing treatment or the new residential dwelling exception,

the surviving spouse is treated as inheriting that treatment.

If the deceased spouse acquired the dwelling before Budget night, the surviving spouse is taken to have acquired the inherited interest before Budget night.

If the dwelling was a new residential dwelling for the deceased spouse, it continues to be treated as a new residential dwelling for the surviving spouse.

Acquisition from a deceased co-owner

A similar concession applies where:

1. two individuals own a dwelling as joint tenants or tenants-in-common;
2. they are not spouses;
3. one co-owner dies; and
4. the surviving co-owner acquires the deceased's interest.

The concession applies if both ownership interests qualified for the relevant exception before the death. In those circumstances, the additional ownership interest acquired from the deceased retains the same grandfathered status or new residential dwelling status as the deceased's interest.

Relationship breakdowns

The exposure draft also addresses transfers arising from relationship breakdowns, including Family Court orders, court-approved agreements and binding financial agreements.

Where a spouse acquires an ownership interest from a spouse, former spouse, company or trustee under a qualifying relationship breakdown arrangement:

1. grandfathered pre-Budget acquisition status transfers with the ownership interest; and
2. new residential dwelling status also transfers with the ownership interest.

This ensures that a transfer resulting from a relationship breakdown does not, of itself, cause the recipient to lose access to grandfathered negative gearing treatment.

Interaction with the main residence rules

The exposure draft also addresses an unintended interaction with section 118-192 of the ITAA 1997.

When a taxpayer first uses a former main residence to produce assessable income, section 118-192 ordinarily deems the dwelling to be acquired at market value at that time for CGT purposes. Treasury was concerned that this deemed acquisition could inadvertently cause a taxpayer to lose grandfathered negative gearing treatment.

The amendments therefore provide that, when determining whether:

1. the pre-Budget acquisition exception applies; or
2. the new residential dwelling exception applies,
3. the deemed acquisition rule in section 118-192 is ignored.

Consequences for CGT concessions

The amendments also ensure that where a person inherits "new residential dwelling" status under these rules, that status carries across to the housing-related CGT concessions. This preserves eligibility for the choice between:

1. the 50% CGT discount; and
2. cost base indexation and the 30% minimum CGT tax regime,

to the same extent as the previous owner.

COMMENT – The amendments are intended to preserve existing negative gearing and housing concession outcomes where ownership interests change because of death or a relationship breakdown. Under the existing acquisition rules, these transactions can result in the recipient being treated as having acquired a new ownership interest after Budget night, even where the dwelling itself would otherwise have qualified for grandfathered treatment. The exposure draft generally preserves the tax treatment that applied to the transferor's ownership interest in these circumstances. Future legislation is expected to address broader issues involving partnerships, companies, restructures and listed investment companies.

The draft legislation is open for consultation until 21 August 2026.

w <https://consult.treasury.gov.au/c2026-792170>

4.5 2026 Federal Budget reforms – New residential dwelling

Treasury has released an exposure draft determination setting out when a residential dwelling will qualify as a "new residential dwelling" for the purposes of the negative gearing and CGT reforms. The determination also prescribes several housing-related activities that are excluded from the loss quarantining rules.

New residential dwellings

Under the negative gearing reforms, owners of qualifying new residential dwellings:

1. remain exempt from the loss quarantining rules;
2. may continue to negatively gear the dwelling; and
3. can choose between the 50% CGT discount and the post-1 July 2027 indexation regime when the dwelling is disposed of.

The Explanatory Material states that the policy objective is to direct concessional tax treatment towards investments that genuinely increase Australia's housing supply.

Four categories of new residential dwellings

A dwelling will qualify as a new residential dwelling if it falls within one of four categories:

Basic case

A taxpayer acquires land without a residential dwelling and later constructs or installs a residential dwelling on that land. This includes traditional home construction and modular homes.

Additional dwellings on existing land

A taxpayer acquires land containing one or more dwellings and subsequently increases the number of dwellings on the land. Common examples include subdivision projects, dual occupancies and apartment redevelopments. Only the additional dwellings qualify as new residential dwellings.

Conversions

A taxpayer acquires land containing a non-residential building and subsequently converts that building into residential accommodation. Examples include office-to-residential and warehouse-to-residential conversions.

Acquisition within 24 months of completion

A taxpayer acquires a dwelling that was already a new residential dwelling for another entity within 24 months after the first occupancy certificate is issued. This is intended to ensure newly completed dwellings remain eligible when sold by developers and other intermediaries.

Common requirements

All four categories require that:

1. the dwelling is located in Australia;
2. a certificate of occupancy has been issued;
3. the dwelling is capable of being held and transferred as a separate legal interest; and
4. the dwelling was completed after Budget night on 12 May 2026.

The Explanatory Material states that the separate legal interest requirement is intended to prevent structures such as most granny flats from qualifying as new residential dwellings where they cannot be independently owned or transferred.

Transitional rule for developers

The exposure draft includes a transitional rule for developers holding completed but unsold stock at Budget night.

Where:

1. the developer owned the dwelling before Budget night;
2. the occupancy certificate was issued before Budget night; and
3. the dwelling is continuously held for sale;

the dwelling can continue to qualify as a new residential dwelling for a purchaser under the 24-month rule.

Anti-avoidance rule

The determination includes a specific anti-avoidance provision.

A dwelling will not qualify as a new residential dwelling where a scheme is entered into and it would be reasonable to conclude that a purpose of the scheme is to obtain a tax benefit by treating an existing dwelling as a new residential dwelling.

The Explanatory Material gives the example of a taxpayer transferring land with an existing dwelling to another entity, demolishing the dwelling, transferring the land back and then constructing a replacement dwelling. Such arrangements are intended to be excluded from the concession where they do not genuinely increase housing supply.

Housing investment exemptions from loss quarantining

The determination also specifies several activities for which a residential dwelling will be exempt from the loss quarantining rules, regardless of whether it qualifies as a new residential dwelling.

The exemptions apply where the dwelling is:

1. used to provide specialist disability accommodation under the National Disability Insurance Scheme;
2. leased through an eligible community housing provider to provide affordable housing;
3. leased to a government body for public housing purposes; or
4. part of an active build-to-rent development.

The exemption only applies while the dwelling is being used for the qualifying activity. If the dwelling ceases to satisfy the relevant requirements, the ordinary loss quarantining rules apply unless another exception is available.

4. The draft legislation is open for consultation until 21 August 2026.

COMMENT – The draft determination adopts a relatively broad concept of housing supply. It extends beyond newly constructed standalone homes to cover redevelopment projects, higher-density developments and commercial-to-residential conversions. It also preserves access to negative gearing for several categories of housing that align with existing government housing policies, including affordable housing, specialist disability accommodation, public housing and build-to-rent projects. Treasury has noted that consultation is continuing on whether these rules should ultimately be moved into the legislation itself rather than remain subject to ministerial determinations.

w <https://consult.treasury.gov.au/c2026-792170>

4.6 PAYG withholding variation for FRCGW

The *Draft Legislative Instrument LI 2026/D18* repeals and consolidates five existing legislative instruments that vary withholding obligations under the foreign resident capital gains withholding regime. The ATO has indicated the instrument is largely administrative in nature and is intended to make it easier for taxpayers and advisers to determine whether a class variation applies.

Acquisitions from multiple vendors

For acquisitions involving multiple vendors where some, but not all, vendors have provided a clearance certificate, residency declaration, non-IARPI declaration or notice of variation, withholding is calculated separately for each vendor as follows:

1. a proportionate withholding amount calculated based on percentage interest in the asset, where no relevant documentation has been provided;

2. the amount specified in the ATO's notice of variation; and
3. nil where the vendor has provided the relevant certificate or declaration.

Deceased estate transactions

The instrument provides for a nil withholding variation for acquisitions resulting from death where the relevant rollover provisions in Division 128 of ITAA 1997 apply.

Income tax exempt entities

The instrument provides for a nil withholding variation for acquisitions from specified exempt entities, including government bodies and endorsed income tax exempt charities.

Marriage and relationship breakdowns

The instrument confirms a nil withholding amount for transfers between spouses or former spouses because of the matters set out in section 126-5 of ITAA 1997. The variation applies where the owner holds a copy of documents evidencing these matters.

Mortgagee sales

The withholding amount is varied to nil where:

1. the CGT asset is real property of a kind mentioned in paragraph 855-20(a) of ITAA 1997;
2. the acquisition occurs as a result of a specified mortgagee exercising its power of sale;
3. the residue from the sale proceeds is no greater than zero; and
4. the owner receives written notification from the specified mortgagee that no amount is required to be paid to the Commissioner because those conditions are satisfied.

Status

The draft instrument was released on 17 July 2026 and consultation closes on 14 August 2026. Once finalised, it will repeal and replace the five existing class variation instruments.

ATO Draft Legislative Instrument LI 2026/D18

w <https://www.ato.gov.au/law/view/document?docid=OPS/LI2026D18/00001>

5. Rulings

5.1 ATO's approach to private rulings

The Commissioner has issued an addendum to TR 2006/11, concerning the Commissioner's approach to private rulings. The updates mainly clarify the limits of private rulings, including the importance of the question asked, the facts provided, and the scheme identified in the ruling.

The Addendum makes the following substantive changes:

1. Scope of the ruling request - TR 2006/11 now makes clearer that the Commissioner may answer only the specific question asked. For example, if a taxpayer asks whether sale proceeds are assessable as ordinary income under section 6-5 of the ITAA 1997, the Commissioner may answer that question without ruling on whether the amount is assessable as a capital gain under section 6-10.
2. Importance of identifying the scheme - the updated Ruling emphasises that the Commissioner identifies the relevant scheme from the facts provided by the applicant. A later decision-maker considering the ruling generally takes that specified scheme as a given and does not conduct a fresh fact-finding exercise.
3. Valuations - the Commissioner will not issue a private ruling where the application is really seeking confirmation of a valuation methodology, or the market value of a future event.
4. General anti-avoidance rules - a taxpayer may request a ruling on whether a general anti-avoidance rule, such as Part IVA, applies. However, the Ruling now notes that the Commissioner will generally not rule on this issue where the scheme has not been implemented and the answer depends on assumptions about future facts.
5. When the Commissioner may decline to rule – the Addendum expands the circumstances in which the Commissioner may decline to rule, including where the application is hypothetical, would have no practical consequences, relates to a matter already being considered, or would require an unreasonable diversion of ATO resources.
6. Promoter penalty laws - TR 2006/11 now refers to the promoter penalty laws. The Commissioner may seek sanctions where a scheme is promoted as conforming with a private ruling, but the scheme is materially different from the scheme described in the ruling.

COMMENT – The updates reinforce the importance of identifying all relevant questions before lodging a private ruling application, and asking each question with precision. The Commissioner is only required to rule on the question asked and the scheme described by the applicant. If a taxpayer asks only about one provision, the ruling may not protect them on another provision that is equally relevant to the transaction. The request should therefore identify the relevant tax consequences, the precise statutory provisions, the assumptions and facts on which the ruling is sought, and any alternative characterisations that could affect the outcome.

w <https://www.ato.gov.au/law/view/document?docid=TXR/TR200611A7/NAT/ATO/00001>

5.2 Substantiation relief where records are lost

On 8 July 2026, the ATO published Addendum TR 97/24A2, which amends TR 97/24. The Addendum updates the ruling for currency and expands the guidance on when the Commissioner may accept that a taxpayer should not be denied deductions because supporting records have been lost or destroyed.

Division 900 of the ITAA 1997 requires taxpayers to keep written evidence for certain work expenses, car expenses and business travel expenses. Taxpayers do not need to lodge that evidence with their tax returns.

However, they must produce it if the Commissioner asks for it. If they cannot do so, the expenses will generally not be deductible.

TR 97/24 recognises that this outcome may be inappropriate where records have been lost or destroyed despite reasonable precautions. A taxpayer will ordinarily need evidence showing both that the loss or destruction occurred and that they took reasonable steps to protect the records. Examples include evidence that the taxpayer's home was burgled or burnt, or that a locked car containing the records was stolen.

The Addendum now expressly recognises that vulnerability may affect what evidence a taxpayer can provide. Where records are lost or destroyed because the taxpayer is experiencing sudden homelessness, family violence or similar vulnerability, the Commissioner will have regard to evidence of those circumstances.

If the lost or destroyed document was required under Subdivision 900-E, the taxpayer must generally try to obtain a substitute document. What is "reasonably possible" depends on the circumstances. The Commissioner may accept that a substitute document cannot reasonably be obtained where, for example:

5. seeking the document would expose the taxpayer to a risk of harm or injury; or
3. the supplier who issued the original document has ceased trading and its staff or records cannot be located.

A taxpayer should be able to show either that they made a genuine attempt to obtain a substitute document, or that there were reasonable grounds for concluding that such an attempt would not succeed.

Where documents such as bank statements or credit card statements can safely be provided as acceptable evidence as described in Law Administration Practice Statement PS LA 2005/7 *Substantiating an individual's work-related expenses*, it is not necessary to obtain a substitute document.

COMMENT – The Addendum is a helpful reminder that substantiation relief is not automatic when records are lost. Taxpayers should be able to explain what happened to the records, what steps were taken to preserve them, and what efforts were made to obtain substitute documents.

ATO Reference TR97/24A2

w <https://www.ato.gov.au/law/view/document?docid=TXR/TR9724A2/NAT/ATO/00001>

5.3 Recipient created tax invoices

The *Draft Goods and Services Tax Ruling* GSTR 2026/D2 sets out the Commissioner's preliminary view on the operation of recipient created tax invoices (**RCTI**) under the *A New Tax System (Goods and Services Tax): Recipient Created Tax Invoice Determination 2023 (2023 Determination)*. The draft ruling replaces guidance previously contained in GSTR 2000/10, which has been withdrawn with effect from 29 July 2026, following the repeal of the earlier legislative determinations.

Recipient within an eligible class

One of the key changes is the replacement of the former class-based eligibility framework. GSTR 2000/10 focused on specific categories of supplies and recipients, including agricultural products and recipients with a GST turnover exceeding \$20 million. Under the 2023 Determination, eligibility is instead based on whether the recipient is a government related entity, a large business entity or a business entity that determines the value of the taxable supply. Due to this shift, the draft ruling places significant emphasis on the meaning of "recipient determines the value of the taxable supply" and the conditions that must be met for an RCTI to be valid.

Recipient determination of value

The Commissioner explains that a recipient determines value where it establishes the price of the supply because it possesses information necessary to calculate that amount and the supplier cannot independently

determine the price. The ruling distinguishes this from circumstances where a recipient merely verifies, approves or because it calculates GST from an amount set by the supplier, which will not satisfy the requirement. The draft ruling provides an example involving the purchase of milk from a farmer, where the recipient determines the value of the supply because the final price cannot be calculated until the recipient conducts testing and analysis of the milk's volume, quality and fat content.

GST registration requirements

The draft ruling provides detailed guidance on the GST registration requirement. It confirms that both the supplier and the recipient must be registered for GST when the RCTI is issued and that the requirement is tested at that specific point in time. A document will not qualify as an RCTI where either party was not registered at the issue date, even if GST registration is subsequently backdated to an earlier date.

Written agreements and embedded agreements

The Commissioner makes it clear that an RCTI can only be issued where a written agreement is in place at the time the document is issued. This agreement may either be a separate standalone agreement entered into by the parties or an agreement embedded within the RCTI itself. In either case, the agreement must identify the relevant supplies, confirm that the recipient will issue RCTIs for those supplies, require the supplier not to issue tax invoices for those supplies, and include acknowledgements regarding each party's GST registration obligations. An expired agreement, or an agreement that is intended to operate retrospectively, will not satisfy the requirements of the 2023 Determination.

The draft ruling also clarifies the operation of embedded agreements. A supplier has 21 days after receiving an RCTI to reject the proposed agreement. If a rejection notice is provided within that period, the document is not an RCTI. If no rejection is received and all other requirements are satisfied, the document will constitute a valid RCTI.

Invalid RCTIs and correction mechanisms

The draft ruling provides detailed guidance on documents that fail to satisfy the RCTI requirements. It addresses common errors such as incorrect or missing ABN, incorrect price, or missing date of issue. In that case, the recipient may issue a replacement document that satisfies the RCTI requirements. The replacement document becomes the RCTI for the supply. The recipient's entitlement to attribute an input tax credit will generally arise only once the valid replacement document has been issued and held.

Agency arrangements

The draft ruling contains new guidance on agency relationships. It confirms that an authorised agent may carry out the administrative aspects of the RCTI process, including preparing and issuing RCTIs on behalf of the recipient. However, the agent does not become a party to the underlying transaction or the RCTI arrangement. The recipient remains the entity acquiring the supply, remains entitled to any input tax credits, and must continue to be identified as the recipient on the RCTI. The supplier and recipient remain the parties to the written agreement for GST purposes.

Set-off arrangements and compliance

The Commissioner provides updated guidance on situations where a recipient both acquires supplies from, and makes supplies to, the same supplier. The ruling confirms that a single document may operate as both an RCTI for the supplier's supply and a tax invoice for a separate supply made by the recipient. Although the parties may commercially set off the amounts payable between themselves, each supply remains separate for GST purposes and each party must report the full GST consequences of its own supplies.

The draft ruling also includes a practical compliance checklist.

Status

The draft ruling is open for consultation until 11 September 2026 and, if finalised, is proposed to apply from 15 June 2023, being the commencement date of the 2023 Determination.

COMMENT – The greater emphasis on the requirement that the recipient determine the value of the supply may represent a shift in the ATO's approach to RCTIs. Some arrangements where RCTIs have been used in the past may no longer meet the requirements for valid RCTIs if the recipient merely verifies, approves or calculates GST from an amount set by the supplier, rather than itself determining the value of the taxable supply.

ATO Goods and Services Tax Ruling GSTR 2000/10W

w <https://www.ato.gov.au/law/view/document?DocID=GST/GSTR200010/NAT/ATO/00001>

ATO Draft Goods and Services Tax Ruling GSTR 2026/D2

w <https://www.ato.gov.au/law/view/document?docid=DGS/GSTR2026D2/NAT/ATO/00001>

5.4 ATO finalises Payday Super rulings

The ATO has finalised three Law Companion Rulings dealing with the operation of the Payday Super regime.

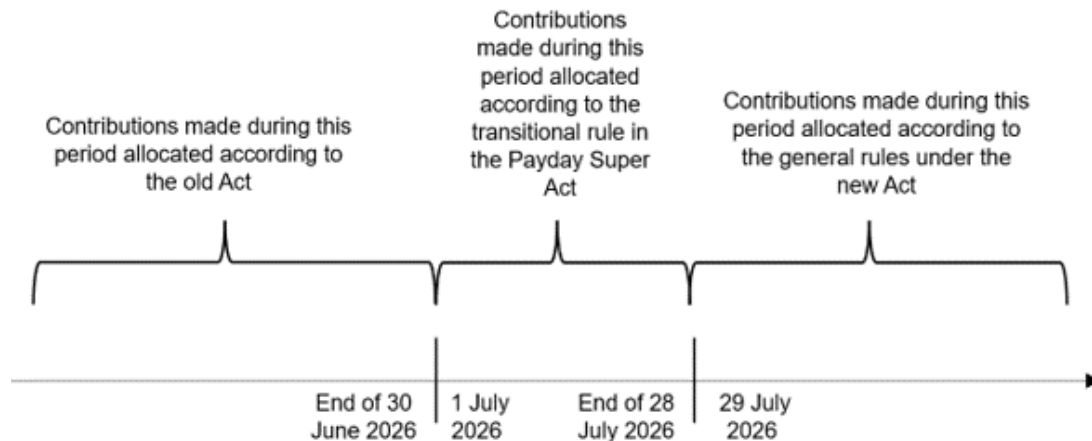
LCR 2026/1 – Transitional provisions

LCR 2026/1 explains how pre-1 July 2026 SG obligations continue to be dealt with under the former quarterly regime and sets out the rules governing the transition to Payday Super. Key points include:

1. the former SG regime continues to apply to quarters ending before 1 July 2026;
2. the late payment offset is no longer available for contributions made on or after 1 July 2026, meaning the quarter ending 31 March 2026 is effectively the last quarter for which a late payment offset can be used;
3. contributions made between 1 July 2026 and 28 July 2026 are first applied to outstanding June 2026 quarter obligations before being applied to QE day liabilities arising under Payday Super;
4. excess super contributions made before 1 July 2026 can be carried forward and applied under the new regime; and
5. special transitional rules continue to apply for Norfolk Island wages.

The accompanying Compendium confirms that requests for exemptions from Payday Super were rejected and notes the Government's announced intention to address concessional contribution cap issues arising from the transition.

The final ruling was updated to include the following visual timeline:



LCR 2026/2 – Eligible contributions

LCR 2026/2 explains what constitutes an "eligible contribution" capable of reducing an employer's SG liability. The ruling confirms that a contribution must:

1. be made to a complying superannuation fund or RSA;
2. be capable of being allocated to the employee's account; and
3. satisfy the relevant timing requirements.

The ruling contains extensive guidance on when contributions are regarded as being "able to be allocated", confirming that both contribution data and payment information must be received by the fund. Contributions rejected by a fund are generally not treated as eligible contributions for SG purposes.

The ruling also explains:

1. how excess contributions can be carried forward and applied against future QE days;
2. the operation of "on-time" and "late" contributions;
3. allowable longer periods for new employees, fund changes, out-of-cycle payments and exceptional circumstances;
4. the bunching rule; and
5. how eligible contributions are automatically applied under the legislation.

Following consultation, the final ruling was amended to provide additional clarification around rejected contributions, contribution allocation, payroll timing issues, and the distinction between receipt by the fund and the point at which a contribution becomes capable of allocation.

LCR 2026/3 – SG charge calculation and assessment

LCR 2026/3 explains how SG shortfalls and the SGC are calculated under Payday Super. The ruling confirms that SG liabilities are calculated by reference to each individual QE day and employee.

Among the key concepts addressed are:

1. calculation of the individual SG amount;
2. individual base SG shortfalls;
3. individual final SG shortfalls;
4. late contributions;
5. notional earnings components;
6. administrative uplift amounts;

7. choice loading requirements;
8. voluntary disclosure statements; and
9. Commissioner-initiated assessments.

The ruling confirms that:

1. notional earnings accrue daily on a compounding basis using the GIC rate;
2. late contributions can reduce an individual final SG shortfall but cannot eliminate all SGC exposure because notional earnings and administrative uplift amounts still arise;
3. the default administrative uplift is 60%, although reductions are available where voluntary disclosures are made or the employer has a favourable compliance history; and
4. the Commissioner may assess SG liabilities at any time.

The ruling introduces detailed examples illustrating the operation of voluntary disclosure statements and administrative uplift reductions. In some cases, the administrative uplift can be reduced to nil where an employer voluntarily discloses within 30 days and has a clean compliance history.

The accompanying Compendium records stakeholder concerns regarding allocation rules, late payments, fund-level processing issues, SMSFs, timing of assessments, voluntary disclosures and practical implementation issues. The ATO clarified a number of points but generally maintained its view that the legislation provides little scope for administrative concessions and that employers bear responsibility for ensuring contributions are received within the prescribed timeframes.

ATO Reference *LCR 2026/1*

w <https://www.ato.gov.au/law/view/document?docid=COG/LCR20261/NAT/ATO/00001>

ATO Reference *LCR 2026/2*

w <https://www.ato.gov.au/law/view/document?docid=COG/LCR20262/NAT/ATO/00001>

ATO Reference *LCR 2026/3*

w <https://www.ato.gov.au/law/view/document?docid=COG/LCR20263/NAT/ATO/00001>

5.5 Duty for incorporated associations and amalgamations (Vic)

Revenue Victoria has issued Revenue Ruling DA-020v2, which replaces DA-020 and updates the ruling to refer to the *Associations Incorporation Reform Act 2012* (Vic), rather than the former *Associations Incorporation Act 1981* (Vic). The ruling applies from 20 July 2026.

The Ruling confirms that, when an association becomes incorporated, property held on trust or otherwise for the association vests in the incorporated association under section 9 of the *Associations Incorporation Reform Act 2012*. Similarly, where 2 or more incorporated associations amalgamate, the property of each constituent association vests in the amalgamated association under section 21.

Revenue Victoria considers that such a vesting of Victorian land is a statutory vesting of land for the purposes of sections 7(1)(b)(iib) and 7A(1) of the *Duties Act 2000* (Vic). As a result, duty is technically chargeable under section 8(1) as if the vesting were a transfer of dutiable property. However, section 218 of the *Associations Incorporation Reform Act 2012* exempts an instrument giving effect to the vesting from duty.

To obtain the exemption, there must be sufficient documentation showing that:

1. for an incorporation, the transferor held the land on behalf of the association before incorporation; or
2. for an amalgamation, at least one of the constituent incorporated associations held the land before the amalgamation.

w <https://www.sro.vic.gov.au/about-us/laws-legal-cases-and-rulings/public-rulings/incorporated-associations-and-amalgamations-incorporated-associations>

5.6 Assumed tax liability amounts and consideration for duties (Vic)

On 20 July 2026, Commissioner of Victoria State Revenue issued Ruling DA-070 which sets out the Commissioner's view on when a purchaser's payment of a vendor's tax liability forms part of the "consideration" for a transfer of land under section 20(1) of the Duties Act 2000 (Vic).

The Ruling focuses on amounts paid by a purchaser towards a vendor's land tax, windfall gains tax (WGT) or congestion levy liability (referred to as Assumed Tax Liability Amounts) and whether those amounts must be included in the dutiable value of the land for duty purposes.

The Ruling draws on several key court decisions. In *Chief Commissioner of State Revenue v Dick Smith Electronics Holdings Pty Ltd* [2005] HCA 3 and *Commissioner of State Revenue v Lend Lease Development Pty Ltd* [2014] HCA 51, the High Court held that consideration for a transfer of land is not limited to the purchase price stated in the contract. Rather, it includes all money or value provided by the purchaser that moves the transfer of the land when the transaction is viewed as a whole.

The Ruling also relies on *Commissioner of State Revenue v 1043 Melton Highway Pty Ltd* [2020] VSC 820, where the Supreme Court of Victoria stated that the relevant question is whether the vendor would transfer the land only in return for the payment in issue. If the answer is yes, the payment forms part of the consideration, even if it also serves another commercial purpose.

Applying these principles, the Commissioner states that an Assumed Tax Liability Amount will form part of the consideration for a transfer of land if, viewed objectively at the time of transfer and having regard to the transaction as a whole, it is part of what the purchaser must provide in order to obtain the transfer. The characterisation of the payment depends on its substance rather than its label. Describing a payment as an "adjustment" or directing payment to a third party, such as the Commissioner, does not prevent it from constituting consideration.

In relation to land tax, the ruling distinguishes between transactions below and above the threshold amount under section 10G of the *Sale of Land Act 1962* (Vic). Where the sale price is below the threshold amount, any contractual provision requiring the purchaser to pay an amount towards the vendor's land tax liability is ineffective and cannot form part of the consideration. However, where the sale price meets or exceeds the threshold amount, a purchaser may agree to contribute towards the vendor's land tax liability. If that contribution is payable in addition to the purchase price and forms part of the amount required by the vendor in exchange for the transfer, it will constitute consideration for duty purposes. The ruling's example concludes that an apportioned land tax reimbursement of \$241,075 paid by the purchaser at settlement formed part of the consideration because the vendor would not transfer the land without it.

The Ruling adopts a similar approach for windfall gains tax (WGT). Under section 10H of the *Sale of Land Act 1962* (Vic), a purchaser cannot be required to pay a WGT liability that already exists when the contract is entered into. Such a provision is ineffective and any corresponding amount cannot constitute consideration. However, where no WGT liability exists at contract date and a liability subsequently arises before settlement, a contractual requirement that the purchaser pay the amount will be consideration if it forms part of the bargain required for the transfer. The ruling illustrates this with an example where a purchaser paid a \$125,000 WGT assessment directly to the Commissioner at settlement. Because the payment was required under the contract

in addition to the purchase price and was necessary for the transfer to proceed, it formed part of the consideration.

The Commissioner also concludes that payments relating to a vendor's congestion levy liability will form part of the consideration where they are contractually required and constitute part of what moves the transfer. In those circumstances, the purchaser is effectively providing additional value to obtain the transfer of the land, regardless of how the payment is structured.

The Ruling confirms that ordinary municipal rates adjustments do not constitute consideration. Where a purchaser reimburses the vendor for rates attributable to the post-settlement period, the reimbursement merely reflects an amount that the purchaser would have been responsible for paying as the new owner in any event. The Commissioner therefore does not regard these adjustments as part of the consideration for the transfer of land under section 20(1) of the Duties Act.

Land Transfer Duty – Assumed Tax Amounts Victoria Ruling DA-070

w <https://www.sro.vic.gov.au/about-us/laws-legal-cases-and-rulings/public-rulings/land-transfer-duty-assumed-tax-amounts>

5.7 Tasmania First Home Owner Grant – guidelines released

The Tasmanian State Revenue Office has issued a First Home Owner Grant guideline, setting out the eligibility requirements for the First Home Owner Grant:

1. \$30,000 grant – available for eligible transactions entered into between:
 - (a) 1 April 2021 and 30 June 2024 inclusive; and
 - (b) 1 July 2025 and 30 June 2026 inclusive;
2. \$20,000 grant – available for eligible transactions entered into between 1 July 2026 and 30 June 2027 inclusive; and
3. \$10,000 grant – available for eligible transactions entered into between 1 July 2024 and 30 June 2025.

There are general eligibility criteria applicable to all applicants. These include that each applicant must be a natural person, be at least 18 years of age, meet the citizenship or residency requirements, and not have previously received a First Home Owner Grant or HomeBuilder Grant in Tasmania or any other Australian state or territory. Recipients of a grant must also occupy the property as their principal place of residence for a continuous period of at least 6 months commencing within 12 months of completion of a build or settlement of sale, depending on the transaction.

The guideline also outlines 'specific' eligibility criteria which apply to the \$20,000 and \$30,000 grants. These establish timing requirements in relation to:

1. building your home through a registered builder;
2. building your own home as an owner-builder;
3. purchasing an off-the-plan home; and
4. purchasing a new home.

The Commissioner of State Revenue has discretion to extend or modify the requirements as set out in the general eligibility criteria and specific eligibility criteria above. The guideline sets out the relevant application process (including applying for Commissioner of State Revenue discretion), objection rights, payment process, land tax, and the State Revenue Office Audit Program.

w <https://www.sro.tas.gov.au/Documents/first-home-owner-grant-guideline.pdf>

5.8 NT payroll tax exemption for maternity, paternity and adoption leave

On 16 January 2026, the Northern Territory Revenue Office updated Payroll Tax Ruling PTA012, which clarifies the payroll tax exemption available for employer-funded maternity, paternity and adoption leave payments.

Section 53 and clause 20 of Schedule 2 to the *Payroll Tax Act 2009* (NT) provide that wages paid or payable to employees on maternity leave, adoption leave or paternity leave are exempt from payroll tax.

PTA012 explains the definitions of maternity leave, adoption leave and paternity leave for the purpose of this payroll tax exemption.

PTA012 also explains the types of wages that are exempt, which include wages/salaries, employer superannuation contributions, allowances, bonuses and commissions, and provides that the maximum entitlement for any one pregnancy or adoption is 14 weeks full time leave or the equivalent for a full-time employee, or 14 weeks leave at the applicable part-time rates of pay for a part-time employee.

Revenue Ruling PTA012

w https://treasury.nt.gov.au/data/assets/pdf_file/0015/1622121/pta012-exemption-for-maternity-paternity-and-adoption-leave-pay.pdf

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 Two dwellings, one main residence?

Facts

The taxpayer acquired Property A before the commencement of the CGT regime. Many years later, a related entity acquired the adjacent Property B after the introduction of CGT. The two properties were neighbouring lots connected by a pathway through an opening in the fence.

Over time, various adult children of the taxpayer resided in Property B with their families. Eventually, one child (Z) and Z's family occupied Property B on an ongoing basis. During this period, the taxpayer and their spouse each had a room in Property B that they used for recreational purposes and regularly spent time there.

Property B was later transferred from the related entity to the taxpayer. Z and Z's family continued to reside in Property B without paying rent or outgoings and were financially dependent on the taxpayer. The taxpayer paid all costs associated with Property B, including rates, insurance and maintenance.

The taxpayer subsequently sold Property B to another child to fund aged care needs but retained ownership of Property A.

The taxpayer used Property B for receiving mail and deliveries and for medical purposes. The taxpayer suffered from several medical conditions and received substantial support from Z at Property A, including assistance with mobility, medication management and daily health monitoring. Z and Z's spouse also provided personal care, cooking and cleaning services.

Both properties were used daily by the taxpayer, Z and Z's family. The taxpayer primarily slept, ate and received care at Property A, although before Z moved into Property B the taxpayer had regularly slept at Property B. The children frequently spent time at Property A with their grandparent.

The main laundry servicing both properties was located in Property B. Both properties were used for meal preparation, entertainment and social activities. The taxpayer regularly moved between the properties, often ate meals outdoors at Property B, and kept furniture, personal belongings and storage items across both properties. Z regularly slept at Property A and Z's spouse occasionally stayed there.

Property B was never used to derive assessable income. The properties were held under separate titles, although their combined land area was less than two hectares.

The taxpayer continued to use both properties until death, which occurred at Property A. Z and Z's spouse assisted with transport for shopping, social activities and medical appointments using both their own vehicles and the taxpayer's vehicles. Following the taxpayer's death, Z and Z's family continued to reside in Property B and use both properties. Property A remained unsold.

Question

Are Property A and Property B considered to be a single dwelling for the purposes of the main residence exemption in section 118-115 of the ITAA 1997?

Ruling

The ATO concluded that Property A and Property B were not a single dwelling for the purposes of section 118-115 of the ITAA 1997. The issue was whether two separate residential properties could be treated as one dwelling when applying the main residence exemption in section 118-110 of the ITAA 1997.

Section 118-115 of the ITAA 1997 defines a dwelling to include a unit of residential accommodation and the land immediately beneath it. The ATO relied on TD 1999/69, which states that a dwelling can include more than one unit of accommodation if the units are used together as one residence or abode. Relevant factors include where occupants sleep, eat and live, the proximity of the properties, any physical connection between them, whether they can be sold separately, how integrated the occupants' daily activities are, how the properties are shared and how costs are shared.

The ATO also referred to *Campbell v O'Sullivan* [1947] SASR 195. In that case, May J stated that a dwelling ordinarily means a place of abode or residence used for sleeping and usually for the provision of meals. The case supports the view that a dwelling is fundamentally a place occupied as a residence.

The facts showed a high level of integration between the properties. Family members used both properties daily. The properties were physically connected. Meals, social activities and some household functions occurred across both sites. The taxpayer also moved regularly between the properties.

Despite those factors, the ATO placed significant weight on the separate character of the properties. They were held under separate titles. They were designed and built as independent residences. They were acquired at different times. Property B was later sold separately while Property A was retained. In the ATO's view, those factors showed that each property remained a distinct residence.

The ATO accepted that the taxpayer spent substantial time at Property B and that the occupants of Property B regularly used Property A. However, the ATO considered that the living arrangements were best described as the taxpayer maintaining a main residence at Property A while Z and Z's family maintained a separate main residence at Property B. The ATO considered this more accurate than characterising the arrangement as a single household occupying both properties as one residence.

The ATO therefore concluded that the properties were not used together as one place of residence or abode. Property A and Property B were not a single dwelling for the purposes of section 118-115 of the ITAA 1997.

ATO reference *Edited Private Advice Authorisation No. 1052544228873*
w <https://www.ato.gov.au/law/view/document?docid=EV/1052544228873>

6.2 Record keeping and CGT

Facts

The taxpayer and their spouse purchased a property that was used as their main residence. The property was later subdivided, and a new dwelling was constructed at the rear of the land by the taxpayers acting as owner-builders.

After construction was completed, the original residence was sold and the taxpayer moved into the newly constructed dwelling. The taxpayer subsequently moved to another property, and the new dwelling was then rented to tenants. The dwelling was later sold.

Records relating to the construction of the new dwelling were lost or destroyed due to computer system damage. The taxpayer has exhausted all avenues to obtain source documents and reconstruct the records required to establish the dwelling's cost base for capital gains tax purposes.

Question

For the purposes of the record-keeping requirements in Division 121 of the ITAA 1997, is the taxpayer able to reconstruct the figures associated with establishing the cost base of the property by obtaining estimates from a quantity surveyor?

Ruling

The ATO ruled that the taxpayer could use estimates from an appropriately qualified quantity surveyor to reconstruct construction costs forming part of the property's CGT cost base. The ruling focuses on the interaction between the CGT cost base rules in section 110-25 of the ITAA 1997 and the CGT record-keeping requirements in Division 121 of the ITAA 1997.

Division 121 requires taxpayers to keep records relevant to calculating a capital gain or capital loss. Where records are lost, taxpayers are expected to make reasonable efforts to obtain replacement documents from third parties such as builders, contractors, solicitors, accountants or government authorities. If records cannot be obtained, subsection 121-20(5) of the ITAA 1997 requires the records to be reconstructed.

The ruling relied on TR 97/25, which deals with situations where actual construction expenditure cannot be established from source documents. The ATO accepts that construction costs may be reconstructed using estimates prepared by an appropriately qualified person. The relevant expert must have expertise in calculating building costs and be capable of being accepted as an expert by a court or tribunal. A quantity surveyor will ordinarily satisfy this requirement where they have expertise in the relevant type of construction. Other suitably qualified experts may include experienced builders, supervising architects and project managers with relevant cost-estimation experience.

The ATO accepted that the taxpayer's construction records had been lost due to computer system damage and that reasonable attempts had been made to obtain replacement evidence. The expenditure related to the construction of the dwelling and was the type of capital expenditure that may form part of the fourth element of the cost base under section 110-25 of the ITAA 1997. In those circumstances, the ATO accepted that cost estimates prepared by an appropriately qualified quantity surveyor could be used to reconstruct the records and support inclusion of those amounts in the property's cost base.

COMMENT – The approach in TR 97/25 is arguably concessional. It should not be assumed that the ATO would allow similar estimates in other non-property construction contexts. The ruling is directed to reconstructing construction expenditure where source records have been lost and an appropriately qualified expert can provide a reliable estimate. Advisers should be cautious about extending that approach to other types of expenditure without clear supporting evidence.

ATO reference *Edited Private Advice Authorisation No. 1052543262593*
w <https://www.ato.gov.au/law/view/document?docid=EV/1052543262593>

6.3 GST groups and registration

Facts

The taxpayer is an Australian company that has been registered for GST and is a member of a GST group, with another group entity acting as the representative member. That representative entity operates an online retail business involving the sale and delivery of goods in Australia and overseas.

The taxpayer acquired a commercial warehouse property which has since been used by the representative member in carrying on its business. There was no formal lease between the taxpayer and the representative member. Instead, the parties operated under an informal, undocumented occupancy arrangement under which the representative member paid the ownership and holding costs of the property.

The representative member subsequently sold its business and vacated the property, bringing the occupancy arrangement to an end. Following the business sale, the purchaser entered into a temporary occupancy arrangement to access the property for limited activities before vacating. During this period, the representative member continued to meet the ownership and holding costs of the property.

The taxpayer has entered into a contract to sell the property to an unrelated third-party purchaser. Apart from this property, the taxpayer does not own any other real property.

Other than allowing occupation of the property, the taxpayer has not been involved in the GST group's business activities. The taxpayer is to be removed from the GST group. Upon leaving the group, the property will not be made available to any other entity and no further income will be derived from leasing or any other use of the property before settlement of the sale.

The taxpayer has not undertaken any development activities in relation to the property since acquiring it. Following cessation of the occupancy arrangement, the taxpayer has not conducted, and will not conduct, any activities either within or outside the GST group, other than those associated with the property. Its only anticipated revenue will be the proceeds from the sale of the property.

Questions

6. Is the taxpayer required to be registered for GST under section 23-5 of the GST Act from the relevant effective date?
7. Is the taxpayer entitled to cancel its GST registration under section 25-55 of the GST Act from the relevant effective date?

Ruling

Question 1 – GST Registration Requirement under section 23-5 of the GST Act

The ATO considered whether the taxpayer was required to remain registered for GST after leaving the GST group. Under section 23-5 of the GST Act, an entity must be registered if it is carrying on an enterprise and its GST turnover meets the registration turnover threshold. For entities that are not non-profit bodies, the threshold is \$75,000.

The ruling explains that the GST turnover test requires consideration of both current GST turnover and projected GST turnover. Although the taxpayer's current GST turnover could potentially exceed the threshold because of supplies previously made to the GST group representative, that fact alone is not determinative. The critical issue was whether the taxpayer's projected GST turnover would meet the threshold after leaving the GST group.

The ATO noted that, following cessation of the occupancy arrangement, the taxpayer would make no further supplies other than the sale of the warehouse property. In calculating projected GST turnover, section 188-25 of the GST Act requires certain supplies to be disregarded, including supplies made by way of transfer of ownership of a capital asset and supplies made solely as a consequence of ceasing to carry on an enterprise.

In determining whether the property was a capital asset, the ATO relied on the principles in *Goods and Services Tax Ruling* GSTR 2001/7. The ruling distinguishes capital assets, which are held as part of the profit-yielding structure of an enterprise, from revenue assets, which are acquired for sale or whose disposal is inherent in the conduct of the business. The property had been acquired and held for use in the business

operations of the GST group rather than for resale at a profit. It functioned as a leasing or business-use asset and was therefore characterised as a capital asset at the time of sale.

Because the sale involved the transfer of a capital asset and occurred in connection with the cessation of the taxpayer's enterprise activities, the sale was excluded from projected GST turnover under section 188-25 of the GST Act. Once that exclusion was applied, the taxpayer's projected GST turnover fell below the registration threshold. Consequently, the taxpayer was not required to be registered for GST after leaving the GST group.

Question 2 – Cancellation of GST Registration under section 25-55 of the GST Act

Having concluded that the taxpayer was no longer required to be registered for GST, the ATO then considered whether the taxpayer was entitled to cancel its GST registration. Section 25-55 of the GST Act requires the Commissioner to cancel an entity's registration where: (i) the entity applies for cancellation in the approved form, (ii) the entity has been registered for at least 12 months, and (iii) the entity is not required to be registered.

The ATO accepted that the taxpayer had been registered for more than 12 months and, based on the analysis under Question 1, was no longer required to be registered because its projected GST turnover was below the registration threshold. Accordingly, provided the taxpayer lodges an application in the approved form, the statutory requirements in section 25-55 of the GST Act would be satisfied and the Commissioner must cancel the taxpayer's GST registration.

TRAP – The requirements for forming and maintaining a GST group are technical. Related entities should not simply be treated as a single GST group because they are commonly owned, share premises, or operate as part of the same commercial group. Advisers should confirm that the statutory requirements are met, including the membership requirements, GST registration status, 90% ownership test where relevant, and the appointment of a representative member, before treating intra-group supplies as ignored for GST purposes.

ATO reference *Edited Private Advice Authorisation No. 1052526045978*
w <https://www.ato.gov.au/law/view/document?docid=EV/1052526045978>

6.4 Creditable acquisition legal fees

Facts

In addition to the facts below, the scheme is to be read together with the related court proceedings.

The Company carries on a business and is registered for GST.

First proceeding — directors' duties

A shareholder commenced proceedings against the Company's directors alleging breaches of directors' duties. The directors engaged lawyers to defend the proceedings.

The Company advanced and indemnified the directors' legal and non-legal costs in connection with the proceedings, in accordance with the *Corporations Act 2001* (Cth), pending the Court's decision.

The Company incurred costs of approximately in relation to the first proceeding. The Company has claimed input tax credits for acquisitions of services relating to those costs in its quarterly activity statements.

The Court found in favour of the directors. A costs order was made requiring the plaintiff shareholder to reimburse the directors' costs on an indemnity basis.

The plaintiff shareholder, through their solicitor, negotiated a reduction of the costs amount. The parties agreed to settle the costs liability.

The plaintiff paid money into the trust account of the Defendant's solicitor. As there were outstanding legal costs in relation to the proceedings, the lawyers retained a portion and transferred the remaining money to the Company's bank account.

Second proceeding - trademark infringements

The Company commenced separate proceedings, regarding trademark infringements against an entity which operates a similar business to the Company and the controller of that entity (**Individual A**).

The Company engaged the barristers through their lawyers for legal services in relation to the trademark infringements proceedings. The lawyers did not issue a separate engagement letter to the Company in respect of the second proceeding.

Individual A's barrister requested out of court settlement with the Company and considering expensive legal costs and difficulty providing actual financial loss as a result of the infringements, the Company's barrister, advised that the Company accepted the out of court settlement amount.

Questions

1. Did the Company make a creditable acquisition from the Directors by paying for the Director's costs in respect of the first proceeding (relating to directors duties) under section 11-5 of the GST Act?
2. Did the Company make a creditable acquisition of legal services in respect of the first proceeding under section 11-5 of the GST Act?
3. Does the Company make a creditable acquisition of services in respect of the second proceeding (relating to trademark infringements) under section 11-5 of the GST Act?

Ruling

Question 1

The Company did not make a creditable acquisition from the directors by paying, or being liable to pay, their legal costs in the first proceeding. The directors did not make a supply to the Company in return for the indemnity payment.

The payment of the directors' legal costs was not, of itself, enough to establish that the Company acquired anything from the directors for GST purposes. A creditable acquisition under section 11-5 of the GST Act requires a taxable supply to the acquirer and consideration for that supply.

The ATO accepted that the Company was registered for GST and that it paid, or was liable to pay, the relevant legal costs. However, the directors did not provide anything to the Company in return for the payment. The payment arose under the indemnity arrangements connected with the directors' defence of the first proceeding.

Consistent with GSTR 2006/9, there is no supply merely because a legal obligation arises or because one entity pays an amount connected with another entity's liability. There must be something supplied by one entity to another.

Here, nothing passed from the directors to the Company. The directors were the parties defending the directors' duties proceeding. The Company's payment discharged, or contributed to, the costs incurred in that proceeding, but it did not cause the directors to make a taxable supply to the Company.

Accordingly, the Company did not make a creditable acquisition from the directors under section 11-5 of the GST Act in respect of the first proceeding.

Question 2

No. The Company did not make a creditable acquisition of legal services in respect of the first proceeding. The legal services were supplied to the directors, not to the Company.

The Company provided, or was liable to provide, consideration for the legal services and was registered for GST. However, that was not sufficient to satisfy section 11-5 of the GST Act. The Company also needed to be the recipient of a taxable supply.

Consistent with GSTR 2006/9, an entity may pay for a supply without being the recipient of that supply. The entity is a third-party payer and does not make a creditable acquisition merely because it pays, or is liable to pay.

The indemnity arrangements did not change the identity of the recipient of the legal services. The directors engaged the lawyers to defend the directors' duties proceeding. The Company's payment discharged, or contributed to, the directors' legal costs, but it did not cause the legal services to be supplied to the Company.

The same outcome for the third-party disbursements. The services were acquired for the directors in defending the proceeding. The Company was not the recipient of those supplies merely because it ultimately bore the cost.

Accordingly, the Company did not satisfy the acquisition requirement in section 11-5 of the GST Act. It did not make a creditable acquisition of the legal services or related disbursement services for the first proceeding and was not entitled to input tax credits for those costs.

Question 3

Yes, the Company made a creditable acquisition of services in respect of the trademark infringements.

As per the reasoning outlined in Question 2, the Company satisfied paragraph 11-5(c) and 11-5(d) of the GST Act.

The Company also satisfied the requirements under paragraphs 11-5(a) and 11-5(b) of the GST Act as the services were supplied to the Company in respect of the trademark infringements proceedings and initiated by the Company in the course of running its enterprise.

Accordingly, the requirements of section 11-5 of the GST Act are satisfied and the Company made a creditable acquisition of services in respect of the second proceeding (relating to trademark infringements).

COMMENT – This is a common scenario. It is important to understand that payment of legal fees by one entity on behalf of directors, shareholders, employees or related entities may not give rise to a creditable acquisition by the paying entity. The paying entity may have incurred the cost, but that does not mean it was the recipient of the legal services for GST purposes. The arrangement may also need to be reviewed for Division 7A and FBT implications, particularly where a company pays or indemnifies costs that primarily relate to another person's obligations or personal position.

ATO reference *Edited Private Advice Authorisation No.* 1052489492180
w <https://www.ato.gov.au/law/view/document?docid=EV/1052489492180>

6.5 Foreign income tax offset on foreign capital gains

Facts

The taxpayer was an Australian resident and sold a Country A rental property. Country A tax was paid on the foreign taxable gain. For Australian tax purposes, the taxpayer made a capital gain on the disposal and applied the 50% CGT discount under Division 115 of the ITAA 1997.

The taxpayer had rental losses, which was able to reduce the taxable gain in Country A.

Is the taxpayer entitled to a foreign income tax offset for the Country A tax paid?

Ruling

Yes, but only to the extent the foreign tax relates to the amount included in the taxpayer's Australian assessable income. The taxpayer is entitled to a foreign income tax offset equal to 50% of the Country A tax paid on the capital gain, subject to the foreign income tax offset limit in Subdivision 770-B of the ITAA 1997.

Division 770 allows a foreign income tax offset where foreign income tax has been paid in respect of an amount included in Australian assessable income. For a capital gain, the relevant Australian amount is the net capital gain included in assessable income, after applying capital losses and any CGT discount.

The ATO applied the apportionment approach in ATO ID 2010/175 and *Burton v Commissioner of Taxation* [2019] FCAFC 141. As only 50% of the gross capital gain was included in the taxpayer's Australian assessable income after applying the CGT discount, only 50% of the Country A tax was treated as paid in respect of an amount included in assessable income.

The reduction of the Country A gain by Country A rental losses did not change the Australian apportionment. The comparison is made by reference to the Australian capital gain calculation, not the foreign tax calculation.

COMMENT – The foreign income tax offset will not be taken into account in calculating the minimum taxable capital gain for the purposes of the new 30% minimum CGT tax. The offset does not reduce the capital gain that is used to determine whether the minimum CGT tax applies and the amount payable.

ATO reference *Edited Private Advice Authorisation No.* 1052518291133
w <https://www.ato.gov.au/law/view/document?docid=EV/1052518291133>

7. ATO and other materials

7.1 Interim Decision Impact Statement – *Department of Education*

The ATO has released an Interim Decision Impact Statement following the Federal Court's decision in *Department of Education v Commissioner of Taxation* [2026] FCA 898 (see Item 1.2 of these tax training notes). The case concerned whether a Victorian Department of Education "salary loading allowance" paid annually to eligible teachers formed part of the relevant superannuation guarantee earnings base and therefore attracted superannuation guarantee obligations.

The allowance was calculated as 17.5% of four weeks' normal salary and was paid annually to teachers who completed the relevant service period and remained employed on the specified payment date. The Commissioner had issued amended SGC assessments covering periods from 2004 to 2022 on the basis that the allowance formed part of the applicable notional earnings base (for periods before 1 July 2008) and ordinary time earnings (**OTE**) (for periods from 1 July 2008).

For periods prior to 1 July 2008, the Court held that the allowance did not form part of the relevant notional earnings base. The Court accepted that the allowance was, in substance, a recreation leave allowance equivalent to annual leave loading, notwithstanding the unusual way it was paid to teachers. Because recreation leave allowances were excluded from the definition of "salary" under the relevant Victorian superannuation legislation, the amount was not included in the notional earnings base.

For periods from 1 July 2008, the Court held that the allowance was not OTE. The Court considered that where an industrial instrument specifies an employee's salary for ordinary hours, that salary represents the employee's earnings at ordinary rates of pay. An additional payment made on top of that salary does not become OTE merely because it is received in connection with ordinary employment. Accordingly, the salary loading allowance was not OTE even though employees were not required to work additional hours to receive it.

ATO view

The Commissioner has appealed the decision to the Full Federal Court on both issues. The ATO states that *Draft Law Companion Ruling* LCR 2026/D1 (Payday Super: qualifying earnings) continues to reflect the Commissioner's current interpretation of OTE, although the ruling will not be finalised until the appeal process concludes. Pending the outcome of the appeal, the ATO generally will not finalise advice requests, compliance decisions, SGC assessments or objections where the outcome depends on whether a particular payment constitutes OTE.

w <https://www.ato.gov.au/law/view/document?DocID=LIT/ICD/VID204of2025/00001>

7.2 Update to decision impact statement on Shaw

On 15 July 2026, the ATO updated its DIS for *Commissioner of Taxation v Shaw* [2026] FCA 197. In that case, the Federal Court dismissed the Commissioner's appeal from the ART's decision allowing a long-haul truck driver's meal expense deductions.

The ATO's updated DIS confirms that it has completed its review of the implications of the decision for existing public advice and guidance. Following that review, the ATO concluded that:

1. no amendments to existing advice or guidance are required at this stage; and

2. there is no immediate need for a practical compliance guideline, although the ATO may reconsider that position in the future.

The DIS reiterates the ATO's view that the decision confirms the distinction between deductibility and substantiation. Taxpayers must first establish that an expense is deductible under section 8-1 of the ITAA 1997 before relying on any substantiation concession. The ATO also emphasises that the Commissioner's published "reasonable amounts" do not create an automatic entitlement to a deduction and that deductibility must still be established on the facts.

Importantly, the ATO notes that the decision does not establish that bank statements or oral testimony will always be sufficient evidence of meal expenses, does not remove the need to consider apportionment where private expenditure is involved, and does not provide an automatic deduction where expenditure falls within the Commissioner's published reasonable amounts.

The DIS also confirms that TD 2026/4 (reasonable travel and overtime meal allowance expense amounts for 2026-27) has already been issued having regard to the decision.

w <https://www.ato.gov.au/law/view/document?docid=LIT/ICD/WAD112of2025/00001>

7.3 When the ATO may move a business to monthly GST reporting

On 22 July 2026, the ATO released guidance outlining the circumstances in which it may require a business to move from quarterly to monthly GST reporting. The ATO may make such a determination where a business exceeds the relevant GST turnover threshold, has been operating in Australia for less than three months, or has a history of failing to meet its tax obligations, including repeated late lodgments, late payments or incorrect reporting.

Where the ATO directs a business to report monthly, the business must calculate, report and pay GST monthly through its BAS. Any WET, LCT or fuel tax credit obligations will also move to monthly reporting automatically. Businesses may also choose to align other obligations, such as PAYG withholding, with the monthly cycle.

Businesses that disagree with the change may lodge an objection within 60 days of receiving the notice.

The ATO notes that businesses generally must remain on monthly GST reporting for at least 12 months before seeking to return to quarterly or annual reporting. A request to revoke the determination can be made through a registered tax agent or directly to the ATO but will only be approved where the circumstances that led to the determination no longer apply.

The guidance includes an example of a business with a history of late lodgments, unpaid tax debts and defaulted payment plans being moved to monthly GST reporting, with the ATO noting that more frequent reporting can help improve record keeping and tax compliance.

w <https://www.ato.gov.au/businesses-and-organisations/preparing-lodging-and-paying/business-activity-statements-bas/changing-to-monthly-gst-reporting/why-we-may-change-your-gst-reporting-cycle>

7.4 ATO expands pre-fill data for contractors

On 5 August 2026, the ATO announced that, for the first time, information reported through the Taxable Payments Annual Report (**TPAR**) will be included as pre-filled income in eligible tax returns. The initiative is expected to pre-fill approximately \$21 billion of contractor payments and assist around 700,000 sole traders and individuals in business to prepare their tax returns more efficiently.

The expanded pre-fill data will cover payments reported through the TPAR regime, including contractors operating in industries such as building and construction, courier and road freight services, cleaning services, information technology, and security, investigation and surveillance services.

The ATO is encouraging contractors to lodge their returns after 28 August 2026. Waiting until late August should allow more complete pre-fill information to become available and reduce the likelihood of amendments being required later.

The ATO emphasises that pre-fill information does not replace the need for taxpayers to maintain proper records or declare all business income. Contractors remain responsible for ensuring their returns include income not captured through TPAR reporting, including payments received directly from clients, through platforms or in cash. Contractors who amend pre-filled amounts should retain records supporting the adjustment.

The ATO estimates that more than \$1 billion of TPAR income may be omitted or under-reported this year and notes that shadow economy behaviour contributes to approximately \$25 billion in lost tax revenue annually.

w <https://www.ato.gov.au/media-centre/new-ato-pre-fill-data-makes-tax-time-easier-for-contractors>

7.5 ATO updates transfer balance cap guidance

The ATO has issued Addendum LCR 2016/9A5 and Compendium LCR 2016/9EC, updating its guidance on the transfer balance cap regime. The amendments primarily clarify the operation of proportional indexation of an individual's personal transfer balance cap, the treatment of successor fund transfers, and various transfer balance account events.

A significant change is the inclusion of new guidance and examples explaining how a person's personal transfer balance cap is indexed. The Addendum clarifies that indexation is based on the individual's highest transfer balance account balance relative to their transfer balance cap at the relevant time.

New examples illustrate both situations where a member receives partial indexation and where no indexation is available because the member has previously fully utilised their cap.

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: $\$1.525 \text{ million (highest balance)} \div \$1.613 \text{ million} = 0.945$
 - expressed as a percentage and rounded down = 94%
 - subtract 94% from 100% = 6%
 - transfer balance increase: $\$200,000 \times 6\% = \$12,000$.
- 17L. On 1 July 2023, Ryuk's personal transfer balance cap is indexed by a further \$12,000 to \$1.625 million ($\$1.613 \text{ million} + \$12,000 = \$1.625 \text{ million}$). 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.

Example A2 – Personal transfer balance cap not entitled to indexation

- 17M. Using Example A1 of this Ruling, except Ryuk's superannuation income stream is instead valued at \$1.6 million, Ryuk's transfer balance account commences on 1 March 2018 and is credited with \$1.6 million.
- 17N. 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.
- 17O. On 1 July 2021, although the general transfer balance cap is increased to \$1.7 million, Ryuk's personal transfer balance cap will remain at \$1.6 million. He is not entitled to indexation on 1 July 2021 (or any future indexation of the general transfer balance cap) because his transfer balance equalled his personal transfer balance cap.

The Addendum also introduces detailed guidance on successor fund transfers. The ATO confirms that where a superannuation income stream ceases because of a successor fund transfer, a debit arises in the member's transfer balance account equal to the value of the superannuation interest supporting the pension immediately before it ceases. Where a replacement retirement-phase pension commences in the successor fund, a corresponding credit will generally arise in the member's transfer balance account. A new worked example illustrates the TBA consequences of these transfers.

In addition, the ruling clarifies that a superannuation income stream will cease to be in the retirement phase where the trustee fails to comply with a commutation authority within the required timeframe, resulting in a transfer balance debit. Further guidance has been included on pension failures, commutation events and other transfer balance account adjustments.

The Compendium confirms that, following consultation:

1. the explanation of unused cap percentage calculations has been clarified to better explain the proportional indexation methodology;
2. the successor fund transfer example has been amended to clarify the treatment of capped defined benefit income streams; and

3. no changes were made in relation to submissions seeking guidance on Part 9 life insurance transfers, which the ATO regarded as outside the scope of the ruling.

w <https://www.ato.gov.au/law/view/document?docid=COG/LCR20169A5/NAT/ATO/00001>
w <https://www.ato.gov.au/law/view/document?docid=COC/LCR2016EC9/NAT/ATO/00001>

7.6 ANAO audit of ATO regulation of SMSFs

The Australian National Audit Office (**ANAO**) has commenced a performance audit into the ATO's regulation of SMSFs, with the audit expected to be tabled in March 2027.

The audit will examine:

1. whether the ATO effectively manages risks associated with SMSFs;
2. whether SMSF compliance is effectively monitored and reported; and
3. whether non-compliant SMSFs are appropriately investigated and sanctioned.

The ANAO is currently gathering evidence and has invited submissions from stakeholders and members of the public until 25 October 2026.

Although the audit will not review government policy, it will assess the effectiveness of the ATO's administration, compliance and enforcement activities in relation to the SMSF sector. Given the size and significance of the SMSF industry, the audit may influence future compliance and regulatory approaches.

w <https://www.anao.gov.au/work/performance-audit/australian-taxation-offices-regulation-of-self-managed-superannuation-funds>

7.7 Changes to SMSF limited recourse borrowing arrangements

On 28 July 2026, the ATO released guidance on changes to the limited recourse borrowing arrangement (**LRBA**) rules for SMSFs that take effect from 10 August 2026. The changes, introduced by the *Treasury Laws Amendment (Tax Reform No. 1) Act 2026*, restrict new LRBAs used to acquire real property to business real property only.

The ATO emphasises that LRBAs are not prohibited, and SMSFs may continue to borrow under an LRBA. However, for LRBAs entered into on or after 10 August 2026 to acquire real property, the property must satisfy the definition of business real property. The new rules apply regardless of whether the lender is a bank, non-bank lender or related party.

Importantly, existing arrangements are grandfathered. The changes do not apply where an SMSF:

1. entered into an LRBA before 10 August 2026 to acquire real property; or
2. entered into a binding contract to acquire real property before 10 August 2026, even if settlement or the LRBA occurs after that date.

Existing LRBAs may also be maintained or refinanced without losing grandfathered status.

For new arrangements entered into from 10 August 2026, the property must be business real property when the LRBA is entered into and throughout the life of the borrowing arrangement. If the property ceases to be business real property, the SMSF may breach the borrowing rules and be exposed to compliance action.

The ATO also confirms that residential property may still be acquired under an LRBA where it qualifies as business real property. However, residential property that does not satisfy that definition can no longer be financed through an LRBA, although it may still be acquired by an SMSF using other funding arrangements.

The ATO has indicated that it is reviewing and updating existing guidance, including SMSFR 2009/1 and SMSFR 2012/1, to reflect the amended borrowing rules.

w <https://www.ato.gov.au/individuals-and-families/super-for-individuals-and-families/self-managed-super-funds-smsf/smsf-investing/restrictions-on-smsf-investments/smsf-borrowing-restrictions/limited-recourse-borrowing-arrangements/changes-to-limited-recourse-borrowing-arrangements>

7.8 ATO commences electoral roll data-matching program

On 8 July 2026, the ATO announced a new ongoing data-matching program under which it will obtain electoral roll information from the AEC. The data may include a person's name, residential address, sex, date of birth and occupation. The ATO estimates it will receive records relating to approximately 18 million individuals each quarter.

The ATO will match this information against its existing records to identify potential non-compliance with tax and superannuation registration, lodgment, reporting and payment obligations. The program is also intended to help locate taxpayers with outstanding tax or superannuation liabilities and identify individuals operating outside the tax and superannuation systems.

The data will also support administration of Australia's Foreign Investment Framework, including compliance activities involving residential and agricultural land acquisitions where a person acquires Australian property but does not appear on the electoral roll.

The ATO estimates the program will involve a significant volume of data and notes that it will generally be the sole user of the information obtained. The program will operate in accordance with the Office of the Australian Information Commissioner's data-matching guidelines and the Privacy Act.

w <https://www.legislation.gov.au/C2026G00425/asmade/text>

7.9 Tax Ombudsman review highlights bias risk in ATO decision-making

On 27 July 2026, the Tax Ombudsman released a review of the ATO's controls for managing bias in compliance, enforcement and decision-making activities. The review was initiated following an investigation into historical allegations of ATO maladministration involving bias and prejudice and examined whether the ATO's current processes, guidance and training adequately protect against bias in high-impact decisions.

While the review acknowledged that the ATO has significantly strengthened its governance and decision-making controls over the past 10 to 15 years, it concluded that bias is not explicitly recognised as a specific compliance risk and that some existing controls were not designed to identify or mitigate bias directly. Officers were not consistently prompted to consider bias risks or to test assumptions made about taxpayers.

A recurring concern identified during the review was the potential impact of taxpayer "labelling". The Ombudsman noted feedback from taxpayers and tax professionals that once a taxpayer is regarded as high-risk or a poor complier, it can be difficult to shed that label, creating a risk that historical conduct may be given disproportionate weight in future compliance activity.

The review found opportunities to strengthen controls in a number of areas, including:

1. explicit bias checks in decision-making processes;
2. independent review and assurance activities;
3. staff training;
4. quality assurance procedures;
5. data collection and monitoring; and
6. the language used in internal records and external disclosures.

The Ombudsman made two recommendations:

1. that the ATO assure itself and the community that its controls against bias and prejudice are operating effectively; and
2. that the ATO develop and implement a plan to address identified gaps in bias controls.

The ATO accepted both recommendations.

In its response, the ATO committed to undertaking a phased review of existing controls, explicitly recognising bias risks within its enterprise risk framework and implementing targeted improvements, including additional guidance, training, assurance activities, monitoring and ongoing enhancements to decision-making processes. The ATO also emphasised the distinction between bias and legitimate risk-based compliance assessment, noting that consideration of compliance history and intelligence remains an important part of evidence-based tax administration.

w https://taxombudsman.gov.au/wp-content/uploads/2026/07/Bias-isnt-always-seen_Review-Report.pdf
w <https://taxombudsman.gov.au/publications/ato-told-to-sharpen-focus-on-bias-risk/>
w <https://www.ato.gov.au/media-centre/ato-response-to-tax-ombudsmans-review-into-the-atos-controls>

8. Tax professionals

8.1 TPB Corporate Plan 2026–27

The TPB has released its 2026–27 Corporate Plan, setting out its regulatory priorities, compliance focus areas and performance measures for the coming years. The TPB's stated purpose is to support public trust and confidence in the integrity of both the tax profession and the tax system.

The theme throughout the plan is a commitment to a more visible, proactive and targeted regulatory approach. The TPB states that it intends to provide clearer regulatory signals, strengthen professional standards and take firmer action against misconduct, while continuing to support voluntary compliance among practitioners who meet their obligations. Particular focus will be placed on misconduct, unethical behaviour, unregistered preparer activity and conduct that undermines confidence in the tax system.

The TPB identifies the following key compliance priority areas:

1. tax practitioner misconduct and unethical behaviour;
2. illegal phoenix activity;
3. tax avoidance schemes;
4. shadow economy activity;
5. overclaimed work-related expenses;
6. exploitation of vulnerable Australians;
7. failures by practitioners to comply with their own tax obligations; and
8. fraud and integrity risks.

The plan also highlights a number of strategic initiatives, including:

1. implementation of the TPB reforms announced in the March 2025 Federal Budget, including enhanced sanctions powers;
2. increased use of data analytics and risk engines to identify systemic risks and target compliance activity;
3. improvements to practitioner registration, identity verification and integrity checking processes;
4. greater transparency in consultations, including publication of consultation outcomes and non-confidential submissions;
5. increased guidance on emerging technology and AI use by tax practitioners; and
6. efforts to reduce unnecessary compliance burdens and duplication with other regulators.

The plan notes the following two headline performance measures:

1. 80% positive tax practitioner feedback in relation to TPB guidance and support materials. This measure will be assessed through an annual survey of practitioners; and
2. positive court and tribunal outcomes in sanctions matters. The TPB has reduced its benchmark from requiring 100% positive litigation outcomes to 85% positive outcomes in Federal Court and ART proceedings.

w <https://www.tpb.gov.au/corporate-plan>

8.2 Treasury consultation on TPB sanctions reform

Treasury has commenced consultation on draft regulations and a draft determination designed to strengthen the TPB's sanctions framework. The reforms were originally announced in the 2025-26 Federal Budget and

build on earlier consultations regarding enhanced disciplinary powers and greater transparency in the regulation of tax practitioners.

A key feature of the proposed reforms is the expansion of information that will be published on the TPB public register. Under the draft regulations, the TPB would be required to publish details where:

4. a tax practitioner's registration is suspended or terminated;
8. an unregistered practitioner is convicted of an offence under the TASA;
9. an unregistered practitioner pays an infringement notice;
10. a practitioner has been prohibited from applying for registration within the previous five years; or
11. the TPB accepts an enforceable voluntary undertaking.

The draft regulations also make a range of technical and consequential amendments to the Tax Agent Services Regulations 2022, including updates to cross-references and greater consistency in publication periods for sanctions information.

The accompanying draft determination proposes amendments to section 45 of the Tax Agent Services (Code of Professional Conduct) Determination 2024. The amendments would require tax practitioners to disclose additional conduct-related information to clients and specify when those disclosures must be made. The objective is to improve transparency and allow prospective clients to better assess a practitioner's suitability and disciplinary history before engagement.

Submissions close on 14 August 2026.

w <https://consult.treasury.gov.au/c2026-791474>

8.3 TPB finalises guidance on responsible AI use for tax practitioners

On 22 July 2026, the TPB released Guidance Statement TPB(GS) 55/2026, which explains how existing obligations under the Code of Professional Conduct apply when tax practitioners use AI in the provision of tax agent services. The guidance does not create new obligations but clarifies how existing professional standards apply in an AI environment.

The TPB recognises that AI can improve productivity, efficiency and client service, but emphasises that AI is a tool to support, not replace, professional judgement. Practitioners remain responsible for all advice and services provided to clients, including reviewing and verifying AI-generated outputs.

The guidance identifies several factors practitioners should consider when using AI, including:

1. the nature and purpose of the task being performed;
2. how and where information is stored and used;
3. the intended use of, and reliance on, AI outputs;
4. the strengths and limitations of the AI tool;
5. review and verification processes; and
6. whether the AI tool is appropriate for the particular task and decision-making process.

The TPB highlights two key Code obligations in particular:

1. **Competency** – Practitioners remain accountable for the accuracy of advice and services. AI cannot replace tax knowledge, professional judgement or the obligation to take reasonable care. Practitioners should understand the limitations of AI, verify outputs for accuracy and maintain appropriate records, review procedures and quality management processes; and

2. **Confidentiality** – Entering client information into AI tools may constitute disclosure to a third party. Practitioners should ensure they have appropriate client consent, understand how the AI provider uses and stores information, and undertake due diligence to ensure compliance with the Privacy Act, Australian Privacy Principles and, where relevant, the Privacy (Tax File Number) Rule 2015.

The TPB also notes that practitioners must continue to comply with their broader obligations concerning honesty, integrity, independence, supervision, record-keeping and quality management when using AI.

w <https://www.tpb.gov.au/tpbgs-552026-use-artificial-intelligence-and-code-professional-conduct>

8.4 Navigating super payments in July and August

On 13 July 2026, the ATO released guidance to help employers manage the transition from the former quarterly superannuation system to the new Payday Super regime.

The ATO confirms that the final quarterly superannuation contribution for the quarter ending 30 June 2026 remained due by 28 July 2026. Contributions made between 1 July and 28 July 2026 will first be allocated against outstanding quarterly superannuation obligations before being applied to any Payday Super liabilities.

If an employer misses the 28 July 2026 deadline, they must lodge a SG statement by 28 August 2026 and pay the resulting SGC to the ATO. The ATO also confirms that employers who miss the quarterly deadline cannot use a late payment offset to transfer later contributions against the outstanding quarterly liability.

From 29 July 2026, contributions will only be allocated to Payday Super obligations, even where the employer intended them to satisfy an earlier quarterly shortfall. The ATO further notes that:

1. excess contributions will automatically be carried forward and applied to future Payday Super obligations; and
2. late contributions will automatically be applied to the earliest outstanding Payday Super liability.

w <https://www.ato.gov.au/tax-and-super-professionals/for-tax-professionals/tax-professionals-newsroom/navigating-super-payments-in-july>

8.5 Check property manager reports to reduce incorrect claims

On 20 July 2026, the ATO reminded tax practitioners that property manager reports should be treated as a starting point only when preparing rental property schedules, as the expense classifications used by property managers may not reflect the correct tax treatment.

The ATO identified several common errors, including:

1. capital expenses (including initial repairs) being incorrectly claimed as immediate deductions;
2. expenses being grouped too broadly to determine the correct tax treatment;
3. mismatches between when expenses are incurred and the accounting method adopted; and
4. private expenses being incorrectly included in rental property claims.

To reduce the risk of incorrect claims, the ATO recommends that practitioners:

1. obtain invoices or work descriptions where the nature of an expense is unclear;
2. seek additional supporting evidence where invoice descriptions do not align with the work undertaken;
3. confirm that invoices relate to the relevant rental property; and
4. ensure capital works, depreciating assets and repairs are correctly identified and treated.

The ATO also encourages practitioners to explain to clients why tax outcomes may differ from amounts reported by property managers. The review process is particularly important where a property has been recently acquired or significant expenditure has been incurred, as it can reduce the risk of incorrect or overstated deductions and subsequent ATO review activity.

w <https://www.ato.gov.au/tax-and-super-professionals/for-tax-professionals/tax-professionals-newsroom/check-property-manager-reports-to-reduce-incorrect-claims>

8.6 What happens after lodging a tax return

On 10 July 2026, the ATO updated its guidance on tax return processing and post-lodgment monitoring. The ATO aims to process most electronically lodged current-year returns within 12 business days, while paper returns may take up to 50 days.

Practitioners can monitor the progress of returns through the Tax Return Processing Status report, OSfA and clients' notices of assessment. Where processing delays occur, the ATO issues a weekly report outlining potential causes. Clients first appear on the Tax Return Processing Status report 26 days after lodgment and may remain on the report for up to one year.

The ATO also notes a known system issue where some returns may not display a "lodged" status in OSfA for up to 28 days, despite a lodgment reference number having been issued. This issue most commonly affects certain client groups, including high wealth individuals, partnerships, trusts, consolidated groups with substituted accounting periods and some early lodgments. If the status has not updated after 28 days, practitioners may contact the Tax or BAS Agent phone service or lodge a Tax Practitioner Assistance request.

The guidance also reminds practitioners that notices of assessment and most ATO correspondence will generally be delivered to a client's myGov Inbox where myGov is linked to the ATO, although those communications remain accessible through Communication History in Online services for agents.

w <https://www.ato.gov.au/tax-and-super-professionals/for-tax-professionals/prepare-and-lodge/tax-time/after-you-lodge>

8.7 ATO Commissioner addresses practitioner concerns

On 8 July 2026, Commissioner Rob Heferen responded to questions raised during the ATO's Tax Professionals livestream, addressing concerns about the ATO's firmer compliance approach, support for vulnerable taxpayers, GIC remission and recently enacted tax measures.

A key message was that the ATO's stronger stance on lodgment and payment obligations is now the "new normal", with taxpayers expected to meet their obligations on time unless exceptional circumstances apply.

In relation to vulnerable taxpayers, the Commissioner reiterated that the ATO cannot waive tax debts or alter legal obligations because of hardship, but can provide support through payment plans and tailored assistance. He also acknowledged ongoing investment in staff training and specialist support services.

The Commissioner also commented on GIC remission, noting that the more concessional approach adopted during the COVID-19 period was temporary and that the ATO has deliberately returned to a firmer position to encourage timely payment. He emphasised that the remission criteria have not changed and that decisions continue to take account of the taxpayer's circumstances and compliance history. The ATO received more than 140,000 remission requests during the previous year.

The Commissioner further confirmed that, following Royal Assent of the Government's CGT and negative gearing reforms, the ATO will begin releasing guidance and tools to assist practitioners and taxpayers in understanding the new measures.

More broadly, he acknowledged the increasing pressures on tax practitioners and reaffirmed the ATO's commitment to providing clearer guidance and taking industry feedback into account when developing future communications and support materials

W <https://www.ato.gov.au/tax-and-super-professionals/for-tax-professionals/tax-professionals-newsroom/our-commissioner-responds-to-your-questions>