

Tax Update

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- Corporate & Commercial
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- Estate Planning
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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 SKG	What happened? The NSW Court of Appeal dismissed appeals by SKG and Ezko and held that the relevant cleaning contracts were employment agency contracts for payroll tax purposes. The Court rejected the argument that the decisive issue was whether the clients controlled how the cleaning work was performed, and instead focused on whether the services were provided in and for the conduct of the clients' businesses. Why it matters? The decision confirms that control is relevant but not decisive in identifying an employment agency contract. Regular and ongoing services that are closely connected with a client's ordinary business operations may fall within the employment agency provisions, even where the contractor supplies its own labour and equipment. The decision is particularly important for subcontracting arrangements where advisers might otherwise focus only on the relevant contract provisions and their exclusions.	Page 8
Item 2.2 Larmar	What happened? The Federal Court held that income from property syndicate activities was derived personally by Earl Larmar, rather than by a related family trust, because he was the person who identified opportunities, sourced investors, arranged finance, controlled the syndicates and made the material commercial decisions. The Court also held that the income was personal services income and that the relevant entity was not conducting a personal services business. The Court accepted that the Commissioner had validly formed an opinion of fraud or evasion, allowing amended assessments to be issued outside the ordinary amendment period. Why it matters? The decision is an important reminder that derivation turns on who, in substance, earns the income, not merely on where amounts are recorded or returned. It also highlights the risk that income from entrepreneurial or advisory activities may be characterised as PSI where the income is mainly a reward for an individual's personal efforts and skills. The evasion aspect is significant because the Court accepted that the Commissioner could amend outside the ordinary amendment period where income was not returned in accordance with the true legal position and that it was not sufficient to show that this was intentional.	Page 10

Tax Update Matter	Impact Summary	Further Detail
Item 2.4 Caldwell	What happened? The Full Court of the Federal Circuit and Family Court held, by majority, that three family trusts and/or their assets were property of Mr Caldwell for the purposes of section 79 of the <i>Family Law Act 1975</i>. The majority focused on Mr Caldwell's present control over the trusts and his ability to benefit himself, including his capacity to assume control of appointor and trustee powers, notwithstanding the intergenerational purpose of the trusts and the origin of the assets. Why it matters? For accountants and other advisers involved in structuring and asset protection, the decision is a reminder that trust control should be considered alongside tax efficiency and legal ownership. Where a client has practical control of a trust and a real ability to benefit from it, those features may be relevant in a family law property settlement, even if the trust was established for broader family or intergenerational purposes. When advising on new structures, succession arrangements or asset protection, it is worth considering who holds appointor, guardian, trustee and amendment powers, how those powers may be exercised, and whether the structure appropriately separates control from personal access to trust assets.	Page 20
Item 4.2 2026 Federal Budget Reforms	What happened? The 2026 Federal Budget reforms include enacted CGT and negative gearing changes, including an increase to the turnover threshold for the 50% active asset reduction from \$2 million to \$10 million from 1 July 2027. The broader reform package also includes the proposed Innovative Business CGT Concession, under which eligible founders, employees and investors in qualifying innovative start-ups may be able to choose between a 50% CGT discount and indexation for gains accruing from 1 July 2027. Further measures in Treasury Laws Amendment (Tax Reform No. 2) Bill 2026 cover loss carry back, the permanent instant asset write-off threshold and other targeted measures, while Tax Reform No. 1 also includes amendments affecting SMSF limited recourse borrowing arrangements for real property. Why it matters? For many advisers, the most immediate structuring point is the increased turnover threshold for the 50% active asset reduction, which may broaden access to the small business CGT concessions in some scenarios. It applies from 1 July 2027. The proposed Innovative Business CGT Concession is also potentially significant for founders, employees and investors in qualifying start-ups, because it may preserve access to a 50% CGT discount or indexation treatment despite the broader move to a minimum CGT rate. The significance of the IBCC will depend on what changes are made to it during the consultation process.	Page 49

Tax Update Matter	Impact Summary	Further Detail
Item 8.1 Decision Impact Statement – <i>Bendel</i>	What happened? The ATO released its Decision Impact Statement on the High Court's decision in <i>Commissioner of Taxation v Bendel</i> [2026] HCA 18, accepting that a private company beneficiary's unpaid present entitlement to trust income is not, without more, a loan for Division 7A purposes. The ATO accepts that mere inaction or failure to demand payment does not amount to the provision of financial accommodation. Why it matters? The Decision Impact Statement is important to consider in advising private groups with corporate beneficiaries and unpaid present entitlements. Existing trust distribution and UPE management practices should be revisited, but the ATO has signalled that the analysis remains fact-dependent and that other Division 7A provisions, trust deed terms, sub-trust arrangements and anti-avoidance issues may still need to be considered.	Page 66

2. Detailed case summaries

2.1 SKG Cleaning – payroll tax and employment agency contracts

Facts

SKG Cleaning Services Pty Ltd, SKG Pty Ltd, Ezko Property Services (Aust) Pty Ltd as trustee for The Ezko Unit Trust and Ezko Property Services (Aust) Retail Pty Ltd carry on the business of providing cleaning services to commercial and governmental clients in New South Wales using subcontractors and their own employees to undertake the cleaning work.

Most engagements were governed by standard form cleaning contracts, although not all contracts were available in evidence. Both SKG and its related entity also entered into negotiated, longer-form agreements with major clients containing different contractual terms. The standard form agreements generally required the cleaning contractor to perform services professionally, supply its own equipment and labour, comply with security and legal requirements, and ensure personnel met acceptable standards. Many contracts also allowed the client to object to individual workers and require their replacement. Some agreements included detailed cleaning schedules identifying the tasks to be completed and the frequency of those tasks, but the SKG entities maintained that these provisions related only to the scope of work rather than control over its performance.

The contracts between the SKG entities and their clients contained varying degrees of client oversight. Some required the contractor to ensure that employees and subcontractors complied with specified standards and permitted the client to require the removal of personnel or direct how services were to be provided. Other agreements required qualified personnel, authorised background checks, or permitted termination for contractual breaches. In several instances, relevant schedules or appendices setting out the detailed scope of works or contractual terms were not in evidence. The Ezko contracts similarly included obligations concerning service standards and, in one case, expressly stated that cleaning staff were employed directly by the contractor.

The Chief Commissioner assessed both groups for payroll tax on payments made to subcontractors, treating the cleaning contracts as employment agency contracts under section 37 of the *Payroll Tax Act 2007* (NSW). Following these assessments, which included a 25% penalty tax, both SKG and Ezko lodged objections. These objections were unsuccessful, and review proceedings were commenced in the Supreme Court of New South Wales.

The primary judge concluded that the contracts were employment agency contracts for the purposes of the PTA. SKG and Ezko appealed the decision in relation to a limited number of contracts. They argued that those agreements were not employment agency contracts because they merely specified the cleaning services to be performed and the required frequency, without giving clients control over who performed the work or how it was carried out. SKG and Ezko described these agreements as "no indicia contracts", contending that they lacked the features characteristic of employment agency arrangements.

Issue

Did the cleaning contracts between the SKG and Ezko entities and their respective clients constitute employment agency contracts?

Decision

The Court reiterated that the characterisation of a contract depends principally on its terms and the context in which it operates, rather than on how the parties performed the contract in practice. The critical question is

whether the contract is one under which an employment agent procures the services of another person for a client, with the services being provided "for" the client's business.

The Court rejected the submission by the SKG entities and Ezko entities that the decisive consideration was the degree of control the client exercised over how the cleaning work was performed. It held that this approach adopted an unduly narrow interpretation of section 37 of the PTA. Rather, the proper inquiry is whether there is a sufficient connection between the services provided under the contract and the ordinary activities of the client's business. Although the client's ability to direct or control the work may be relevant, it is only one factor and is not a critical consideration.

The Court emphasised that the employment agency provisions operate as an anti-avoidance measure designed to prevent payroll tax being avoided through the interposition of an intermediary where work that would ordinarily be undertaken by employees is instead supplied through an employment agency arrangement. Relevant considerations therefore include the regularity and continuity of the services and whether, absent the contractual arrangement, the client would ordinarily engage employees to perform those functions.

The Court held that the primary judge had correctly focused on the close relationship between the cleaning services and the ordinary conduct of each client's business. The contracts required the provision of regular and ongoing cleaning services of a kind that businesses ordinarily require for the operation of their premises. The Court accepted that, in the ordinary course, such work would commonly be undertaken by employees if it were not outsourced to a commercial cleaning contractor. Although the contracts varied in their level of detail, each contemplated the routine provision of general cleaning services rather than specialised or occasional work.

The Court recognised that not every cleaning contract will necessarily constitute an employment agency contract. It gave the example of highly specialised cleaning services, such as external window cleaning of high-rise buildings, which would not ordinarily form part of the client's regular business operations. However, none of the contracts in issue fell within that category.

The Court further observed that the contractual provisions reinforced this conclusion. Most contracts permitted the client to object to particular workers, required cleaners to meet specified standards or qualifications, or otherwise afforded the client a degree of oversight regarding who performed the services and the standard of performance. Collectively, these features supported the conclusion that the disputed contracts were properly characterised as employment agency contracts.

The appeal was dismissed.

COMMENT – SKG clarifies that the two 'limbs' for an employment agency contract that many thought were identified in *Chief Commissioner of State Revenue v Integrated Trolley Management Pty Ltd* [2023] NSWCA 302, being regularity and continuity, and direction and control, do not replace the broader test from *UNSW Global Pty Ltd v Chief Commissioner of State Revenue* [2016] NSWSC 1852; 104 ATR 577. The question remains a qualitative one: whether the work is being performed in and for the conduct of the client's business. It is a test of fact and degree that requires consideration of both the nature of the client's business and the nature of the work performed. The key question is whether, had an employment agent not been used, the client would have employed the workers as employees to perform the relevant work.

TIP – The decision means that contractual arrangements for general, regular cleaning will more likely be characterised as employment agency contracts, whereas specialist cleaning may not be. The issue will be whether the specialist cleaning is undertaken under the same contract as the general cleaning services. Given this, it is prudent that separate contracts govern general cleaning services and specialist cleaning services, so that the character of each arrangement can be assessed separately.

TRAP – Revenue NSW continues to seek to apply the employment agency contract provisions aggressively to contracting arrangements and in new industries, in circumstances where the contractor may otherwise have been excluded under the relevant contract provisions. Advisers should not assume that an exclusion available

under the relevant contract provisions means that payroll tax will not apply as the contractual arrangement may be characterised as an employment agency contract. The employment agency contractor provisions need to be considered separately for any sub-contracting arrangements. There are no equivalent exclusions in the employment agency contract provisions to the exclusions in the relevant contract provisions.

Citation *SKG Cleaning Services Pty Ltd v Chief Commissioner of State Revenue* [2026] NSWCA 122 (Leeming, Ball and Free JJA, Sydney)
w <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCA/2026/122.html>

2.2 Larmar – derivation, PSI and evasion

Facts

On 5 October 1989, E H Larmar Services Pty Ltd was incorporated, and on 1 November 1989 the Larmar Family Trust No 2 was settled. Around the same time, Earl Larmar began operating a tax and accounting practice as a sole trader under the name EH Larmar & Co. Earl also commenced establishing property syndicates for clients and investors.

On 1 February 1991, Earl circulated a proposal to selected clients inviting investment in what became the Brisbane Prime Property Group, marking the first significant syndicate he established. Over the following decades, he identified properties, selected investors, arranged financing, and controlled all significant decisions for each syndicate, while charging various fees including management, brokerage and success fees.

A proposal letter from Earl to investors for Brisbane Prime Property Group was written in first person and said:

...

(b) “(t)he management of the property will be undertaken by my firm, E. H. Larmar & Co, and a competitive fee will be charged on an annual basis for the management and oversight of the property concerned.”;

(c) A fee will be charged “by me” for putting the group together of 2% of the purchase price of the property;

A further letter was sent to potential investors regarding this proposal dated 14 May 1991, which was on the letterhead of Earl's accounting firm.

An application form provided to investors was addressed to Earl, care of the accounting firm. Prospective investors were required to fill out the form nominating an amount to be invested and enclose a cheque for that amount, payable to “E.H. Larmar & Co as the trustee company for this group has yet to be determined”.

On various dates between June 1993 and November 2007, additional syndicates were established, including City Arcade in June 1993, Centrepont around 1 August 1996, Meridian in 1999, Whites Hill in September 2001, Monier in June 2003, Wickham in October 2004, Tribune in March 2006, 31 Station Road in December 2006, and Ashgrove in September 2007. Many of these lacked formal agreements or had incomplete documentation, but all were centrally managed and controlled by Earl, with his firm preparing financial statements and administering operations.

Some syndicate arrangements did have documentation. For example, the Cityview Properties Investment Group joint venture was the subject of a written joint venture agreement dated 16 November 1994 between the trustee of the Larmar Family Trust No 2 and Cityview Properties Pty Ltd. The "manager" in the agreement was defined as the trustee. By contrast, the Tribune syndicate investor communications referred to a joint venture agreement, but it was later conceded that there was no such written agreement.

On several occasions between 2008 and 2010, in connection with borrowings from ING Direct for projects including Tribune and Cityview, Earl provided financial information to support personal guarantees he was offering. The loan documentation recorded that he was personally actively involved in managing the property

syndicates, exercised close control over their operations, and had substantial assets under management. The financial information he supplied set out his personal asset position, including investments in syndicates, real property, cash, and amounts described as management fees and other fees due to him. In the September 2008 material, management fees of approximately \$1.41 million were recorded as due to Earl personally. In the November 2008 material, more than \$16 million in fees, including a \$15 million success fee, was recorded as due to him. Later documentation in 2010 again reflected his personal net worth and financial position for the purpose of assessing his capacity to provide a personal guarantee

Investors in the syndicates were notified of changes to investment properties and cross-investments between syndicates, which were decided unilaterally by Earl without investor consultation. Over time, the syndicates generated substantial income, including management fees, brokerage fees on capital raising, success fees on property realisations, and project management consultancy fees. There was no disclosure to investors of actual management fees to be charged or the method by which they would be calculated. Earl explained that the management fees to be charged to a particular syndicate were decided by Earl based on the hourly rates charged by his accounting firm as well as a range of 1 to 4% of total funds under management.

Most of the income from the syndicates was reported in the trust tax return for the Larmar Family Trust No 2 and included in the assessable income of the relevant beneficiaries of the trust. Some brokerage fees and success fees were omitted entirely and were not reported by Earl or any of his related entities.

On 19 August 2014, the ATO commenced an audit into Earl and his associated entities, examining income derived from the syndicate activities over the financial years ending 30 June 2005 to 2014.

On 12 July 2017, following the audit, the Commissioner issued amended assessments to Earl for the income years ending 30 June 2005 to 2014, based on findings of evasion in those years. These assessments increased Earl's assessable income by approximately \$29.8 million, on the basis that fees generated from the property syndicates were his personal ordinary income.

On 11 September 2017, Earl lodged an objection to those amended assessments, contending that the income had been derived by the Larmar Family Trust No 2 and correctly returned by its beneficiaries rather than by him personally.

On 1 November 2022, the Commissioner disallowed that objection.

On 6 March 2024, the Commissioner issued alternative assessments to the trustee of the Larmar Family Trust No 2 on the basis that, if the income was not assessable to Earl, it would instead be assessable to the trustee.

Both Earl and the corporate trustee commenced proceedings in the Federal Court challenging the objection decisions.

The Commissioner argued that Earl personally derived the syndication income either as ordinary income under section 6-5 of the ITAA 1997 or as statutory personal services income, because the fees were the product of his personal services, skill and business activities in establishing, controlling and operating the syndicates. Earl gave evidence that he regarded brokerage fees from several of the syndicates as his own money to do with as he pleased.

The Commissioner submitted that, as a matter of substance and commercial reality, Earl exercised effective control over the syndicates, the generation of income, and the application of funds, such that he was the party who earned and derived the income notwithstanding the existence of the Larmar Family Trust No 2. Earl, by contrast, argued that the legal form of the arrangements should be respected, with the trustee entering into the relevant dealings, deriving the income, and returning it through the trust, consistent with Division 6 of the ITAA 1936.

In contrast, Earl argued that the income was not derived by him personally, but by the trustee of the Larmar Family Trust No 2, with his activities undertaken in his capacity as principal or agent of the trust. While he had

included brokerage fees in his personal income returns for 2007 and 2009, this was not recorded in the financial statements of the accounting firm as income and Earl gave evidence that he considered this was a mistake and that the income was earned by the trustee of the Larmar Family Trust No 2.

On the alternative basis, the Commissioner argued that, if the income was not assessable to Earl personally, it was instead derived by the trustee of the Larmar Family Trust No 2, supporting the validity of the alternative assessments. Earl resisted that position, maintaining that the income had already been correctly treated as trust income and assessed to beneficiaries, such that the Commissioner's alternative assessments were unnecessary or misconceived.

The Commissioner's position was that the Property Syndicate Fees were personal services income of Earl Larmar, because they were mainly a reward for his personal efforts and skills. The Commissioner relied on the substance of the activities, emphasising that Earl personally created and controlled the syndicates, sourced investors, identified properties, arranged funding, and made all key commercial decisions. On that basis, each category of fee, management, brokerage, success and project management, was said to be directly attributable to his personal exertion.

Earl maintained that the fees were not his personal services income, but instead were income of his service entity. He contended that the income was generated through the structure and operations of that entity, and that staff contributed significantly to the work giving rise to the fees. In the alternative, he argued that, even if the income were characterised as personal services income, the entity qualified as a personal services business, such that the attribution rules would not apply.

Issues

1. Did Earl personally derive the income generated from the property syndicates or was that income derived by the Larmar Family Trust No 2 and therefore assessable to the trustee or its beneficiaries?
2. Was the income PSI?
3. Did the Commissioner validly form an opinion of evasion that would allow assessments earlier than the 2 or 4 year amendment period?

Decision

Did Earl personally derive the income or was it derived by the trust?

The Court determined this issue by focusing on who, in substance, earned the income for the purposes of section 6-5, rather than relying on the legal form of the arrangements or the entity that recorded the receipts. It examined the totality of the syndication activities and found that Earl Larmar was the person who identified and secured investment opportunities, structured the syndicates, sourced investors, arranged finance, and made all material commercial decisions, including setting and charging the various fees. Those activities were continuous and organised, and amounted to a business carried on by Earl.

Against that factual background, the Court considered whether the trustee of the Larmar Family Trust No 2 could nevertheless be regarded as the entity that derived the income. It accepted that the trust existed and that amounts were recorded and returned through it, but emphasised that Division 6 does not determine derivation, it assumes that the trust has already derived the income. On the evidence, the trust did not undertake or control the income producing activities in any substantive sense, and did not stand between Earl and the earning of the fees. Rather, it operated as a vehicle through which amounts were later allocated.

The Court also rejected the characterisation of Earl as acting merely in a representative or agency capacity for the trustee. His role, functions and control were consistent with acting as principal in his own business, not as an agent carrying on activities on behalf of a separate trust estate.

Personal services income

The Court noted that, if the Larmar Family Trust No 2 was a personal services business, then the PSI rules would not attribute the income to Earl personally. The Court held that the Property Syndicate Fees were personal services income, being mainly a reward for Earl's personal efforts and skills.

In reaching that conclusion, it relied on its earlier findings that Earl personally established and controlled the syndicates, attracted investors through his own reputation, identified and acquired properties, and made all material commercial decisions. Those activities required his skill, expertise and experience, and were the substantive source of the income.

Although staff provided administrative and preparatory assistance, they had no decision-making role and did not perform the core income-generating functions. The Court therefore treated their involvement as incidental.

The Court found that Services was not a personal services business, as none of the statutory tests in Division 87 were satisfied and no personal services business determination had been obtained.

In relation to the results test, the Court held that the Property Syndicate Fees were not earned for producing a "result" in the relevant sense. There was no evidence of identifiable contractual deliverables or outcomes against which the fees were calculated. Earl did not identify any "result" for the purposes of the test, and the fee structures did not exhibit the characteristics required by section 87-18.

For the unrelated clients test, the Court found that Services did not provide services as a result of offers or invitations to the public or a section of the public. Investment opportunities were offered only to existing clients, investors, or their associates, reflecting pre-existing relationships rather than a public market offering.

In respect of the employment test, the Court was not satisfied that at least 20% of the principal work was performed by others. While staff undertook administrative and support functions, there was no sufficient evidence or analysis demonstrating that their contribution, measured by market value, met the statutory threshold.

For the business premises test, the evidence showed that Services, the property syndicates, and the accounting practice operated from the same premises, with no demonstrated physical or functional separation. Accordingly, the requirements of section 87-30 were not met.

Opinion of evasion

The Court focused on whether the Commissioner had formed the opinion of evasion on a proper basis, noting that the statutory test requires the opinion to be bona fide and supported by the material before the Commissioner.

The Court considered that "evasion" in this context does not require fraud or deliberate misconduct, but extends to circumstances where there has been a failure to return income in accordance with the true legal position.

Having found that the Property Syndicate Fees were, in substance, Earl Larmar's personal income, the Court considered it significant that those amounts were not returned by Earl, but instead were treated as income of another entity. The Court accepted that this mischaracterisation of the income provided a sufficient basis for the Commissioner to form the view that there had been an avoidance of tax. It did not require proof of fraud or intentional wrongdoing; rather, it was enough that income was not returned in accordance with the true legal position, and that the Commissioner's opinion was formed bona fide on the material available.

COMMENT – There may be a question whether there was a sufficient basis for a conclusion of fraud or evasion if Earl genuinely and reasonably believed that he had not derived the income personally, but that it had instead been derived by the trustee of the Larmar Family Trust No 2. In *Denver Chemical Manufacturing Co v Commissioner of Taxation (NSW)* (1949) 79 CLR 296; Dixon J said that "evasion" means "more than avoid"

and “involves a blameworthy act or omission on the part of the taxpayer, or those for whom he is responsible, which results in the avoidance of tax”. On that approach, it may not be enough merely to show that the income was, as a matter of correct legal analysis, derived by Earl personally. A further question may be whether the non-inclusion of that income in Earl’s personal returns involved the necessary blameworthy act or omission, having regard to what Earl knew, believed and reasonably understood about the arrangements at the time. If any requirement for some element of intent, knowledge or blameworthiness is removed, there is effectively no practical limit on the Commissioner’s power to amend an assessment. On the approach adopted in *Larmar*, it appears that any omission of assessable income from a tax return, even where based on a genuine and reasonable view of the law or facts, could be characterised as ‘evasion’.

TRAP – It is important that legal documents properly reflect the intended legal, commercial and tax outcome. If the documents say that one entity is the contracting party, manager or income earner, but the intended outcome is that a different person or entity was to be the contracting party and would derive the income, the legal form will undermine the tax position.

Citation *Larmar v Commissioner of Taxation* [2026] FCA 826 (Wheatley J, Brisbane)
w <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2026/826.html>

2.3 Ostwald – SGC and the reasonable steps defence

Facts

Brendan, Matthew and Daniel Ostwald were directors of Ostwald Bros Pty Ltd.

On 28 October 2016, Ostwald’s superannuation guarantee for the quarter ending 30 September 2016 fell due, and \$680,099.43 was debited from its bank account and paid to a clearing house, with the funds reaching employees’ superannuation funds on 31 October 2016, after the due date.

On 28 November 2016, Ostwald failed to lodge its required superannuation guarantee statement for the September 2016 quarter

On 3 February 2017, \$917,353 was debited from Ostwald’s bank account and paid to a clearing house for the December 2016 quarter, with the funds reaching employees’ superannuation funds on 6 February 2017, again after the due date.

On 28 February 2017, Ostwald failed to lodge its superannuation guarantee statement for the December 2016 quarter.

On 28 April 2017, Ostwald’s superannuation guarantee for the quarter ending 31 March 2017 became due.

On 16 May 2017, \$773,876.87 was debited from Ostwald’s bank account and paid to a clearing house for the March 2017 quarter, with the funds received by employees’ superannuation funds on 17 May 2017, after the due date.

On 28 May 2017, Ostwald failed to lodge its superannuation guarantee statement for the March 2017 quarter.

On 25 August 2017, Ostwald was placed into external administration.

On 30 November 2017, Ostwald was placed into liquidation, and on 29 June 2018, new liquidators were appointed.

On 29 July 2021, 4 October 2021 and 5 October 2021, the Commissioner made default assessments of superannuation guarantee charge for the three quarters, after Ostwald had failed to lodge the required statements.

On 22 February 2024, the Commissioner issued director penalty notices to Brendan Ostwald, Matthew Ostwald and Daniel Ostwald in respect of unpaid amounts for the September and December 2016 quarters, followed by further notices on 8 March 2024 for the March 2017 quarter.

On 2 May 2024, the liquidators objected to the default assessments and lodged revised superannuation guarantee calculations showing significantly reduced liabilities.

On 3 May 2024 the directors submitted a defence to the director penalty notices, relying on the “all reasonable steps” defence. Section 269-35 of Schedule 1 to the TAA relevantly provides:

- (2) *You are not liable to a penalty under this Division if:*
 - (a) *you took all reasonable steps to ensure that one of the following happened:*
 - (i) *the directors caused the company to comply with its obligation;*
 - (ii) *the directors caused an administrator of the company to be appointed under section 436A, 436B or 436C of the Corporations Act 2001;*
 - (iia) *the directors caused a small business restructuring practitioner for the company to be appointed under section 453B of that Act;*
 - (iii) *the directors caused the company to begin to be wound up (within the meaning of that Act); or*
 - (b) *there were no reasonable steps you could have taken to ensure that any of those things happened.*
- (3) *In determining what are reasonable steps for the purposes of subsection (2), have regard to:*
 - (a) *when, and for how long, you were a director and took part in the management of the company; and*
 - (b) *all other relevant circumstances.*

...

(4A) *For the purpose of the Commissioner recovering from you a penalty payable under this Division (other than as mentioned in subsection (4)), subsection (1) or (2) does not apply unless:*

- (a) *you provide information to the Commissioner during the period of 60 days starting on the day the Commissioner:*
 - (i) *in the case of the Commissioner recovering the penalty under section 260 - 5 (Commissioner may collect amounts from third party)--gives you a notice under subsection 260 - 5(6) in relation to the penalty; or*
 - (ii) *otherwise--notifies you in writing that he or she has recovered any of the penalty; and*
- (b) *the Commissioner is satisfied of the matters mentioned in subsection (1) or (2) of this section on the basis of that information.*

On 22 October 2024, the ATO advised that the directors remained liable for the relevant quarters and that the statutory timeframe for formally determining the defence had not yet been triggered.

On 20 December 2024, the ATO allowed the objection in part, reducing the underlying superannuation guarantee shortfalls.

On 7 February 2025, and again on 6 and 7 March 2025, the ATO issued amended assessments reflecting the reduced superannuation guarantee charge liabilities,

On 8 May 2025, the directors’ solicitors made further submissions requesting that the ATO reconsider the availability of the defence in light of the reduced assessments and additional material.

On 22 May 2025, the Commissioner determined that he was not satisfied that the directors had established the “all reasonable steps” defence and maintained their liability for director penalties.

Brendan Ostwald, Matthew Ostwald and Daniel Ostwald then commenced proceedings in the Federal Court seeking judicial review of those decisions under the *Administrative Decisions (Judicial Review) Act 1977* (Cth).

Brendan, Matthew and Daniel sought judicial review of the Commissioner's decision that they could not rely on the "all reasonable steps" defence in section 269-35(2) of Schedule 1 to the TAA. They argued that they had taken all reasonable steps to ensure the company complied with its obligations and therefore should not be personally liable for the director penalties.

The evidence showed that the directors undertook significant efforts to address the company's financial difficulties, including engaging Grant Thornton for restructuring advice, retaining Allegiant FS to assist with financing and banking negotiations, renegotiating facilities with ANZ, securing additional funding, pursuing refinancing opportunities and exploring asset sales. They argued that these measures, together with the eventual payment of substantial superannuation contributions and their continued efforts to improve the company's financial position until administrators were appointed in August 2017, demonstrated that they had taken all reasonable steps to ensure compliance.

The Commissioner argued that there was no reviewable decision for the purposes of the ADJR Act because the statutory timeframe for considering the directors' reliance on the defence under section 269-35(4A) had not yet commenced. In particular, the Commissioner contended that, for Matthew and Daniel, there had been no relevant recovery action or written notification that the Commissioner had recovered any of the penalty, so the 60-day period in section 269-35(4A) had not been triggered.

Issue

1. Was there a reviewable "decision" under section 269-35(4A) in respect of Matthew and Daniel, such that their judicial review applications were competent?
2. Did the Commissioner err in concluding that the "all reasonable steps" defence in section 269-35(2) was not made out, including by failing to consider relevant matters, considering irrelevant matters, or otherwise misapplying the statute?

Decision

Reviewable decision

As a preliminary issue, the Court held that the applications brought by Matthew and Daniel were incompetent because the requirements in section 269-35(4A) for a reviewable decision had not been satisfied. Unlike Brendan, neither had been subject to a relevant recovery action or notification by the Commissioner, meaning there was no reviewable decision under the ADJR Act.

Commissioner's decision

The Court nevertheless considered the substantive grounds of review. It rejected the directors' argument that the Commissioner failed to consider relevant matters, emphasising that the statutory inquiry was whether the directors had taken all reasonable steps to ensure the company complied with its obligation to pay SGC, not merely SG contributions. Many of the matters relied upon by the directors, including refinancing efforts, lender negotiations and funding arrangements, were directed to paying SG contributions rather than SGC liabilities and were therefore not mandatory considerations. In any event, the Court found that those matters had largely been considered by the Commissioner.

The Court also rejected the claims that the Commissioner had taken irrelevant considerations into account, improperly applied policy, or acted unreasonably. The alleged irrelevant matters were not shown to be legally irrelevant and, in any event, could not have affected the outcome. No relevant policy influencing the decision was identified, and complaints about earlier ATO assessment and enforcement decisions fell outside the scope of the proceedings. The Court further held that the Commissioner's conclusion that the directors had not established the "all reasonable steps" defence was rationally open on the evidence.

The applications were dismissed with costs.

COMMENT – The decision reinforces the distinction between a company’s obligation to pay SG contributions and its separate statutory obligation to pay SGC once a superannuation shortfall has arisen. It confirms that the “all reasonable steps” defence in section 269-35(2) is directed to whether directors took reasonable steps to ensure compliance with the company’s SGC obligations, not whether they generally attempted to support the business, secure funding, restructure operations or facilitate the eventual payment of employee superannuation.

TIP – Section 269-35(4A) does not prevent a director from relying on the “all reasonable steps” defence in proceedings commenced by the Commissioner to recover a director penalty. The issue in *Ostwald* was different: the directors sought judicial review under the ADJR of the Commissioner’s decision not to accept the defence. That meant the Court had to consider whether there was a reviewable decision under the ADJR Act, rather than determining the defence in recovery proceedings brought by the Commissioner.

TRAP – The DPN regime may raise different considerations for different directors, even where the notices arise from the same company debt. The availability and strength of a defence may depend on when each person was a director, their role in the management of the company, what they knew, what steps they took, and whether the statutory timeframe for providing information has been triggered for that director. As a result, the interests of directors may diverge. This is relevant if seeking to act for more than one director, because advisers must consider at the outset whether they can properly act for multiple directors while complying with their obligation to avoid conflicts of interest.

Citation *Ostwald v Commissioner of Taxation* [2026] FCA 868 (Downes J, Brisbane)
w <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2026/868.html>

2.4 Caldwell – family trusts and family law property settlements

Facts

The Caldwell family business was established in the 1900s by Mr Caldwell’s great-grandfather. It was subsequently operated by successive generations, including Mr Caldwell’s grandfather and then his father, Mr K. Over time, this business evolved into a group of related companies and trusts, including B Pty Ltd, C Pty Ltd, and D Pty Ltd.

On 1 October 1982, the C Trust was established by Mr K. Its main asset became a property in Brisbane acquired that same year. The trust deed stated that the trust existed for the exclusive benefit of Mr K’s direct lineal descendants. Mr Caldwell and his siblings were named as primary beneficiaries. Mr K was the sole principal until his death.

In or around 1991 or 1992, Mr Caldwell married Ms Caldwell.

On 19 June 1993, the D Trust was established. Like the C Trust, it was structured to benefit Mr K’s direct descendants. Its corporate trustee was D Pty Ltd, and its main asset became a 75% stake in the E Trust, which owned another Brisbane property purchased in March 1997.

On 15 September 2016, the B Trust was created, again with Mr K as appointor and primary beneficiary. Mr Caldwell was named as the sole secondary beneficiary. The trust deed permitted broad discretionary distributions, including to Mr Caldwell. The trustee was B Pty Ltd.

On 19 June 2019, all three trust deeds (B, C, and D) were amended to exclude any person who was not a direct lineal descendant of Mr K as a potential beneficiary. This amendment explicitly excluded Ms Caldwell, who had previously been an eligible beneficiary as Mr Caldwell’s spouse.

On 30 April 2021, further variations were made to each trust deed. Upon Mr K's death, Mr Caldwell, along with his sons Mr G and Mr H, would become joint appointors or principals. Although Mr Caldwell was not the sole appointor, he had the power, at his absolute discretion and without being required to give reasons, to remove either or both of the sons as co-appointors or principals. He also had the practical ability to control the identity of the trustee, including by appointing himself or a corporate trustee controlled by him.

In early 2022, Mr and Ms Caldwell separated after about 30 years of marriage. They later divorced in 2023. The couple have three adult children, including Mr G and Mr H.

In July 2024, the C Trust provided Mr Caldwell with a \$1 million loan facility to fund legal expenses. On the same date, Mr Caldwell, Mr G, and Mr H entered into a side agreement confirming that:

1. Mr G and Mr H would only sign the loan agreement on the condition that a clause allowing their removal as appointors be deleted; and
2. Mr Caldwell agreed to the removal of that clause, and all parties confirmed that matters concerning the divorce settlement and loans would be dealt with separately.

On 28 October 2024, Ms Caldwell applied to the Federal Circuit and Family Court of Australia (Division 1) for property settlement orders under section 79 of the *Family Law Act 1975* (Cth).

Ms Caldwell sought a declaration from the Family Court that the B, C, and D Trusts and/or their assets were "property of the parties to the marriage or either of them" within the meaning of section 79 of the *Family Law Act*. 'Property of the parties to the marriage' refers to any assets or interests that either or both spouses are legally or beneficially entitled to, which can be adjusted between them under section 79 of the *Family Law Act*. This concept is significant because only assets classified as 'property' can be directly divided by the Court in a financial settlement following separation or divorce.

Ms Caldwell contended that Mr Caldwell had effective control of the trusts such that the trusts or their assets could be treated as his property. Mr Caldwell contended that control was shared with his sons and could only be exercised unanimously, meaning he did not have sole control.

If Mr Caldwell had control, Ms Caldwell argued that the control and benefits received meant the trusts/assets should be treated as property of Mr Caldwell. Mr Caldwell argued that the trusts were separate legal entities and that any control or benefit was insufficient to characterise them as property, and at most, they were a financial resource, not 'property'.

In addition to the declaration, Ms Caldwell sought significant relief, including:

1. removal of her sons, Mr G and Mr H, as appointors or trust guardians;
2. restraints on Mr Caldwell from altering trust appointments until settlement was paid;
3. an order requiring Mr Caldwell to appoint a replacement trustee and cause a distribution of 35 percent of the net trust assets to himself; and
4. an order requiring him to then transfer that sum to her as part of the matrimonial property division.

At first instance, the primary judge dismissed Ms Caldwell's application. The primary judge accepted that Mr Caldwell had a degree of control and a capacity to benefit, but gave significant weight to other factors, including the intergenerational purpose of the trusts, the origin of the trust assets, the absence of direct distributions to the husband or wife, and the legal constraints on the exercise of Mr Caldwell's powers, including the proper purpose rule.

Ms Caldwell appealed to the Full Federal Court on the basis that the primary judge erred in the following ways:

1. in finding that the purpose of the trusts is to "facilitate the intergenerational management of the [Caldwell] families' ... business for the benefit of future generations of the lineal descendants of [Mr K]" and that it is only in the pursuit of that purpose that the powers residing in the husband can validly be exercised;

2. in finding that the purpose as identified prevented the trusts and/or their assets from constituting property of the husband for the purposes of section 79 of the *Family Law Act*;
3. by failing to take into account in determining the proper purpose of each trust that the husband could unilaterally assume control which included a broad power to vary the terms of each trust;
4. in determining the issue of the proper purpose of each trust by taking into account matters outside of the relevant trust deeds in circumstances where there was no warrant to do so;
5. in taking into account the side agreement for purposes beyond which relevance of the document was expressly limited;
6. in failing to find that each of the three trusts constituted the alter ego of the husband and failed to give adequate reasons for her conclusion to the contrary; and
7. in failing to find that the trusts and/or their assets were property of the husband for the purposes of section 79 of the *Family Law Act*.

Issue

Were the B Trust, C Trust and D Trust, or their assets, “property of the parties to the marriage or either of them” within the meaning of section 79 of the Family Law Act?

Decision

By majority, Christie and Brasch JJ allowed Ms Caldwell’s appeal and declared that the B Trust, C Trust and D Trust and/or their assets were property of Mr Caldwell for the purposes of section 79.

Separation of characterisation and adjustment

The majority held that the primary judge had conflated two separate questions. The first question was whether the trusts and/or their assets were property of a party to the marriage. The second question was whether, if they were property, it would be just and equitable to make any adjustment in respect of them.

The majority emphasised that a finding that the trusts were property of Mr Caldwell did not mean that Ms Caldwell would necessarily receive any adjustment to her entitlement. That would remain a separate question for the trial judge when determining the broader section 79 application.

Purpose of the trusts and origin of assets

The primary judge had placed significant weight on the fact that the trust assets were derived from intergenerational Caldwell family wealth and had not been built up by contributions of Mr Caldwell or Ms Caldwell during the marriage. The majority held that those matters were not irrelevant, but they were directed to later questions of contribution and adjustment, rather than the threshold question of whether the trusts were property.

The majority accepted that there may be cases where assets derived from intergenerational family wealth will not be characterised as property of a party to the marriage. However, this was not such a case because Mr Caldwell’s present control and capacity to benefit meant that the trusts were properly characterised as property of Mr Caldwell.

Capacity to benefit

The majority also placed weight on Mr Caldwell’s capacity to benefit himself from the trusts. The trust deeds did not prevent Mr Caldwell from bestowing a benefit on himself. Although Ms Caldwell was excluded from receiving a direct or indirect benefit, that did not answer the relevant question, because Ms Caldwell’s application was for a declaration that the trusts were property of Mr Caldwell.

The majority considered that focusing on Ms Caldwell's exclusion from benefit distracted from the relevant point that Mr Caldwell had control and the capacity to distribute trust property or income to himself. On that basis, the trusts and their assets fell within the broad concept of property for the purposes of section 79.

Effective control

The majority considered that Mr Caldwell had effective control of the trusts. Mr Caldwell had the present ability to remove the sons as co-appointors or principals, control the voting rights attached to the A class shares, control the composition of the boards of the trustee companies, and appoint himself or a corporate trustee controlled by him.

The fact that Mr Caldwell had not yet exercised those powers was not determinative. The relevant question was whether there was any present impediment to him doing so. The majority held that there was not. It was sufficient that Mr Caldwell had the present capacity to assume control; he did not need to have already taken the steps necessary to exercise that control.

Proper purpose rule

The proper purpose rule requires a trustee to exercise his or her power in accordance with the purpose for which it was granted. Ms Caldwell argued that Mr Caldwell could not exercise his powers in a way that would ultimately benefit Ms Caldwell because to do so would be a fraud on the power or breach of the proper purpose rule. The majority rejected this as a basis for denying the characterisation of the trusts as property of Mr Caldwell.

The majority noted that the powers conferred by the trust deeds were broad discretionary powers. The trustees were not required to give reasons, could pay all or part of the trust fund to beneficiaries, and could act notwithstanding personal interest. The C Trust deed contained a recital referring to sound financial provision for certain family members and the future operation of part of the Caldwell family business, but the majority regarded that recital as general in nature and not sufficient to prevent the husband from exercising control for his own benefit.

Further, even if restrictions on benefits to non-lineal descendants were relevant to what orders might ultimately be made, they did not prevent the trusts from being characterised as property of Mr Caldwell. The question before the Court was not whether Ms Caldwell should receive a distribution from the trusts, but whether the trusts were property of Mr Caldwell for section 79 purposes.

Side agreement

During the proceedings, Mr Caldwell entered into an agreement with his sons connected with a loan facility from the C Trust. The agreement contemplated that Mr Caldwell would relinquish his ability to remove the sons as co-appointors after the conclusion of the family law proceedings.

The majority held that the primary judge erred in treating that agreement as relevant to whether the trusts were presently property of Mr Caldwell. Mr Caldwell's intention as to whether he might later relinquish control was incidental. The relevant question was whether he had effective control at the time of the determination.

COMMENT – Justice Strum dissented and would have upheld the trial decision, emphasising that not all trusts controlled by an individual will automatically be treated as personal property. The dissenting judgment rejects the idea that control and capacity to benefit are enough on their own. Importantly, his Honour viewed Mr Caldwell's control as potential rather than presently exercised, requiring active steps to override other family members. Justice Strum also considered that the analysis must consider the wider commercial and family context. In this case, the trusts reflected long-standing intergenerational family wealth, established and built up by the Caldwell family over several generations, with no contributions from the spouses during the marriage. Justice Strum also placed weight on the purpose of the trusts, being to preserve and manage a family business

for lineal descendants. In that context, Mr Caldwell's powers could not simply be used to extract value for personal purposes without engaging the proper purpose rule.

KEY TAKEAWAY - The Full Court's decision confirms that trust assets can be treated as a client's personal property far more readily than many advisers assume. The key focus is on present control and the ability to benefit oneself, not how the trust has historically operated or where its assets came from. Importantly, a client does not need to have exercised those powers. It is enough that they can presently take control, for example by changing appointors or trustees, and distribute assets to themselves.

Citation *Caldwell & Caldwell* [2026] FedCFamC1A 81 (11 May 2026) (Christie, Strum & Brasch JJ, Sydney) w <https://www7.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FedCFamC1A/2026/81.html>

2.5 Forever Grateful Holdings – duty on change of trustee in NSW

Facts

On 1 February 2005, the Hume Enterprises Family Investment Trust was established as a discretionary trust. Hume Contracting Pty Ltd later became trustee of the trust and, on 15 July 2013, acquired a property in Moama, New South Wales, in its capacity as trustee of the trust.

On 6 March 2024, Forever Grateful Holdings Pty Ltd was appointed as the new trustee of the trust, and Hume Contracting retired as trustee. The deed of appointment, under which Hume Enterprises retired as trustee of the trust, required Forever Grateful to take all necessary steps to perfect its title to the trust assets.

On 19 April 2024, Forever Grateful entered into a contract to sell the Moama property to an unrelated third party. At that time, the property remained registered in the name of Hume Contracting as the former trustee. The contract for sale contemplated that the property would first be transferred from Hume Contracting to Forever Grateful before settlement with the purchaser.

On 10 May 2024, Forever Grateful's solicitors created an undated and unexecuted transfer of the Moama property on PEXA. The transfer identified Hume Contracting as transferor, and Forever Grateful as transferee and stated that the transfer was for no consideration and reflected a change in the manner of holding the property.

Section 54(3) of the *Duties Act 1997* (NSW) allows a transfer of trust property following the retirement or appointment of a trustee to be assessed at nominal duty (\$100) rather than ad valorem duty, but only where the trust deed ensures that trustees cannot obtain a beneficial interest in the trust property. In particular, the Chief Commissioner must be satisfied that no continuing or newly appointed trustee is, or can become, a beneficiary of the trust.

On 24 May 2024, the solicitors uploaded the unexecuted transfer and associated documents to the Revenue NSW eDuties portal. At that time, the trust deed did not satisfy all the requirements of section 54(3), because the deed did not irrevocably prevent trustees from becoming beneficiaries of the trust.

In May and June 2024, Revenue NSW issued a series of requisitions in respect of the transfer of property.

On 24 June 2024, the trust deed was amended to insert provisions permanently excluding foreign persons and trustees from benefiting under the trust. The parties accepted that, following those amendments, the trust satisfied the requirements for the concessional duty treatment available under section 54(3) of the *Duties Act* and was also exempt from surcharge purchaser duty under section 104ZK.

On 26 June 2024, before any transfer had been executed, the Chief Commissioner issued an assessment imposing ad valorem duty of \$93,055 and surcharge purchaser duty of \$160,000. The Chief Commissioner

considered that liability for duty arose on 24 May 2024, when information about the proposed transfer was first provided through the eDuties system. Because the trust deed did not then satisfy the requirements of section 54(3), the transfer was assessed to ad valorem duty and surcharge purchaser duty.

On 15 July 2024, the transfer was digitally signed through PEXA by the solicitors acting for both Hume Contracting and Forever Grateful. By that date, the trust deed had been amended and there was no dispute that the requirements of section 54(3) and section 104ZK were satisfied.

Forever Grateful objected to the assessment. The objection was disallowed on 25 October 2024 and Forever Grateful commenced proceedings in the Supreme Court of New South Wales seeking review of the assessment.

The Chief Commissioner argued that, under section 12(4)(b) of the Duties Act, liability for duty arose on 24 May 2024 when information relating to the unsigned electronic transfer was first uploaded to the eDuties portal. Relevantly, section 12 of the Duties Act provides as follows:

12 When does a liability for duty arise?

- (1) A liability for duty charged by this Chapter arises when a transfer of dutiable property occurs.*
- (2) However, if a transfer of dutiable property is effected by an instrument, liability for duty charged by this Chapter arises when the instrument is first executed.*
- ...
- (4) An electronic registry instrument is taken to be first executed—*
 - (a) if the instrument is digitally signed by a subscriber within the meaning of the Electronic Conveyancing National Law (NSW)—on the date the instrument is first digitally signed by the subscriber, or*
 - (b) otherwise—when the Chief Commissioner first receives information relating to the instrument.*

Issue

Did liability for duty arise when the unsigned transfer was uploaded to the eDuties portal on 24 May 2024, or only when the transfer was digitally executed on 15 July 2024?

Decision

Before dealing with section 12, Justice Hmelnitsky noted a preliminary difficulty with the way the case had been argued. The parties had proceeded on the basis that the availability of the section 54(3) concession depended on when the liability for duty arose under section 12. His Honour questioned whether that was necessarily the correct approach. Given section 54(3) appears to focus on the transfer of trust property, the better question may simply have been when the transfer occurred, rather than the question of when liability for duty arose under section 12.

Justice Hmelnitsky held that section 12(4) operates only in relation to an electronic registry instrument that effects a transfer within the meaning of section 12(2). The provision does not deem an unsigned draft document to create a liability for duty merely because information about the document has been provided to the Chief Commissioner.

His Honour rejected the Chief Commissioner's submission that section 12(4)(b) created an immediate liability for duty when information relating to a future transfer was first uploaded to the eDuties portal. Rather, section 12(4) merely specifies when an electronic registry instrument is taken to be first executed. It does not convert a draft instrument, which does not itself effect a transfer, into one that attracts duty.

Justice Hmelnitsky held that the relevant transfer was effected by the instrument digitally signed on 15 July 2024. Therefore, section 12(4)(a) applied and liability for duty arose on that date.

By that date, the trust deed satisfied the requirements of section 54(3). As such, on the date of the transfer, Forever Grateful was entitled to the concessional duty treatment available when the trustee of a trust is changed, and the associated exemption from surcharge purchaser duty.

The Court ordered that the assessment dated 26 June 2024 be revoked and that the transfer of the Moama property be assessed for concessional duty, in the amount of \$100.

TRAP – Before transferring dutiable property in New South Wales to a new trustee, it is important to ensure that the trust deed prevents all continuing or successor trustees from benefiting under the trust. If that exclusion is not in place before the transfer occurs, the transfer of property to the new or continuing trustee will likely not qualify for nominal duty under section 54(3), even if the deed is amended later.

TRAP – Care should be taken where a corporate trustee is replaced by an individual family member or where an original trustee has died and another individual is appointed to take their place. Trust deeds often contain clauses or are amended to include clauses to satisfy section 54(3) by irrevocably excluding successor trustees from benefiting under the trust. If the incoming trustee is also a beneficiary who was expected to receive future distributions, their appointment as trustee may inadvertently remove their entitlement to benefit from the trust, even if they were previously within the intended class of beneficiaries.

Citation *Forever Grateful Holdings Pty Ltd v Chief Commissioner of State Revenue* [2026] NSWSC 761 (Hmelnitsky J, Sydney)
w <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2026/761.html>

2.6 Lao Holdings – recovery of landholder duty

Facts

On 17 March 2016, Lao Holdings Pty Ltd acquired 76 million shares in Aviation 3030 Pty Ltd (in liquidation), and a further 76 million shares were issued to a related trustee. Because Aviation 3030 owned land in Victoria, the share issue constituted a “relevant acquisition” of a landholder within the meaning of section 78 of the *Duties Act 2000*. As a result, a liability for landholder duty arose at the time of the acquisition, with section 85(1) making both Aviation 3030, as the landholder, and Lao Holdings, as the acquirer, jointly and severally liable for the full amount of duty.

Section 85 of the Duties Act provides:

Who is liable to pay the duty?

- (1) *The following are jointly and severally liable to pay duty chargeable under this Part—*
- (a) the person who makes the relevant acquisition; and*
 - (b) the landholder or, if the landholder is a unit trust scheme, the trustee of the landholder; and*
 - (c) if the relevant acquisition results from an aggregation of the interests of the person referred to in paragraph (a) and other persons—each of those other persons.*
- (2) *A person, other than a person referred to in subsection (1)(c), may recover as a debt from the person who made the relevant acquisition or a person referred to in subsection (1)(c) the amount of any duty chargeable under this Part and any penalty paid by the first person in respect of that duty.*

On 27 August 2019, the State Revenue Office issued an assessment to Aviation 3030 for approximately \$4.49 million in duty, penalty tax and interest in respect of the share issue. On 28 August 2019, a corresponding assessment was issued to Lao Holdings for the same amount.

On 12 March 2020, after Aviation 3030 had entered liquidation, its liquidators commenced proceedings in the Federal Court of Australia seeking to have the share issue set aside as a voidable transaction. At that stage, no

claim was made to recover the duty from Lao Holdings under section 85(2), and the Commissioner agreed to defer dealing with the proof of debt for the duty liability until the Federal Court proceeding had been resolved.

On 20 October 2021, Aviation 3030 paid approximately \$4.5 million to the State Revenue Office to discharge the duty liability. The assessment was later reduced on reassessment, and part of the amount paid was refunded.

On 29 April 2022, the Federal Court delivered its judgment, declining to set aside the share issue but finding that it constituted an unreasonable director-related transaction, and ordering Lao Holdings to pay approximately \$9.04 million to Aviation 3030.

On 20 July 2023, Aviation 3030 then commenced proceedings in the Supreme Court of Victoria seeking to recover from Lao Holdings a portion of the duty it had paid, relying on its statutory right of recovery under section 85(2) and, in the alternative, a claim for contribution.

Lao Holdings Pty Ltd argued that Aviation 3030 could not recover any of the duty because, on a proper construction of section 85(2) of the *Duties Act 2000*, the right to recover arose when the duty became chargeable in 2016, not when it was later paid. On that approach, the cause of action accrued at the time of the share issue, meaning Aviation 3030's claim, commenced in 2023, was out of time under the six year limitation period. More broadly, Lao Holdings contended that section 85(2) allowed recovery of duty that was "chargeable" regardless of whether it had actually been paid, and that the trial judge had incorrectly read in a requirement of payment.

Lao Holdings also argued that Aviation 3030's claim should not have been brought at all because it was barred by Anshun estoppel. Anshun estoppel prevents a party from raising a claim in later proceedings if it was so closely connected to an earlier case that it was unreasonable not to have raised it then. It is concerned with avoiding fragmented litigation and, in particular, the risk of inconsistent outcomes if related issues are litigated separately.

Lao Holdings said the duty liability arose out of the same underlying share transaction that was the subject of earlier Federal Court proceedings, and that Aviation 3030 should have pursued recovery of the duty in those earlier proceedings. In its view, it was unreasonable not to have raised the duty claim at that time, particularly since the duty had already been assessed and was paid during the course of that litigation.

Aviation 3030 argued that section 85(2) only permits recovery of duty that has actually been paid, and therefore the right to recover does not arise until payment is made. On that basis, its cause of action accrued in October 2021 when it paid the duty to the State Revenue Office, meaning its 2023 claim was brought within time. Aviation 3030 emphasised that the provision is remedial and is designed to allow a landholder who has discharged a jointly owed liability to recover that amount from the acquirer who should ultimately bear the economic burden.

In response to the Anshun estoppel argument, Aviation 3030 argued that it was not unreasonable not to bring the duty claim in the earlier Federal Court proceedings. It said those proceedings were primarily directed at setting aside the share issue, and if that relief had been granted, no duty would have been payable at all. It also argued that the duty claim was logically separate and arose later in time, particularly as the duty was not paid until late in the Federal Court proceedings and its amount depended on the outcome of that litigation. Aviation 3030 argued that there was therefore no basis for an Anshun estoppel.

Issues

1. Was payment of the landholder duty a prerequisite to the right to recover that duty from the acquirer under section 85(2) of the *Duties Act 2000*?
2. Was the claim to recover the duty statute barred?
3. Was the claim precluded by Anshun estoppel?

Decision

Was payment of duty required before Aviation 3030 could recover it?

The Court of Appeal closely examined the wording, structure, and purpose of section 85(2) of the *Duties Act*. It began with the text, noting that the provision allows a party to “recover as a debt” the amount of duty and penalty. The Court emphasised that this wording describes a single recoverable sum, not separate entitlements arising at different times. That sum only becomes certain and enforceable once both components, duty and any penalty, have actually been paid.

The Court then considered the statutory context. Section 85 sits immediately after provisions dealing with when duty must be paid and operates as part of a scheme that first imposes liability, then ensures payment, and only afterwards regulates recovery between liable parties. This sequencing strongly indicated that recovery rights arise after payment has occurred.

Turning to purpose, the Court highlighted that landholder duty provisions impose joint and several liability even where the landholder may not control or benefit from the transaction. Section 85(2) was intended to remedy that potential unfairness by allowing a landholder who has paid the duty to recoup it from the acquirer. That purpose is only engaged once the landholder has actually suffered the burden of payment.

On this analysis, the Court rejected Lao Holdings’ argument that recovery could occur before payment. It held that payment is a necessary precondition to recovery. Aviation 3030’s right to recover arose only when it paid the duty to the State Revenue Office.

Was the claim statute-barred?

The limitation issue depended on when the cause of action to recover the duty accrued. Lao Holdings argued that the cause of action arose in 2016, when the duty became chargeable on the share issue. Aviation 3030 argued that the cause of action only arose from October 2021, when it actually paid the duty.

The Court linked this issue directly to its construction of section 85(2). Because it found that payment is required before a recovery right arises, it followed that the cause of action cannot accrue until that payment occurs.

Since Aviation 3030 paid the duty in October 2021 and commenced proceedings in July 2023, the claim was brought well within the six-year limitation period.

Was the claim precluded by Anshun estoppel?

The Court rejected the argument that Aviation 3030’s claim should have been brought in the earlier proceedings, finding the earlier case focused on setting aside the share issue, so a duty recovery claim would have been premature, and in any event the two claims were legally distinct. It also noted that Aviation 3030’s right to recover did not arise until it paid the duty, by which time the earlier proceeding was well advanced, and there was no risk of inconsistent judgments. Accordingly, it was not unreasonable to defer the claim, and Anshun estoppel did not apply.

COMMENT – Under the landholder duty and trust acquisition or surrender regimes in the various States and Territories, liability can be imposed in ways in unexpected ways. For example, in Queensland (which contains a trust acquisition and surrender duty regime), where a person is surrendering an interest in a trust that has dutiable property, it is liable for the duty (jointly with the trustee) on the trust surrender. Similarly, the various landholder duty regimes will usually impose joint and several liability on the acquirer, the trustee itself and potentially entities who have had their acquisitions aggregated with another entity under the aggregation rules: see, for example, section 89 of the *Duties Act 1999* (ACT) and section 154 of the *Duties Act 1997* (NSW). In some jurisdictions, the entities that are jointly and severally liable may have a statutory right of recovery of the

amount paid against one of more of the other parties: see, for example, section 154(2) of the *Duties Act 1997* (NSW).

TIP – The potential for joint and several liability should be considered as part of any transaction that results in an acquisition in landholder or that is a trust acquisition or surrender. Even where there is a statutory right of recovery, consideration should be given as to how that right would be enforced. This means that not only should a purchaser be concerned about the duty considerations for a transaction, but so should the vendor.

TRAP – In Queensland, even ordinary transfer duty results in joint and several liability for both parties to the transaction: see section 17(2) of the *Duties Act 2001* (QLD). Unlike the Victorian landholder duty regime considered in *Lao Holdings*, there is no statutory right of indemnity or contribution. This makes it extremely important to ensure that the parties determine contractually who is responsible for the duty.

Citation *Lao Holdings Pty Ltd v Aviation 3030 Pty Ltd* (in liq) [2026] VSCA 148 (Emerton P, Kennedy JA and Waller AJA, Melbourne)
w <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSCA/2026/148.html>

2.7 Wang – Revenue NSW Guidelines for remission of interest

Facts

Raymond Wang and Sarah Chen owned properties at Sans Souci, Bondi and Vaucluse, either jointly or individually.

Land tax year	Sans Souci	Bondi	Vaucluse
2021	Not specified as relevant year	Owned by Raymond (unclear whether solely or jointly with Sarah)	Not owned
2022	Owned by Raymond and Sarah	Owned by Raymond (unclear whether solely or jointly with Sarah)	Not owned
2023	Owned by Raymond and Sarah	Owned by Raymond (unclear whether solely or jointly with Sarah)	Not owned
2024	Owned by Raymond and Sarah	Owned until some point in 2024 by Raymond (unclear whether solely or jointly with Sarah)	Acquired in 2024 by Raymond and Sarah
2025	Owned by Raymond and Sarah	No longer owned	Owned by Raymond and Sarah

Land tax was assessed and paid for the Sans Souci property for the years 2022, 2023, 2024 and 2025. However, no land tax was levied for the Bondi property or the Vaucluse property during the relevant periods.

Revenue NSW assigned separate client identification numbers to the Sans Souci property, the Bondi and Vaucluse properties, and individually to Raymond and Sarah, resulting in four separate identifiers in total.

The Bondi property was identified as being owned by Raymond in an assessment dated 15 February 2022, but no land tax was levied because its value on a standalone basis fell below the minimum threshold. Because Revenue NSW had recorded the properties at Bondi and Vaucluse under a different client identification

number, those properties were not included with the Sans Souci assessment and separate tax free thresholds were applied.

On dates prior to 31 December in the relevant land tax years, Raymond and Sarah said they notified Revenue NSW of their ownership of the Bondi property, and in late 2024 entered details of the Vaucluse property through the Service NSW portal, which transmitted that information to Revenue NSW's system. Despite those notifications, no formal land tax returns were lodged for any of the properties. During the same period, Revenue NSW issued correspondence in relation to the Sans Souci property indicating that records should be updated to reflect any additional landholdings.

On 17 July 2025, Revenue NSW issued aggregated land tax assessments in respect of the omitted properties and including interest on the basis that the land tax had not been paid on time.

On 1 August 2025, a further assessment was issued to Raymond individually in respect of his share of the Bondi and Vaucluse properties and other properties solely owned by him.

Raymond and Sarah objected to the assessments.

On 5 September 2025, the Chief Commissioner disallowed the objection and refused to remit the interest in accordance with Revenue NSW's ruling "TAA 001: Remission of Interest Guidelines" issued on 1 July 2025.

On 9 September 2025 Raymond and Sarah commenced proceedings in NCAT seeking review of the decision.

Revenue NSW Remission of Interest Guidelines

Revenue NSW has the power to assess interest at both the market rate and the premium rate where a tax default occurs. It also has certain statutory powers to remit interest (section 25 of the *Taxation Administration Act 1996* (NSW)) (**TAA NSW**). The Chief Commissioner may issue guidelines setting out interest must be remitted. Where guidelines are issued, interest may only be remitted in accordance with those guidelines.

In July 2025, Revenue NSW issued Guidelines under section 25(2) of the TAA NSW (**Guidelines**).

The Guidelines provided that the Chief Commissioner could remit interest:

1. in accordance with the 25% Remission Criteria;
2. in Exceptional Circumstances; or
3. in accordance with an Approved Payment Extension; or
4. In accordance with an Approved Payment Plan.

The 25% Remission Criteria did not apply in this case, as the circumstances did not involve an isolated late lodgement or payment, a first-time or new land tax liability, voluntary disclosure, or any of the specified "listed circumstances" beyond the taxpayer's control.

'Exceptional circumstances', in which up to 100% of interest can be remitted, are exhaustively defined as:

1. a default is due to financial system network and/or payment platform failure;
2. acts or omissions of Revenue NSW affected the receipt of payment, including processing problems;
3. payment is not possible due to the direct impact of fire, flood or other natural disaster;
4. the Chief Commissioner has made a declaration on the Revenue NSW website as to how interest will apply to particular persons or classes of persons for a specified period of time under any circumstances that the Chief Commissioner considers appropriate".

For further detail regarding the Guidelines as issued by Revenue NSW, refer to our July 2025 Tax Training Notes.

Consideration of the Guidelines

Raymond and Sarah argued that they had informed Revenue NSW of their ownership of the Bondi property as it was recorded on a 2022 assessment, and they had disclosed their ownership of the Vaucluse property by adding it to the Service NSW portal in late 2024. Raymond said he noticed on the Service NSW app that it recorded the Sans Souci property but not the Vaucluse property, so he submitted the Vaucluse property details twice "just in case".

Raymond and Sarah argued that they had provided all relevant information in respect of the property ownership to Revenue NSW to allow for assessment of their liability for land tax. Any failure to pay the correct amount of land tax had occurred due to Revenue NSW's failure to record the correct ownership details in the database, not because of a lack of disclosure. The issue in attaching different client identification numbers to each of the properties which resulted in an incorrect aggregation of their land holdings and the applicable land tax was not information that Raymond and Sarah had access to and would have been able to correct. They argued that they should not be held responsible for Revenue NSW's 'system error'. Raymond and Sarah contended that the error was due to a financial system network failure, and that remission is permitted under the Guidelines.

Revenue NSW argued that Raymond and Sarah had failed to pay sufficient attention to the prior year land tax notices which set out their obligations to disclose their landholdings. While information provided to the Service NSW portal did enter Revenue NSW's system for recording data, Revenue NSW argued that it did not control the Service NSW portal or website, and therefore that disclosure did not constitute sufficient compliance.

Revenue NSW argued that the term 'financial system network' in the Guidelines refers to a system operated by Revenue NSW and does not extend more broadly to include a network operated by Service NSW which captures and transmits data to a network operated by Revenue NSW.

Issues

1. Was a tax default on the part of the Raymond and Sarah due to a 'financial system network' and/or 'payment platform failure' within the meaning of 'exceptional circumstances' as set out in the Revenue NSW Guidelines?
2. Should the question of validity of the Guidelines be referred to the Supreme Court?

Decision

Was a tax default due to a 'financial system network' and/or 'payment platform failure'?

NCAT rejected Revenue NSW's argument about the narrow definition of a 'financial system network'. The evidence regarding how the Revenue NSW data network operated showed that information could be initially received at the Service NSW portal, to then be transmitted to the Revenue NSW network. Once the information was received, the Revenue NSW network (which was under Revenue NSW's control) was able to record and use that information. Service NSW was equipped both to receive data and also to collect payment of land tax. The Service NSW platform therefore relevantly met the definition of a 'financial system network'.

The NCAT determined that Raymond and Sarah had provided the relevant data for the Vaucluse property via Service NSW, and that Revenue NSW already had the information in respect of the Bondi property. The failure to identify the correct land ownership and aggregate the land tax assessments relevantly met the definition of a 'financial system network failure'. NCAT did not consider it was necessary to identify any particular technical or human failure in the operation or use of the network. The NCAT allowed for a remission of interest in full, regardless of any other tax default that occurred as a result of failure to lodge a return.

Should the question of validity of the Guidelines be referred to the Supreme Court?

The NCAT noted that a serious question arose in respect of the validity of the Guidelines, but decided that it was unnecessary to resolve this issue in order to determine the case. The TAA NSW contemplates two rates of interest:

1. market-rate interest which compensates Revenue NSW for the time value of money in respect of tax assessments which have remained unpaid; and
2. premium-rate interest which has a penal or deterrent character.

The Guidelines do not distinguish between these two rates of interest when prescribing the circumstances allowing for remission, despite each rate having a different purpose. The NCAT noted this raises an issue where remission decisions are required to be made in accordance with Guidelines that do not separately consider the rates of interest.

Revenue NSW requested the NCAT to refer the question of validity to the Supreme Court. The NCAT decided not to refer the matter to the Supreme Court as there was no need to require Raymond and Sarah (who were self-represented) to do so, especially as it would not affect the outcome of the case. The NCAT had already determined that interest would be remitted under the Guidelines, and if the Guidelines were invalid, the NCAT would decide remission under the statutory scheme in any case.

COMMENT - For advisers, it is important not to assume that an absence of contact from Revenue NSW means a client is compliant with land tax obligations. Section 12 of the *Land Tax Management Act 1956* (NSW) imposes a positive obligation on taxpayers, where the Chief Commissioner has published an order in the Gazette, to lodge land tax returns, and that obligation rests squarely with the taxpayer. Section 72 reinforces this by deeming a failure to lodge as a tax default, meaning interest can apply even where Revenue NSW has not initiated any action or issued reminders.

TRAP – The Guidelines significantly limit when interest can be remitted for a tax default involving NSW State taxes, including both market-rate interest and the premium rate of interest. Advisers should not assume that interest will be remitted merely because the taxpayer acted reasonably, made an honest mistake, was unaware of the liability, or had otherwise provided some information to Revenue NSW.

Citation *Wang v Chief Commissioner of State Revenue* [2026] NSWCATAD 178 (Senior Member EA MacIntyre, Sydney)
w <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCATAD/2026/178.html>

3. Cases in brief

3.1 Appeal updates

S.N.A Group

S.N.A Group has been denied special leave to appeal to the High Court against the decision of the Full Court of the Federal Court of Australia in *Commissioner of Taxation v S.N.A Group Pty Ltd* [2026] FCAFC 10 (see our March 2026 Tax Training Notes). S.N.A Group was unsuccessful in the Full Court in objecting to amended assessments denying deductions for service fees paid under contracts for the use of trust assets of related parties.

Vicinity Funds

The Victorian Commissioner of State Revenue has appealed the decision in *Commissioner of State Revenue v Vicinity Funds RE Ltd* [2026] VSCA 119 (see our June 2026 Tax Update). The decision concerned how transfer duty is calculated where land is transferred for a nominal price but is subject to long-term leases and substantial tenant-funded developments. The key issue was whether the value of tenant-built improvements should be included in the value of the land when assessing duty.

3.2 Other tax and super related cases from 10 June 2026 to 8 July 2026

Citation	Date	Headnote	Link
<i>In the matter of Hudson Global Resources (Aust) Pty Limited</i> [2026] NSWSC 535	15 May 2026	CORPORATIONS – voluntary administration – whether Corporations Act 2001 (Cth) s 440B applies – whether notice under s 260-5 of Schedule 1 to the Taxation Administration Act 1953 (Cth) creates security interest – whether passive receipt constitutes enforcement – statutory charge – no enforcement – power under s 447A to modify operation of Pt 5.3A – relief to be granted under s 447A	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2026/535.html
<i>Issa and Commissioner of Taxation (Practice and procedure)</i> [2026] ARTA 1026	10 June 2026	PRACTICE AND PROCEDURE – Applicant given multiple directions to file statement of facts issues and contentions and further evidence over the course of 18 months – Applicant repeatedly failed to meet Tribunal directions within a reasonable time – Applicant failed to appear for a non-compliance directions hearing – Application dismissed.	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/1026.html
<i>Deputy Commissioner of Taxation v Nararra Developments Pty Ltd (in liq), in the matter of Nararra Developments Pty Ltd (in liq)</i> [2026]	12 June 2026	CORPORATIONS – application by the defendant to replace liquidators and receivers on the basis of a conflict – liquidators are plaintiffs suing the defendant in a related proceedings alleging tax avoidance schemes by which monies owing to the Deputy	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2026/730.html

Citation	Date	Headnote	Link
FCA 730		Commissioner of Taxation were distributed to the defendant indirectly through other companies – alleged litigation conflict on the basis that the liquidators are effectively on both sides of the record – alleged conflict on the basis that the liquidators of the defendant may be required to adjudicate proofs of debt that they themselves have lodged on behalf of other companies – liquidators have undertaken to discontinue the related proceedings insofar as the defendant is joined to it – liquidators have undertaken not to lodge (or cause to be lodged) proofs of debt until after determination of the related proceedings – existence of conflict depends on what claim is made – claim of conflict premature, but conflict may arise subsequently	
<i>Prasser and Commissioner of Taxation (Taxation and business)</i> [2026] ARTA 1053	12 June 2026	Division 340 of Schedule 1 to the Taxation Administration Act 1953; application of the International Organisations (Privileges and Immunities) Act 1963; Taxation Ruling TR 92/14; serious financial hardship; Practice Law Administration Statement PS LA 2011/17; capacity to repay in a reasonable timeframe on the basis of income and outgoings; reasonable household expenditure; whether appropriate to release applicant from liability.	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/1053.html
<i>Heilmann v Chief Commissioner of State Revenue</i> [2026] NSWCATAD 180	16 June 2026	ADMINISTRATIVE LAW – Revenue – surcharge land tax – foreign person – inconsistency with international double taxation agreement between Australia and Germany – whether amending legislation with retrospective effect invalid – whether surcharge land tax provisions invalid – joint tenancy	https://www.caselaw.nsw.gov.au/decision/19ec8b5129b3a2440423bda1
<i>Howton v Chief Commissioner of State Revenue</i> [2026] NSWCATAD 181	17 June 2026	TAXES AND DUTIES — Land tax — Surcharge land tax — Foreign person	https://www.caselaw.nsw.gov.au/decision/19ece8cf8b375be2f36120b8
<i>Bouvet and Commissioner of Taxation (Practice and procedure)</i> [2026] ARTA 1075	18 June 2026	TAXATION - PRACTICE AND PROCEDURE – applicant contends that he derived significant royalty income and is entitled to withholding tax credits – same correspondence from respondent contained objection decision relating to an assessment and decision to disallow withholding tax credit – whether refusal to allow	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/1075.html

Citation	Date	Headnote	Link
		withholding tax credit gives rise to a reviewable decision - whether grounds for dismissal of application — whether Tribunal is satisfied that application has no reasonable prospects of success – whether application is frivolous, vexatious, misconceived or lacking in substance - whether there is a basis for applicant to argue he derived royalty income – no reviewable decision relating to refusal to allow withholding tax credit – tribunal satisfied that application for review of objection decision has no reasonable prospects of success – tribunal satisfied that application for review of objection decision is frivolous, vexatious, misconceived or lacking in substance - application dismissed	
<i>Tempone v Chief Commissioner of State Revenue</i> [2026] NSWCATAD 182	19 June 2026	ADMINISTRATIVE LAW - administrative review - assessment - objection - review by Civil and Administrative Tribunal STATE TAXES - surcharge purchaser duty - interest - remission - TAA 001: Remission of Interest Guidelines	https://www.caselaw.nsw.gov.au/decision/19ed86f54b44c2d396c72e09
<i>Tang v Chief Commissioner of State Revenue</i> [2026] NSWCATAD 183	19 June 2026	REVENUE LAW – State taxes – application for registration of motor – transfer – duty – objection – appeal – fairness – estoppel – hardship – exemption – “just and reasonable” REVENUE LAW – interest – tax default – Chief Commissioner’s Guidelines – remission ADMINISTRATIVE LAW – reviewable decision – correct and preferable decision – Civil and Administrative Tribunal	https://www.caselaw.nsw.gov.au/decision/19ed8edea6340168e9b84898
<i>Cai and Commissioner of Taxation (Taxation and business)</i> [2026] ARTA 1224	2 July 2026	TAXATION – assessable income – default assessment – gambling activities – amounts deposited or lost by applicant at casinos – whether amounts arose from or related to undisclosed income of applicant – whether evidence of cash loans to applicant from third parties – whether evidence of loans of casino chips to applicant from other individuals – nature of applicant’s relationship with certain entities and businesses – administrative penalty – differences between imposition of administrative penalty and allegations of fraud or criminal behaviour – whether applicant made false or misleading statement –	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/1224.html

Citation	Date	Headnote	Link
		whether applicant was reckless – whether penalty should be remitted – decision affirmed.	
<i>Chew v Chief Commissioner of State Revenue</i> [2026] NSWCATAD 200	7 July 2026	REVENUE LAW - State taxes - duties - first home buyer - exemption - residence requirement - time and pattern of occupation - discretion to change REVENUE LAW - assessment - objection - appeal ADMINISTRATIVE LAW - reviewable decision - correct and preferable decision - Civil and Administrative Tribunal	https://www.caselaw.nsw.gov.au/decision/19f34b24433b27a782ecf259
<i>Moloney v Chief Commissioner of State Revenue</i> [2026] NSWCATAD 201	7 July 2026	REVENUE LAW - State taxes - land tax - assessment - objection - appeal REVENUE LAW - tax default - interest - Chief Commissioner's Guidelines - remission ADMINISTRATIVE LAW - reviewable decision - correct and preferable decision - Civil and Administrative Tribunal	https://www.caselaw.nsw.gov.au/decision/19f35da8a3c74a3b6be4bdbf

4. Federal Legislation

4.1 Progress of legislation

Title	Introduced House	Passed House	Introduced Senate	Passed Senate	Assented
Treasury Laws Amendment (Business Registries Stabilisation and Uplift) Bill 2026	14/5	27/5	22/6	29/6	30/6
Treasury Laws Amendment (Strengthening Accountability for Tax Adviser Misconduct and Other Measures) Bill 2026	2/7				
Treasury Laws Amendment (Tax Reform No. 1) Bill 2026	28/5	4/6	22/6	25/6	26/6
Treasury Laws Amendment (Tax Reform No. 2) Bill 2026	25/6				

4.2 2026 Federal Budget Reforms

CGT and negative gearing changes

As noted in the table above, the Treasury Laws Amendment (Tax Reform No. 1) Bill 2026 passed both Houses of Federal Parliament on 25 June 2026 and received Royal Assent on 26 June 2026.

Key amendments to Bill

The key amendments made to the Bill before being passed included the following:

1. minimum 30% CGT tax rate:
 - (a) in working out the minimum 30% tax rate, the net capital gain is reduced but not below nil, by any deductible gifts or political contributions under Division 30 of the ITAA 1997 or conservation covenant deductions under Division 31 for the income year;
 - (b) the types of payments for which the receipt of will prevent the minimum 30% tax rate from applying have been expanded
2. increasing the turnover threshold for access to the 50 per cent active asset reduction from \$2 million to \$10 million. This change applies to assessments for the income year that includes 1 July 2027 and later income years.

COMMENT – The practical relevance of the increased \$10 million turnover threshold for the 50% active asset reduction may be limited, because it will only be relevant if the taxpayer is carrying on a business or the asset is used in a business of an affiliate or connected entity. This will have limited utility where the asset is shares in a company or units in a unit trust. However, the increased threshold appears to apply when testing the object entity rules in section 152-10 of the ITAA 1997 for the purposes of the active asset reduction. This means it may potentially open up the active asset reduction for CGT events happening to shares or units where the taxpayer holds between 20% and 39% of the relevant company or unit trust, provided the taxpayer satisfies the basic conditions in its own right.

Limited recourse borrowing arrangements

In addition, the Bill amended the *Superannuation Industry (Supervision) Act 1993* (Cth) so that, for a permitted borrowing by a SMSF under section 67A of the SISA in respect of real property, the real property must be business real property. These amendments do not apply to the following:

1. the arrangement is for maintaining (or refinancing) a borrowing of money under another arrangement entered into before that commencement; or
2. the acquisition of the asset (to which the borrowing under the arrangement relates) happens under an arrangement entered into before that commencement.

In practical terms, existing limited recourse borrowing arrangements should be grandfathered if they were entered into before commencement. Refinancing of those existing borrowings should also remain permitted. In addition, the new restriction should not apply where the contract to acquire the real property was entered into before commencement, even if settlement occurs after commencement. However, for new borrowing arrangements entered into after commencement, an SMSF will generally only be able to borrow under section 67A to acquire real property if that property is business real property.

COMMENT – It is not sufficient that the property is merely non-residential. The property must be business real property, which means that it must be used wholly and exclusively in one or more businesses carried on by a person. This would rule out non-residential land that is not currently used in any person's business, regardless of whether the land is acquired from a related party or an unrelated party.

w https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r7493

Loss carry back and instant asset write-off changes

The Treasury Laws Amendment (Tax Reform No 2) Bill 2026 (Cth) implements a second tranche of the Government's Budget tax measures.

Loss carry back regime for corporate entities

Schedule 1 introduces new loss carry back provisions allowing eligible corporate tax entities to offset current-year tax losses against tax paid in either or both of the previous two income years. This results in a refundable tax offset, limited to the amount of earlier tax paid and the entity's franking account balance at the end of the income year in which the offset is claimed.

Eligibility is limited to entities that are not significant global entities, broadly those with annual global turnover less than \$1 billion. The regime applies to losses arising in income years commencing on or after 1 July 2026 and operates as an alternative to the ordinary loss carry forward rules. Integrity measures exclude certain transferred losses and address ownership changes. Capital losses are expressly excluded.

Permanent instant asset write-off threshold

Schedule 2 makes permanent the \$20,000 instant asset write-off threshold for small businesses using the simplified depreciation rules in Subdivision 328-D of the ITAA 1997.

The current threshold of \$20,000 was due to expire on 30 June 2026 and revert to \$1,000 from 1 July 2026. This amendment will permanently set the threshold to be \$20,000.

The amendments also permanently set the low-value pool threshold at \$20,000, and temporarily relax the rules preventing small businesses from re-entering the simplified depreciation regime for 5 years if they opt out, with this restriction suspended until 30 June 2027.

Targeted exemption for PNG Chiefs employment income

Schedule 3 introduces an income tax exemption for income from employment with PNG Chiefs Limited, a Papua New Guinea-based NRL franchise.

The exemption ensures that the income tax exemptions under Papua New Guinea tax law remain operative in Australia, regardless of whether the employment income is earned in or outside Australia. The measure applies for a 10-year period commencing from the 2025–26 income year.

Status

The Bill has been referred to the Senate Economics Legislation Committee for review, with a report due by 13 August 2026.

w https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r7502

Innovative Business CGT Concession (IBCC)

Under the proposal, eligible early-stage investors, founders and employee share scheme participants would be entitled to choose between a 50 per cent CGT discount and indexation for gains accruing from 1 July 2027.

Proposed reforms

The following are the key proposals for consultation:

1. introduce an IBCC CGT concession. Eligible investors in qualifying innovative start-ups would receive a 50% discount on capital gains, with the option to instead apply cost base indexation and the proposed 30% minimum CGT rate;
2. the concession would generally be limited to new equity issued by unlisted, independent companies with turnover below \$50 million and less than 10 years since incorporation;
3. start-ups would be required to demonstrate genuine innovative activity, high growth potential and active business operations, based on principles adapted from the existing Early Stage Innovation Company regime;
4. minimum holding period and lifetime cap. Investors would generally need to hold eligible shares for at least five years. The concession would be capped at \$10 million in lifetime capital gains per individual;
5. transitional arrangements. Existing investors in qualifying innovative start-ups may access the concession for gains accruing from 1 July 2027 where specified eligibility requirements are met; and
6. extension to venture capital general partners. Eligible carried interest earned by general partners of qualifying venture capital partnerships would also be able to access the concession.

Treasury has released a consultation paper seeking feedback on the design of the IBCC.

Key policy rationale

A central theme of the consultation paper is that innovative start-ups often generate substantial growth from a low or nil cost base, making them less suited to an indexed CGT framework. Treasury considers that a targeted concession may help maintain incentives for founders, employees and investors who support high-risk, high-growth businesses. The proposed IBCC is intended to complement existing support measures such as the Research and Development Tax Incentive, venture capital concessions and employee share scheme arrangements.

Consultation questions

Treasury is seeking feedback on whether:

1. the proposed IBCC appropriately supports investment in innovative start-ups;
2. the proposed age and turnover thresholds appropriately target eligible businesses;

3. extended eligibility will be considered for unlisted and independent innovative start-ups and may apply to sectors such as biotech, medtech and deep tech;
4. the proposed innovation criteria are practical and effective;
5. the five-year minimum holding period is appropriate;
6. the \$10 million lifetime cap is proportionate and appropriately targeted; and
7. the proposed transitional arrangements are workable.

Submissions close on 10 July 2026.

w <https://consult.treasury.gov.au/c2026-779186>

4.3 Capital gains tax and discretionary trusts reform factsheet

Treasury has released a Small Business Explainer factsheet outlining proposed CGT and discretionary trust reforms, together with transitional measures intended to support small businesses. The factsheet highlights the continued availability of existing small business CGT concessions and explains the operation of the proposed minimum tax on discretionary trusts.

Key measures

The factsheet outlines the following key reforms:

1. from 1 July 2027, the existing 50% CGT discount will be replaced with cost base indexation and a 30% minimum tax on capital gains. Gains accrued before 1 July 2027 would retain access to the current 50% discount;
2. the four existing small business CGT concessions will remain available, with the turnover threshold for the 50% active asset reduction increasing from \$2 million to \$10 million from 1 July 2027;
3. 30% minimum tax on discretionary trusts. From 1 July 2028, a trustee level minimum tax would apply to discretionary trust income, subject to exemptions and exclusions;
4. eligible businesses would have access to a 3-year rollover relief period from 1 July 2027 to facilitate restructuring from discretionary trusts into alternative structures without triggering tax liabilities; and
5. the Innovative Business CGT Concession, which is a separate consultation on a proposed concession allowing eligible early-stage investors to choose between a 50% CGT discount or indexation and the minimum tax regime. This concession is covered at item 3.2 of these notes.

Exemptions and support measures

The factsheet notes that primary production income, qualifying testamentary trusts and fixed trusts would generally be excluded from the proposed minimum trust tax of 30%. It also highlights support measures including ASIC assistance for businesses seeking to incorporate and access to guidance from the Australian Small Business and Family Enterprise Ombudsman.

Additional business support measures

The factsheet also summarises broader Budget measures, including making the \$20,000 instant asset write-off permanent, introducing permanent loss carry-back rules, providing loss refundability for eligible start-ups, expanding venture capital tax incentives and broadening access to the active asset reduction concession.

w https://treasury.gov.au/sites/default/files/2026-06/p2026-781365_0.pdf

4.4 Tax practitioner regulation and foreign resident CGT

On 2 July 2026, the Government introduced the Treasury Laws Amendment (Strengthening Accountability for Tax Adviser Misconduct and Other Measures) Bill 2026 into Parliament.

Tax practitioner regulation

The Bill introduces the most substantial reforms to the regulation of tax practitioners since the commencement of the *Tax Agent Services Act 2009* (**TASA**). The amendments are intended to strengthen the integrity of the tax profession following a number of high-profile misconduct matters and provide the Tax Practitioners Board (**TPB**) with a broader range of enforcement options.

Under the current regime, the TPB's primary disciplinary tools are registration termination, written cautions and orders. The Bill substantially expands these powers by introducing:

1. interim suspension powers allowing the TPB to suspend a practitioner's registration while investigations are ongoing where immediate regulatory action is considered necessary;
2. contingent suspension powers, enabling the TPB to impose suspension if specified conditions are not met;
3. enforceable undertakings which may be accepted instead of, or in addition to, formal disciplinary action;
4. an infringement notice regime for certain contraventions of the TASA; and
5. extended periods during which individuals may be prevented from re-registering following serious misconduct from 5 years to 10 years.

The reforms are intended to provide a graduated enforcement framework that allows the TPB to respond proportionately to compliance concerns, rather than relying primarily on cancellation of registration.

Increased civil and criminal penalties

The Bill significantly increases the consequences for unregistered practice and serious breaches of professional obligations.

For civil penalty provisions, maximum penalties are increased from 250 to 2,500 penalty units for individuals and from 1,250 to 50,000 penalty units for bodies corporate, including corporate groups and significant global entities in appropriate circumstances. Based on the current penalty unit value of \$364, the maximum penalties increase from \$91,000 to \$910,000 for individuals and from \$455,000 to \$18.2 million for bodies corporate. The increase is particularly significant for corporate offenders, with the maximum penalty increasing forty-fold.

The expanded penalty framework applies to a range of conduct, including breaches of the Code of Professional Conduct and making false or misleading representations regarding registration status. The amendments introduce a new civil penalty regime for breaches of the Code, which operates alongside the TPB's existing administrative sanctions. However, the TPB cannot seek a civil penalty from the Federal Court unless it has first conducted an investigation and is satisfied that a Code breach has occurred, consistent with the current requirement that a breach be established before sanctions can be imposed.

The Bill also introduces new criminal offences targeting:

1. the provision of tax agent services while unregistered;
2. holding oneself out as a registered tax practitioner when not entitled to do so; and
3. other serious contraventions of the registration framework; and
4. maximum criminal penalties include fines and imprisonment of up to 40 months for the most serious offences.

Expanded liability for partnerships and firms

The Bill relocates the existing partnership liability rules previously contained in section 50-40 of the TASA to a new section 70-20. Where a partnership contravenes a civil penalty provision, each partner is taken to have contravened the provision unless the partner can establish that they did not engage in the conduct, did not aid, abet, counsel or procure the conduct, and were not knowingly concerned in, or party to, the conduct.

The maximum civil penalty for individual partners is generally limited to one-fifth of the penalty applicable to a body corporate. However, the Bill introduces a new exception, so that the concession does not apply where the partnership is a significant global entity (**SGE**). Partners of a partnership that is an SGE are personally exposed to the full penalty amount.

Foreign resident CGT measures tighten integrity rules

The Bill also contains significant amendments to Australia's foreign resident capital gains tax (**FRCGT**) regime.

The amendments broaden the definition of assets that are sufficiently connected with Australian real property and natural resources to remain taxable in Australia when disposed of by foreign residents. The changes are intended to ensure that economic interests in Australian land cannot be separated from the land itself to avoid Australian taxation.

In particular, the reforms:

1. expand the scope of assets treated as Australian real property interests;
2. clarify the treatment of rights and options relating to Australian real property;
3. refine the operation of the principal asset test; and
4. strengthen withholding and notification requirements for significant transactions involving foreign vendors.

Real property previously took its ordinary meaning. A definition will be inserted in section 995-1 of the ITAA 1997 as follows:

real property includes the following:

- (a) any interest in or right over land (regardless of how that interest or right is treated for the purposes of any *State law or *Territory law);
- (b) a personal right to call for or be granted any interest in or right over land;
- (c) a licence or contractual right exercisable over or in relation to land;
- (d) a thing (or combination of things) that is fixed or installed on land (whether or not it is a fixture, or treated in any other way, for the purposes of any State law or Territory law or at general law);
- (e) a lease of a thing mentioned in paragraph (d);
- (f) a licence or contractual right exercisable over a thing mentioned in paragraph (d).

COMMENT – In the exposure draft consultation (see our May 2026 Tax Training Notes), it was proposed that the foreign resident CGT changes would have retrospective effect back to 12 December 2006. The retrospectivity has been abandoned in the bill introduced to Parliament.

Principal asset test moved beyond a point-in-time analysis

The Bill significantly expands the principal asset test (**PAT**) used to determine whether an interest in an entity is an indirect Australian real property interest. Under the current rules, the PAT is tested only at the time of the CGT event. The Bill replaces this with a 365-day look-back test, so that the PAT will be satisfied if the entity derived more than 50% of its value from taxable Australian real property (**TARP**) at any time during the preceding 12 months.

These reforms are intended to align Australia's foreign resident CGT rules more closely with OECD standards.

COMMENT – Following the consultation on the exposure draft legislation (see our May 2026 Tax Training Notes), Treasury recognised that some investors may not have access to sufficient historical valuation information to apply a full 365-day look-back. The Bill therefore allows the Minister to prescribe alternative testing times by legislative instrument for specified classes of investors.

Transitional CGT relief for renewable energy assets

To support investment in renewable energy infrastructure, the Bill introduces a temporary concession for certain foreign corporate investors.

Broadly, eligible foreign corporate entities disposing of qualifying renewable energy assets or indirect interests in renewable energy projects before 30 June 2030 may access a 50% CGT concession, subject to the detailed eligibility requirements contained in the legislation.

The concession is intended to facilitate continued foreign investment in Australia's renewable energy sector while the broader FRCGT integrity measures are implemented.

COMMENT – In the exposure draft legislation (see our May 2026 Tax Training Notes), assets had to have the primary purpose of "generating, or directly facilitating the generation of, electricity using eligible renewable energy sources". In the Bill, this has been expanded to include assets with a primary purpose to operate as an energy storage system" for renewable energy (i.e. batteries).

Clarification of foreign resident CGT withholding credits

The Bill also addresses an issue that occasionally arises where a disposal contract and settlement occur in different income years.

The amendments clarify that credits for amounts withheld under the FRCGT withholding regime are available in the income year in which the relevant gain is recognised for Australian tax purposes. This aligns the operation of the credit rules with the taxation of the underlying gain and reduces the risk of timing mismatches.

Merger law and competition reforms

The Bill contains a number of technical amendments to Australia's recently enacted merger control framework.

Most significantly, acquisitions which have not been notified under the merger regime will no longer automatically be void. Instead, the Australian Competition and Consumer Commission may seek court orders to unwind or void a transaction where appropriate. The amendments also refine concepts such as control and association and provide greater flexibility regarding implementation timeframes for approved transactions. ,

DGR and giving fund amendments

The Bill also makes several charity and not-for-profit sector amendments.

These include the addition and extension of various deductible gift recipient (DGR) listings and the renaming of public and private ancillary funds as public giving funds and private giving funds. The terminology changes are largely administrative and do not materially alter the underlying DGR or governance rules applicable to these entities.

w https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r7514

4.5 Increase to Commonwealth penalty units

From 1 July 2026, the value of a Commonwealth penalty unit increased from \$330 to \$364. As many Commonwealth offences and civil penalty provisions are expressed as a multiple of penalty units, the change results in higher monetary penalties across a wide range of federal laws.

The increase is the first indexation adjustment under amendments introduced by the *Crimes and Other Legislation Amendment (Omnibus No. 1) Act 2024*. Those amendments increased the penalty unit value to \$330 and established a mechanism under the Crimes Act 1914 for periodic CPI-based indexation every three years. The 1 July 2026 adjustment is the first such indexation event.

w <https://www.ato.gov.au/individuals-and-families/paying-the-ato/interest-and-penalties/penalties/penalty-units>

4.6 Regulations supporting Division 296 finalised

The Government has finalised the *Income Tax Assessment (1997 Act) Amendment (Building a Stronger and Fairer Super System and Other Measures) Regulations 2026*, which provide the detailed operating rules for the new Division 296 tax applying to individuals with total superannuation balances exceeding \$3 million. The regulations support the measures enacted by the *Treasury Laws Amendment (Building a Stronger and Fairer Super System) Act 2026* and will apply from 1 July 2026.

The regulations contain four schedules dealing with the calculation and attribution of Division 296 earnings, valuation of superannuation interests, family law payment splits, and consequential amendments. Following consultation, the final regulations include a number of changes from the exposure draft, including greater flexibility to use alternative valuation methodologies, revised valuation rules for deferred innovative income streams and modifications to the attribution formula for small superannuation funds.

Schedule 1 establishes rules for determining a member's share of a fund's Division 296 earnings.

Most funds must attribute earnings to members on a fair and reasonable basis, having regard to prescribed factors. For small superannuation funds, including SMSFs, earnings must generally be attributed using an actuarial methodology, with attribution based on each member's proportionate share of fund value. Special rules also apply for certain interests, including defined benefit interests, specified pensions and annuities, military invalidity pensions, certain State superannuation schemes and family law split interests. Transitional CGT relief is also provided through prescribed adjustment factors over the first four years of the regime.

The regulations also contain important rules for deceased members, ensuring earnings continue to be attributed to interests after death until benefits are paid out or a reversionary pension commences. For Division 296 purposes, the deceased member's total superannuation balance is generally taken to be nil at the end of the year of death.

Schedule 2 prescribes valuation methodologies for defined benefit interests and other interests where the standard withdrawal benefit value would not produce an appropriate outcome.

In many cases, valuation will be based on family law values, although an alternative valuation methodology may be used where certified by a superannuation actuary and approved conditions are satisfied. The regulations also introduce a revised valuation method for deferred innovative income streams, intended to better reflect the value of those interests during both the deferral and payment phases.

Schedule 3 contains detailed provisions dealing with family law payment splits.

Where a defined benefit interest cannot practically be divided, the non-member spouse is treated as holding a separate notional superannuation interest for Division 296 purposes. The regulations prescribe valuation rules

for both base amount and percentage payment splits and provide adjustments to prevent distortions in earnings calculations when interests become subject to family law arrangements.

Schedule 4 updates various actuarial assumptions used to calculate notional taxed contributions and defined benefit contributions and identifies constitutionally protected State office holders whose earnings remain outside the scope of Division 296 tax.

The regulations commenced on 19 June 2026, with the Division 296 regime commencing from 1 July 2026.

Income Tax Assessment (1997 Act) Amendment (Building a Stronger and Fairer Super System and Other Measures) Regulations 2026

w <https://www.legislation.gov.au/F2026L00726/asmade/text>

4.7 Temporary extension of road user charge rate relief

The Government has made the *Fuel Tax (Road User Charge) Determination 2026*. The new determination repeals and replaces the *Fuel Tax (Road User Charge) Determination 2023* and takes effect from 1 July 2026.

The road user charge was reduced to zero between 1 April 2026 and 30 June 2026 as part of the Government's temporary fuel relief measures. From 1 July 2026 to 2 August 2026, the charge will apply at a reduced rate of 16.4 cents per litre for taxable liquid fuels and 21.9 cents per kilogram for taxable gaseous fuels.

While the new rates represent an increase from the temporary zero rate, they remain below the previous road user charge of 32.4 cents per litre that applied before 1 April 2026. The Government has indicated that the temporary relief is expected to end on 2 August 2026, immediately before the August adjustment day.

Fuel Tax (Road User Charge) Determination 2026

w <https://www.ato.gov.au/law/view/document?docid=OPS/LI202623/00001>

4.8 GST adjustment note requirement for reverse charged supplies

The ATO has released draft *Legislative Instrument LI 2026/D15*, which proposes to continue the existing waiver of the requirement for recipients to hold a GST adjustment note when claiming a decreasing adjustment relating to certain reverse-charged supplies.

Under the GST reverse-charge rules in section 83-5 of the *A New Tax System (Goods and Services Tax) Act 1999*, liability for GST may be shifted from a non-resident supplier to the Australian recipient. In these circumstances, obtaining an adjustment note from the non-resident supplier can be difficult.

The draft determination waives the adjustment note requirement for decreasing adjustments relating to supplies to which the reverse-charge provisions apply. It will repeal and replace the *Goods and Services Tax: Waiver of Adjustment Note Determination (No. 39) 2016 – Reverse Charged Supplies*, which is due to sunset on 1 October 2026, while preserving its existing operation.

Comments on the draft are due by 10 July 2026.

Legislative Instrument LI 2026/D15 – Draft A New Tax System (Goods and Services Tax (Waiver of Adjustment Note requirement – Reverse Charged Supplies) Determination 2026

w <https://www.ato.gov.au/law/view/document?docid=OPS/LI2026D15/00001>

4.9 Private health insurance amendment

The Private Health Insurance Amendment (Modernising the Private Health Insurance Rebate) Bill 2026 (Cth) has been introduced to remove the higher private health insurance (**PHI**) rebate currently available to people aged 65 and over.

From 1 April 2027, rebate entitlement will be determined solely by income, with the age-based rebate uplifts for people aged 65–69 and 70+ abolished.

The Government states that the measure will improve intergenerational equity, simplify the rebate system and better target support, so that households on the same income receive the same rebate regardless of age. It also notes that older Australians already benefit from community rating and are more likely to retain PHI, meaning the higher age-based rebate is not necessary to encourage participation.

The Bill amends the *Private Health Insurance Act 2007* to align rebate calculations for people aged 65 and over with those applying to younger Australians and makes a consequential amendment to the *Age Discrimination Act 2004* (Cth).

The Government estimates that around 3.2 million Australians aged 65 and over will be affected, with the average annual premium increase estimated at around \$250. The measure is expected to save around \$3 billion over four years, with those savings to be redirected to aged-care initiatives.

The Bill has been referred to the Senate Community Affairs Legislation Committee for inquiry and report by 7 October 2026, with submissions closing on 21 August 2026.

w https://www.apph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r7497

5. State Legislation

5.1 Surcharge purchaser duty relief in 2026–27 NSW Budget

The NSW Government has announced new surcharge purchaser duty relief measures aimed at supporting investment in the build-to-rent and retirement living sectors.

From 1 July 2026, surcharge purchaser duty relief will be available for acquisitions of operational build-to-rent properties. The relief will also extend to eligible retirement village developers and operators from the same date.

To implement these measures, the *Revenue and Other Legislation Amendment Bill 2026* has been introduced into the NSW Legislative Assembly. Among other amendments, the Bill proposes changes to the *Duties Act 1997* to give effect to the new surcharge purchaser duty concessions.

Budget Paper No 01 (NSW)

w <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=18925>

5.2 Victoria proposes land tax and duty concession reforms

The *Building Legislation and Treasury Legislation (Tax Relief) Amendment Bill 2026* (Vic) has passed both Houses of the Victorian Parliament and is awaiting Royal Assent.

Among other measures, the Bill proposes a number of amendments to the *Land Tax Act 2005* (Vic) aimed at enhancing the operation of the PPR exemption and providing greater flexibility for owners undertaking the construction or renovation of their home.

The proposed land tax amendments would:

1. clarify the application of the PPR exemption where a joint owner ceases to occupy an existing principal place of residence and commences construction or renovation of a new principal place of residence;
2. extend access to the PPR exemption where construction or renovation works take longer than four years to complete, including by giving the Commissioner discretion to extend the exemption period in appropriate circumstances;
3. broaden the definition of "works start date" by allowing landowners to nominate the date on which certain planning or building permits are issued as the commencement date for exemption purposes; and
4. allow land tax to be deferred where construction or renovation of a principal place of residence was completed in the preceding year and the works finish date occurred on or after 1 July of that year.

The Bill also proposes to extend the temporary duty concession for eligible off-the-plan purchases of newly constructed single-dwelling residential properties within strata subdivisions that include common property. The concession, currently available under section 21AA(1)(c) of the *Duties Act 2000* (Vic), would be extended to contracts entered into between 21 October 2024 and 21 April 2027, rather than ending on 1 October 2026.

Building Legislation and Treasury Legislation (Tax Relief) Amendment Bill 2026 (Vic)

w <https://www.legislation.vic.gov.au/bills/building-legislation-and-treasury-legislation-tax-relief-amendment-bill-2026>

5.3 Tasmania legislation to facilitate Help to Buy scheme

On 5 June 2026, the *Help to Buy (Commonwealth Powers) Act 2026* (Tas) received Royal Assent, enabling the Commonwealth's Help to Buy shared equity scheme to operate in Tasmania.

The legislation adopts the *Help to Buy Act 2024* (Cth) and refers the necessary legislative powers from the Tasmanian Parliament to the Commonwealth to the extent required to facilitate the scheme within the State. Under the Help to Buy program, the Commonwealth provides financial assistance to eligible individuals through a shared equity arrangement to assist them in purchasing a home.

The Act also introduces consequential amendments to the *Duties Act 2001* (Tas), *First Home Owner Grant Act 2000* (Tas), *First Home Owner Grant Regulations 2021* (Tas) and the *Land Tax Act 2000* (Tas). These amendments are intended to ensure that participation in the Help to Buy scheme does not result in unintended consequences for the calculation of transfer duty or land tax liabilities, or adversely affect eligibility for First Home Owner Grant concessions and related benefits.

The legislation commenced on 5 June 2026.

Help to Buy (Commonwealth Powers) Act 2026 (Tas)

w <https://www.parliament.tas.gov.au/bills/bills2026/help-to-buy-commonwealth-powers-bill-2026-9-of-2026>

5.4 Tasmanian duties changes

The *Taxation and Related Legislation (Miscellaneous Amendments) Bill 2026* has been introduced into the Tasmanian Parliament to amend the *Duties Act 2001* (Tas), *Land Tax Act 2000* (Tas) and *Taxation Administration Act 1997* (Tas). The Bill is intended to improve tax administration, reduce red tape and modernise a range of duty and land tax provisions.

Key amendments include:

1. extending the duty concession for complying superannuation funds to self-managed superannuation funds;
2. reducing, from 1 July 2026, the threshold for Foreign Investor Duty Surcharge relief from 50 new dwellings to 10 new dwellings completed in a financial year, with a corresponding reduction for land tax surcharge relief;
3. extending concessional duty treatment for transfers arising on intestacy so that they receive the same treatment as transfers arising under a will;
4. extending the duty exemption for property transfers made under unregistered family arbitration awards;
5. making a range of technical amendments to the intergenerational rural transfer and corporate reconstruction and consolidation exemption provisions; and
6. allowing the Commissioner up to five years to withdraw a tax assessment, aligning the period with existing reassessment and refund timeframes and providing greater flexibility for land tax instalment arrangements.

Unless otherwise specified, the amendments will commence on Royal Assent.

Taxation and Related Legislation (Miscellaneous Amendments) Bill 2026

w <https://www.parliament.tas.gov.au/bills/bills2026/taxation-and-related-legislation-miscellaneous-amendments-bill-2026-21-of-2026>

5.5 Queensland Budget 2026-27

On 23 June 2026, the Queensland Treasurer, David Janetzki, handed down the Queensland Budget 2026–27, which includes a number of state taxation and revenue measures affecting employers, property investors and developers.

Key revenue measures include the following:

1. Payroll tax rebate for apprentices and trainees extended: the existing 50% payroll tax rebate for exempt wages paid to apprentices and trainees will be extended for a further 12 months, until 30 June 2027.
2. Transfer duty concessions removed for temporary residents: from 1 August 2026, temporary residents will no longer be eligible for Queensland transfer duty concessions available for homes, first homes and vacant land. A limited exemption will apply to certain retirement visa holders (Subclass 405 and 410). As a result, affected purchasers will generally be required to pay transfer duty at ordinary rates, aligning concession eligibility with the requirements for the Queensland first home owner grant.
3. Residential development incentives expanded: the broadening of access to existing transfer duty and land tax surcharge relief for residential property developers. The changes include:
 - (a) reducing the minimum dwelling threshold required to access relief from 50 dwellings to 20 dwellings;
 - (b) introducing a pre-approval process for developers; and
 - (c) adopting a more holistic assessment of contributions made by closely related corporate entities when determining eligibility.
4. Additional funding for compliance and debt recovery activities: the Budget provides increased funding to the Queensland Revenue Office to support tax compliance programs, audit activities and debt recovery initiatives. The measure is expected to generate an additional \$220 million in revenue and increase the collection of outstanding revenue and penalty debts by approximately \$612 million over four years.

Queensland Budget 2026–27 — Budget Paper No 4
w <https://budget.qld.gov.au/>

5.6 NT payroll tax rate increase enacted for large employers

The *Treasury Legislation Amendment Act 2026* (NT) has been passed, implementing the Northern Territory Government's 2026–27 Budget measure to increase payroll tax for large employers.

From 1 July 2026, a higher payroll tax rate of 6.5% applies to taxable Territory wages where an employer, or a payroll tax group, has Australia-wide wages of \$100 million or more during the relevant financial year or period. Employers below this threshold will continue to be subject to the existing 5.5% payroll tax rate.

The legislation inserts new section 7A into the *Payroll Tax Act 2009* (NT), which applies the 6.5% rate where either:

1. the total taxable wages and interstate wages of a payroll tax group are at least \$100 million; or
2. in the case of a standalone employer, the employer's total taxable wages and interstate wages are at least \$100 million.

The Act also gives legislative effect to the Northern Territory Government's previously announced 12-month extension of the \$50,000 HomeGrown Territory Grant.

The amendments extend the eligibility period for first home owners to enter contracts to purchase or build a new home, or commence construction as owner-builders, from 30 September 2026 to 30 September 2027. The deadline for satisfying the principal place of residence requirement is similarly extended to 30 September 2027. The extension ceases from 1 October 2027, after which the grant will operate under the pre-existing rules.

Treasury Legislation Amendment Bill 2026 (NT)

w

https://legislation.nt.gov.au/en/LegislationPortal/Bills/~link.aspx?_id=CB90F46288CB4E56B0579839C1E8B726&z=z

5.7 ACT 2026-27 Budget

The ACT has released its 2026-27 Budget, which includes the following changes to the duty regime:

1. abolishing stamp duty for first home buyers;
2. existing stamp duty concession for owner-occupier off the plan units will be made permanent and expanded to the purchasers of turn-key units. This is intended to remove stamp duty for new unit-titled 'missing middle' properties (terraces and townhouses) for owner-occupiers;
3. homebuyers eligible for the 'Disability Duty Concession Scheme' will no longer pay any duty, regardless of the price of the property;
4. increase of the commercial stamp duty tax-free threshold to \$2.1 million; and
5. the Pensioner Duty Concession Scheme will be expanded to Service Pension recipients with a permanent incapacity to work, and Department of Veterans' Affairs Gold Card holders will no longer require a 12-month waiting period.

w <https://www.treasury.act.gov.au/budget/budget-2026-27>

6. Rulings

6.1 Super Guarantee obligations for tripartite arrangements

The ATO has released draft *Superannuation Guarantee Ruling* SGR 2026/D1, which explains how to identify the relevant employer for SG purposes in tripartite working arrangements involving an end-user, an intermediary and a worker. When finalised, the ruling will replace SGR 2005/2.

While the ATO states that its substantive views have not changed, the draft updates the guidance to align with TR 2023/4 and recent High Court and Full Federal Court authority concerning the meaning of "employer" and "employee" for SG purposes.

The ruling should be read alongside TR 2023/4, which explains the ordinary and extended meanings of "employee" in section 12 of the SGAA.

A tripartite arrangement commonly arises where an intermediary, such as a labour hire firm, service firm or employment agency, contracts with an end-user to supply the services of a worker. Typically, there is also a contract between the intermediary and the worker, but no contract between the worker and the end-user.

The draft ruling emphasises a two-step approach to identifying the employer:

1. determine whether a contract for the performance of work or supply of labour exists, and identify the parties to that contract; and
2. determine whether the relationship created by that contract is one of employer and employee under the ordinary meaning in subsection 12(1) or the extended definition in subsection 12(3) of the SGAA.

A key theme of the draft is that an employment relationship is fundamentally contractual. Accordingly, where there is no contract between the worker and the end-user, the end-user cannot be the worker's employer. Likewise, where there is no contract between the worker and the intermediary, the intermediary cannot be the worker's employer. The ruling notes that a contract may be written, oral, partly oral and partly written, or implied from the parties' conduct.

The draft also highlights the importance of the extended employee definition in subsection 12(3). Where a worker performs work under a contract that is wholly or principally for the labour of the worker, the worker may be treated as an employee of the other party to that contract, even if the work is ultimately performed for the benefit of an end-user. As a result, an intermediary may have SG obligations even where it is not the direct recipient of the worker's services.

Consistent with recent High Court authority, the ruling places greater emphasis on the legal rights and obligations created by the contract rather than the practical operation of the arrangement. In particular, the relevant consideration is the legal right to control the worker's activities, rather than the day-to-day exercise of supervision by the end-user. The ruling adopts the approach in *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* [2022] HCA 1, under which contractual rights remain central to determining the parties' relationship.

The Commissioner also reiterates that descriptions such as "employment agency", "labour hire firm", "recruitment agency", "independent contractor" or similar labels are not determinative. The legal character of the relationship depends on the contractual arrangements and the rights and obligations they create, rather than the terminology adopted by the parties.

The ruling further clarifies that where an intermediary merely acts as a recruitment or placement agent and brings about a contractual relationship between the end-user and worker, the intermediary will not be the employer. Similarly, where services are supplied through an interposed company, trust or partnership, neither

the intermediary nor the end-user will generally be the worker's employer because the relevant contract is with the interposed entity rather than the worker personally.

Comments on the draft are due on 31 July 2026.

TIP – Where the intended service provider is an entity, but the principal wants a particular individual to be responsible for ensuring that the entity complies with its obligations, the contracts should be drafted carefully. If the individual is made a direct party to the service contract, or assumes obligations to perform the substantive work personally, that may undermine the intended characterisation of the entity as the service provider and create a risk that the natural person is considered to be an employee for SGAA purposes. Consider dealing with the individual's oversight, guarantee or assurance obligations under a separate contract, so that the service contract remains between the principal and the entity providing the services.

ATO reference *Draft Superannuation Guarantee Ruling* SGR 2026/D1
w <https://www.ato.gov.au/law/view/document?docid=DSG/SGR2026D1/NAT/ATO/00001>

6.2 Draft GST Ruling – cross-border supplies to an Australian consumer

On 10 June 2026, the ATO issued draft GSTR 2026/D1, which replaces GSTR 2017/1 and sets out the Commissioner's views on when supplies of services, digital products, rights and other intangibles made by non-resident suppliers are supplied to an Australian consumer and therefore connected with Australia under paragraph 9-25(5)(d) of the GST Act.

The draft largely retains the existing approach to determining whether a recipient is an Australian consumer but significantly expands the guidance on the consumer element of the test and introduces a new compliance framework for non-resident suppliers.

A supply will be made to an Australian consumer where the recipient satisfies both:

1. the "residency element": the recipient is an Australian resident for income tax purposes; and
2. the "consumer element": the recipient is either not registered for GST or, if registered, does not acquire the supply solely or partly for the purposes of an enterprise it carries on.

The draft provides substantially expanded guidance on the operation of the section 84-100 safeguard, under which a supplier may treat a recipient as not being an Australian consumer if it has taken reasonable steps or relies on ordinary business systems and processes to form a reasonable belief that the recipient is not an Australian consumer.

The ATO confirms that a reasonable belief may be based on automated systems and can be supported by information such as billing and mailing addresses, credit card details, geolocation data, IP addresses, place of establishment and representations made by customers. For fully automated systems, the ATO accepts that two pieces of non-contradictory evidence pointing to a location outside Australia may be sufficient to support a reasonable belief regarding residency.

A major focus of the draft is the consumer element. The ATO makes clear that suppliers relying on a recipient's GST registration must obtain both:

1. the recipient's ABN; and
2. a declaration or other information indicating that the recipient is GST registered.

The draft emphasises that an ABN alone is insufficient because an entity may hold an ABN without being GST registered. It also rejects a "set-and-forget" approach, instead requiring ongoing monitoring of GST registration status. The ATO endorses use of ABN Lookup and introduces practical compliance concessions, including

ABN verification within seven days of onboarding new customers and periodic registration checks for recurring customers.

A new appendix provides practical compliance approaches which, if followed in good faith, will generally mean the ATO will not devote compliance resources to reviewing a supplier's conclusion that a recipient is not an Australian consumer. The Commissioner also accepts existing customer-location systems designed to comply with comparable overseas VAT/GST regimes, including those used in the United Kingdom, European Union, New Zealand and Norway.

The draft contains a number of practical examples illustrating the operation of the safeguard provisions.

Example 4 – inconsistent information

66. *..., another customer, Ana, purchases online security software from PC Protect. When Ana signed up for her account with PC Protect, she provided her home address as in Australia. However, when paying for her software, Ana pays using her German credit card.*
67. *This is the only information that PC Protect's usual business systems and processes collects, which is relevant to determining whether Ana satisfies the residency element.*
68. *Given that the information obtained by PC Protect is inconsistent regarding whether Ana satisfies the residency element, PC Protect assesses the quality and reliability of the information it has. Although Ana's account indicates that she has an Australian home address, the fact that she paid with a German credit card supports a conclusion that Ana currently resides in Germany. The credit card information is more reliable because it is contemporaneous with the attribution time.*
69. *PC Protect's usual business systems and processes provide a reasonable basis for a reasonable belief that Ana does not satisfy the residency element.*

Example 9 – customer provides false residency declaration

87. *Danika is an Australian resident for income tax purposes who resides in South Australia. She is not registered for GST. She often shops at KeyOrder, an online store which sells goods and digital products to customers around the world. When she signed up for her account with KeyOrder, Danika provides her Australian mailing address.*
88. *Danika purchases an app from KeyOrder. During checkout, she checks a box to indicate that she is an Australian resident for income tax purposes. She notices the price goes up by 10% when she does this, so she unselects the box and continues. She pays using the payment intermediary she always uses when shopping at KeyOrder. The payment intermediary does not pass on any information to KeyOrder that would indicate whether Danika satisfies the residency element.*
89. *KeyOrder does not treat Danika as an Australian consumer for the supply of the app and does not charge GST. The section 84-100 safeguard does not apply to KeyOrder. This is because, although Danika incorrectly declared that she was not an Australian resident for income tax purposes, KeyOrder should have used other account information they held about her (such as her Australian mailing address) to determine whether she satisfied the residency element.*
90. *Even though information about Danika's income tax residency is closely correlated to the residency element, KeyOrder should have considered this information less reliable than the other information Danika has previously provided when signing up for her account. The information about Danika's income tax residency status is less reliable because it is only required for KeyOrder's compliance purposes and Danika has an incentive to incorrectly declare her residency status to avoid the additional GST cost.*

91. *Because Danika is otherwise an Australian consumer under subsection 9-25(7) and section 84-100 does not apply, the supply by KeyOrder to Danika is connected with Australia under paragraph 9-25(5)(d). If the other requirements in section 9-5 are met, KeyOrder will be liable for GST on the supply*

Comments on the draft are due on 24 July 2026.

ATO reference *Draft Goods and Services Tax Ruling* GSTR 2026/D1
w <https://www.ato.gov.au/law/view/document?docid=DGS/GSTR2026D1/NAT/ATO/00001>

6.3 Private and public ancillary funds - meaning of "benefit"

On 10 June 2026, the ATO issued *Taxation Determination* TD 2026/3, which explains when a private or public ancillary fund is taken to provide a "benefit" for the purposes of the Private Ancillary Fund Guidelines 2019 and Public Ancillary Fund Guidelines 2022.

The Determination addresses both distributions to DGRs under subsection 15(4) of the Guidelines and the prohibition on providing benefits to founders, donors, trustees and related entities under subsection 22(3).

Ancillary funds are charitable trusts that act as intermediaries between donors and eligible DGRs. The ATO states that the term "benefit" extends beyond money or property and includes any advantage, gain or improvement in position, including future or contingent advantages and the assumption or removal of liabilities.

Importantly, the ATO confirms that the meaning of "benefit" differs according to context. A benefit for distribution purposes under subsection 15(4) is narrower than the broad integrity rule in subsection 22(3) of the Guidelines.

Benefits that count as distributions

Under subsection 15(4) of the Guidelines, a benefit will count as a distribution only if it provides an objectively ascertainable benefit to a DGR. Examples include discounted leases, concessional loans, guarantees, payment of expenses on behalf of a DGR, forgone rent or interest, and debt forgiveness.

The final Determination includes new examples clarifying that:

1. an ancillary fund paying expenses on behalf of a DGR can constitute a distribution; and
2. a non-binding multi-year pledge does not constitute a distribution when made, with each payment generally counting only when it is actually paid unless the DGR receives a legally enforceable right.

The value of a subsection 15(4) benefit must reflect the actual advantage received by the DGR, taking into account any consideration provided by the DGR and any conditions attached to the arrangement.

A benefit need not be readily capable of market valuation before it can qualify as a distribution.

Prohibited related-party benefits

The ATO has adopted a broad interpretation of subsection 22(3) of the Guidelines, which prohibits ancillary funds from providing direct or indirect benefits to related entities. A benefit may arise under formal or informal arrangements, through positive action or omission, and may include improved cash flow, relief from obligations, opportunities to earn profits or benefits flowing through intermediaries.

The Determination confirms that a benefit may be provided by omission, including where an ancillary fund chooses not to enforce a contractual right or financial obligation owed by a related entity. The ATO also rejects

the existence of any general "incidental benefit" exception, emphasising that subsection 22(3) focuses on the practical effect of an arrangement rather than its form or purpose.

The examples illustrate the breadth of the provision, including:

1. an ancillary fund subsidising occupancy costs for a related entity;
2. choosing not to enforce a contractual penalty against a related entity; and
3. imposing grant conditions that direct business opportunities to founder-connected entities.

ATO reference *Taxation Determination* TD 2026/3

w <https://www.ato.gov.au/law/view/document?docid=TXD/TD20263/NAT/ATO/00001>

ATO reference *Taxation Determination* TD 2026/3EC

w <https://www.ato.gov.au/law/view/document?docid=CTD/TD2026EC3/NAT/ATO/00001>

6.4 Foreign service exemption - temporary absences

The ATO has released draft *Taxation Determination* TD 2012/8DC, which updates the Commissioner's view on when temporary absences form part of a continuous period of foreign service for the purposes of the foreign earnings exemption in section 23AG of the ITAA 1936.

The principal change is the ATO's proposed acceptance that short work-related absences from the foreign country may form part of a continuous period of foreign service where the absence is directly connected with an ongoing foreign service engagement. Examples include travel to Australia or a third country to attend training, conferences, briefing sessions or to undertake duties connected with the foreign assignment. However, the absence must not be excessive in comparison with the scheduled foreign service period.

The draft also expressly provides that, to qualify as foreign service, the service must be performed in a foreign country. Consistent with existing case law, service performed in international waters or international airspace does not constitute foreign service for the purposes of section 23AG.

Apart from these changes, the Commissioner maintains the existing view that certain temporary absences continue to form part of a continuous period of foreign service, including:

1. recreation leave attributable to the foreign service;
2. absences due to the taxpayer's illness or injury;
3. absences due to the illness, injury or death of another person; and
4. qualifying work-related absences directly connected with the foreign service.

The draft also confirms that maternity leave, parental leave, long service leave, purchased leave, furlough and similar forms of extended leave generally break the continuity of foreign service. Weekends, public holidays, rostered days off and similar non-working days continue to form part of an otherwise continuous period of foreign service where they arise under the normal terms and conditions of the overseas engagement.

The updated view is proposed to apply from 1 July 2026.

ATO reference *Draft Taxation Determination* TD 2012/8DC

w <https://www.ato.gov.au/law/view/document?DocID=DCT/TD20128DC1/NAT/ATO/00001>

6.5 Queensland ruling on duty concessions for shared equity schemes

The Queensland Commissioner of State Revenue has issued Public Ruling GEN013.1 confirming that participation in the Queensland Government's Boost to Buy scheme or the Commonwealth Government's Help

to Buy scheme will not affect access to existing transfer duty concessions, land tax concessions or the First Home Owner Grant.

Participants will be eligible for the same transfer duty home concessions as other home buyers, provided they satisfy the ordinary requirements of the *Duties Act 2001* (Qld).

Under the administrative arrangement, the Queensland and Commonwealth governments are taken not to hold an interest in the property for transfer duty purposes. As a result, transfer duty is assessed on the property's full dutiable value at the time of acquisition, and no additional duty will arise when participants later acquire a greater ownership interest through voluntary repayments under the shared equity arrangement.

The ruling also confirms that participation in these schemes will not, of itself, affect eligibility for land tax home exemptions or the First Home Owner Grant. However, transfer duty may still apply where a participant is subsequently added to or removed from an existing shared equity arrangement under the normal operation of the legislation.

The ruling applies from 15 December 2025 for Boost to Buy arrangements and 5 December 2025 for Help to Buy arrangements.

Public Ruling GEN013.1

w <https://qro.qld.gov.au/files/gen013.pdf>

7. 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.

7.1 Dwelling destroyed during estate administration

Facts

The taxpayer is the legal personal representative of a deceased estate where the deceased died intestate.

The estate included a property that had been acquired by the deceased prior to 1976 (pre-CGT).

The property was not the deceased's main residence at the time of death. Instead, the deceased resided in another property under a right to reside granted under a parent's will.

The property was less than two hectares in size, and no capital improvements were made to it following the deceased's death.

A dwelling existed on the property at the time of the deceased's death, but it was destroyed by fire during the administration of the estate.

Following the destruction, the local council demolished the remains of the dwelling under emergency powers before the grant of Letters of Administration. No replacement dwelling was constructed.

No insurance proceeds were received in respect of the destruction of the dwelling, as the policy had lapsed prior to the event.

As there was no executor or next of kin, the Coroner directed the administration of the estate to State Trustees Limited (STL), which subsequently obtained Letters of Administration.

After obtaining authority, STL undertook administration activities and commenced the sale process within a relatively short period following the deceased's death.

At the time of sale, the property comprised vacant land only.

The property was ultimately sold and settled at auction within two years of the deceased's death.

Question

Can section 118-195 of the ITAA 1997 can apply to disregard the capital gain made by the taxpayer on the sale of vacant land?

Ruling

Section 118-195 of the ITAA 1997 provides a CGT exemption (or partial exemption) for a dwelling that passes to a beneficiary or legal personal representative of a deceased estate, provided certain conditions are satisfied. Relevantly, the provision can disregard a capital gain or loss where a CGT event happens to a pre-CGT dwelling that was owned by the deceased and is disposed of within a specified period (generally within two years of death), or where the dwelling satisfies post-death main residence use conditions.

A critical threshold requirement is that the CGT event must happen to a dwelling. The term “dwelling” is defined in section 118-115 of the ITAA 1997 and includes a building or part of a building that is used mainly for residential accommodation. It can also include land adjacent to a dwelling (up to two hectares) where that land is used primarily for private or domestic purposes in association with the dwelling. Importantly, the concept of “dwelling” requires the existence of a residential structure at the time of the CGT event.

In this case, although a dwelling existed on the property at the time of the deceased’s death, it was destroyed during the administration of the estate and no replacement dwelling was constructed. As a result, at the time the CGT event occurred (being the disposal of the property), the asset comprised vacant land only. The absence of an existing dwelling at the time of the CGT event is determinative, as section 118-195 operates only where the CGT event relates to a dwelling.

The ATO therefore concluded that section 118-195 of the ITAA 1997 cannot apply to disregard the capital gain because the legislative requirement that the CGT event happen to a dwelling is not satisfied. The fact that a dwelling previously existed on the land, or that the land was historically used in connection with a dwelling, is insufficient. The provision does not extend to situations where only vacant land is disposed of, even if the destruction of the dwelling was outside the taxpayer’s control and occurred during estate administration.

As section 118-195 does not apply, the estate must determine the capital gain under the ordinary CGT rules in Division 128 of the ITAA 1997. Where the deceased acquired the asset prior to 20 September 1985, item 4 of the table in section 128-15(4) (commonly referenced in practice as subsection 128-15(4)) deems the first element of the cost base of the asset in the hands of the legal personal representative to be its market value at the date of death. Importantly, because a dwelling existed on the land at that time, the relevant market value includes both the land and the improvements (i.e. the dwelling). This effectively “resets” the cost base to a post-CGT value, mitigating the potential capital gain on subsequent disposal.

The estate is generally eligible for the 50% CGT discount under Division 115 of the ITAA 1997, provided the asset is taken to have been held for at least 12 months. For deceased estates, the ownership period includes both the period the asset was held by the deceased and the period held by the estate. As the property was acquired by the deceased prior to the introduction of the CGT regime and disposed of more than 12 months after death, the discount will ordinarily apply to reduce any assessable capital gain by 50%.

COMMENT – The ruling does not consider the potential interaction with section 118-160 of the ITAA 1997, which can extend the main residence where a dwelling that is the taxpayer’s main residence is accidentally destroyed (for example, by fire), and a CGT event subsequently happens in relation to the land without a replacement dwelling being erected on that land. In this case, the dwelling was not the main residence of the deceased, so that section could have no application.

TIP – Section 118-195 of the ITAA 1997 can apply to a dwelling that was not the deceased’s main residence just before death, provided the dwelling was not being used to produce assessable income at that time and the other conditions in the provision are satisfied. The exemption is therefore not limited to the deceased’s actual home at death. However, there still needs to be a dwelling to which the CGT event happens, so the provision will not assist where the asset sold is vacant land because the dwelling has been destroyed and not replaced before disposal.

ATO reference *Edited Private Advice Authorisation No. 1052520114845*
w <https://www.ato.gov.au/law/view/document?DocID=EV/1052520114845>

7.2 Personal services income and unrelated clients

Facts

The taxpayer is an Australian incorporated company whose sole director provides services in relation to writing home loans and residential investment property loans.

The taxpayer entered into an independent contractor agreement with a broker. Under this arrangement, the director operates as an authorised credit representative under the broker's Australian Credit Licence, and commissions from financial institutions must be paid to the broker as the licence holder.

The agreement expressly provides that the taxpayer and its director are not employees of the broker. The taxpayer is free to undertake other work, may outsource services, and is responsible for meeting its own compliance requirements. It bears commercial and entrepreneurial risk, including the obligation to rectify defective work at its own cost and the risk of non-payment where services are not satisfactorily performed.

During the income year, the taxpayer derived income from the broker in the form of a percentage of commissions received by the broker for loans originated by the director. These included upfront and trailing commissions, as well as additional amounts for other services provided to individuals engaged by the broker. The broker issued recipient-created tax invoices and made periodic payments to the taxpayer.

All client-facing branding and advertising were conducted under the broker's name and website. The taxpayer did not maintain its own website. Business cards displayed both the broker's name and the director's name.

The taxpayer operated as a mobile business without owning or leasing business premises. It occasionally used the broker's office for administrative purposes only (for example, document execution), without paying for that use, and did not provide client-facing services from those premises.

The taxpayer sourced business through multiple channels, including advertising, professional networks, events and referrals.

During the income year, the taxpayer entered into engagements (on behalf of the broker) with multiple customers. Some clients engaged the taxpayer's services more than once, and none of the clients were associates of each other or of the taxpayer.

Question

Will the taxpayer satisfy the unrelated clients test under section 87-20 of the ITAA 1997 through the application of the special rules for agents in section 87-40 of the ITAA 1997?

Ruling

The taxpayer derived income that was characterised as PSI because it was mainly a reward for the personal efforts and skills of the individual performing the services. Where PSI is earned through a company (a personal services entity), the PSI rules apply unless the entity qualifies as a personal services business (**PSB**), which can be established by satisfying, among other tests, the unrelated clients test in section 87-20 of the ITAA 1997.

A key preliminary issue is the "80% rule" in section 87-15, which determines whether the taxpayer can self-assess against the PSB tests. Although the taxpayer derived its income under a single contract with the broker, the ATO considered the effect of the agent rules in section 87-40. These rules modify how "clients" are identified where an entity acts as an agent but bears sufficient entrepreneurial risk. If section 87-40 applies, the end customers (rather than the intermediary principal) are treated as the taxpayer's clients for the purposes of both the 80% rule and the unrelated clients test.

Section 87-40 of the ITAA 1997 applies if the following criteria in subsection 87-40(2) are satisfied:

- (a) *the individual or personal services entity is an agent of another entity (the principal) but not the principal's employee; and*
- (b) *the agent receives income from the principal that is for services that the agent provides to other entities (customers) on the principal's behalf; and*
- (c) *at least 75% of that income is commissions, or fees, based on the agent's performance in providing services to the customer on the principal's behalf; and*
- (d) *the agent actively seeks other entities to whom the agent could provide services on the principal's behalf; and*
- (e) *the agent does not provide any services to the customers, on the principal's behalf, using premises:*
 - (i) *that the principal or an associate of the principal owns; or*
 - (ii) *in which the principal or an associate of the principal has a leasehold interest;*
unless the agent uses the premises under an arrangement entered into at arm's length.

The ATO systematically tested the requirements in section 87-40(2). First, the taxpayer was found to be acting as an agent of the broker rather than as an employee. This conclusion was supported by indicia of independence and entrepreneurial risk, including the absence of an employment relationship, the ability to undertake other work, the capacity to outsource, and the obligation to rectify defective work at its own cost (consistent with principles discussed in cases such as *Spriggs v FC of T*; *Riddle v FC of T* [2009] HCA 22 regarding the distinction between business activities and employment-like arrangements).

Secondly, the income received by the taxpayer from the broker was, in substance, for services provided to end customers on the broker's behalf. The regulatory requirement that commissions be paid to the licence holder (the broker) did not alter the underlying commercial reality that the taxpayer earned income from servicing those customers, with the broker acting as an intermediary in the payment chain.

Thirdly, the ATO found that at least 75% of the taxpayer's income consisted of commissions contingent on performance (for example, upfront and trailing commissions dependent on loans being written and maintained). This satisfied the requirement that remuneration be substantially performance-based.

Fourthly, the taxpayer was actively engaged in seeking work by making offers to the public. The evidence of marketing through advertising, networks, referrals and other channels established the requisite direct causal link between public offers and the work obtained, as required under *Taxation Ruling* TR 2022/3.

Finally, the taxpayer did not provide client-facing services from premises owned or leased by the broker. Although the broker's premises were occasionally used for administrative purposes, this did not breach the requirement in section 87-40(2)(e), which is concerned with where services to customers are performed.

Having satisfied all elements of section 87-40, the special agent rules applied. As a result, the taxpayer's clients were treated as the end customers rather than the broker. This recharacterisation meant that the taxpayer was regarded as deriving PSI from multiple unrelated clients, rather than from a single intermediary.

On that basis, the ATO concluded that the taxpayer satisfied the unrelated clients test in section 87-20 of the ITAA 1997. Specifically, the taxpayer derived PSI from multiple entities that were not associates and obtained some of that work directly through public offers or invitations. Therefore, the taxpayer qualified as conducting a PSB for the relevant year, with the effect that the PSI attribution rules did not apply.

ATO reference Edited Private Advice Authorisation No. 1052486244795
 w <https://www.ato.gov.au/law/view/document?DocID=EV/1052486244795>

7.3 PSI rules and results test

Facts

The taxpayer is a consulting professional who provided services through multiple unrelated entities during the relevant income year.

The taxpayer entered into separate agreements with three entities (Entities A, B and C), none of which were associates of each other:

Entity	Key features of arrangement
Entity A	The taxpayer provided services at the entity's premises. Client fees were collected by the entity and remitted to the taxpayer net of a percentage-based management fee. The taxpayer maintained professional indemnity insurance, indemnified the entity against liabilities, and supplied their own tools and equipment.
Entity B	The entity collected fees and charged the taxpayer a percentage-based management fee. The taxpayer was required to maintain professional indemnity insurance and indemnify the entity against claims. Some equipment and materials could be provided by the entity.
Entity C	The taxpayer was licensed to use the entity's facilities and determined client fees. The entity charged a management fee based on a percentage of those fees. The taxpayer maintained professional indemnity insurance, indemnified the entity, relied on the entity's facilities and basic supplies, but provided their own tools and equipment.

In each case, the taxpayer entered into contractual arrangements under which the relevant entity facilitated client billing and administrative support in exchange for a management fee calculated as a percentage of fees generated.

The taxpayer earned income by providing consulting services tailored to individual client needs, with fees determined by the nature of each service performed.

The taxpayer maintained professional indemnity insurance and assumed contractual liability to indemnify each entity for losses arising from the provision of services.

Although the taxpayer had access to the premises and support services of each entity, they were responsible for supplying the tools and equipment necessary to perform their work.

More than 75% of the taxpayer's consulting income was derived from services performed through these arrangements, and the taxpayer also engaged an associate to assist with administrative functions.

Questions

1. Was the income received by the taxpayer as a sole trader in the relevant financial year PSI under section 84-5 of the ITAA 1997?
2. Is the taxpayer conducting a PSB on the basis that the results test is satisfied under section 87-18 of the ITAA 1997 in the relevant income year?
3. Is the taxpayer entitled to deduct a reasonable amount for wages paid to an associate for administrative duties performed, having regard to section 8-1 of the ITAA 1997?

Ruling

Question 1 – PSI

The ATO concluded that the income derived by the taxpayer constituted PSI under section 84-5 of the ITAA 1997 because it was mainly a reward for the taxpayer's personal efforts and skills. PSI is defined as income that is mainly attributable to an individual's labour, as opposed to being generated from the sale of goods, the use of income-producing assets, or a business structure. The "mainly" threshold requires that more than 50% of the income be attributable to personal exertion. In this case, the taxpayer derived income from providing consulting services to multiple entities, and that income arose directly from the taxpayer's professional skill and services rather than from any substantial business structure or asset base. Accordingly, the income satisfied the statutory definition of PSI.

Question 2 – PSB and the results test

Although the income was PSI, the ATO determined that the taxpayer was conducting a PSB because the results test in section 87-18 of the ITAA 1997 was satisfied. Where at least 75% of PSI meets the three limbs of the results test, the PSI rules in Part 2-42 do not apply. Each limb of the test was considered in turn.

First, the ATO was satisfied that the taxpayer's income was "for producing a result." The taxpayer was remunerated on a per-consultation basis, with fees tied to the specific service provided rather than time worked. This is indicative of a results-based arrangement, in contrast to an hourly or time-based engagement. The distinction is important: as explained in *IRG Technical Services Pty Ltd v Federal Commissioner of Taxation* [2007] FCA 1867, income is not considered to be for producing a result where it is merely remuneration for ongoing work, even if that work produces outputs. Here, the structure of payment by discrete consultations supported the conclusion that the taxpayer was paid for achieving identifiable outcomes.

Second, the taxpayer satisfied the requirement to supply the plant and equipment necessary to perform the work. The taxpayer provided their own professional tools and equipment, which were integral to delivering the consulting services. Although the entities provided premises and certain support services, these were effectively accessed in exchange for management fees and did not displace the taxpayer's responsibility for the core tools required to produce the result.

Third, the taxpayer was liable for the cost of rectifying defects in the work performed, thereby bearing commercial risk. This was evidenced by contractual indemnity clauses and the requirement to hold professional indemnity insurance. The existence of indemnity obligations and insurance is a strong indicator that the taxpayer was exposed to liability for defective work, satisfying this limb of the test. The Commissioner emphasised that this requirement is concerned with real exposure to commercial risk, not merely contractual "window dressing."

As all three limbs were met for at least 75% of the taxpayer's PSI, the taxpayer was held to be conducting a PSB. Consequently, the PSI attribution and deduction limitation rules in Part 2-42 did not apply.

Question 3 – Deductibility of payments to an associate

Because the taxpayer was conducting a PSB, the restrictive deduction rules that would otherwise apply to PSI under Division 85 of the ITAA 1997 were not engaged. Instead, the general deduction provision in section 8-1 of the ITAA 1997 applied. Under that provision, a deduction is allowed for losses or outgoings incurred in gaining or producing assessable income, provided they are not capital, private or domestic in nature.

The payments made to the taxpayer's associate for administrative duties were characterised as ordinary business expenses incurred in the course of deriving income. Therefore, these payments were deductible, subject to the requirement that they be reasonable and commensurate with the services provided. This reflects the general principle that, once the PSI rules are disapplied (due to the existence of a PSB), ordinary deductibility principles govern the treatment of such expenses.

ATO reference *Edited Private Advice Authorisation No. 1052497134106*
w <https://www.ato.gov.au/law/view/document?docid=EV/1052497134106>

7.4 Non-commercial loss rules discretion

Facts

The taxpayer carried on a liquor re-selling business, with its primary market being online bottle sales and on-premises sales in a particular location. The business commenced operations in an earlier income year and had a mixed performance history, having generated profits in some years and losses in others.

The business model involved acquiring empty casks from cooperages, which were then manufactured into smaller formats. These casks were provided to distilleries, which produced the distillate spirit. The taxpayer purchased the spirit, which was then placed into the casks and matured by the distilleries for the legally required minimum maturation period. After maturation, the product was bottled (sometimes with assistance from the distillery), stored at a storage facility, and ultimately sold by the taxpayer.

The taxpayer did not satisfy the income requirement in section 35-10(2E) of the ITAA 1997, which requires that the taxpayer has earned less than \$250,000 from other sources. The taxpayer did not meet any of the four non-commercial loss tests (assessable income, profits, real property, or other assets tests).

The business was adversely affected by external factors, including the COVID-19 pandemic and a broader market downturn. In the relevant income year, the business again incurred a loss.

The profitability of the business was significantly impacted by two robberies at the storage facility where the liquor was held. The first robbery occurred near the end of an earlier income year, with its financial impact largely arising in the relevant income year. Following this incident, the taxpayer moved stock within the facility and raised concerns with the storage provider, including seeking remedial action and casual consultation with legal professionals. However, no preventative action was taken by the facility, and a second robbery occurred.

The robberies resulted in substantial unrecoverable losses of inventory, with no successful insurance recovery due to a dispute with the storage provider. This led to reduced revenue in the relevant income year. The taxpayer also experienced psychosocial harm that affected their ability to operate the business.

As a result, the taxpayer derived relatively low revenue and incurred a loss in the relevant year. The taxpayer considered that, absent the robberies, the business would have generated sufficient income and a profit.

Question

Will the Commissioner will exercise the discretion under paragraph 35-55(1)(a) of the ITAA 1997 to allow the taxpayer to include losses from a non-primary production business activity in the calculation of taxable income for the relevant income year?

Ruling

Division 35 of the ITAA 1997 restricts the ability of individuals to offset losses from non-commercial business activities against other assessable income unless certain objective tests are satisfied or the Commissioner exercises a discretion. In this case, the taxpayer did not meet the income requirement in section 35-10(2E) and failed all four objective tests (assessable income, profits, real property, and other assets). Accordingly, the losses would ordinarily be deferred unless the discretion in paragraph 35-55(1)(a) applied.

Paragraph 35-55(1)(a) allows the Commissioner to disregard the loss deferral rules where the business activity is affected by “special circumstances” outside the taxpayer’s control, and those circumstances have prevented the activity from satisfying a test or producing a profit. The concept of “special circumstances” is not

exhaustively defined but is generally interpreted to include events that are unusual, uncommon, or exceptional, and not part of the ordinary risks of carrying on a business.

In applying this discretion, the ATO considered whether the circumstances affecting the taxpayer's business were sufficiently extraordinary and whether they had a material impact on the business' performance in the relevant income year. The ATO accepted that a combination of factors, including the COVID-19 pandemic, a broader market downturn, and the occurrence of multiple robberies at the storage facility, constituted special circumstances. While economic downturns may sometimes be regarded as part of normal commercial risk, the combined effect of these events, particularly the criminal thefts, was considered to go beyond ordinary business contingencies.

The ATO was satisfied that the taxpayer's business activity was affected by special circumstances within the meaning of paragraph 35-55(1)(a), and that these circumstances prevented the business from satisfying one of the objective tests or producing a profit. The discretion was exercised to allow the taxpayer to include the business losses in the calculation of taxable income for the relevant income year.

COMMENT - The ATO has updated *Practical Compliance Guideline* PCG 2022/1, which provides a safe harbour allowing individuals carrying on non-commercial business activities to access the Commissioner's discretion under Division 35 of the ITAA 1997 without lodging a formal application (see item 7.5 of these notes) to remove references to COVID-19 as a factor relevant to the exercise of the discretion.

ATO reference *Edited Private Advice Authorisation No. 1052511588000*
w <https://www.ato.gov.au/law/view/document?docid=EV/1052511588000>

7.5 Non-commercial loss rules lead time

Facts

The taxpayer carries on a retail business.

To establish and commence the business, the taxpayer undertook a range of preparatory activities, including product development, sourcing suppliers, researching packaging, developing branding, building an online presence, and setting up operational systems.

The initial setup phase extended over several months and involved testing and refining multiple products, sampling various packaging options, and liaising with suppliers who imposed minimum order quantities and extended production timeframes. The taxpayer also developed and refined branding and product presentation, coordinated mass production and overseas shipping, and established the business website, fulfilment workflows, and compliance processes.

In addition, the taxpayer sought to ensure that all components met sustainability requirements, which significantly prolonged research, sourcing, and sampling timelines.

The taxpayer experienced delays in obtaining suitable packaging that satisfied both functional and sustainability requirements. Further delays arose due to rising material costs, difficulties in securing sustainable and cost-effective supply options, and extended shipping timeframes.

Question

Will the Commissioner exercise the discretion in paragraph 35-55(1)(c) of the ITAA 1997 to allow the taxpayer to include losses from the business in the calculation of taxable income for the relevant income year?

Ruling

The Commissioner's discretion in paragraph 35-55(1)(c) of the ITAA 1997 operates as a limited exception to the non-commercial loss deferral rule in section 35-10. Broadly, losses from a business activity carried on by an individual cannot be offset against other assessable income unless one of the statutory tests is satisfied, an exception applies, or the Commissioner exercises a discretion.

Under paragraph 35-55(1)(c) of the ITAA 1997, the Commissioner's discretion can be exercised where the business activity has started to be carried and:

1. because of its nature, it has not produced, or will not produce, assessable income greater than the deductions attributable to it; and
2. there is an objective expectation, based on evidence from independent sources (where available) that, within a period that is commercially viable for the industry concerned, the activity will produce assessable income for an income year greater than the deductions attributable to it for that year.

A note following paragraph 35-55(1)(c) of the ITAA 1997 states that the discretion is intended to apply where there is an inherent period before the business activity can generate assessable income exceeding deductions (for example, forestry or viticulture).

The ATO observed that this note does not mean that the Commissioner should exercise the discretion for any start-up activity that is yet to produce assessable income greater than the deductions attributable to it simply because a client base is being built up.

A critical requirement is that the delay in profitability must arise because of the nature of the activity itself, and not from factors specific to how the taxpayer has chosen to establish or operate the business. This principle is emphasised in *Taxation Ruling* TR 2007/6, which distinguishes between:

1. delays inherent in the business model; and
2. delays attributable to taxpayer-specific decisions, such as the scale, funding, or manner in which the activity is conducted.

TR 2007/6 makes clear that the discretion is not intended to cover ordinary start-up phases where a taxpayer is building systems, establishing suppliers, or developing a customer base.

The distinction between "inherent characteristics" and "taxpayer choices" has judicial support in *Federal Commissioner of Taxation v Eskandari* (2004) 54 ATR 695. In that case, the Court held that a delay will only satisfy paragraph 35-55(1)(c) if it is attributable to a characteristic shared by that type of activity generally. Where the delay arises from the taxpayer's own decisions or business approach, the requirement is not met.

Applying these principles, the ATO accepted that the taxpayer's business activity had commenced, but concluded that the absence of assessable income was not due to any inherent feature of a retail business. Retail activities are ordinarily capable of generating income relatively shortly after commencement. Instead, the delay was attributed to the taxpayer's chosen approach to establishing the business, including product development, supplier arrangements, branding, packaging selection, sustainability considerations, and the coordination of production and logistics. These are all preparatory or operational choices rather than constraints imposed by the nature of the industry itself.

Consistent with TR 2007/6, delays arising from factors such as extended research and development, supply chain decisions, cost considerations, or sustainability requirements are regarded as peculiar to the taxpayer's circumstances, rather than inherent to the business activity. As such, they do not satisfy the statutory requirement that the lack of profitability occur "because of the nature" of the activity.

The ATO determined that the lead-time discretion in paragraph 35-55(1)(c) of the ITAA 1997 could not be exercised. The taxpayer's losses therefore remain subject to deferral under section 35-10 and cannot be offset against other assessable income in the relevant income year.

ATO reference *Edited Private Advice Authorisation No. 1052517056247*
w <https://www.ato.gov.au/law/view/document?DocID=EV/1052517056247>

8. ATO and other materials

8.1 Decision Impact Statement – *Bendel*

The ATO has released its Decision Impact Statement on the High Court's decision in *Commissioner of Taxation v Bendel* [2026] HCA 18 (see our June 2026 Tax Training Notes). By a 5:2 majority, the High Court held that a private company beneficiary's UPE to trust income is not, without more, a loan for the purposes of section 109D of Division 7A. The Court rejected the Commissioner's long-standing position that a corporate beneficiary's failure to call for payment of a UPE could amount to the provision of "financial accommodation".

The case concerned the Steven Bendel 2005 Discretionary Trust, whose trustee resolved to make Mr Bendel and his private company, Gleewin Investments Pty Ltd, presently entitled to trust income. Although the trust deed contemplated amounts being held on separate trust, the entitlements remained largely unpaid and Gleewin took no steps to demand payment. The Commissioner assessed the arrangements on the basis that the outstanding UPEs constituted loans under section 109D, resulting in deemed dividends to the trust. The High Court rejected that approach.

The majority held that the "provision of financial accommodation" requires some positive act involving the transfer, supply or grant of value or pecuniary assistance. Mere inactivity, acquiescence or a failure to demand payment is insufficient. A private company beneficiary that simply does nothing in relation to its entitlement does not make a loan, provide financial accommodation or enter into a transaction that, in substance, effects a loan.

ATO view

The ATO accepts that section 109D does not apply where a private company beneficiary has a UPE and has taken no relevant action in respect of that entitlement. Importantly, this will apply whether the entitlement is held on a separate trust or not. Accordingly, a corporate beneficiary's mere failure to call for payment of trust income will no longer be treated as the making of a loan for Division 7A purposes.

However, the ATO emphasises that the characterisation of a UPE remains highly fact-dependent. Relevant considerations include:

1. the terms of the trust deed;
2. the terms of trustee resolutions;
3. the accounting treatment adopted by the parties; and
4. any later dealings with the entitlement, including whether it has been converted into, satisfied by, or replaced with a loan arrangement.

Depending on those facts, an entitlement may remain an unpaid present entitlement, be held on separate trust, give rise to a debtor-creditor relationship, or be dealt with in a way that creates a loan for Division 7A purposes.

UPEs converted into loans

The ATO has made clear that the decision does not unwind arrangements that have already been converted into loans. Where parties have taken steps that satisfy, replace or otherwise deal with a UPE in a manner that gives rise to a loan within section 109D(3), the arrangement will continue to be treated as a loan. A UPE that has already been converted into a complying Division 7A loan is no longer a UPE and the High Court's decision does not reverse that outcome.

Implications for existing arrangements

The ATO states that UPEs which have simply been left outstanding will not, without more, be loans for Division 7A purposes. Similarly, UPEs established under former PS LA 2010/4 sub-trust arrangements will not be treated as loans merely because they were held on separate trust. By contrast, UPEs made subject to complying Division 7A loan agreements remain loans as a matter of fact and will continue to be administered accordingly.

The ATO also notes that variations to investment agreements between a sub-trust and the main trust will not automatically convert the arrangement into a loan or revive the amount as a UPE for Subdivision EA purposes. The outcome will depend on the nature and effect of the variation in the particular circumstances.

Subdivision EA and section 100A

The DIS indicates that the ATO is likely to place greater emphasis on Subdivision EA following *Bendel*. Subdivision EA may apply where a private company beneficiary has a UPE and the trust (including a relevant sub-trust or separate trust) makes a payment or loan to, or forgives a debt of, a shareholder or associate of the company. The ATO notes that the High Court itself observed that the facts in *Bendel* broadly corresponded with the circumstances addressed by Subdivision EA.

The ATO also expressly highlights section 100A as a potential alternative compliance focus. Where a UPE arises under an arrangement intended to reduce tax, another person benefits, and the arrangement falls outside ordinary family or commercial dealing, section 100A may apply. This could expose the trustee to tax at the top marginal rate, which may be significantly more adverse than a Division 7A deemed dividend outcome.

While not discussed in detail in the DIS, the ATO notes that other integrity provisions, including Part IVA, may also remain relevant in appropriate trust distribution arrangements.

Objections and ATO guidance

Taxpayers assessed on the basis that a UPE, without more, constituted a section 109D loan may seek an amendment where still within the amendment period or lodge an objection. The ATO has indicated that requests will be considered having regard to the particular facts, including the trust deed, trustee resolutions, accounting records and any subsequent dealings with the entitlement. The ATO will also consider extension-of-time requests for objections arising as a consequence of the *Bendel* decision.

As a result of the decision, the ATO will withdraw TD 2022/11, which reflected the Commissioner's former view that UPEs and sub-trust arrangements could amount to financial accommodation.

The ATO will also review a number of related rulings and guidance products, including TR 2022/4, PCG 2022/2 and PCG 2017/13, to determine whether amendments or withdrawals are required.

COMMENT – While *Bendel* represents a significant taxpayer victory on the scope of section 109D, the ATO has signalled a renewed emphasis on Subdivision EA, section 100A and, potentially, Part IVA. Consequently, taxpayers should not assume that retaining profits in trusts through corporate beneficiaries is now risk-free merely because Division 7A does not apply directly to a passive UPE.

w <https://www.ato.gov.au/law/view/document?DocID=LIT/ICD/M47/2025/00001>

8.2 Decision Impact Statement – Hall

The ATO has released its final Decision Impact Statement in relation to *Commissioner of Taxation v Hall* [2026] FCAFC 43. The case involved a sports presenter and producer employed by the ABC during the 2021 income year. Due to COVID-19 restrictions and employer directions, he performed his digital production duties from a

dedicated room in his rented apartment and attended the ABC's Southbank Studios only for live broadcasting duties. He claimed deductions for a portion of his rent attributable to the home office, as well as car expenses incurred travelling between home and the studios on days he undertook both sets of duties. The ART allowed both deductions, but the Full Federal Court overturned that decision and upheld the Commissioner's objection decision.

In relation to occupancy expenses, the ATO notes that the Full Federal Court confirmed that the positive and negative limbs of section 8-1 of the ITAA 1997 must be considered separately. Although occupancy expenses may have a sufficient connection with income-producing activities, they remain non-deductible if their essential character is private or domestic. The Court reaffirmed that a home office ordinarily remains part of the home and does not become business premises merely because it is used regularly, exclusively or necessarily for work. Importantly, an outgoing does not need to be "purely" private or domestic to be excluded under section 8-1(2).

Consistent with its longstanding view, the ATO states that occupancy expenses such as rent, mortgage interest and council rates will generally remain private and non-deductible unless the home is properly characterised as a place of business forming part of the taxpayer's income-earning structure. By contrast, running expenses such as electricity, internet and depreciation of equipment may still be deductible to the extent they relate to work use.

In relation to transport expenses, the ATO notes that the Court reaffirmed the distinction between travel undertaken to perform work and travel undertaken in the course of performing work. Where separate duties are performed at home and at a regular workplace, travel between those locations is ordinarily undertaken to commence or resume work and therefore retains its private character. The fact that work has already been performed at home does not convert the travel into deductible work-related travel.

The ATO considers the decision to be a reaffirmation of long-established principles. Working from home, even where required by an employer or public health restrictions, does not of itself alter the character of home occupancy expenses or ordinary home-to-work travel.

w <https://www.ato.gov.au/law/view/document?docid=LIT/ICD/vid779of2025-final/00001>

8.3 Decision Impact Statement – SEPL

The ATO has released its Decision Impact Statement in relation to *SEPL Pty Ltd as trustee of the SFT Trust v Commissioner of Taxation* [2026] FCAFC 36. The Full Federal Court unanimously held that three brothers who were directors of the corporate trustee of a discretionary trust were not employees for FBT purposes and that luxury motor vehicles provided for their use were not provided "in respect of" any employment. The Court overturned the earlier Federal Court decision and restored the ART's conclusion that no FBT liability arose.

The brothers were the only directors and shareholders of the trustee company and were also beneficiaries, appointors and controllers of the discretionary trust. They worked extensively in the business but had no employment contracts, received no salary or wages, and benefited primarily through trust distributions and use of trust-owned vehicles. The Court held that the FBTAA requires a person to be an "employee" through the statutory chain of definitions linking employee status to the receipt of salary or wages. On the facts, any hypothetical payment to the brothers would have been made in their capacities as proprietors, controllers and discretionary beneficiaries rather than as employees.

The Court also rejected the Commissioner's argument that the broad definition of benefits provided "in respect of" employment was satisfied merely because the brothers worked in the business. Consistent with *J & G Knowles & Associates Pty Ltd v Commissioner of Taxation* [2000] FCA 196, there must be a meaningful and material connection between the benefit and the employment relationship. It was open to conclude that the vehicle benefits arose from the brothers' relationship with the trust and family structure rather than any

employment relationship. The Court also accepted that the brothers' understanding of the arrangement was a relevant factor in determining the capacity in which the benefits were received.

The ATO accepts the Court's analysis of the statutory definitions of "employee", "employment" and "salary or wages" within the FBTA. It also accepts that section 137 does not expand the ordinary meaning of employee and instead operates as a safeguard where remuneration is provided solely in non-cash form.

However, the ATO emphasises that the outcome was driven by the unusual facts of the case. The brothers were shareholders, directors, appointors and beneficiaries of a closely held family discretionary trust, received no salary or wages and participated in arrangements that were documented and accounted for as beneficiary benefits. The ATO cautions that directors of corporate trustees may still be employees for FBT purposes depending on the terms of the trust deed, the nature of the benefits provided and the capacity in which those benefits are received.

The ATO is reviewing the implications of the decision for its guidance in MT 2019, MT 2016 and relevant sections of *Fringe benefits tax – a guide for employers*.

w <https://www.ato.gov.au/law/view/document?docid=LIT/ICD/SAD127of2025/00001>

8.4 Decision Impact Statement – Ziegler

The ATO has issued a Decision Impact Statement in relation to *Ziegler v Commissioner of Taxation* [2025] FCAFC 168, in which the Commissioner was successful on all issues.

The case arose from a series of transactions undertaken by Michael Ziegler and associated entities following the settlement of earlier disputes with the Commissioner. Following the settlement, the Commissioner recalculated Michael's GIC liability and recorded a credit of approximately \$13.7 million to his income tax account. Michael had previously claimed and been allowed a deduction for that GIC amount, but later argued that the credit was not an assessable recoupment. The arrangements also generated an imputation benefit of approximately \$3 million through a dividend paid by Orrong Strategies Pty Ltd, resulting in the Commissioner making a determination under section 177EA of the ITAA 1936 that no imputation benefit should arise. The Commissioner also increased previously issued administrative penalties after concluding the original penalty assessments were incorrect.

The Court held that the credit recorded to Michael's income tax account was an assessable recoupment because it related to an amount that had in fact been deducted in an earlier year. Importantly, the Court confirmed that a recoupment can be assessable even where the taxpayer was not legally entitled to the original deduction.

The Court also held that the Commissioner's power and duty to assess administrative penalties is ongoing. If the Commissioner later concludes that a penalty assessment is incorrect, the Commissioner may issue a revised penalty assessment reflecting the correct penalty outcome.

In relation to section 177EA, the Court confirmed that a scheme may consist of a single step and that the relevant purpose is determined objectively by reference to the surrounding circumstances. The decision reinforces the breadth of section 177EA and confirms that the relevant circumstances do not need to form part of the scheme itself.

The Court further reaffirmed that, in Part IVC proceedings, a taxpayer must establish the correct tax liability and cannot merely identify errors in the Commissioner's reasoning. To show that an assessment is excessive, the taxpayer must demonstrate what the correct assessment should have been. Importantly, a departure from the terms of a settlement deed does not, of itself, establish that an assessment is excessive.

The ATO considers that the decision confirms and strengthens its existing administrative practice. In particular, the ATO notes that the decision supports the following propositions:

1. a recoupment may be assessable under section 20-20 where an amount has been deducted in fact, irrespective of whether the taxpayer was legally entitled to the deduction;
2. the Commissioner has a continuing duty and power to reassess administrative penalties where an earlier assessment is considered incorrect;
3. for the purposes of section 177EA, a scheme may be identified broadly, including as a single step, and purpose is determined objectively by reference to the relevant circumstances; and
4. in Part IVC proceedings, excessiveness depends on the correct application of the taxation laws rather than administrative conduct, alleged errors by the Commissioner or departures from settlement arrangements.

The ATO states that the decision does not require any changes to existing ATO guidance and provides further judicial support for its current administrative approach.

w <https://www.ato.gov.au/law/view/document?docid=LIT/ICD/QUD617of2024/00001>

8.5 Safe harbour for non-commercial loss discretion

The ATO has updated *Practical Compliance Guideline* PCG 2022/1, which provides a safe harbour allowing individuals carrying on non-commercial business activities to access the Commissioner's discretion under Division 35 of the ITAA 1997 without lodging a formal application.

Where the safe harbour applies, taxpayers may self-assess on the basis that the Commissioner has exercised the discretion to allow current-year business losses to be claimed.

The update removes COVID-19-related impacts from the safe harbour, including circumstances such as government-imposed lockdowns, business closures and trading restrictions.

The safe harbour is now limited to business activities affected by flood or bushfire events, provided the other conditions in the Guideline are satisfied. Taxpayers affected by other special circumstances may still seek the Commissioner's discretion through the ordinary private ruling process.

The ATO has also extended the operation of the safe harbour to cover the 2026–27 income year, allowing eligible taxpayers affected by flood or bushfire events to continue relying on the streamlined approach.

ATO reference *Practical Compliance Guideline* PCG 2022/1

w <https://www.ato.gov.au/law/view/document?docid=COG/PCG20221/NAT/ATO/00001>

8.6 Dynamic PAYG instalments and protection from GIC

The ATO has released draft *Practical Compliance Guideline* PCG 2026/D3, setting out the Commissioner's proposed compliance approach to the imposition of GIC on excessive PAYG instalment variations where taxpayers use the new dynamic PAYG instalment method.

The dynamic PAYG instalment method uses financial information drawn from a taxpayer's business accounting software to calculate PAYG instalments that better reflect current business performance. The ATO considers that using real-time financial data should reduce the likelihood of significant year-end tax liabilities or overpayment of instalments.

The draft Guideline provides a practical safe harbour from GIC that would otherwise arise where a taxpayer's varied PAYG instalment is less than 85% of the Commissioner's benchmark instalment rate or benchmark tax. To access the compliance concession, taxpayers must:

1. use the dynamic PAYG instalment method for the remainder of the income year once they commence using it;
2. retain records evidencing the inputs, use and outputs of the method;
3. use the exact outputs generated by the method when completing relevant BAS labels;
4. pay the PAYG instalment amount calculated under the method; and
5. have all relevant tax lodgments and payment obligations up to date (subject to existing ATO payment arrangements where applicable).

A key condition of the concession is that taxpayers must take reasonable care when using the method. The ATO states that reasonable care includes using complete and accurate financial information, reconciling data to source records, maintaining appropriate governance and review procedures, and keeping sufficient records to substantiate the calculations.

The ATO has made clear that the concession will not be available where taxpayers use the variation process to defer tax payments or obtain an inappropriate cash-flow advantage.

Comments on the draft are due by 28 August 2026. If finalised in its current form, the Guideline will apply from 1 July 2026. The ATO will be conducting pilot programs and working with software providers and stakeholders during the 2026–27 income year.

TRAP – Reducing PAYG instalments without a reasonable basis can expose the taxpayer to GIC and will likely take the taxpayer outside the protection contemplated by the draft Guideline. The variation process should not be used simply to manage cash flow or defer tax payments. Taxpayers should ensure that any reduction is supported by current, accurate financial information and contemporaneous records explaining why the varied instalment reasonably reflects the expected tax liability.

ATO reference *Draft Practical Compliance Guide* PCG 2026/D3

w <https://www.ato.gov.au/law/view/document?docid=DPC/PCG2026D3/NAT/ATO/00001>

w <https://www.ato.gov.au/businesses-and-organisations/small-business-newsroom/dynamic-payg-instalments-are-coming-have-your-say>

8.7 Updated Foreign Investment Tax checklist

Treasury has released an updated Foreign Investment Tax Checklist, which is now available through the Foreign Investment Portal. The checklist is designed to provide the ATO with information needed to assist Treasury in assessing foreign investment proposals. Applicants will be advised through the Portal whether completion of the checklist is required as part of their application.

The updated checklist requires detailed information about the tax profile and structure of the proposed investment, including:

1. transaction step plans and organisational structures;
2. funding and financing arrangements;
3. cross-border restructures;
4. distributions to offshore entities;
5. related-party financing arrangements;
6. thin capitalisation and debt deduction creation rules; and
7. whether any aspect of the transaction involves arrangements covered by specified ATO Taxpayer Alerts.

The checklist also contains additional sections that must be completed where relevant, including transactions involving:

1. private equity, venture capital or infrastructure funds;
2. intangible asset migration arrangements;
3. managed investment trusts;
4. non-concessional managed investment trust income arrangements; and
5. hybrid mismatch arrangements.

Applicants are encouraged to provide all required information at the time of lodgement, as missing information may delay the assessment process and in some cases may result in conditions being imposed requiring further information to be provided after approval.

w <https://foreigninvestment.gov.au/getting-started/where-to-submit/portal#making-a-submission>

8.8 Calculating and paying super under Payday Super

On 21 June 2026, the ATO released guidance explaining how employers must calculate and pay SG contributions under the new Payday Super regime.

The ATO outlines the following five steps for complying with Payday Super obligations:

1. calculate the SG amount - generally 12% of an employee's qualifying earnings (subject to maximum contribution base);
2. pay contributions into a complying super fund chosen by the employee;
3. ensure contributions are received by the fund within 7 business days of payday (the "QE day");
4. pay and report through SuperStream, usually via payroll software;
5. keep appropriate records of super calculations and payments.

Contributions are automatically applied to the earliest unpaid payday obligation, meaning employers can no longer elect to apply late contributions against particular unpaid SG amounts.

Where employers pay more than the minimum 12% super guarantee amount, excess contributions may be carried forward and applied against future SG obligations for up to 12 months, although this does not affect any obligation to pay higher amounts required under awards or employment agreements.

The ATO further confirms that employers can claim income tax deductions for eligible super contributions and for SGC payments relating to Payday Super obligations from 1 July 2026 onwards.

w <https://www.ato.gov.au/businesses-and-organisations/super-for-employers/paying-super-on-payday/how-to-work-out-and-pay-super>

8.9 Payday Super compliance and data matching

On 21 June 2026, the ATO released guidance outlining how it will monitor and enforce compliance under Payday Super. Under the new regime, the ATO will use data reported through STP and SuperStream to identify unpaid, underpaid or late superannuation contributions much earlier than under the previous quarterly system.

The guidance explains that employers will be required to report year-to-date qualifying earnings through STP on or before each payday. The ATO will use this information to calculate the minimum SG contribution required for each employee and compare it against contribution data reported by superannuation funds, including the amount contributed and the date received.

The ATO emphasises the importance of accurate and timely reporting through both STP and SuperStream. Employers should maintain adequate records, particularly where corrections, adjustments or exceptions arise, as reporting discrepancies may result in the ATO seeking further information or reviewing apparent shortfalls.

For the first year of Payday Super, the ATO has indicated that its compliance focus will be on employers that fail to pay the minimum SG amount, do not make super contributions at all, or do not take reasonable steps to transition to payday reporting and payment arrangements. Employers who are genuinely attempting to comply, make contributions for each payday and promptly correct errors will generally not be the focus of compliance action during the transitional period.

The ATO also notes that its longer-term compliance approach will increasingly focus on employer behaviour, payment history and recurring patterns of non-compliance. As a result, Payday Super is expected to involve significantly greater data matching and earlier compliance action than under the previous quarterly system.

w <https://www.ato.gov.au/businesses-and-organisations/super-for-employers/missed-or-late-payday-super-payments/how-we-check-payday-super-compliance>

8.10 Annual leave loading and Payday Super

On 27 June 2026, the ATO released guidance on the treatment of annual leave loading for Payday Super purposes. The ATO confirms that annual leave loading is generally included in an employee's qualifying earnings and therefore forms part of the SG calculation. However, annual leave loading can be excluded where it is paid to compensate an employee for the lost opportunity to work overtime while on leave.

To exclude annual leave loading from qualifying earnings, employers must have written evidence demonstrating that the payment is linked to lost overtime opportunities. This may be contained in an award, enterprise agreement or other documented policy that is understood by both the employer and employees. Where no such evidence exists, the ATO states that employers should either obtain the necessary documentation or begin including annual leave loading in qualifying earnings when calculating super guarantee contributions.

The ATO acknowledges that some employers may have been uncertain about the historical treatment of annual leave loading. It has indicated that it will not review prior periods where an employer self-assessed that annual leave loading was paid in lieu of overtime opportunities, provided there is no evidence that the payment was made for another purpose.

However, where evidence indicates that annual leave loading was paid for reasons other than compensating for lost overtime, the amount should have been included in qualifying earnings. Failure to do so may result in a SG shortfall and exposure to the SGC.

w <https://www.ato.gov.au/businesses-and-organisations/super-for-employers/paying-super-on-payday/what-payments-are-qualifying-earnings/super-on-annual-leave-loading>

8.11 Record keeping requirements for Payday Super

On 27 June 2026, the ATO released guidance outlining the records employers must keep to demonstrate compliance with their Payday Super obligations.

The guidance states that employers must keep records showing they offered eligible employees a choice of super fund within 28 days of commencing employment. This includes evidence that the employee was provided with a standard choice form (or equivalent documentation), details of the employee's fund selection, employees

who were not entitled to choose a fund, the outcome of any stapled fund request, and evidence that the employer's nominated default fund offers a MySuper product.

Employers must also retain records of their super guarantee calculations and contributions, including the super fund receiving the contribution, the amount contributed for each employee and the qualifying earnings used to calculate the SG liability. Evidence may include super fund receipts, contribution confirmations and bank records. The ATO emphasises that employers remain responsible for maintaining these records even where a clearing house is used.

Particular attention should be given to record-keeping for higher-risk payroll and reporting scenarios, including new employees, employees who change super funds, out-of-cycle payments of qualifying earnings, exceptional circumstances determinations, overpayments, reimbursements, STP corrections and incomplete STP reporting. Records may also be required where the ATO is unable to match employee or employer information with contribution data reported by super funds.

The ATO confirms that employers may use any record-keeping system provided the records adequately explain transactions and are maintained in English, or can readily be converted into English. Records relating to super contributions must generally be retained for at least 5 years from the date the contribution is made. Records relating to an employee's choice of super fund must generally be retained for at least 5 years from the date the employee commenced employment, or chose or changed their nominated fund.

The guidance also addresses situations where records have been lost or damaged. In these circumstances, employers may reconstruct or estimate super guarantee records using information obtained from employees, banks, superannuation funds and PAYG withholding records, provided the basis of the estimate is appropriately documented and communicated.

For more information, visit <https://www.ato.gov.au/businesses-and-organisations/super-for-employers/setting-up-super-for-your-business/record-keeping-for-payday-super>

8.12 How Payday Super affects SMSFs

On 27 June 2026, the ATO released guidance on how Payday Super will apply to SMSFs.

SMSFs that receive contributions from unrelated employers must comply with the new Payday Super and SuperStream requirements. In particular, SMSFs must ensure their bank account can receive payments through the New Payments Platform and that they maintain an active electronic service address (**ESA**).

SMSFs that are not up to date with their reporting and administrative obligations may be unable to receive contributions. Employers can use Super Fund Lookup to confirm whether an SMSF is able to accept contributions.

The ATO confirmed that the timeframe for allocating or rejecting contributions has not changed. SMSFs continue to have 28 calendar days after the end of the month in which a contribution is received to either allocate or reject that contribution.

The guidance emphasises the importance of maintaining an active ESA. Under the upgraded SuperStream system, employers can submit a member verification request to confirm that an SMSF's ESA is active before making a contribution. If the ESA is not active, contributions may be delayed or rejected. In those circumstances, the employer may become liable for the SGC if the contribution does not reach the SMSF in full within the required timeframe. To avoid this outcome, employers can instead pay contributions to the employee's stapled super fund or, if there is no stapled fund, the employer's default fund.

The ATO also confirmed that SG contributions to closely held SMSFs (i.e. contributions from a related-party employer) must be made for each payday under the new regime. However, these contributions remain excepted from the SuperStream requirements and do not need to be made through SuperStream. Existing STP reporting obligations and concessions continue to apply.

w <https://www.ato.gov.au/businesses-and-organisations/super-for-employers/paying-electronically-through-superstream/how-payday-super-affects-smsfs>

8.13 Missed Payday Super contributions and voluntary disclosures

The ATO has released guidance on what employers should do if they miss a SG contribution under the Payday Super regime and how the voluntary disclosure process operates. Employers are encouraged to rectify missed contributions as soon as possible by paying outstanding amounts directly to employees' super funds. Even where full payment is not possible, partial payments can reduce the SGC ultimately payable.

Where a contribution is unpaid, paid late, underpaid or paid to the wrong fund, the employer will generally become liable for the SGC and receive an assessment from the ATO. The SGC includes the SG shortfall, notional earnings and may include an administrative uplift amount of up to 60% of the unpaid super and notional earnings. The ATO also notes that reporting errors or incomplete information may result in apparent shortfalls where contributions have in fact been made.

A voluntary disclosure must be lodged before the ATO issues an assessment and can reduce the administrative uplift component of the SGC. The reduction can be substantial where the disclosure is made shortly after the relevant payday and, in some cases, may reduce the uplift amount to nil where the employer has a strong compliance history. Employers can also use the voluntary disclosure process to increase a previously disclosed shortfall for the same qualifying earnings day.

The ATO further encourages employers to pay outstanding super contributions before an assessment is issued, as late contributions reduce the SG shortfall on which the SGC is calculated. Employers should also retain records of the error and the corrective action taken.

For the first year of Payday Super (1 July 2026 to 30 June 2027), the ATO will adopt a practical compliance approach and generally will not allocate compliance resources to employers who are attempting to pay super on each payday and who correct errors promptly. Instead, compliance activity will focus on employers that fail to rectify mistakes, do not attempt to transition to payday contributions, or fail to pay SG obligations altogether.

Where an SGC assessment is issued, the liability becomes due and payable on the date of assessment. General interest charge applies to unpaid SGC liabilities and is not deductible. While payment arrangements may be available, they do not prevent the imposition of late payment penalties, which are non-remittable and non-deductible.

TIP – To avoid a non-payment of superannuation contributions leading to a director penalty notice (DPN) that is a lockdown DPN, a voluntary disclosure statement must be lodged with the ATO within 60 days of the qualifying earnings day. If the disclosure statement is not lodged within that period, the director will lose the ability to cause the penalty to be remitted by placing the company into administration, liquidation or small business restructuring after the DPN is issued.

w <https://www.ato.gov.au/businesses-and-organisations/super-for-employers/missed-or-late-payday-super-payments/what-to-do-if-you-miss-a-payday-super-contribution>

w <https://www.ato.gov.au/businesses-and-organisations/super-for-employers/missed-or-late-payday-super-payments/what-to-do-if-you-miss-a-payday-super-contribution/making-a-voluntary-disclosure-for-payday-super>

8.14 Updated guidance on crypto reporting

On 29 June 2026, the ATO updated its guidance on common mistakes made by taxpayers when reporting crypto asset transactions.

The ATO notes that many taxpayers rely solely on cryptocurrency exchanges to retain transaction records. However, taxpayers are expected to maintain their own detailed records of all crypto asset transactions, including purchases, disposals, transfers, crypto-to-crypto swaps, staking rewards and airdrops. The ATO also recommends regularly exporting and backing up transaction histories, as exchanges may close and access to accounts or wallets may be lost.

The guidance further emphasises that all crypto transactions must be recorded in Australian dollars based on their market value at the time of the transaction. This requirement applies even where no Australian dollars are involved, such as crypto-to-crypto swaps.

The ATO reminds taxpayers that tokens received through staking rewards or airdrops are generally treated as ordinary income. Their market value in Australian dollars should usually be included in the taxpayer's return as other income.

The guidance also warns against assuming that tax consequences only arise when crypto assets are converted into Australian dollars. A CGT event can also occur where crypto assets are exchanged for other crypto assets, used to acquire goods or services, or reinvested into other tokens. These disposal events must generally be reported even where no cash is received.

In addition, the ATO reiterates that crypto assets held for investment purposes are not personal use assets and are therefore not exempt from CGT merely because they are occasionally used to make purchases.

Finally, the ATO confirms that taxpayers may be able to claim a capital loss where crypto assets are lost or stolen, provided they can demonstrate ownership and retain appropriate supporting evidence. The ATO also warns of increasing scam activity targeting crypto investors and encourages taxpayers to maintain appropriate cyber security practices.

w <https://www.ato.gov.au/tax-and-super-professionals/for-tax-professionals/tax-professionals-newsroom/clarity-on-crypto-reporting>

8.15 Independent report on ATO small business debt recovery

The Australian National Audit Office (ANAO) has found that the ATO's management of small business collectable debt is only partly effective, with collectable small business debt increasing from \$16.5 billion in 2018-19 to \$35.9 billion in 2024-25. Small business now accounts for 66.1% of all collectable tax debt, with over 1.3 million small businesses owing an average of approximately \$26,800 each. The ANAO noted that debt recovery measures were significantly reduced during COVID-19, natural disasters and other economic disruptions, contributing to a deterioration in payment culture and a substantial increase in aged debt.

While the ATO has implemented a broad debt management framework and resumed firmer recovery action, the ANAO considered that the ATO lacks adequate small business-specific performance measures, targets and reporting. In particular, the ATO has acknowledged that the risk posed by small business debt remains outside its tolerance levels and is unlikely to be brought back within tolerance in the near term.

The ANAO made eight recommendations, all accepted by the ATO:

1. clarify governance accountabilities and reporting lines for small business debt;
2. improve public reporting on debt performance and recovery outcomes;

3. set measurable targets to reduce small business collectable debt and evaluate debt recovery initiatives;
4. review the effectiveness of taxpayer engagement strategies and communication channels;
5. regularly monitor and retrain debt analytics and machine-learning models;
6. establish benchmarks for debt recovery performance measures;
7. improve reporting on how efficiently debts move through recovery pathways; and
8. update debt collection unit cost calculations, including external collection agency costs, to improve return-on-investment reporting.

The report also noted declining response rates to ATO debt communications and questioned whether current engagement strategies are sufficiently effective in changing taxpayer payment behaviour.

w <https://www.anao.gov.au/work/performance-audit/australian-taxation-office-management-of-small-business-collectable-debt>

9. Tax professionals

9.1 TPB factsheet on AML/CTF obligations and TASA requirements

On 15 June 2026, the TPB released a factsheet to assist registered tax practitioners in preparing for the expanded AML/CTF regime that commenced on 1 July 2026. The factsheet focuses on the interaction between AML/CTF obligations and existing obligations under the TASA, including the Code of Professional Conduct.

The TPB notes that the AML/CTF regime will only apply where a tax practitioner provides a designated service with the requisite Australian connection. Relevant designated services may include assisting with property transactions, business acquisitions and disposals, company and trust restructures, corporate financing transactions, acting as a trustee or company officeholder, and providing registered office or business addresses.

The factsheet identifies several areas where the AML/CTF and TASA regimes overlap:

1. Client verification: compliance with AML/CTF customer due diligence requirements will generally satisfy the TPB's minimum proof of identity requirements for client verification;
2. Confidentiality: reporting suspicious matters or transactions to AUSTRAC in accordance with AML/CTF obligations will not breach a practitioner's confidentiality obligations under the Code of Professional Conduct or the Code Determination;
3. Record keeping: AML/CTF records generally need to be retained for 7 years, whereas TASA records are generally retained for 5 years. Although the obligations remain separate, the TPB notes that the same records may often satisfy both regimes;
4. Training and due diligence: practitioners may be able to leverage existing TASA governance, supervision, training and quality management processes to assist in meeting AML/CTF personnel due diligence and training requirements; and
5. Outsourcing: practitioners may outsource AML/CTF functions or tax agent service functions, but remain responsible for exercising appropriate due diligence and ensuring compliance under both regulatory frameworks.

The TPB also highlights that the AML/CTF and TASA regimes contain separate reporting frameworks. Under the AML/CTF regime, practitioners may be required to report suspicious matters and certain transactions involving clients to AUSTRAC. By contrast, the TASA breach reporting regime is directed at the conduct of registered tax practitioners. In some circumstances, the same conduct may trigger reporting obligations under both regimes.

The factsheet encourages tax practitioners to assess whether any of their services are designated services, undertake appropriate AML/CTF risk assessments, implement a documented AML/CTF program, appoint an AML/CTF compliance officer, train staff, and ensure systems and processes are in place.

TIP – for more information about the AML/CTF requirements, see the AUSTRAC website here:

<https://www.austrac.gov.au/new-austrac>

w <https://www.tpb.gov.au/tpb-releases-factsheet-help-registered-tax-practitioners-prepare-expanded-amlctf-regime>

w https://www.tpb.gov.au/sites/default/files/2026-06/Changes%20to%20the%20anti-money%20laundering%20and%20counter-terrorism%20financing%20laws_Factsheet.pdf

9.2 ATO compliance checks on "other refundable tax offsets"

The ATO has highlighted a significant increase in incorrect claims for the 'Other refundable tax offsets' label in individual income tax returns, noting that 52% of agent-lodged claims reviewed in 2025 were incorrect and often required subsequent amendment. As a result, the ATO has indicated that it will apply increased scrutiny to claims made at this label.

The ATO reminds practitioners that taxpayers can only claim an amount at this label in limited circumstances. For the 2025 income year and earlier years, claims are generally confined to taxpayers who:

1. are the principal beneficiary of a special disability trust that has paid tax; or
2. have received exploration credits under the junior mineral exploration incentive.

For special disability trust claims, the correct code is "C", and eligibility depends on the trust satisfying the relevant qualifying requirements at the end of the income year.

The ATO also notes that the junior mineral exploration incentive ceased on 30 June 2025, meaning the 2025 income year was the last year in which exploration credits could be claimed. Exploration credit claims cannot be made for later income years.

w <https://www.ato.gov.au/tax-and-super-professionals/for-tax-professionals/tax-professionals-newsroom/check-eligibility-for-other-refundable-tax-offsets>

9.3 ATO advises clients to link myGov to ATO

The ATO has strengthened the identity verification process for individuals linking ATO online services to their myGov account as part of its Counter Fraud Program. As a result, taxpayers may be asked a broader range of questions to verify their identity before the link can be established. Depending on the information held by the ATO, verification questions may relate to:

1. bank account details;
2. superannuation account details;
3. notices of assessment;
4. Centrelink payment summaries;
5. dividend statements;
6. PAYG payment summaries;
7. travel documents;
8. managed fund statements;
9. TFN application lodgment receipts;
10. ATO refund amounts;
11. ATO payment plan details; and
12. recent payslips.

The number and type of questions asked will vary depending on the information available for the individual. The ATO recommends using myID to sign in to myGov and access ATO online services.

w <https://www.ato.gov.au/tax-and-super-professionals/for-tax-professionals/tax-professionals-newsroom/enhancing-how-clients-link-the-ato-to-mygov>