Tax Update

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Contents

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

1. Tax Update Pitstop

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

Tax Update Matter	Impact Summary	Further Detail
Item 2.1 Bendel	**What happened?** The High Court dismissed the Commissioner’s appeal and held, by majority, that a corporate beneficiary’s unpaid present entitlement was not a “loan” within section 109D(3) of Division 7A. The majority held that the trustee’s resolutions had set aside trust income on separate trust for the corporate beneficiary, rather than creating an immediate debt, and that the corporate beneficiary’s mere failure to call for payment did not involve any positive act of providing financial accommodation. **Why it matters?** The decision is significant because it rejects the Commissioner’s long-standing approach that an unpaid present entitlement can itself amount to a Division 7A loan. It confirms that not every debtor-creditor or trust-beneficiary relationship falls within section 109D(3), and it reinforces the importance of Subdivision EA as the provision directed to arrangements where trust entitlements of corporate beneficiaries are left unpaid and trust funds are advanced to shareholders or their associates.	Page 8
Item 2.2 and Item 2.3 Ward and Buile	**What happened?** In *Ward*, the ART held that an Australian citizen with an Australian domicile was nevertheless a foreign resident because she had established a permanent place of abode outside Australia after many years of settled life overseas. In *Buile*, the ART held that, although the taxpayer had strong family and financial ties to Australia, the Australia–Singapore DTA tie-breaker treated him as solely resident in Singapore because his personal and economic relations were closer to Singapore. **Why they matter?** Together, the decisions are a strong reminder that residency disputes turn on close factual analysis and that domestic residency and treaty residency are separate questions. *Ward* highlights the risk of losing access to the main residence exemption when a former Australian home is sold while the taxpayer is a foreign resident, while *Buile* shows that even if Australian residency may continue under domestic law, a DTA may still allocate exclusive residence to the foreign country.	Pages 15 & 18
Item 2.4 Cameron	**What happened?** The Federal Court held that interest paid by the Cameron Family Trust on sub-trust loans put in place under PS LA 2010/4 was not deductible under section 8-1, because the arrangements merely	Page 20

	converted unpaid present entitlements into interest-bearing debts and did not involve any borrowing or application of funds in an income-producing activity of the trust. The Court also held that the taxpayers had not discharged their onus of proving that no valid family trust election existed, with the result that FTDT applied to distributions made outside the family group. **Why it matters?** The decision is important because it rejects the argument that interest on PS LA 2010/4 sub-trust arrangements is deductible merely because trust profits remain available to a business group. It also highlights the evidentiary difficulty of disproving a historical family trust election once contemporaneous returns record that an election was made, and is a reminder that FTDT can produce very significant liabilities when distributions are made outside the family group.	
Item 4.2 Capital gains tax adjustments	**What happened?** The Treasury Laws Amendment (Tax Reform No. 1) Bill 2026 proposes major CGT reforms from 1 July 2027. Broadly, the Bill would remove the general 50% CGT discount for individuals and trusts, replace it with indexation of cost base for eligible assets, preserve a discount only for certain new residential dwellings and affordable housing, and introduce transitional rules that defer pre-1 July 2027 gains until a later realisation event. **Why it matters?** If enacted, the changes would fundamentally alter how capital gains are calculated for individuals and trusts, including the treatment of pre- and post-1 July 2027 gains, the ordering and categorisation of gains, and eligibility for concessions. The proposals will be particularly important for owners of long-held assets, trust structures and property investors, and they will require careful modelling before transactions occurring on or after 1 July 2027.	Page 49
Item 4.3 Negative gearing	**What happened?** The Treasury Laws Amendment (Tax Reform No. 1) Bill 2026 proposes major changes to negative gearing from 1 July 2027. Broadly, deductions for net rental losses on residential property would no longer be immediately available against salary and other income, but would instead be quarantined and carried forward, subject to limited exceptions for certain new residential dwellings and affordable housing. **Why it matters?** If enacted, the changes would significantly alter the after-tax economics of holding loss-making residential investment property. The reforms will be particularly important for individuals and trusts investing in established housing stock, and they will require careful modelling of cashflow, ownership structure and the availability of any concession for new housing or affordable housing projects.	Page 66

2. Detailed case summaries

2.1 Bendel – Division 7A and UPEs

Facts

Steven Bendel was the sole director and shareholder of Gleewin Pty Ltd. Gleewin Pty Ltd was the trustee of The Steven Bendel 2005 Discretionary Trust (**2005 Trust**). Steven was a beneficiary of the 2005 Trust, and was also the sole director and shareholder of Gleewin Investments Pty Ltd, a corporate beneficiary.

In the years ended 30 June 2014 to 30 June 2017, the 2005 Trust made Steven presently entitled to a share of its income and, from 2013 until 2017, the 2005 Trust made Gleewin Investments Pty Ltd presently entitled to a share of its income.

The trust deed for the 2005 Trust contained terms which allowed the trustee to determine to set aside, pay or apply any part of, or all of the income of the trust in each year for any of the beneficiaries of the trust. In relation to amounts set aside for a beneficiary, the trust deed provided that "[a]ny amount set aside for any beneficiary ...shall cease to form part of the Trust Fund and upon such setting aside ... shall thenceforth be held by the Trustee on a separate trust for such person absolutely …".

The trust deed then provided the trustee with the power to invest amounts held on separate trusts for beneficiaries, in such manner as the trustee thinks fit.

During each of the 2013 to 2017 years, the financial affairs of the 2005 Trust were managed as follows:

1. Steven caused the 2005 Trust to advance money from its resources to him or for his benefit from time to time;
2. the advances to Steven were recorded with the description 'Drawings' by way of journals posted to a beneficiary account, 'Bendel Current Account';
3. distributions of (or creation of entitlements to) the 2005 Trust's income or capital were made from time to time;
4. when the amounts of the distributions (entitlements) were ascertained, journals were posted to the Bendel Current Account; and
5. for each year, Steven's entitlement to income from the 2005 Trust was less than the balance owed by him to the 2005 Trust so that his entitlement to the 2005 Trust's income was always fully discharged or paid (i.e. the current account was always in debit).

For each of the years under review, the 2005 Trust reported Steven's entitlement as discharged and paid (due to the set off against amounts owed by Steven to the 2005 Trust).

The financial affairs of Gleewin Investments Pty Ltd were similarly managed. During each of the 2013 to 2017 years:

1. Steven caused the 2005 Trust to meet the tax liabilities and other expenses of Gleewin Investments Pty Ltd;
2. when the expenses of Gleewin Investments Pty Ltd were met by the 2005 Trust, entries were made to both entities' accounts – in the 2005 Trust accounts, expenses were recorded in the Gleewin Investments Current Account, and in the accounts of Gleewin Investments Pty Ltd, the expenses were recorded in the account named 'Steven Bendel 2005 Discretionary Trust';
3. amounts belonging to Gleewin Investments Pty Ltd (PAYG tax refunds) were received by the 2005 Trust and not passed on. These amounts also were posted to the same accounts by or on behalf of each of

the 2005 Trust and Gleewin Investments Pty Ltd and reflected an increase in the obligations of the 2005 Trust to Gleewin Investments Pty Ltd; and

4. for each year the entitlement of Gleewin Investment Pty Ltd to income from the 2005 Trust was also posted to the Gleewin Investments Current Account, and for each of the 2013 to 2017 years that income entitlement was greater than the taxation and other expenses paid on behalf of Gleewin Investments Pty Ltd by the 2005 Trust from its resources so that its entitlement to the income of the 2005 Trust was always recorded as at least partly outstanding (i.e. the loan account was always in credit in the 2005 Trust).

The entitlements of Gleewin Investments Pty Ltd were reported in the 'Gleewin Investments Current Account' showing a running balance of unpaid present entitlements (UPEs).

Despite the requirements under the trust deed, Gleenwin Pty Ltd did not report any asset held separately, did not purport to alienate or create any interest in any identified asset to meet or correspond with the UPEs and did not report or account for any separate trust.

<u>ATO audit</u>

The ATO conducted an audit of Steven's tax affairs, during which the UPEs of Gleewin Investments Pty Ltd were discovered.

On 4 September 2019 the ATO issued amended assessments contending that:

1. the UPEs of Gleewin Investments Pty Ltd to prior year trust income comprised loans within the meaning of section 109D(3) of the ITAA 1936 made by Gleewin Investments Pty Ltd in the current year to the 2005 Trust;
2. those loans were taken to be dividends paid within the meaning of section 109D(1) of the ITAA 1936;
3. those dividends were taken to be paid out of the profits of Gleewin Investments Pty Ltd by operation of section 109Z of the ITAA 1936;
4. the dividends taken to be paid out of profits were assessable income by operation of section 44(1) of the ITAA 1936 and included in the section 95 net income of the 2005 Trust; and
5. the beneficiaries who were entitled to the income of the 2005 Trust were liable to be assessed under section 97 for a proportion of each such dividend determined by reference to their proportionate shares of the income of the 2005 Trust.

Section 109D(3) provides as follows:

> *What is a loan?*
>
> *(3) In this Division,* ***loan*** *includes:*
>
> *(a) an advance of money; and*
>
> *(b) a provision of credit or any other form of financial accommodation; and*
>
> *(c) a payment of an amount for, on account of, on behalf of or at the request of, an entity, if there is an express or implied obligation to repay the amount; and*
>
> *(d) a transaction (whatever its terms or form) which in substance effects a loan of money.*

The ATO considered that a UPE is a loan under either paragraph (b) or (d).

Objections were lodged on 1 November 2019. On 23 March 2021 the objections were disallowed for the 2014 to 2016 years, and allowed in part for the 2017 year. The ATO also issued penalty assessments.

Steven sought review in the AAT.

The AAT concluded that there was no "loan" under section 109D(3) of the ITAA 1936 as a loan for this purpose 'does not go so far as to embrace the rights in equity created when entitlements to trust income are created but not paid, and remain unpaid'. The AAT found that 'the balance of an outstanding or unpaid present entitlement of a corporate beneficiary of a trust, whether held on a separate trust or otherwise, is not a loan to the trust'.

This conclusion was reached having regard to the following reasons:

1. the policy of Division 7A to tax those who enjoy the benefit of corporate profits without paying the tax that would arise had the company paid dividends in the usual way;
2. statutory construction principles call for:
3. regard to statutory context and legislative history; and
4. potentially competing provisions to be construed in a manner which 'gives effect to harmonious goals';
5. that there is no tiebreaker provision which mandates which of two competing assessing provisions would apply if an unpaid present entitlement constitutes a loan within the meaning of section 109D(3);
6. that the section 109RB discretion is not designed to allow relieving discretions to be exercised outside the section 109RB(1)(b) gateways of honest mistakes and inadvertent omissions and, therefore, is not a discretion that would relieve inappropriate double taxing;
7. Subdivision EA being a specific and, therefore, a lead provision containing an express set of rules that can be regarded as a particular path that has been chosen to deal with the taxation effect of unpaid present entitlements in favour of corporate beneficiaries in prescribed circumstances;
8. the lack of clarity as to the nature of an unpaid present entitlement and the separate trust concept;
9. the expressed explanation accompanying the former section 109UB of the ITAA 1936 to the effect that:
10. an unpaid present entitlement in favour of a corporate beneficiary and a contemporaneous loan by the trustee to a shareholder in the corporate beneficiary (or associate) is in substance a loan by the company to the shareholder; and
11. an amount to which a company is entitled 'held on a secondary trust for the benefit of the company' is regarded as unpaid and within the ambit of section 109UB of the ITAA 1936;
12. the operation of Subdivision EA which taxes the shareholder in the foregoing circumstances as if the company had lent money directly to that shareholder which falls squarely within the Division 7A policy framework; and
13. there being no provision in either of the tax acts that expressly allows assessment of two people arising out of the same circumstance with one of those people potentially not enjoying any benefit of the corporate profits that are the underlying cause of the assessment.

The AAT also confirmed that the amount taken to be a dividend paid by Gleewin Investments Pty Ltd to the 2005 Trust was not the same as the amount determined to be assessable income by operation of sections 95 and 97 for Gleewin Investments Pty Ltd. This meant that section 6-25 of the ITAA 1997 which prevents double taxation of the 'same amount' would not apply and tax could be applied both to the distribution of trust income and the deemed dividend arising from an unpaid present entitlement.

The ATO appealed to the Full Federal Court, but the appeal] was dismissed. The Full Court held that section 109D(3) of the ITAA 1936 requires a transaction creating an obligation to repay, rather than merely an obligation to pay, and confirmed that not all debtor-creditor relationships constitute loans for Division 7A purposes.

The ATO appealed to the High Court.

Issue

Is an outstanding unpaid present entitlement a 'loan' within the meaning of section 109D(3) of the ITAA 1936?

Decision

Three judgments were delivered in the High Court. A single majority judgment of Gageler CJ, Gordon, Edelmen, Steward and Gleeson JJ and two dissenting judgments by Jagot J and Beech-Jones J.

<u>Majority judgment</u>

Legal effect of the trustee's resolutions (the "set aside" issue)

The majority began by determining the legal effect of the resolutions under the trust deed, because that characterisation was necessary to be considered before to any section 109D(3) analysis.

The majority held that a trustee becomes a debtor to a beneficiary only where there is an unconditional obligation to pay money, such that nothing remains to be done except payment, or where the trustee admits the debt: see paragraph [29]. In that circumstance, the equitable relationship of trustee and beneficiary may be overlaid by a debtor-creditor relationship: see paragraph [30]. Whether that occurs depends on the terms of the trust deed, the language of the relevant resolution, and, where relevant, the conduct of the beneficiary. Applying those principles, the majority distinguished cases such as *Chianti Pty Ltd v Leume Pty Ltd* (2007) 35 WAR 488 and *Fischer v Nemeske Pty Ltd* (2016) 257 CLR 615, where the resolutions were expressed in terms that created an immediate obligation to pay or credit amounts to beneficiaries: see paragraphs [30] to [34].

By contrast, the resolutions in this case, read with the trust deed, did not effect a final distribution giving rise to an unconditional obligation to pay: see paragraphs [37]. Rather, they operated to set aside income and hold it on separate trust terms for the beneficiary, with the trustee retaining powers of investment. Consistently with *Oswal v Federal Commissioner of Taxation* (2013) 233 FCR 110, that arrangement created trust obligations in respect of specific property, not a debtor-creditor relationship: see paragraphs [36] and [43].

The majority noted that, before the resolutions, Gleewin Investments was merely the object of a discretionary fiduciary power: see paragraph [37]. Once the trustee resolved to "set aside" the income under cl 3(1)(a), read with cl 3(2)(c), and cl 3(5) of the deed, the amounts ceased to form part of the general trust fund and were thereafter held on separate trust for Gleewin Investments, subject to the trustee's power to invest or otherwise deal with them pending payment: see paragraph [38]. The majority emphasised that the deed distinguished between setting aside and payment, and that the phrase "pending payment" contemplated an intervening state of affairs in which the amounts were held on separate trust rather than immediately payable as a debt: see paragraph [39]. In that context, payment would only become obligatory upon a further step, such as a call for payment by the beneficiary (in circumstances where the beneficiaries was entitled to call for payment under the principles in *Saunders v Vautier* (1841) Cr & Ph 240) or an admission of indebtedness by the trustee: see paragraph [40].

The majority also rejected the Commissioner's reliance on the language of "distribution" in the resolutions, holding that, read in context, it referred only to the future consequence of the amounts having been set aside and did not alter the express legal effect of the resolutions: see paragraph [41].

The majority held that, for the above reasons, the resolutions created trust obligations in respect of identified property, not an unconditional debt due to Gleewin Investments: see paragraphs [41]-[43].

The majority rejected the Commissioner's contention that any separate trust failed for uncertainty of subject matter: see paragraph [48]. Their Honours held that the resolutions identified with sufficient certainty the property the subject of the separate trusts by reference to the "net income" of the 2005 Trust for each year, allocated in defined percentages between Gleewin Investments and Steven: see paragraph [48]. That concept was ascertainable by reference to section 95 of the ITAA 1936 and was therefore capable of identifying the relevant trust property with sufficient precision: see paragraph [48]. In that respect, the majority distinguished the dissenting reasoning of Turner J in *Commissioner of Inland Revenue v Ward* [1970] NZLR 1 (see paragraph [46], and drew support from *Associated Alloys Pty Ltd v ACN 001 452 106 Pty Ltd (In liq)* (2000) 202

CLR 588 as authority that trust property may be sufficiently certain where identified by reference to a proportionate interest in an ascertainable fund: see paragraph [49].

The majority also rejected the contention that the absence of physical segregation of assets prevented the creation of a valid separate trust, holding that the net income of the trust could be identified at year end as a proportion of the trust fund and that no question of breach of trust by failure to segregate arose on the appeal see paragraph [50].

Accordingly, the amounts set aside each year were validly impressed with separate trust obligations in favour of Gleewin Investments and Steven.

Did trustee admit unpaid present entitlement as a debt?

The majority also rejected the Commissioner's contention that the accounting treatment of the unpaid present entitlement amounted to an admission by the trustee that it was indebted to Gleewin Investments: see paragraph [52]. Their Honours held that whether the accounts could be read in that way was a question of fact, and the difficulty for the Commissioner was that the AAT had made no finding of admission and the evidence did not compel such an inference see paragraph [53]. The entry in the balance sheet described as the "Beneficiaries Current Account", in which Gleewin Investments appeared under a liabilities heading, was equivocal see paragraph [54]. It was not classified as either a current or non-current liability, no expert evidence was led as to what the entry represented or whether the accounts complied with any relevant accounting standard, and the entry was equally capable of reflecting the setting aside of amounts subject to a separate trust rather than an unconditional debt see paragraph [54].

The majority also noted that a corresponding "Beneficiaries Current Account" appeared on the asset side of the trust accounts in relation to Steven, which was consistent with amounts lent to him, and that the accounts of Gleewin Investments referred to a current asset described as "Steven Bendel 2005 Discretionary Trust", but again without any explanatory evidence. In those circumstances, the accounting records did not establish any admission of indebtedness by the trustee: see paragraph [55].

The majority therefore concluded that the resolutions did not make Gleewin, as trustee, a debtor of Gleewin Investments, but instead set aside the trust income on separate trust terms, with no action in money had and received arising unless and until payment was called for or indebtedness was admitted: see paragraph [57].

Construction of section 109D(3) of the ITAA 1936

The majority noted that the Commissioner relied on section 109D(3)(b) (provision of financial accommodation) and section 109D(3)(d) (a transaction that is in substance a loan) as the basis on which the unpaid present entitlement was a loan for Division 7A.

In relation to section 109D(3), the majority rejected the Commissioner's contention that the unpaid present entitlement involved a "provision of financial accommodation" within paragraph (b): see paragraph [72]. Their Honours held that the concept of financial accommodation requires some positive act by the company involving the supply, grant or making available of pecuniary assistance, and therefore contemplates an anterior transfer of value or bilateral dealing: see paragraph [72]. That construction was supported by the structure and language of Division 7A, which is directed to the active movement of value from a private company to a shareholder or associate. In particular, section 109D(1) refers to a company "making" a loan, section 109D(3) speaks of an "advance", "provision", "payment" or "transaction", and section 109D(4) provides that a loan is made when an amount is paid or something described in subsection (3) is done. Read together, those provisions require the company to do something that effects the transfer of value.

On the facts, however, Gleewin Investments did nothing of that kind. Its mere failure to demand payment of the entitlement did not involve any provision of time, credit or other pecuniary assistance, and mere inactivity could not satisfy the statutory language of "advance", "provision", "payment" or "transaction": see paragraph [72].

The majority held that the Commissioner's reliance on section 109D(3)(d) failed for substantially the same reasons as his reliance on paragraph (b): see paragraph [74]. Their Honours considered that mere inaction, or acquiescence in the retention of funds, could not amount to a "transaction" which in substance effected a loan, because the ordinary meaning of that term connotes some interchange or interaction between entities: see paragraph [74]. That conclusion was reinforced by the fact that the legal relationship between Gleewin as trustee and Gleewin Investments remained one of trustee and beneficiary, not debtor and creditor. The majority further observed that the Commissioner's construction would lead to the improbable consequence that a private company beneficiary capable of calling for payment under the rule in *Saunders v Vautier* [1841] EngR 765 would be taken to make a loan for Division 7A purposes merely by not doing so. For those reasons, paragraph (d) could not apply: see paragraph [74].

Statutory context

The majority held that the broader statutory context reinforced the conclusion that Gleewin Investments' forbearance did not amount to a loan within section 109D(3): see paragraph [75]. Their Honours reasoned that the repeated references in Division 7A to amounts being "repaid", and to an obligation to "repay", confirm that even the extended definition of "loan" retains a unifying requirement that value be supplied subject to an obligation of repayment: see paragraph [76]. In that respect, the majority considered that section 109D(3) is not confined to advances of money, but extends to any transfer of value burdened with an obligation of repayment.

The majority also relied on the structure of Division 7A, particularly section 109F(6), which deems a debt to be forgiven where a reasonable person would conclude that the private company will not insist on payment: see paragraph [77]. Their Honours held that, if mere forbearance could itself amount to a loan under section 109D(3), section 109F(6) would be rendered incoherent, because a deemed dividend would already arise at the moment the company failed to insist on payment. The use of an objective "reasonable person" test in section 109F(6) also reinforced that Division 7A operates by reference to objectively ascertainable facts, rather than the subjective intention or forbearance of a private company: see paragraph [78].

Legislative history

The majority further held that the legislative history strongly supported the conclusion that the Commissioner had taxed the wrong taxpayer: see paragraph [79]. Their Honours noted that Parliament had long been aware of the issue of unpaid present entitlements to corporate beneficiaries and had responded by enacting provisions, ultimately in Subdivision EA, directed to taxing shareholders or their associates where trust entitlements were effectively lent or paid to them. Parliament had not adopted proposals that would instead have taxed the trustee or the corporate beneficiary as if there had been no distribution: see paragraph [83]. That history confirmed that Division 7A was intended to operate in this area through Subdivision EA, not by treating the trustee's retention of a corporate beneficiary's entitlement as a loan under section 109D(3). For those reasons, the majority concluded that the Commissioner's construction of the expanded definition of "loan" must be rejected.

<u>Jagot J's dissent</u>

Justice Jagot approached the case from a fundamentally different starting point than the majority, placing decisive emphasis on the breadth, purpose, and practical operation of section 109D(3): see paragraph [90]. Her Honour accepted that the statutory definition of "loan" is deliberately expansive and designed to capture not only formal lending arrangements, but also informal, indirect, or economically equivalent forms of financial accommodation: see paragraphs [91]-[92].

Her Honour's reasoning proceeds on the basis that the statutory language, particularly the inclusion of "financial accommodation" and transactions which "in substance effect a loan", is intended to move beyond strict legal form and capture the real substance of financial dealings between a private company and its associates: see paragraph [92].

Justice Jagot considered that there was no requirement that a loan must involve an "advance" in the traditional sense see paragraph [93]. In her Honour's view, the statute does not confine itself to lending arrangements involving the outflow of funds from lender to borrower followed by a repayment obligation: see paragraphs [130]-[131]. Her Honour placed weight on the fact that section 109D(3)(b) is structured so that "provision of credit" is only one example within a broader concept of "financial accommodation". The question whether, in substance, one entity has been provided with the benefit of funds, credit, or financial flexibility by another: see paragraphs [136] to [137].

Justice Jagot rejected Steven's separate trust analysis. Her Honour held that no conclusion should be reached that cl 3(5) effected the constitution of separate trusts over identified property upon the resolutions being made. In context, the better construction of cl 3(5) was that the resolutions operated to effect an irrevocable alteration of beneficial entitlements in the trust fund as a whole, rather than causing specified amounts to cease to form part of the trust fund and become the subject of separately constituted trusts: see paragraphs [166] to [169].

Justice Jagot held that a debtor-creditor relationship arose between the trustee and the corporate beneficiary. Her Honour considered that, upon the resolutions setting aside the relevant portions of net income, the trustee was immediately bound either to pay the beneficiary its quantified entitlement or to place that amount to the beneficiary's credit in the trust accounts. The concept of holding the amount "pending payment" was consistent with the existence of an immediately payable debt, not inconsistent with it: see paragraphs [179] to [180]. Her Honour further held that the entries made in the trust accounts, together with the trustee's conduct and the common control exercised by Steven, constituted an admission by the trustee of its indebtedness to Gleewin Investments: see paragraph [182].

Justice Jagot held that the resolutions created an immediately enforceable indebtedness from the trustee to Gleewin Investments, and that Gleewin Investments thereafter provided financial accommodation to the trustee by not requiring payment of that debt: see paragraphs [186] to [187]. Her Honour reasoned that, once the trustee admitted its indebtedness by the resolutions and corresponding accounting entries, Gleewin Investments had a presently enforceable right to payment, but decided to leave the entitlement in the trust. That non-action constituted the "doing of a thing" for the purposes of section 109D(3)(b), because it enabled the trustee to retain and use funds that were otherwise payable to Gleewin Investments see paragraph [186]. As that financial accommodation was not undone within the relevant year, sections 109D(1)(a), (b) and (d) were satisfied, with the consequence that Gleewin Investments was taken to have paid a dividend to the trustee equal to the amount of the financial accommodation not undone before lodgment day: see paragraphs [187] to [190].

<u>Beech-Jones J's dissent</u>

Justice Beech-Jones considered that the statutory definition of "loan" in section 109D(3) is deliberately extended and plural in form, encompassing three distinct (but overlapping) categories: an advance of money, the provision of credit or financial accommodation, and transactions which in substance effect a loan: see paragraphs [240]-[245].

Importantly, Beech-Jones J did not accept that a positive or active provision, in the sense insisted upon by the majority, is always required in a narrow or formal sense: see paragraph [236]. His Honour considered that the requirement would be satisfied where, looking at the arrangement as a whole, the company has given or granted time to pay a debt: see paragraph [240].

Ultimately, Beech-Jones J concluded that the combination of:

1. the beneficiary's entitlement to funds,
2. the trustee's continued use of those funds, and
3. the beneficiary's failure to require payment,

gave rise to an arrangement in which the trustee was financially accommodated by the beneficiary. On that basis, section 109D(3) was engaged and Division 7A could apply.

COMMENT – It does not appear that the majority's reasoning on the application of section 109D(3) depended on the conclusion that the income had been set aside on separate trust. The critical point was that Gleewin Investments had taken no positive step to provide financial accommodation. On the majority's reasoning, the absence of any act of advance, provision, payment or transaction was sufficient to deny the existence of a loan within section 109D(3), regardless of whether the entitlement was analysed as held on separate trust.

COMMENT – Under the rule in *Saunders v Vautier*, if the only beneficiaries entitled to trust property are adults with full legal capacity and an absolute entitlement, they can require the trustee to transfer the property to them and bring the trust to an end. The majority accepted that, where a beneficiary has a right to call for payment in accordance with the principles in *Saunders v Vautier*, the trustee-beneficiary relationship may become overlaid by a debtor-creditor relationship. However, the Court did not hold that the resolutions themselves conferred an immediate right in Gleewin Investments to call for payment. The critical question is whether, upon the resolutions taking effect, Gleewin Investments obtained a vested and indefeasible interest in the relevant income such that it could invoke the rule in *Saunders v Vautier*. In *Oswal*, Edmonds J analysed whether an amount set aside for a beneficiary on separate trust gave rise to a vested and indefeasible interest. His Honour held that both a power of sale and the trustee's right of indemnity prevents the beneficiary having a defeasible interest. This leads to the question of whether a resolution to set aside income in the manner that occurred in *Bendel* may result, at least in some cases, in the beneficiary not being presently entitled to the income for the purpose of section 97 of the ITAA 1936.

COMMENT – a consequence of the majority's reasoning is that the corporate beneficiary is also entitled to any income earned on the investment of the unpaid income. This is because if an amount set aside is held on separate trust for the beneficiary, returns generated from investing that amount should also be held for that beneficiary, subject to the terms of the deed and any proper trustee charges or indemnity. In *Bendel*, the unpaid present entitlement was not accounted for in this manner.

TRAP –The majority's legislative history analysis proceeded on the footing that Parliament had chosen Subdivision EA as the mechanism to address arrangements where a corporate beneficiary's unpaid present entitlement is left in the trust and the trustee makes a payment, loan or other provision of financial accommodation to a shareholder or associate. On these facts, because Steven was the shareholder of the corporate beneficiary and had been advanced trust funds, the majority's reasoning strongly suggests that Subdivision EA would have applied.

Citation *Commissioner of Taxation v Bendel* [2026] HCA 18 (Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ) w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2026/18.html

2.2 Ward – individual residency

Facts

Alexandra Ward is an Australian citizen who was born in Australia and had an Australian domicile. She is married with two children.

In January 2005, Alexandra purchased a residential property in St Ives, New South Wales, which she occupied as her family home until May 2009.

In May 2009, Alexandra left Australia with her family to relocate to the United States due to her husband's employment. Shortly after departure, the St Ives property was leased to tenants and remained continuously rented until its eventual sale in February 2023.

From 2009 to 2014, Alexandra and her family resided in rental accommodation in Foster City, California. In November 2014, Alexandra and her husband purchased a family home in Foster City, where they lived until early 2021. During that period, Alexandra's husband worked in the United States and earned the family's income. Alexandra herself did not work, as her visa did not permit employment.

The family's life in the United States was settled and stable. The children attended local public schools, Alexandra participated in school-related activities such as the Parent-Teacher Association, and became integrated into the local community.

In February 2021, Alexandra and her family sold their home in the United States and relocated to the Netherlands. In the Netherlands they resided in leased accommodation, and the children attended an international school in The Hague. Alexandra did not undertake paid employment, but participated in ex-pat community groups.

Throughout the period from 2009 to 2023, Alexandra made only intermittent visits to Australia. In total, she spent approximately 145 days in Australia over that 14-year period, and she did not return to Australia at all between 5 November 2019 and 30 June 2023.

Despite her absence, Alexandra maintained some connections with Australia. She retained relationships with her mother, extended family and friends. She maintained Australian bank accounts, held an Australian driver's licence, stored personal belongings in Australia, and was a beneficiary of an Australian family trust. She also asserted an intention to return to Australia in the future, noting that she had explored enrolling her children in a Sydney school before deciding against relocation during the COVID-19 pandemic.

At the same time, other actions pointed away from a continuing connection to Australia. The St Ives property was not used as a residence after 2009 and was instead consistently rented out. Alexandra ultimately sold the property in 2023. She also removed her name from the Australian electoral roll.

In February 2023, the St Ives property was sold for approximately $2.3 million. That sale gave rise to a capital gain.

The Commissioner issued income tax assessments for the 2021, 2022 and 2023 income years on the basis that Alexandra was not a resident during those years. This meant that Alexandra was not entitled to the main residence exemption for the sale of the St Ives property in the 2023 income year.

From 12 December 2019, the main residence exemption in section 118-110 of the ITAA 1997 is subject to the foreign resident exclusion in section 118-110(4), with the result that a taxpayer cannot disregard a capital gain or capital loss from a CGT event happening to a dwelling that was their main residence if they are a foreign resident at the time of the CGT event. The only exception is the limited "life events" carve-out in section 118-110(5), which requires the individual to have been a foreign resident for a continuous period of 6 years or less and for the CGT event to occur because of specified events such as terminal medical condition, death of a spouse or minor child, or a marriage or relationship breakdown.

On 22 March 2024, Alexandra objected to the assessments, including on the basis that she was a resident of Australia at the time of the CGT event and was entitled to the main residence exemption.

On 8 November 2024, the Commissioner disallowed the objection to the availability of the main residency exemption, although allowed partial adjustments the capital gain calculation.

Alexandra then appealed to the ART. In the ART, it was agreed that Alexandra retained an Australian domicile.

Issue

Was Alexandra a resident of Australia during the income years ended 30 June 2021 to 2023?

Decision

As it was agreed that Alexandra's domicile is Australia, the sole point for determination was whether Alexandra's 'permanent place of abode' was outside Australia. In determining this point, the ART placed significant weight on Alexandra's prolonged absence from Australia. By 2021, Alexandra had lived overseas for more than a decade, with only brief and infrequent visits to Australia, and none during the income years in question. This extended and continuous overseas presence was, according to the ART, strongly indicative of a permanent, rather than temporary, absence.

The ART also found that Alexandra had effectively abandoned her Australian residence. The St Ives property had been rented out since 2009 and was ultimately sold, and Alexandra had removed herself from the electoral roll. These factors pointed away from any ongoing place of abode in Australia.

Little weight was given to Alexandra's reliance on temporary visa arrangements or her stated intention to return to Australia. The ART focused on the practical reality that Alexandra had lived overseas continuously for many years, and that her conduct demonstrated a settled and enduring life abroad rather than a temporary absence.

Although Alexandra retained some ties to Australia, including family relationships and financial connections, these were outweighed by the strength of her overseas connections. Her daily life, family arrangements, and economic circumstances were all centred overseas, leading the ART to conclude that Alexandra had a permanent place of abode outside Australia.

The ART affirmed the Commissioner's decision and found that Alexandra was not a resident of Australia during the 2021 to 2023 income years.

COMMENT – The ART focused on Alexandra's continuing ties to Australia rather than the nature and strength of her ties to the Netherlands. Under the permanent place of abode exclusion, the question is not whether some Australian ties were retained, but whether the taxpayer's actual home and settled mode of life was in a specific place outside Australia. A person may resume Australian residency under the domicile test without physically returning if they cease to have a permanent place of abode outside Australia. The ART's emphasis on Alexandra having abandoned Australia indefinitely speaks more to retention of domicile than to whether she had a permanent place of abode in a particular place outside Australia.

TRAP – This case highlights that selling of a former main residence while living overseas can significantly affect access to the main residence exemption, particularly where the taxpayer has already established a permanent place of abode outside Australia by the time of disposal.

TRAP – The foreign resident exclusion from the main residence exemption turns on the taxpayer's status at the time of the CGT event, which for a disposal is generally the contract date rather than settlement. The ordinary operation of the main residence exemption often requires practitioners to think in settlement-to-settlement terms when working through ownership periods and overlapping dwellings.

TIP – A practical point for taxpayers leaving Australia is to ensure that they sell the former main residence before becoming a non-resident. This timing issue is a common problem in practice, as taxpayers often only look to sell after departing Australia.

Citation *Ward and Commissioner of Taxation (Taxation and business)* [2026] ARTA 872 (General Member M Burch, Sydney)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/872.html

2.3 Buile – residency of individual and DTA tie-breaker test

Facts

Ragnar is a Norwegian citizen, born in 1961, who relocated to Australia in 1989 as a permanent resident. He married an Australian citizen in 1994 and has two children, the younger of whom was born in Singapore while the family was living there. Ragnar currently holds a five-year resident return visa, which requires periodic physical presence in Australia.

Ragnar has had a long international career in the oil and gas industry, working across multiple countries including Norway, Australia, the United States, England and Singapore, and has relocated frequently for work. He and his wife purchased a family home in Sydney in 2013, where he lived and worked until 2017.

In late 2017, Ragnar moved to Singapore to take up a senior role with Equinor, where he remains employed as Head of Crude Oil Trading for the Asia Pacific region, earning approximately $700,000 per year. The move was undertaken to support the family financially, including funding living expenses, education, the Sydney mortgage and retirement planning. Since that time, he has lived in leased accommodation in Singapore under an employment pass, while his wife and youngest child have continued to reside in the Sydney home.

Ragnar maintains significant personal and professional connections in Singapore, including close friendships and club memberships. However, he continues to spend periods of time in Australia each year, amounting to approximately 38% of his time between 2018 and 2022.

Financially, Ragnar derives the vast majority of his income from his Singapore employment, with only modest pension and passive income from Norway and minimal income from Australian sources. He continues to maintain financial ties to Australia, including superannuation, bank accounts, private health insurance and ownership of the Sydney home and a boat. During the relevant period, he transferred substantial funds from Singapore to Australia to support his family and service the mortgage, totalling over $1.7 million.

Between May 2019 and March 2023, the Commissioner issued assessments for income tax and Division 293 tax in respect of Ragnar's Singapore employment income for the income years ending 30 June 2018 to 30 June 2022. These assessments proceeded on the basis that Ragnar was an Australian tax resident and reflected the position taken in his lodged returns.

On 13 April 2024, Ragnar lodged an objection, contending that under the Double Tax Agreement between Australia and Singapore (**DTA**) he should be treated as a tax resident solely of Singapore during the relevant period. On this basis, he argued that his employment income was taxable only in Singapore and that the assessments were excessive. The DTA contains residency tie-breaker provision at Article 3(2), which provides as follows:

> *(2) Where by reason of the provisions of paragraph 1 of this Article an individual is both a Singapore resident and an Australian resident —*
>
> *(a) he shall be treated solely as a Singapore resident:*
>
> *(i) if he has a permanent home available to him in Singapore and has not a permanent home available to him in Australia;*
>
> *(ii) if sub-paragraph (a)(i) of this paragraph is not applicable but he has an habitual abode in Singapore and has not an habitual abode in Australia;*
>
> *(iii) if neither sub-paragraph (a)(i) nor sub-paragraph (a)(ii) of this paragraph is applicable but the Contracting State with which his personal and economic relations are closest is Singapore;*
>
> *(b) he shall be treated solely as an Australian resident —*
>
> *(i) if he has a permanent home available to him in Australia and has not a permanent home available to him in Singapore;*
>
> *(ii) if sub-paragraph (b)(i) of this paragraph is not applicable but he has an habitual abode in Australia and has not an habitual abode in Singapore;*

(iii) *if neither sub-paragraph (b)(i) nor sub-paragraph (b)(ii) of this paragraph is applicable but the Contracting State with which his personal and economic relations are closest is Australia.*

On 16 December 2024, the Commissioner disallowed the objection in full, maintaining that under the treaty tie-breaker provisions Ragnar was to be treated as a resident solely of Australia.

On 19 March 2025, Ragnar applied for review of that decision.

It was agreed that Ragnar had a permanent home available to him, and had an habitual abode, in both countries. The key issue was in which country Ragnar's personal and economic relations were closest.

Issues

Was Ragnar a resident of Australia or Singapore under the DTA?

Decision

In considering the matter, the ART undertook a detailed comparison with the circumstances considered in *Commissioner of Taxation v Pike* [2019] FCA 2185, and *Commissioner of Taxation v Pike* [2020] FCAFC 158, given the factual similarities between the two cases. As in *Pike*, Ragnar lived and worked overseas while his family remained in Australia, spent periods of time visiting Australia, and used his foreign earnings to support his family. While Ragnar, like Mr Pike, maintained personal ties to Australia, including family and assets, the ART regarded the source of his ongoing income as the most significant factor in assessing his economic relations.

The ART accepted that Ragnar's primary source of income during the relevant period was his employment in Singapore and considered this to be the central feature of his economic life. His earnings in Singapore funded both his own lifestyle and the financial needs of his family in Australia. Consistent with *Pike*, Ragnar's income-earning activity was given paramount weight and was seen as outweighing other connections to Australia.

Although Ragnar owned a valuable home in Sydney and had superannuation interests in Australia, the ART did not regard these as altering the overall analysis. While these assets reflected ongoing economic ties to Australia and were more substantial than those held by Mr Pike, they were not income-producing during the relevant period. The ART considered that capital appreciation and retirement savings did not carry the same weight as ongoing employment income in assessing economic relations.

Similarly, Ragnar's other Australian connections, such as bank accounts, private health insurance and Medicare access, were treated as administrative or practical arrangements and given limited weight.

The ART acknowledged that Ragnar's personal ties to Australia were strong, primarily because his family resided there, and that he spent a significant proportion of time in Australia visiting them. However, it noted that he also had meaningful personal and social connections in Singapore and, importantly, spent the majority of his time there. His presence in Australia was for personal reasons rather than work, and he did not derive any employment income from Australia.

A further important consideration was Ragnar's work pattern and decision-making. The ART found that his career demonstrated a consistent willingness to relocate internationally to maximise income, and that his decision to live apart from his family in order to work in Singapore underscored the primacy of income-earning in his overall circumstances.

Weighing these factors together, the ART concluded that Ragnar's economic and personal relations were more strongly connected to Singapore than to Australia during the relevant period. Accordingly, Ragnar satisfied the treaty tie-breaker in favour of Singapore.

As a result, the ART found that Ragnar had discharged his burden of proof. The objection decision was set aside and substituted with a decision allowing the objection in full.

TIP – This case highlights the importance of considering DTA tie-breaker provisions when advising on residency. It appears Ragnar may not have originally received advice that, even if he remained an Australian resident under domestic law, the Australia–Singapore DTA might still treat him as solely resident in Singapore for the purposes of the DTA and limit Australia's taxing rights.

TRAP – Not all treaty "tie-breaker" provisions actually produce a final tie-break. In some treaties, if the permanent home, habitual abode or centre of vital interests tests do not resolve the issue, the residence question may instead be left to the competent authorities to settle by mutual agreement. Practitioners should therefore not assume that every treaty tie-breaker automatically produces a single residence outcome.

TRAP – Practitioners should also check whether the relevant position under a DTA has been modified by the Multilateral Instrument (**MLI**) or by any later bilateral amending protocol. The text of a DTA as originally enacted may no longer reflect the provisions that actually apply.

Citation *Bulie and Commissioner of Taxation (Taxation)* [2026] ARTA 1003 (General Member M Burch, Sydney) w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/1003.html

2.4 Cameron – FTDT and deductibility of interest

Facts

On 14 July 1988, the Cameron Family Trust was established as a discretionary trust, with Bruce Cameron as the guardian and appointor. Bruce and Charmaine Cameron were included within the class of general beneficiaries.

On 9 June 1995, the Camco 3 Trust was established, with Camco Engineering Pty Ltd as trustee and Bruce as guardian and appointor. Bruce, Charmaine and the Cameron Family Trust were beneficiaries of the Camco 3 Trust, which formed part of a broader group of five Camco trusts through which the Camco engineering business was carried on.

On 1 November 2000, Acropolis Pty Ltd, as trustee of the Cameron Family Trust, lodged the trust's income tax return for the year ended 30 June 1999. That return included completed schedules stating that a family trust election had been made specifying the 1995 income year, and that an interposed entity election had been made for the Camco 3 Trust, both nominating Bruce as the specified individual. The declaration attached to those schedules was dated 18 September 2000.

From the income years ended 30 June 2013 to 30 June 2020, the income of the Cameron Family Trust consisted entirely or mainly of distributions received from the Camco 3 Trust. The distributions from the Camco 3 Trust remained unpaid present entitlements, as the funds were used as working capital in the Camco business.

During the same period, the Cameron Family Trust made Adjuvant Pty Ltd, a company of which Bruce and Charmaine were directors, presently entitled to the income of the trust. These distributions were also recorded as unpaid present entitlements. Bruce understood that unpaid present entitlements owing to a company would give rise to a deemed dividend under Division 7A of the ITAA 1936, unless they were placed on a sub-trust arrangement consistent with the ATO's view in *Practice Statement Law Administration PS LA 2010/4* (since withdrawn). The unpaid present entitlements were therefore set aside on sub-trust for Adjuvant Pty Ltd and 'lent back' to the Cameron Family Trust for a term of 7 years and bearing interest, consistent with the requirements in PS LA 2010/4.

The Cameron Family Trust received approximately $4.1 million in distributions in 2019 and $5.6 million in 2020, entered into further sub-trust loans from Adjuvant Pty Ltd of $2 million and $3.5 million respectively, and claimed deductions for the interest paid on those loans in its tax returns.

The 2019 tax return for the Cameron Family Trust was initially lodged on the basis that distributions were made only within the Cameron family group. However, subsequent lodgments in 2021 and 2022 revealed that, in the 2019 to 2021 income years, the trust had also distributed income to entities outside the family group, namely the Robot Trust (totalling about $180,000 across 2019 and 2021) and Lumitex Ltd (approximately $5 million in 2020).

Following the commencement of an ATO review in December 2021, the trustee made a voluntary disclosure in November 2022 and lodged Family Trust Distribution Tax (**FTDT**) payment advices reflecting those distributions. Amended returns for the 2019 to 2021 income years were then lodged consistent with that disclosure.

During the review, the ATO had also queried the interest deductions claimed for the Cameron Family Trust for the sub-trust arrangements. On 18 November 2022, the trustee self-amended the Cameron Family Trust tax return, as a result of which each beneficiary also amended its tax return to report an increase in income from the trust each year. On 23 January 2023, the trustee of the Cameron Family Trust, Bruce and Charmaine each objected to the amended assessments that arose from the self-amendments.

On 25 January 2023, the Commissioner issued notices assessing FTDT of approximately $2.4 million for those external distributions, with joint and several liability imposed on Acropolis Pty Ltd, as the trustee, and Bruce and Charmaine, as the directors of the trustee, together with general interest charge.

Objections to the FTDT notices were lodged in March 2023 but were ultimately disallowed in May 2024.

The trustee of the Cameron Family Trust, Bruce and Charmaine appealed to the Federal Court of Australia.

<u>Interest deductions</u>

The trustee of the Cameron Family Trust argued that the interest paid on the sub-trust loans was deductible because the arrangements formed part of a consistent approach to retaining profits within the Camco business to support its growth. The trustee submitted that, by placing unpaid present entitlements on sub-trusts and lending them back to the Cameron Family Trust, approximately an extra $7 million was made available to the Camco 3 Trust over 2013 to 2020 to be used in the Camco business, which in turn generated the Cameron Family Trust's income through distributions. The trustee of the Cameron Family Trust relied on *Federal Commissioner of Taxation v Total Holdings (Australia) Pty Ltd* (1979) 43 FLR 217, where interest on borrowings used to support a subsidiary was held to be deductible. On that basis, the interest was said to be incurred in gaining or producing assessable income, or at least to have a sufficient and non-remote connection to that income.

The Commissioner argued that the interest paid by the Cameron Family Trust on the sub-trust loans was not deductible because the loans were not incurred in gaining or producing the trust's assessable income. In substance, the arrangements merely converted Adjuvant Pty Ltd's unpaid present entitlements into interest-bearing debts, without any funds being advanced or applied to an income-producing activity of the Cameron Family Trust. Any connection between the interest payments and income derived from the Camco business was said to be too remote to satisfy section 8-1 of the ITAA 1997.

FTDT

In respect of the FTDT assessments, the trustee of the Cameron Family Trust, Bruce and Charmaine argued that no valid election had ever been made for the Cameron Family Trust. They relied on evidence from Bruce and the family's long-standing accountant that they had no recollection of deciding to make an election or completing the required approved form, and that the references to a family trust election in the 1999 tax return were included by mistake. They also pointed to later conduct, including more than 20 years of tax returns that did not record any election and distributions that would have attracted family trust distribution tax if an election had been in force, as showing that neither the taxpayers nor their advisers had acted on the basis that an election existed.

On the family trust election issue, the Commissioner contended that a valid election had been made with effect from the 1995 income year. The Commissioner relied on the contemporaneous documentary evidence, particularly the detailed schedules in the 1999 income tax returns for the Cameron Family Trust, the Camco 3 Trust and Adjuvant Pty Ltd, all of which referred to a family trust election and related interposed entity elections dated 18 September 2000. The Commissioner argued that this consistent and specific documentation outweighed later conduct and recollections suggesting the election had not been made.

Issues

1. Were the interest payments made by the Cameron Family Trust on the sub-trust loans in the income years ended 30 June 2019 and 2020 incurred in gaining or producing assessable income, and therefore deductible under section 8-1 of the ITAA 1997?
2. Was a valid and effective family trust election made in respect of the Cameron Family Trust, with effect from the 1995 income year, for the purposes of Schedule 2F to the ITAA 1936?

Decision

Interest deductibility

The Court started from the long-standing principle that interest is deductible only where it has a real connection to the activity that produces the taxpayer's income, rather than merely being incurred within a broader group structure. This approach traces back to *Amalgamated Zinc (De Bavay's) Ltd v Federal Commissioner of Taxation* (1935) 54 CLR 295, where the High Court explained that expenses must be incurred "in the course of" gaining or producing income, not merely because they arise in a business context. https://bwslawyers-my.sharepoint.com/personal/jeh_bwslawyers_com_au/_layouts/15/Doc.aspx?sourcedoc={05382EB1-6EB6-4D8D-A028-3773D4A67845}&file=609.rtf&action=default

The Court also made four general points about deductibility under section 8-1 as follows:

1. *"Activities or operations" are descriptive, not a strict test*: The Court noted that cases often say a deductible outgoing must be connected to the taxpayer's "operations or activities" that produce income. However, this language should not be treated as an independent legal test or a limitation on section 8-1(1). It largely reflects situations involving ongoing businesses. The provision itself is broader and applies even where income is not derived from a business. The real inquiry is into what produces the assessable income and whether the outgoing is sufficiently connected to that. References to "activities or operations" simply describe the factual context in many cases.
2. *Deductibility of interest depends mainly on how borrowed funds are used*: Borrowing money, by itself, does not produce assessable income. The key question is how the borrowed funds are applied. Usually, the necessary connection between interest expenses and income arises from the use of the loan. A strict tracing exercise is not always required. The objective relationship between the expenditure and the income-producing activity will often suffice. However, where there is little or no corresponding income, the taxpayer's purpose can become important. In such cases, interest will only be deductible if it is genuinely incurred in gaining income and not explained by some separate objective.

3. *“Purpose” is primarily objective, though subjective purpose may be evidentiary:* The essential character of an outgoing is determined objectively (i.e., what the expenditure is apt to achieve), rather than by the taxpayer’s stated subjective intention: see *Commissioner of Taxation v Hall* [2026] FCAFC 43. While subjective purpose is not determinative, it can provide evidence about the nature of the taxpayer’s activities or undertaking;
4. *Legal form is relevant but not decisive:* The legal structure of an arrangement does not dictate deductibility. Instead, the expenditure must be characterised from a practical and business perspective, considering the whole commercial context. That said, legal rights and obligations cannot be ignored—they form part of the overall factual matrix. The task is to assess the expenditure in light of all surrounding circumstances, not to isolate its legal form or compare it with hypothetical alternatives.

The Court considered the decision in *Commissioner of Taxation v Roberts* (1992) 37 FCR 246, which was relied upon by the trustee of the Cameron Family Trust. In *Roberts*, the borrowing was obtained in circumstances where funds previously employed in a partnership business were withdrawn, and the loan was said to replace those business funds. The Court considered that the decision makes clear that this reasoning is confined to cases involving the replacement of capital actually invested in the income-producing business, akin to partnership capital contributions. The Court noted that Hill J in *Roberts* expressly distinguished this from borrowings used merely to fund payments to partners that do not represent a return of invested capital, holding that such borrowings lack the requisite connection with the partnership’s income-earning activities. The Court noted that simply replacing one liability with another, as it considered occurred when unpaid present entitlements were converted into interest-bearing loans, does not itself create an income-producing nexus.

The Court distinguished *Total Holdings*, as that case involved active steps taken by the taxpayer to invest in, and derive income from, another entity. By contrast, the Cameron Family Trust did not lend funds to the Camco business or invest capital in it, but merely chose not to call for payment of trust entitlements. The Court considered that this distinction meant *Total Holdings* did not assist the taxpayers.

The Court concluded that the interest on the sub-trust loans was not deductible because:

1. the Cameron Family Trust did not invest in the Camco 3 Trust, it merely failed to call for its entitlements to trust income, which is not comparable to partnership capital contributions as contemplated in *Roberts*; and
2. the sub-trust loans were not entered into to preserve capital contributions, but rather to allow the Camco business to retain its profits.

<u>Family trust election</u>

The Court adopted the approach endorsed in *Fox v Percy* (2003) 214 CLR 118 and *Watson v Foxman* (1995) 49 NSWLR 315, which caution against placing undue weight on witnesses’ recollections of events many years earlier. Those cases emphasise that memory is fallible and that courts should prefer contemporary documentary evidence where it exists. This was particularly important because the alleged election dated back more than 25 years.

The Court also referred to *Commissioner of Taxation v Cassaniti* (2018) 266 FCR 385, which confirms that while taxpayers bear the onus of proof in tax appeals, they need only tip the balance of probabilities slightly in their favour. Even so, where the evidence supports competing inferences of equal plausibility, that onus is not discharged.

The 1999 income tax returns for the Cameron Family Trust, the Camco 3 Trust and Adjuvant Pty Ltd each contained detailed and internally consistent schedules stating that a family trust election had been made specifying the 1995 income year, together with related interposed entity elections, all dated 18 September 2000.

While acknowledging the force of the later conduct and evidence, the Court found that the evidence overall pointed in two competing directions. On the one hand, the 1999 returns suggested an election had been made. On the other, later returns and practice suggested the parties did not act on that basis. Because the taxpayers bore the onus of proof, that evidentiary stalemate was decisive. The Court was not satisfied that it was more probable than not that no family trust election existed.

The Court therefore concluded that a valid family trust election was in force for the Cameron Family Trust with effect from the 1995 income year. As a result, the distributions made in the 2019, 2020 and 2021 income years to entities outside Bruce Cameron's family group, including the Robot Trust and Lumitex Ltd, attracted FTDT.

TRAP – Unlike ordinary income tax assessments, FTDT assessments are not subject to a standard period of review. If distributions outside the family group had in fact been made in earlier years, it is unclear why the Commissioner confined the assessments to the income years ended 30 June 2019 to 2021 rather than also issuing FTDT assessments for those earlier years.

COMMENT – The Court's emphasis on the actual application of funds arguably sits uneasily with the approach reflected in *Taxation Ruling* TR 2005/12, which deals with trustees borrowing to fund beneficiary distributions while leaving income-producing trust assets in place. In that ruling, the ATO accepts that interest may in some circumstances be deductible where the borrowing is sufficiently connected with the trust's assessable income-earning activities, even though the borrowed money is applied to make a distribution rather than directly to an income-producing asset. TR 2005/12 focuses on whether the borrowing is to fund the payment of a "returnable amount" to the beneficiary. A critical factual difference is that TR 2005/12 is concerned with an actual borrowing and an actual outflow of borrowed funds, whereas here no fresh funds were advanced to the Cameron Family Trust at all. Instead, an existing unpaid present entitlement was converted into an interest-bearing loan. On that basis, *Cameron* is distinguishable from TR 2005/12, but it also raises a question about the continuing correctness of TR 2005/12.

TIP – PS LA 2010/4 was withdrawn by the ATO effective from 1 July 2022 and replaced by Taxation Determination TD 2022/11, which provides that sub-trust arrangements no longer avoid Division 7A where the underlying funds are used by the trust or related parties, as the ATO considers this use is financial accommodation (i.e. a loan). However, arrangements relating to unpaid present entitlements that arose on or before 30 June 2022 are grandfathered and the former guidance can continue to be relied upon, even if the sub-trust is established after that date.

Citation *Cameron v Commissioner of Taxation* [2026] FCA 609 (Hill J, Perth)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2026/609.html

2.5 Balmain Dental Clinic – superannuation guarantee charge

Facts

Balmain Dental Clinic Pty Ltd as trustee for Dentist & Co Trust operated a dental practice in Balmain. Dr Saade is the sole director, shareholder and controlling mind of the clinic.

In early January 2014 Kathryn Ganora commenced working as an oral health therapist at the Balmain Dental Clinic. Kathryn was remunerated on a commission basis, receiving a fixed 40% of patient fees collected by the clinic each month, with the clinic retaining the remaining 60%.

The Clinic engaged a number of dental practitioners, including dentists, dental hygienists and oral health therapists. Practitioners used clinic facilities and worked as part of a broader clinical team. The Clinic managed patient bookings, invoicing and administrative functions.

Following an audit (presumably arising from a complaint by Kathryn), the ATO determined that Kathryn was an employee under section 12(3) of *Superannuation Guarantee (Administration) Act 1992* (Cth).

There was a dispute as to whether a written contract existed. The Clinic produced a contract dated 10 January 2014 that appeared to have been signed by Kathryn. Kathryn accepted it was her signature on the contract but denied signing it.

Under the written contract:

1. Kathryn was required to faithfully serve the clinic, promote its interests and devote her working time to her duties (clause 4);
2. she was required to comply with clinic policies and procedures (clause 4) and attend training as directed (clause 8);
3. she was remunerated by way of “remuneration” calculated as 40% of gross patient payments, less certain costs (clause 7);
4. the clinic retained control over patient invoicing, records and the ultimate calculation and adjustment of amounts paid to Kathryn (clauses 10 and 12); and
5. there was a three-year restraint of trade clause that referred to the "Company's clients, employees and business associates".

In practice, the Clinic exercised significant control over the working environment:

1. patients were generally allocated to practitioners through the Clinic’s booking system;
2. invoices were issued in the Clinic’s name rather than in Kathryn’s name;
3. the Clinic applied discount protocols and could adjust practitioner earnings by amending the practitioner's invoices at its discretion;
4. practitioners were required to attend meetings, seek approval for leave and comply with operational directions;
5. Kathryn was not permitted to advertise or promote her services and the Clinic advertised her as a member of the Clinic; and
6. Kathryn worked as part of an integrated dental team. She was required under professional standards to work within a structured clinical relationship with dentists and could not operate an independent practice.

The Clinic contended Kathryn was an independent contractor operating her own business. It argued she could delegate or subcontract her work and that the arrangement was for services rather than labour.

The Clinic objected to the SGC assessments. On 7 June 2023 the Commissioner disallowed the objection.

The Clinic applied to the ART for review.

Issue

1. Did Kathryn have a contractual right to delegate or subcontract her work?
2. Was Kathryn was engaged under a contract wholly or principally for her labour within section 12(3) of the SGAA?

Decision

The ART affirmed the Commissioner’s objection decision and found that Kathryn was an employee within the extended definition in section 12(3).

The ART found that a written contract dated 10 January 2014 was genuine and governed the relationship between the parties.

Delegation and subcontracting

A central issue in determining whether the contract was wholly or principally for Kathryn's labour was whether she had a contractual right to delegate or subcontract her work.

The ART noted that authorities such as *Australian Mutual Provident Society v Chaplin* [1978] UKPC 7, *JMC Pty Ltd v Commissioner of Taxation* [2023] FCAFC 76 and *Jamsek v ZG Operations Australia Pty Ltd (No 3)* [2023] FCAFC 48 establish that a genuine and unfettered right to delegate the performance of contractual work is fundamentally inconsistent with an employment relationship. As emphasised in *JMC*, if a person can lawfully arrange for someone else to perform all of their contractual obligations, that tends strongly against a conclusion that the contract is for their personal labour.

The ART distinguished between:

1. legal delegation or subcontracting in the contractual sense (i.e. the right to substitute another person to perform the work and still receive payment); and
2. professional "delegation", referral or assistance, as contemplated by regulatory standards governing dental practice.

The Dental Board standards required Kathryn, as an oral health therapist, to work within a structured professional relationship and to refer or hand over aspects of care where clinically necessary. The ART accepted that this form of "delegation" did not equate to a contractual right to subcontract work for payment. Instead, it reflected clinical obligations within an integrated practice.

With respect to the contract, the ART noted that it was silent on delegation. However, the absence of an express delegation clause did not support the Clinic's position. Consistent with the approach of the High Court in *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* [2022] HCA 1, the ART focused on the rights and obligations created by the contract. The terms requiring Kathryn to "faithfully serve" the clinic, devote her time to its business, and comply with its policies pointed toward an obligation of personal performance.

The Clinic argued that the parties' conduct demonstrated a practical ability to delegate. It relied on multiple examples of "shared treatment" where other practitioners, including Dr Saade, performed parts of procedures associated with Kathryn's patients. The Clinic characterised these as instances where Kathryn delegated work while retaining the associated fees. The ART rejected that characterisation.

The ART accepted Kathryn's explanation, supported by clinical notes and corroborated by other evidence, that:

1. assistance from other practitioners occurred where clinically required (e.g. complexity, patient distress, or limits of scope of practice);
2. referrals or shared treatment were consistent with professional obligations imposed by the Dental Board; and
3. such assistance did not involve Kathryn engaging another practitioner to perform her contractual obligations on her behalf in exchange for remuneration.

The ART also rejected the contention that the conduct of the parties amounted to a variation of the contract permitting delegation. There was no evidence of any agreed variation, no mutual understanding that delegation or subcontracting was permitted and an express contractual requirement at clause 9.2 that variations would need to be in writing.

In these circumstances, the ART gave no weight to alleged informal practices that contradict the contractual framework.

Further, the ART considered *Neale v Atlas Products (Vic) Proprietary Limited* [1955] HCA 18 and *Chaplin*, where workers were free to substitute others to perform their work. It found those authorities distinguishable because, unlike those cases, Kathryn had to report her absence for another practitioner from the clinic to cover her work and was not free to engage a substitute of her choosing.

On this basis, the ART concluded that the evidence did not establish a contractual right for Kathryn to delegate or subcontract her work in the relevant legal sense based on the following findings:

1. the contractual terms supported a relationship of master and servant, inconsistent with a broad right of delegation and required personal performance by Kathryn;
2. any "delegation" arising in practice reflected professional obligations rather than a contractual freedom to subcontract work;
3. there was no evidence of any agreed variation to permit delegation, and any such variation would have required written agreement;
4. the conduct relied upon by the clinic did not evidence delegation, but rather collaboration within an integrated clinical team; and
5. the remuneration structure did not support delegation, as payment remained contingent on clinic-controlled processes and review.

<u>Was the contract wholly or principally for Kathryn's labour?</u>

The ART concluded that the contract was wholly or principally for Kathryn's labour for the following reasons:

1. the terms of the contract established that Kathryn was engaged to personally perform work as an oral health therapist within the clinic. Clauses requiring her to "faithfully serve", devote her time and attention, and comply with the clinic's policies pointed to the provision of personal labour rather than the supply of services through an independent enterprise. The contract also permitted the clinic to terminate Kathryn based on her conduct irrespective of any treatment she provided. These obligations were inconsistent with a contractual purpose of providing access to facilities for the conduct of her own business;
2. the structure of remuneration supported a labour contract. Although calculated by reference to fees generated, Kathryn was not paid per completed task or discrete result. Instead, she received a monthly commission derived from patient billings, subject to adjustments and discretionary review by the clinic. The ART considered this being consistent with remuneration for services performed as part of the clinic's business, rather than payment to produce a contractual result or product;
3. the ART rejected the submission that the arrangement was a facilities or service fee model. The contract did not impose a genuine obligation on Kathryn to pay for use of premises or equipment, nor did it expose her to meaningful commercial risk;
4. professional regulation reinforced the conclusion that the contract was for labour. As an oral health therapist, Kathryn was required to work within a structured professional relationship under a dentist and could not practise independently. This undermined the suggestion that she was conducting her own business and supported the conclusion that her work was integrated into the clinic's operations; and
5. consistently with *JMC* and *Jamsek*, the absence of a genuine right to delegate or subcontract work was significant. A contract permitting substitution would tend against a labour contract. The ART found no right to delegate existed, and that Kathryn was required to perform the work personally. This reinforced the characterisation of the contract as one for her labour.

COMMENT – The case is a reminder that careful drafting matters. If the intention is to support an independent contractor characterisation, the written contract should ordinarily include a genuine right to delegate or subcontract work and should be drafted in a way that does not otherwise point to a common law employment relationship, for example by imposing obligations of personal service, broad control and integration into the principal's business.

Citation *Balmain Dental Clinic Pty Ltd as Trustee for Dentist & Co Trust and Commissioner of Taxation (Taxation and business)* [2026] ARTA 895 (Senior Member J Lye, Brisbane)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/895.html

2.6 D'Arro – statutory defences to DPN

Facts

Build Qld Pty Ltd was a construction company carrying on substantial building projects. Orazio Salvatore D'arro was one of two directors [Note: the judgment does not explain who the other director was or his or her relationship to Orazio]. The directors informally divided responsibilities between them. Orazio was responsible for construction and operational matters, while the other director had responsibility for financial management, including accounting systems, cashflow, and tax compliance.

Orazio did not have direct access to the company's accounting software and relied on the other director for information about the company's financial position.

Over a period of approximately 18 months prior to September 2023, Orazio said that he regularly discussed the company's financial affairs with the other director. These discussions included questions about cashflow and whether tax obligations were being met. Orazio said he was consistently reassured that the company's finances were under control and that it was operating profitably.

During this period, the company was engaged in significant construction work, with contracts said to be worth approximately $30 million. Although there were some project-related issues and short-term funding requirements, Orazio believed the company was financially sound and capable of meeting its obligations as they fell due.

On 13 September 2023, Orazio was informed by the other director that a director penalty notice had been received in relation to unpaid tax liabilities. This was the first time Orazio said he became aware that the company had not met its PAYG withholding obligations.

Shortly after becoming aware of the issue, Orazio and the other director attended a meeting with a finance broker to explore funding options. At that meeting, Orazio learned that the other director had manipulated the company's financial records, including adjusting accounting entries to increase reported income. Orazio argued that this conduct had occurred without his knowledge and had misled him as to the company's true financial position. There was evidence from the broker and the company's bookkeeper supporting the existence of manipulated accounting entries.

Following this, three steps were taken to address the company's financial position and outstanding liabilities, as follows:

1. first, the company engaged external accountants to review its financial affairs and provide advice. There was evidence that the accountants had contact with the Commissioner and undertook work directed towards negotiating a payment arrangement for the outstanding liabilities;
2. second, the company obtained financing of approximately $1,537,000. The funding was personally guaranteed by Orazio and secured against his home; and
3. third, Orazio directed the other director to ensure that the company's receivables and available funds were applied to creditors, including the Commissioner. The other director agreed to that course. Orazio also relied on financial projections prepared by the other director, which indicated that the tax liabilities would be discharged by early 2024 through a combination of ongoing trading and cash inflows.

During this period, Orazio maintained the view that the company was solvent and capable of continuing to trade. He relied on the company's assets, anticipated receivables, and financing arrangements as demonstrating that it could meet its obligations. As a result, he considered that it was neither necessary nor appropriate to pursue insolvency processes such as administration, restructuring, or winding up.

Orazio remained a director until 26 January 2024. During that time, the company did not fully discharge its outstanding tax liabilities.

The Commissioner subsequently commenced proceedings seeking to recover approximately $994,894.65 from Orazio under the director penalty regime. Orazio did not contest that the statutory preconditions for recovery had been satisfied. Instead, he relied on the statutory defence under section 269-35 of the TAA, which provides that a director is not liable if they took all reasonable steps to ensure the company complied with its obligations, or that an administrator, restructuring practitioner or liquidation occurred, or that there were no reasonable steps available to achieve those outcomes.

The Commissioner applied for summary judgment, arguing that Orazio had no real prospect of successfully establishing that defence.

Issue

Did Orazio have a real prospect of successfully establishing a statutory defence under section 269-35 of the TAA?

Decision

Justice McCafferty held that Orazio's statutory defence could not be dismissed as lacking any real prospect of success and that the matter was not suitable for summary determination.

Her Honour explained that the defence requires a director to show that they took all reasonable steps to ensure that the company complied with its tax obligations, or that one of the alternative statutory outcomes occurred, or that no such steps were available. The question of what constitutes "reasonable steps" is an objective one that depends on the circumstances known, or that ought reasonably to have been known, to the director. It is an evaluative and fact-specific inquiry that must take into account the director's role, knowledge and the surrounding circumstances.

Her Honour accepted that, where a company is believed to be solvent, it may be reasonable for a director to prioritise payment of debts rather than pursuing insolvency processes. Orazio's evidence that he believed the company was solvent and capable of trading out of its position was therefore relevant to whether it was reasonable not to place the company into administration or liquidation during the relevant period.

Justice McCafferty further held that the steps relied upon by Orazio, including his reliance on the other director, the engagement of accountants, the attempt to obtain and apply funding, and the alleged misleading conduct, were capable of supporting an argument that he had taken reasonable steps within the meaning of the provision. Although aspects of Orazio's evidence may attract scepticism, they were not inherently implausible or fanciful and raised factual questions that required examination at trial.

Her Honour emphasised that summary judgment should only be granted in clear cases where there is a high degree of certainty that a defence has no real prospect of success. In this case, the issues turned on contested facts and evaluative judgments about reasonableness. Those matters required a full evidentiary hearing.

Accordingly, McCafferty J dismissed the Commissioner's application for summary judgment.

TRAP – The statutory defence in section 269-35 is strict and often difficult to establish in practice. It requires a director to demonstrate that all reasonable steps were taken, or that no such steps were available.

COMMENT – Even where the underlying liability is not in dispute, courts are reluctant to shut out a defence where it depends on contested facts and evaluative judgments about reasonableness. The threshold of "no real prospect of success" remains a high one, and where a defendant can point to a plausible factual narrative, the matter will usually proceed to trial.

Citation *Deputy Commissioner of Taxation v D'Arro* [2026] QSC 109 (McCafferty J, Brisbane)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QSC/2026/109.html

2.7 Winya Indigenous Office Furniture – payroll tax grouping

Facts

On 12 March 2015, Winya Indigenous Office Furniture Pty Ltd was incorporated. The company was founded and controlled by Debbie Barwick, who at all relevant times was a director and majority shareholder holding 51%. The company carried on a business involving the sale of office furniture, described variously as retail and wholesale, and also undertook some design and manufacturing activities. Its internal management was governed by a constitution addressing director appointment, removal and decision-making processes.

On 13 September 2019, Vibe Furniture Pty Ltd, a wholly owned subsidiary of Inventis Limited, acquired a 49% shareholding in Winya Indigenous. Following that acquisition, directors associated with the Inventis Group, namely Anthony Mankarios and Peter Bobbin, joined the board of Winya Indigenous alongside Debbie and Malcolm Smith. A shareholders' agreement dated the same day regulated the relationship between the parties, including an obligation for Vibe to provide accounting and human resources services to Winya Indigenous.

In practice, Winya Indigenous received a broader range of services from entities within the Inventis Group between April 2021 and May 2024, including operational support, IT, sales, marketing and payroll services. These arrangements were said to be aimed at reducing administrative costs. The Inventis Group also promoted the products of Winya Indigenous on its website, and there were shared signatories and, for a period, shared addresses between Winya Indigenous and Inventis Group entities. Although the agreement was with Vibe, the HR services were in fact provided by Inventis HR Services Pty Ltd, another wholly owned Inventis Group subsidiary.

There were also ongoing commercial dealings between Winya Indigenous and the Inventis Group, including the purchase of stock. These purchases represented between 1% and 17% of the gross turnover of Winya Indigenous during the relevant payroll tax years.

On 31 May 2024, the Chief Commissioner determined that Winya Indigenous was part of a payroll tax group with eight Inventis-related entities under the grouping provisions of the relevant legislation, and issued payroll tax assessments (with interest but no penalties) for the years ending 30 June 2020 through to part of 2024. Winya Indigenous was included in this group as a result of section 71 and section 74 of the *Payroll Tax Act 2007* (NSW) (**PTA**). Those sections provide as follows:

> ***71 Groups arising from the use of common employees***
>
> *(1) If one or more employees of an employer perform duties for or in connection with one or more businesses carried on by the employer and one or more other persons, the employer and each of those other persons constitute a group.*
>
> *(2) If one or more employees of an employer are employed solely or mainly to perform duties for or in connection with one or more businesses carried on by one or more other persons, the employer and each of those other persons constitute a group.*
>
> *(3) If one or more employees of an employer perform duties for or in connection with one or more businesses carried on by one or more other persons, being duties performed in connection with, or in fulfilment of the employer's obligation under, an agreement, arrangement or undertaking for the provision of services to any one or more of those other persons in connection with that business or those businesses, the employer and each of those other persons constitute a group.*
>
> *(4) Subsection (3) applies to an agreement, arrangement or undertaking—*
>
> > *(a) whether the agreement, arrangement or undertaking is formal or informal, express or implied, and*
> > *(b) whether or not the agreement, arrangement or undertaking provides for duties to be performed by the employees or specifies the duties to be performed by them.*

> …
>
> ***74 Smaller groups subsumed by larger groups***
>
> *(1) If a person is a member of 2 or more groups, the members of all the groups together constitute a group.*
>
> *(2) If 2 or more members of a group have together a controlling interest in a business (within the meaning of section 72), all the members of the group and the person or persons who carry on the business together constitute a group.*

Winya Indigenous objected to both the grouping and the resulting assessments, and, in the alternative, sought exclusion from the group under section 79 of the PTA. Section 79 relevantly provides as follows:

> *79 Exclusion of persons from groups*
>
> *(1) The Chief Commissioner may, by order in writing, determine that a person who would, but for the determination, be a member of a group is not a member of the group.*
>
> *(2) The Chief Commissioner may only make such a determination if satisfied, having regard to the nature and degree of ownership and control of the businesses, the nature of the businesses and any other matters the Chief Commissioner considers relevant, that a business carried on by the person, is carried on independently of, and is not connected with the carrying on of, a business carried on by any other member of that group.*
>
> *(3) The Chief Commissioner cannot exclude a person from a group if the person is a body corporate that, by reason of section 50 of the Corporations Act 2001 of the Commonwealth, is related to another body corporate that is a member of that group.*
>
> *(4) This section extends to a group constituted by reason of section 74 (Smaller groups subsumed by larger groups).*
>
> *(5) A determination can be expressed to take effect on a date that is earlier than the date of the determination.*
>
> …

The Chief Commissioner rejected the objections to both the grouping decision and the exclusion request in a series of decisions between November 2024 and July 2025.

On 31 July 2025, Winya Indigenous commenced proceedings in the NCAT in relation to the Chief Commissioner's refusal to grant an exclusion from the group.

Issues

Was Winya Indigenous grouped with the Inventis entities for payroll tax purposes?
If so, should an order be made under section 79 of the PTA to exclude Winya Indigenous from the group?

Decision

The NCAT considered whether Winya Indigenous was grouped with entities in the Inventis group, and if so, whether it should be excluded from that group.

<u>Was Winya Indigenous grouped with the Inventis entities under section 71 of the PTA?</u>

As a starting point, the NCAT noted that payroll tax is imposed on “taxable wages” paid by an employer, and that the grouping provisions are directed at preventing tax avoidance through the splitting of business activities across multiple entities. Where entities are grouped under section 71 of the PTA, they are treated as a single employer, with only one tax-free threshold applying to the group as a whole.

The first issue was whether section 71(3) applied to group Winya Indigenous with Inventis HR Services. The NCAT accepted that employees of Inventis HR Services performed a range of functions for Winya Indigenous, including accounting, human resources, IT, payroll, sales and marketing. Although the relevant services agreement was formally with Vibe, the NCAT inferred that Inventis HR Services had effectively assumed the obligation to provide those services, as its employees actually carried them out.

The NCAT rejected a purely literal approach to section 71(3) of the PTA that would group any service provider with its customer merely because services were provided under contract. The NCAT approached section 71(3) of the PTA in light of the High Court's explanation of the purpose of the grouping provisions in *Tasty Chicks Pty Ltd v Chief Commissioner of State Revenue* [2011] HCA 41. In that case, the High Court emphasised that the grouping provisions are anti-avoidance measures directed at preventing the fragmentation of business activities across multiple entities to obtain multiple payroll tax thresholds. This informed the NCAT's view that section 71(3) of the PTA should not be applied so literally as to group ordinary, arm's length service providers and customers with no real commercial connection.

However, the NCAT found that something more than a simple arm's length service relationship was present in this case. In particular, Winya Indigenous was 49% owned by Vibe, Vibe and Inventis HR Services shared common ownership, and there were common directors across the entities. Those features established a sufficient connection to enliven section 71(3) of the PTA. Accordingly, the NCAT found that Winya Indigenous and Inventis HR Services constituted a group, which was then subsumed into a larger group under section 74 of the PTA. The grouping decision therefore stood.

<u>Should Winya Indigenous have been excluded from the group under section 79?</u>

The NCAT noted that whether Winya Indigenous should be excluded from the group under section 79 of the PTA, required consideration of whether its business was carried on independently of, and not materially connected with, the businesses of the other group members, having regard to factors such as ownership, control, the nature of the businesses, and any other relevant matters.

The NCAT referred to the decisions in *Elanor Operations Pty Ltd v Chief Commissioner of State Revenue* [2022] NSWSC 104 and *Chief Commissioner of State Revenue v Elanor Operations Pty Ltd* [2022] NSWCA 222, noting that the grouping provisions require an evaluative, substance-based assessment of the relationship between entities, rather than a purely literal or mechanical application. Consistent with this, de-grouping turns on an evaluative, fact-based inquiry into whether the relevant businesses are independent and not materially connected, having regard to the statutory purpose.

In line with the *Elanor Operations*, the NCAT treated the section 79 test as requiring it to determine, as a question of fact and degree, whether the business of Winya Indigenous was carried on independently of, and not in a way that was materially connected with, the businesses of the other group members. It accepted that the mere existence of some connections between entities is not determinative. Rather, those connections must be material in a commercial sense, and not merely incidental, administrative or inconsequential.

The NCAT accepted that there were a number of connections between Winya Indigenous and the Inventis group. These included the 49% shareholding held by Vibe, shared directors, the provision of back-office services, some common resources and premises, intra-group trading, and public association through marketing. However, the NCAT found that these matters did not carry sufficient weight to deny exclusion.

The NCAT considered that *Elanor Operations* approach required regard to be had to the following

1. *the nature and degree of ownership and control:* the NCAT noted that, while Vibe's 49% shareholding was substantial, it was not a majority interest. Winya Indigenous was majority-owned by Debbie, and the board was evenly split. The NCAT found that Vibe and its nominee directors had influence, but not

control. Their rights were no greater than those of Debbie and her co-director, and there was no evidence that they exercised their position to dominate decision-making;

2. *the nature of the businesses*: The NCAT also considered the nature of the respective businesses. While the activities of Winya Indigenous and the Inventis group were complementary, they operated at different points in the supply chain: Winya Indigenous was primarily engaged in the sale of office furniture, whereas the Inventis group focused on manufacture and distribution. This reduced the significance of any commercial overlap; and
3. *other relevant connections between the entities*: The NCAT gave limited weight to the existence of shared services and resources. These were largely back-office functions and did not involve integration of core, market-facing operations. The evidence also demonstrated that Winya Indigenous operated with practical independence. It terminated the services arrangement when dissatisfied, relocated from shared premises when they were no longer suitable, and sourced the majority of its stock from third-party suppliers rather than the Inventis group. Its branding, including its identity as an Indigenous-owned business, was also distinct.

Taking all matters into account, the NCAT concluded that although there were connections between Winya Indigenous and the Inventis group, they were not material in a commercial sense and did not demonstrate that the businesses were not carried on independently. The degree of ownership and control held by the Inventis interests was insufficient, and the remaining connections did not carry enough weight to justify maintaining the group.

Accordingly, while the initial grouping under section 71(3) was upheld, the NCAT found that Winya Indigenous should have been excluded from the group under section 79.

COMMENT – The case is a reminder of the importance of considering grouping issues carefully for payroll tax compliance. In practice, grouping under section 71 for “common employees” is a key risk area, particularly where related entities share staff, back-office personnel or service arrangements. Those connections can create grouping even where the entities consider themselves operationally separate.

TIP – The reasoning in the *Elanor Operations* decisions appears to have expanded the circumstances in which it was previously thought the Chief Commissioner should grant an exclusion order under section 79 of the PTA. The *Elanor Operations* decisions make it clear that focus is not on whether any connection exists between the grouped entities, but whether the relevant connections are sufficiently material in a commercial sense to show that the businesses are not carried on independently.

Citation *Winya Indigenous Office Furniture Pty Ltd v Chief Commissioner of State Revenue* [2026] NSWCATAD 165 (Senior Member MacIntyre, Sydney)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCATAD/2026/165.html

2.8 Morgan – NSW duty and transfer of life estate

Facts

Cheryl Ann Morgan had been a co-owner of a parcel of land in New South Wales since the 1980s, holding her interest as a tenant in common (with her mother, Doreen Taylor). Cheryl resided on the property from 1983.

Doreen made a will on 30 August 2018 and died on 28 September 2024. Doreen was survived by her two children, Cheryl and her son, John Taylor. At the time of her death, no other persons held an interest in the land.

Cheryl has a disability, and the dwelling on the land had been modified to accommodate her needs, enabling her to live there independently.

Under the terms of the Doreen's Will, Doreen's half interest in the land was divided between her children. One half of that interest (being a 25% interest in the land) was left to Cheryl and her husband, John Morgan, and the remaining half (also a 25% interest in the land) was left to Mr Taylor. Cheryl's husband had predeceased Doreen. The result of this was that his share devolved to Cheryl, such that she became entitled to the full 25% interest originally gifted to them jointly.

Doreen's Will also included a provision allowing Cheryl to remain living in the home for as long as she wished, provided she met the outgoings associated with the property and maintained it in reasonable repair.

On 10 April 2025, Cheryl and Mr Taylor entered into a deed of family arrangement under which Mr Taylor agreed to relinquish his interest in the land in exchange for a payment from Cheryl. A valuation obtained on 24 April 2025 assessed the land at $1,650,000 and attributed a value of $657,000 to Cheryl's right to reside in the property under the Will.

On 23 July 2025, Probate of the Will was granted by the Supreme Court of New South Wales. A transmission application was lodged shortly thereafter to transfer the Doreen's half interest to the executors. Following this, an application was made for assessment of duty on the transfer to Cheryl of Mr Taylor's 25% interest.

On 21 August 2025, the Chief Commissioner assessed ad valorem duty of $12,974.50 on that transfer. The ad valorem duty was calculated by reference to the value of the quarter interest previously held by Mr Taylor.

Cheryl paid the assessed duty but then objected to the assessment. That objection was disallowed on 23 October 2025.

On 22 December 2025 Cheryl subsequently applied to the NCAT for review of the duty assessment.

The Chief Commissioner submitted that, under Doreen's Will, Cheryl was only entitled to a 25% interest in the land, being half of Doreen's 50% tenancy in common interest. However, as a result of the deed of family arrangement, Cheryl ultimately acquired all of Doreen's 50% interest. On that basis, the Chief Commissioner argued that only the value of Cheryl's original 25% entitlement under the Will could be deducted, with the balance representing additional value subject to duty.

Proceeding on this approach, the Chief Commissioner relied on the unencumbered valuation of the land at $1,650,000, attributing $825,000 to the 50% interest acquired by Cheryl. From this, a deduction equivalent to her existing 25% entitlement was allowed, resulting in a dutiable value of $412,500, being the value of the additional 25% interest she received. However, the Chief Commissioner did not make any reduction for the fact that Cheryl has been granted a right to reside under the Will.

Cheryl submitted that her rights to reside in the property under the Will amounted to a life estate, which had been independently valued at $657,000. Cheryl contended that this interest was not an encumbrance that could be disregarded on valuation, but rather a substantive proprietary interest that had to be taken into account in determining the value of what she acquired. On that footing, she argued for a substantially greater reduction in the dutiable value of the transfer.

A reduction in duty was sought by operation of section 63(2) of the *Duties Act 1997* (NSW), which provides as follows:

> *(2) If a transfer of dutiable property is made by a legal personal representative of a deceased person to a beneficiary under an agreement (whether or not in writing) between the beneficiary and one or more other beneficiaries to vary the trusts contained in a will of the deceased person or arising on intestacy, the dutiable value of the dutiable property is to be reduced by the portion of the dutiable value that is referable to the dutiable property to which the beneficiary had an entitlement arising under the trusts contained in the will or arising on intestacy.*

Cheryl further submitted that the Will should be construed in light of the testatrix's intention, and that, having regard to the surrounding circumstances, the proper characterisation of the interest granted to her was a life estate.

Issues

1. Was Cheryl's right to reside in the property a mere right to occupy or a life estate?
2. Should the dutiable value of what Cheryl acquired from her brother be reduced by the existence of her right to reside under the Will?

Decision

The NCAT first considered whether the Will created a life estate in Cheryl's favour. It noted that a life estate is a recognised proprietary interest in land, involving a right to use and occupy the property for life, and is distinct from a mere personal right of residence.

Having regard to the terms of the Will, the NCAT found that the language used did not confer a life estate. The Will provided that Cheryl could not be required to vacate the home against her wishes and could remain there for as long as she wished, subject to meeting outgoings and maintaining the property. The NCAT held that this language should be given its ordinary meaning and did no more than grant Cheryl a right to remain in the property. It did not use language typically associated with a life estate, such as a right to "use and occupy" for life.

The NCAT also considered that certain features of the clause were inconsistent with the grant of a life estate. In particular, the express prohibition on requiring Cheryl to vacate, and the fact that her right depended on her continuing wish to remain, were both indicative of a personal right of occupancy rather than a proprietary estate.

Accordingly, the NCAT rejected Cheryl's contention that she held a life estate.

This conclusion affected the valuation evidence. The only valuation before the NCAT had proceeded on the basis that Cheryl held a life estate and assessed the value of that interest accordingly. As no life estate existed, the NCAT held that the valuation could not be relied upon as it did not reflect the true legal character of Cheryl's rights. The NCAT rejected the argument that the valuation of a life estate could be treated as a proxy for the value of a personal right of occupancy, emphasising that the two are materially different in nature and value.

In the absence of a valuation that properly reflected the actual right granted under the Will, the NCAT was unable to take that right into account in determining the dutiable value of the land.

COMMENT – Section 63(2) is directed to cases where the transfer occurs as a result of an agreement between beneficiaries to vary the beneficial interests arising under the will or intestacy. That is different from a transfer made by a legal personal representative pursuant to a power of appropriation in the administration of the estate. A transfer of that latter kind would ordinarily fall for consideration under section 63(1), which provides concessional duty treatment for appropriations to beneficiaries in satisfaction of their entitlements.

Citation *Morgan v Chief Commissioner of State Revenue* [2026] NSWCATAD 149 (Senior Member MacIntyre, Sydney)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCATAD/2026/149.html

3. Cases in brief

3.1 Cheung – unexplained deposits

The Full Court of the Federal Court of Australia allowed the Commissioner's appeal. In the Federal Court, Lin Jum Cheung had successfully argued that approximately $33 million in deposits from a business trading in Vanuatu were non-taxable gifts.

Mr Lin Jum Cheung, also known as Rene Ah Pow, is an 80-year-old man. Rene was born in Vanuatu but retired to Australia in 2000. Rene's older sister, Graziella, owned a supermarket chain in Vanuatu, which Rene had previously worked in as a general manager until 2000.

Throughout the 2005 to 2015 income years, 99 deposits from bank accounts in Vanuatu, associated with Graziella's business, were paid into Rene’s, or his and his wife’s, Australian bank account. The deposits totalled $32,799,582, which the Commissioner assessed as income according to ordinary concepts.

Key evidence was presented to prove that these deposits were not income. Central to the case was the testimony of Graziella, which the Court found to be honest and reliable. Graziella stated that the funds transferred to Rene were gifts made out of familial love and trust, intended for family investment in Australia, and not payment for services or business income. The Court accepted that Graziella was the sole owner of the supermarket business during the relevant period, and that Rene held no ownership interest or formal employment in the business after retiring in 2000 due to health reasons.

The funds were managed by Rene for family investments, including properties in New South Wales and Queensland, but he received no financial benefit beyond modest living expenses. The Court also considered the long-standing family tradition of supporting relatives financially and noted that the payments lacked the characteristics of income, such as periodicity or compensation for services.

At first instance, the Logan J held the deposits were gifts of capital voluntarily made by a loving sister to a loved brother. The deposits should not have been assessable to Rene as he did not have an ownership interest in that business, the payments were not a reward for services rendered, nor were they an ex-gratia payment to a former employee or in the nature of a pension. Justice Logan accepted that the funds were merely transferred from a sister to a brother who was trusted to invest them wisely for the wider family.

Justice Logan ruled that the Commissioner had incorrectly characterised the funds as income, emphasising that they were capital gifts. Consequently, the objection decision was set aside, and Rene’s taxable income was limited to declared interest income of $1,953,631 during the relevant period.

The Commissioner appealed to the Full Court. The central questions for the Full Court were:

1. the proper scope of appellate intervention in findings based on credibility;
2. whether the primary judge erred in fact-finding, particularly by relying heavily on impressions of witness credibility; and
3. whether Rene had discharged his onus of proving the assessments were excessive.

The Full Court noted that the appeal was by way of rehearing. The Full Court was required to conduct its own review of the evidence and draw its own conclusions, while recognising the trial judge’s advantage in seeing witnesses. The Court noted that appellate restraint applies where findings are based on credibility. Such findings will generally stand unless shown to involve misuse of the trial judge’s advantage, reliance on inconsistent evidence, or conclusions that are “glaringly improbable”.

The Full Court found that the primary judge’s reasoning was flawed in several respects:

1. the judge placed significant weight on the demeanour and apparent honesty of witnesses, without adequately testing their evidence against objective facts and documents;
2. contradictions, inconsistencies, and gaps in the evidence were not properly analysed or explained. These inconsistencies included the following:
   (a) Rene represented himself in multiple documents as having an ownership or senior role in the ABM business, including:
      (i) Visa/immigration materials described him as an “owner” or business operator;
      (ii) citizenship and financial documents described him as a “business owner”;
      (iii) credit applications indicated he earned a substantial salary from the business;
      (iv) the business website referred to him as “founder” or “Managing Director.”
   (b) inconsistent explanations given to the Commissioner, including at one point he said he received a “share of profits" but later claimed he had “sold” his interest to his sister;
   (c) documentary evidence contradicted the oral testimony as to Rene's control and involvement. Evidence showed Rene had ongoing involvement and control features, contrary to the claimed “retired recipient of gifts”, including that he was a signatory on bank accounts, despite denials and funds flowed through and were deployed via entities he controlled;
   (d) family purpose” claim not supported by objective evidence. Rene said funds were held/invested for the wider family, but investments were made through entities he controlled and there was no evidence of distributions to other family members
3. many findings were based on broad acceptance of witness evidence, rather than a detailed examination of the evidentiary record.

The Full Court considered that this amounted to a misuse of the trial judge’s advantage, as credibility findings were not grounded in a proper evaluation of the whole evidence. The Full Court emphasised that documentary and contemporaneous evidence is often more reliable than impressions of witness demeanour. Evidence must be assessed in its full commercial and cultural context. In tax cases, where the taxpayer controls the relevant information, courts must closely scrutinise inconsistencies before accepting claims of honesty. The Full Court referred to the decision of the High Court in *Fox v Percy* [2003] HCA 22, in which the High Court stated as follows:

> *28 … In particular cases incontrovertible facts or uncontested testimony will demonstrate that the trial judge’s conclusions are erroneous, even when they appear to be, or are stated to be, based on credibility findings.*
>
> *29. That this is so is demonstrated in several recent decisions of this Court. In some, quite rare, cases, although the facts fall short of being ‘incontrovertible’, an appellate conclusion may be reached that the decision at trial is ‘glaringly improbable’ or ‘contrary to compelling inferences’ in the case. In such circumstances, the appellate court is not relieved of its statutory functions by the fact that the trial judge has, expressly or implicitly, reached a conclusion influenced by an opinion concerning the credibility of witnesses. In such a case, making all due allowances for the advantages available to the trial judge, the appellate court must ‘not shrink from giving effect to’ its own conclusion. …*

The Full Court then considered the nature of the onus that a taxpayer bears in proving that the Commissioner’s assessments are excessive. The Full Court noted that the Commissioner is not required to prove an alternative factual case. The taxpayer must positively establish their own version of events on the balance of probabilities, meaning the court must be affirmatively persuaded of the facts asserted. On the Full Court’s own assessment of the evidence:

1. Rene's narrative was not sufficiently supported;
2. the evidence contained inconsistencies and gaps that undermined his case; and
3. the primary judge’s conclusions were, in parts, glaringly improbable when viewed against the full record.

Accordingly, Rene failed to prove that the deposits were not assessable income.

COMMENT – This case is a reminder of how difficult it is for a taxpayer to succeed where there is little contemporaneous documentation supporting the asserted position, or where the existing documents positively contradict it. In tax disputes, later oral explanations will often carry limited weight if they are inconsistent with the documents created at the time.

Citation *Commissioner of Taxation v Cheung* [2026] FCAFC 75 (Charlesworth, Goodman and Horan JJ, Queensland)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCAFC/2026/75.html

3.2 Perez – R & D Promoter Penalties

Narciso Perez was a tax agent and carried on a R&D consulting business under the name "Grow Fast Consulting". Grow Fast advised and assisted clients with R&D tax offset claims for an upfront fee and a commission-based fee. Sara-Beth Cleaves and Bryan Santos referred clients to Grow Fast and each received referral fees in return through their entities.

Between late 2014 and 9 April 2018, Grow Fast advised eight different taxpayers in claiming notional deductions for expenditure on R&D claims for income years ended 30 June 2014 to 30 June 2016. In relation to each of these taxpayers, Narciso, Sara-Beth and/or Bryan advised them that their business activities were eligible for R&D claims and promoted Narciso to be a R&D specialist and could assist them in lodging a R&D claim.

After a taxpayer engaged Grow Fast to submit R&D claims on its behalf, Narciso would ask for financial statements and a completed questionnaire. Narciso would then, on the taxpayer's behalf, prepare an application of R&D activities to AusIndustry, and prepare calculations for the R&D claims by apportioning expenditures using a flat percentage, without reference to any documentation in relation to the relevant income year.

The eight taxpayers who lodged R&D claims under Grow Fast's advice were subsequently subject to ATO review and their notices of assessment amended to omit the R&D tax offset.

In 2020, the Commissioner made an application to the Federal Court for declarations that Narciso contravened section 292-50(1) of Schedule 1 of the TAA 1953. The ATO's primary case was that Narciso had promoted 12 tax exploitation schemes in relation to the 8 taxpayers. The ATO alleged two further alternative cases, that Narciso was the promoter of a single tax exploitation scheme, or alternatively, his conduct resulted in Sara-Beth and Bryan being promoters of tax exploitation schemes.

Narciso argued that he did not engage in conduct that promoted tax exploitation schemes. He contended that the taxpayers had misunderstood his advice, failed to undertake their own due diligence, or in some cases had misled him with falsified information.

Justice Kennett observed that Narciso undertook promoting conduct that led taxpayers to believe that their business had a genuine and substantial claim for the R&D tax incentive. Narciso made all the significant decisions in the conduct of Grow Fast's business, and prepared the calculations which formed the basis of his clients' R&D claims. Further, Justice Kennett held that it was not reasonably arguable that the scheme benefit sought by Narciso's clients were available at law, given there was a lack of R&D activities for many of his clients, and much of the expenditure claimed as R&D expenditure were unsubstantiated.

Justice Kennett made the declarations that Narciso was a promoter of a tax exploitation schemes and also engaged in conduct that resulted in Sara-Beth and Bryan being promoters of tax exploitation schemes.

In making his decision, Justice Kennett made the following comments about the need for documentation to show that R&D activities have been conducted:

116. *There are no express evidentiary requirements for establishing that an activity comes within s 355-25(1). In theory at least, witness testimony might therefore be sufficient to substantiate the relevant taxable facts (Bogiatto at [100]-[101]).* ***However, Adam Savage's observation that "the only difference between screwing around and science is writing it down" (Mythbusters, season 10, episode 12) has obvious force.*** *It will usually be very difficult for a tribunal of fact to accept that any "experimental process", proceeding "from hypothesis to experiment, observation and evaluation", has been undertaken in the absence of some contemporaneous record of experiments and observations.*

COMMENT – This decision reflects the ATO's increasing willingness to use the promoter penalty provisions against advisers and intermediaries involved in aggressive tax arrangements. That trend is likely to become more significant following the 2024 legislative changes, which expanded the scope of the provisions, extended the time limit for proceedings, and substantially increased the maximum penalties available.

COMMENT – The ATO has been increasing its compliance focus on R&D in recent years. See Item 7.1 of these Tax Training Notes. Where R&D offsets are being claimed, tax agents should expect some level of review by the ATO.

Citation *Commissioner of Taxation v Perez (No 2)* [2026] FCA 658 (Kennett J, Sydney) w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2026/658.html

3.3 Vicinity funds – Vic duty and fixtures

The Court of Appeal of the Supreme Court of Victoria has dismissed an appeal of the Commissioner of State Revenue from the decision in *Vicinity Funds RE Ltd v Commissioner of State Revenue* [2024] VSC 658.

The case considered 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.

The transactions involved two major Melbourne properties which were transferred in 2018 for $1 each following the exercise of call options. At the time of transfer, both properties were subject to 299-year leases, under which the tenants had constructed significant shopping centre developments at their own cost, amounting to approximately $925 million. The Commissioner assessed duty based on a very high "unencumbered value" of the land, resulting in assessments totalling approximately $82.5 million. The taxpayers objected, arguing that the valuation incorrectly included the value of tenant-owned fixtures.

Duty is calculated on the greater of the consideration paid and the "unencumbered value" of the land. Under section 22 of the Duties Act, the land is valued as if certain interests or arrangements (such as leases) do not exist where those arrangements reduce the value of the land, particularly where they are part of an arrangement to reduce duty. However, section 22A contains a specific rule for tenant's fixtures. It provides that tenant's fixtures are generally included in the value of the land, but they are excluded if the Commissioner is satisfied that they are not transferred to the purchaser. This reflects the underlying property law position that fixtures installed by a tenant remain the property of the tenant.

The Commissioner's approach was to disregard the long-term leases under the anti-avoidance provisions in section 22 and then treat the land as if it were unencumbered. Importantly, the Commissioner also treated the tenant's ownership of the fixtures as irrelevant, effectively attributing the value of the buildings to the freehold land. This significantly increased the dutiable value.

The Court of Appeal rejected that approach. It held that disregarding a lease for valuation purposes under section 22 does not also mean disregarding separate legal rights that exist independently of the lease. In particular, tenant ownership of fixtures arises under statute and is not simply a product of the lease itself. As a result, even if the lease is ignored for valuation purposes, the tenant's ownership of fixtures continues to exist and must still be taken into account.

The Court emphasised that sections 22 and 22A operate together but perform different functions. Section 22 deals with identifying the appropriate valuation of the land by disregarding certain arrangements, while section 22A deals specifically with how tenant's fixtures are treated in that valuation. Parliament had deliberately introduced a separate provision to deal with fixtures, and this indicates that they must be considered independently rather than being swept away by the operation of section 22. The Court therefore rejected the Commissioner's argument that section 22A was effectively overridden where a lease was disregarded.

A further argument raised by the Commissioner was that the improvements should not qualify as "tenant's fixtures" because they could not be removed without destruction. The Court rejected this argument, holding that the statutory definition is broad and not limited to removable items. The legislation expressly extends to major works and improvements, and there is no requirement that they be capable of removal in a practical sense.

The Commissioner also argued that the leases displaced the statutory ownership rules by "otherwise providing" for the treatment of fixtures. This was also rejected. The Court held that a lease will only displace the statutory position if it clearly contradicts it. It is not enough that the lease covers similar subject matter or uses different drafting language. In this case, the lease terms were broadly consistent with the statutory position and did not remove the tenant's ownership of the fixtures.

Another issue was whether the leases or call options could be treated as "encumbrances". The Court confirmed that, in this context, an encumbrance refers to something like a mortgage or charge. A lease is not generally an encumbrance for these purposes, even if it is long-term or confers extensive rights. Similarly, the call options were not treated as encumbrances, particularly as they had been exercised and were no longer operative at the relevant time.

The key error identified by the Court was that the Commissioner failed to properly apply section 22A. Once it is accepted that tenant's fixtures remain owned by the tenant, the Commissioner must consider whether those fixtures are actually transferred to the purchaser. If they are not transferred, their value should not be included in the dutiable value of the land. The Commissioner did not undertake this analysis.

The outcome was that the Commissioner's appeal was dismissed and the matter was remitted for reassessment in accordance with the correct legal approach.

COMMENT – This decision highlights that duty is fundamentally concerned with the value of what is actually transferred. Even in complex arrangements involving long-term leases and low nominal consideration, it is not open to the Commissioner to ignore underlying property law rights unless the statute clearly permits that outcome. In particular, the treatment of tenant's fixtures requires careful analysis.

COMMENT – The Court's confirmation that an "encumbrance" in this context is confined to something like a mortgage or charge may be important beyond the lease setting. It suggests, for example, that a transfer of land to or from a nominee should not automatically be approached on the footing that the nominee arrangement is merely an encumbrance to be disregarded on valuation. Where the nominee or beneficial structure affects what proprietary rights are actually transferred, that structure may result in what is being transferred as something other than a full freehold estate in the land.

Citation *Commissioner of State Revenue v Vicinity Funds RE Ltd* [2026] VSCA 119 (Beach, Kennedy and Walker JJA, Melbourne)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSCA/2026/119.html

3.4 Special Situations Investing – QLD corporate reconstruction exemption

The Commissioner of State Revenue has been successful in an appeal from the decision in *Special Situations Investing Group III, Inc. v Commissioner of State Revenue* [2025] QSC 345.

This case considers the availability of the corporate reconstruction exemption from landholder duty under the *Duties Act 2001* (Qld). The key issue was whether certain intra-group share transfers satisfied the statutory requirement that the relevant shares be “group property”. The Court of Appeal ultimately held that the exemption did not apply, and that landholder duty was payable.

in November 2017 Special Situations Investing Group III, Inc, acquired shares in a landholding entity (**GS Venture**) in two stages. Through these acquisitions, it obtained a significant interest in GS Venture, which was a “private landholder” because it held land in Queensland with a value exceeding the statutory threshold. As a result, the acquisitions were “relevant acquisitions” and were prima facie subject to landholder duty.

Initially, the Commissioner accepted that the transactions qualified for the corporate reconstruction exemption and issued assessments on that basis. However, that position was later reconsidered. The Commissioner issued amended assessments denying the exemption and imposing landholder duty of approximately $14 million (plus interest). Special Situations Investing Group III, Inc objected and was successful at first instance before the Supreme Court. The Commissioner then appealed to the Court of Appeal.

The dispute turned on the interpretation of provisions in Chapter 10 of the Duties Act, which provide exemptions for transactions undertaken as part of a corporate reconstruction. Broadly, the exemption is intended to apply where property is transferred within a corporate group as part of an internal restructure, rather than a transaction with external parties. However, the exemption is only available if specific statutory conditions are satisfied.

One of those conditions is that the property transferred must be “group property”. This concept is defined in section 407 of the Duties Act. Relevantly, section 407(1)(a) of the Duties Act requires that the transferor and transferee must have been members of the same corporate group before the property was first owned by the transferor or another group company, and that group membership must have been continuous during the period of ownership.

The key disagreement between the parties concerned how to identify the point at which the property was “first owned”. Special Situations Investing Group III, Inc argued for a more flexible interpretation. It contended that it was sufficient if the transferor and transferee were group companies at the time the transferor first owned the shares, even if the shares had previously been owned by other group entities before the transferor and transferee became group members.

The Commissioner argued for a stricter interpretation. It submitted that the relevant point in time is the earliest point at which the property was owned by any group company, including earlier entities in the group structure. On this view, if the transferor and transferee were not both group members at that initial point of ownership, the requirement in section 407(1)(a)(i) would not be satisfied and the exemption could not apply.

The Court of Appeal accepted the Commissioner’s interpretation. It held that the statutory language refers to a single, identifiable point in time when the property was “first owned”, and that this must be determined by reference to the earliest ownership by any group company. The requirement is not satisfied by looking only at the later ownership by the immediate transferor.

In reaching this conclusion, the Court emphasised that the phrase “first owned” must be given its ordinary meaning in context. It refers to the point in time at which ownership first commenced within the corporate group, regardless of which entity held the property at that time. The Court rejected the argument of Special Situations Investing Group III, Inc that the provision should be read as allowing alternative points in time (for example, ownership by the transferor or by another group company). Such an interpretation would involve effectively rewriting the statutory language and would create uncertainty by introducing multiple possible reference points.

The Court also placed weight on the structure of the provision. It noted that the requirement in section 407(1)(a)(i) must be read together with the requirement for continuous ownership in section 407(1)(a)(ii). These provisions operate together and support the view that a single, continuous chain of ownership must be established from the earliest point in time when the property was held within the group.

Applying this interpretation to the facts, the Court found that the shares in GS Venture had been owned by other group entities before the transferor (GS Holdings) and the transferee (Special Situations Investing Group III, Inc) became members of the same corporate group. Because both the transferor and transferee were not group companies at the time of that earlier ownership, the statutory requirement was not satisfied. As a result, the shares were not "group property" for the purposes of the exemption.

The Court also considered the broader purpose of the exemption provisions. While it accepted that the provisions are designed to facilitate genuine corporate restructures, it emphasised that the exemption is not intended to apply to all intra-group transactions. Rather, it applies only where the specific statutory conditions are met. The Court rejected an interpretation that would expand the exemption beyond the clear limits set by the legislation.

The outcome was that the appeal was allowed. The decision at first instance was set aside, and the Commissioner's original decision to deny the exemption was reinstated.

COMMENT – This decision highlights the strict requirements of the corporate reconstruction exemption. Even where a transaction clearly occurs within a corporate group and appears to be part of a restructure, the exemption will not apply unless all statutory requirements are satisfied. In particular, the concept of "group property" in QLD requires analysis of the history of ownership of the relevant asset. It is not sufficient to focus only on the immediate transfer. Instead, it is necessary to trace ownership back to the earliest point at which the asset entered the corporate group and confirm that the relevant entities were group members at that time.

While other States have different duty concessions for corporate restructures, the provisions can be similarly technical and precise. When advising on restructures, it is critical to analyse the circumstances and conditions for the concessions or exemptions carefully before assuming that an exemption or concession will be available.

Citation *Commissioner of State Revenue v Special Situations Investing Group III, Inc* [2026] QCA 98 (Mullins P, Boddice JA, Gotterson AJA, Brisbane)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QCA/2026/98.html

3.5 McLennan – family succession planning and unconscionability

John McLennan and his wife, Karen, accumulated substantial assets over many years, including multiple properties, interests held through discretionary trusts (the Lakshmi Trust and Convulon Trust), and a large SMSF. Their son, Ruskin, became increasingly involved in managing those assets from around 2010, and by 2014 John and Karen had stepped back from active management, transferred control of the trustee companies to Ruskin, and given him a central role in their financial affairs. These steps were influenced in part by concerns about their daughter, Susannah, including her longstanding personal and financial instability and the possibility that she might seek access to family assets.

By 2019, John and Karen obtained further legal and financial advice directed to succession planning and the risk of a family provision claim by Susannah. The advice identified that John's position as appointor of the Lakshmi Trust meant he retained effective control over that trust, creating a risk that its assets could be treated as part of his notional estate and thereby exposed to such a claim. The recommended course was to remove

John and Karen as appointors and appoint Ruskin in their place, so that control of the trust (and therefore the ability to bring its assets into a notional estate claim) was distanced from them.

At the same time, advice was given that a property at Bombi Road, McMasters Beach could be transferred to Ruskin during John and Karen's lifetimes, coupled with a life estate allowing them to continue to live in the property. This step was consistent with an overall strategy of restructuring ownership and control of assets in a way that limited their exposure to a potential claim, while still allowing provision to be made for Susannah in a more controlled form through testamentary trusts.

In 2020, deeds were executed to vary the Lakshmi Trust and appoint Ruskin as the new appointor, thereby removing John's ultimate control over the trust. Later in 2020, John and Karen executed documents transferring the Bombi Road property to Ruskin, subject to life tenancy rights in their favour. The solicitor involved recorded that John understood that these steps would permanently relinquish his control of the trust and transfer ownership of the property, and that he did so voluntarily.

Following Karen's death in 2022 and a later breakdown in family relations, John sought to challenge these arrangements. However, the Court of Appeal upheld the primary judge's findings that the changes to the trust and the transfer of the property were not the product of unconscionable conduct. The Court found that John understood the nature and effect of both transactions, including the loss of control over the trust and the transfer of ownership of the property, and that there was no evidence of pressure or exploitation by Ruskin.

COMMENT – This case is a reminder that pre-death succession planning changes of this kind are usually intended to be permanent. Once control of trusts or ownership of assets is transferred as part of a considered estate or asset protection strategy, it will usually be very difficult to unwind those steps later if there is a relationship breakdown within the family. Before implementing these types of changes, it is important the current owner or controller understands this.

Citation *McLennan by his tutor Kennedy v McLennan* [2026] NSWCA 102 (Leeming, Payne and Ball JJA, New South Wales)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCA/2026/102.html

3.6 Appeal updates

Endycott

The taxpayer in *Endycott and Commissioner of Taxation (Taxation)* [2026] ARTA 214 (***Endycott***) has appealed the ART decision to the Federal Court. In *Endycott*, the ART upheld the penalty assessments against the taxpayer on the basis that the taxpayer had intentional disregard for the law or was reckless, and the safe harbour conditions were not met (see our March 2026 Tax Training Notes).

Haines

The taxpayer in *Haines and Commissioner of Taxation (Taxation)* [2026] ARTA 498 (***Haines***) has appealed the ART decision to the Federal Court. In *Haines*, the ART held that expenses claimed by the taxpayer were not deductible as he had failed to establish that all the business expenses were actually incurred by him, rather than the corporate entities associated with him. Additionally, it was held that the non-commercial losses rules applied to defer the business losses and that the penalties were imposed correctly.

Collie

The taxpayer in *Collie and Commissioner of Taxation (Taxation and business)* [2026] ARTA 328 (***Collie***) has appealed the ART decision to the Federal Court. This was a matter that was remitted by the Full Federal Court in *Collie v Commissioner of Taxation* [2024] FCAFC 172 to the ART (see our April 2024 Tax Training Notes and our February 2025 Tax Training Notes). In *Collie*, the ART affirmed the Part IVA assessments issued by the ATO on the basis that the alleged schemes were entered into to obtain tax benefits, however the quantum of benefits had to be reduced as the taxpayer had proved the availability of carry forward tax losses to offset his income.

Botella

The taxpayer in *Botella and Commissioner of Taxation (Taxation and business)* [2026] ARTA 604 (***Botella***) has appealed the ART decision to the Federal Court. In *Botella*, the ART held that the individual taxpayer was deemed to have received a dividend due to the absence of a written loan agreement that complied with Division 7A. Additionally, the ART held that the arrangements entered into by the taxpayers and related entities constituted a dividend stripping scheme.

Tabcorp

Tabcorp has sought special leave to appeal to the High Court against the recent decision in the Full Court of the Federal Court of Australia in *Tabcorp Maxgaming Holdings Limited v Commissioner of Taxation* [2026] FCAFC 30. Tabcorp unsuccessfully claimed substantial losses in connection with a gaming operator's licence. The Full Court dismissed the appeal by Tabcorp holding that there was no financial arrangement under Division 230 of the ITAA 1997.

S.N.A Group

S.N.A Group has sought 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. 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.

3.7 Other tax and super related cases from 12 May 2026 to 10 June 2026

Citation	Date	Headnote	Link
Palmer and Commissioner of Taxation (Taxation and business) [2026] ARTA 780	12 May 2026	TAXATION – review of objection decision relating to default assessments and penalty assessments – income tax returns not lodged by applicant – what is required of applicant to discharge his burden of proof – whether respondent was required to establish residence of applicant as a jurisdictional fact before issuing assessments – whether amounts received in bank and PayPal accounts were attributable to applicant as his income – whether gross amounts should be attributable to applicant – whether applicant had demonstrated what his taxable income should have been – alternative bases for imposition of administrative penalties arising in relation to same facts – penalty for failure to lodge income tax returns -– whether Tribunal should remit all or any part of the penalty – decision affirmed.	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/780.html

Citation	Date	Headnote	Link
Abraham v Commissioner of State Revenue [2026] VCAT 351	18 May 2026	CATCHWORDS Land Tax Act 2005 (Vic), section 11 – Whether applicant is deemed owner of half share in family holiday house acquired under her late husband's will – Whether will conferred a life estate on the applicant (to make her the deemed owner), or granted her a personal right to reside in the property (in which case the executors would be liable to land tax as registered proprietors) – Will provided that the applicant was entitled to the 'use and occupation' of the property for her lifetime – General rule applying to the construction of wills that this language confers a life estate, subject to any contrary intention established by reference to the will as a whole – Consideration of matters contended by the applicant to reveal a contrary intention – Matters relied upon by applicant are not apt, individually or collectively, to displace the general rule of construction – Applicant is the deemed owner of the interest acquired under the will, in addition to her own fee simple interest, and liable to land tax on the value of the entire property.	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2026/351.html
Dundovich and Commissioner of Taxation (Practice and procedure) [2026] ARTA 846	19 May 2026	PRACTICE AND PROCEDURE – taxation – proceedings dismissed under ss. 99 and 100 of the Administrative Review Tribunal Act – application for reinstatement – failure to comply with direction – failure to attend case event – application dismissed.	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/846.html
Grant and Commissioner of Taxation (Taxation and business) [2026] ARTA 833	19 May 2026	TAXATION – INCOME TAX – general anti-avoidance provisions – whether applicant obtained tax benefits in respect of two types of schemes – whether taxpayer's counterfactuals may be impugned by reference to Part IVA of the Income Tax Assessment Act 1936 (Cth) – whether conduct subsequent to the schemes may inform the reliability of counterfactuals – Part IVA determinations upheld, amounts varied	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/833.html
Fan and Commissioner of Taxation (Taxation and business) [2026] ARTA 875	20 May 2026	TAXATION – default assessments – burden of proof – loans, gifts, cash deposits – penalties – intentional disregard and base penalty uplift – remission – partial penalty remission appropriate in overall circumstances	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/875.html

Citation	Date	Headnote	Link
Stefan v Commissioner of State Revenue [2026] VCAT 375	26 May 2026	Duties Act 2000 (Vic), s 57JA and First Home Owner Grant and Home Buyer Schemes Act 2000 (Vic), s 10 – Whether applicant has previously applied for a first home owner grant – Applicant has failed to discharge onus of proof to establish that he had not previously applied – Whether applicant was dishonest in his more recent application for a first home owner grant – Whether duty exemption apt to be reversed where applicant received first home owner grant in circumstances where he was not entitled to the grant.	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2026/375.html
Kant v Commissioner of Taxation [2026] FCA 649	26 May 2026	PRACTICE AND PROCEDURE – application for review of a decision of a Registrar pursuant to s 35A(5) of the Federal Court of Australia Act 1976 (Cth) (FCA Act) – where the Registrar summarily dismissed the proceeding pursuant to s 31A(2) of the FCA Act and r 26.01(1)(a) of the Federal Court Rules 2011 (Cth) – where re-hearing is required to proceed de novo – where proceeding lacks any reasonable prospect of success – application dismissed – summary judgment for the respondent	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2026/649.html
Commissioner of Taxation v Perez (No 2) [2026] FCA 658	28 May 2026	TAXATION – where the applicant alleges the respondent engaged in conduct that resulted in him being the promoter of 12 tax evasion schemes or, alternatively, resulted in his associates being promoters of some of those schemes in contravention of s 290-50(1) of the Taxation Administration Act 1953 (Cth) (TAA) – where the respondent operated a consulting business, Grow Fast, which purported to advise clients on the research and development (R&D) tax incentive scheme under the Income Tax Assessment Act 1997 (Cth), its process and what was involved in making a claim – where the respondent and his associates promoted the respondent as a tax agent and R&D specialist – where the respondent entered into arrangements with the clients which involved taking a percentage of any R&D incentive secured – where the respondent advised each client that they were eligible for R&D grants on the basis of their "R&D activities" – where there	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2026/658.html

Citation	Date	Headnote	Link
		were no records to substantiate these activities – where the respondent prepared and lodged applications for registration as an R&D entity with AusIndustry for each client – where the respondent produced financial figures for clients not based on records – where these figures were subsequently used to prepare tax incentive schedules – where the tax incentive schedules were lodged with the clients' income tax returns claiming notional deductions for expenses purportedly related to R&D activities – where the clients received the benefit of the claims by way of reduced income tax liability – where the Australian Taxation Office conducted reviews and the claims were unable to be substantiated – whether the clients were engaged in R&D activities – whether difference between screwing around and science – whether the clients were eligible for the R&D incentives claimed – whether the schemes were tax exploitation schemes – whether the respondent and his associates were promoters of the schemes – whether the respondent contravened s 290-50(1) of the TAA	
Eltamimy and Commissioner of Taxation (Taxation and business) [2026] ARTA 929	28 May 2026	TAXATION – income tax – whether applicant entitled to additional deductions for expenses relating to a residential property – whether the applicant had entered into a genuine tenancy agreement in relation to the property – whether any tenancy agreement was on commercial terms – whether applicant used property for private or domestic purposes – substantiation of expenses incurred in relation to the property - whether amounts paid under insurance policies relating to the property were assessable to the applicant – whether applicant entitled to additional deductions for car expenses – whether applicant was able to use log book method rather than cents per kilometre method for working out car expenses – whether log book records kept by applicant complied with statutory requirements – whether applicant had substantiated motor vehicle expenses – administrative	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/929.html

Citation	Date	Headnote	Link
		penalties – penalties for false or misleading statement – whether shortfall amount resulted from recklessness of applicant – whether all or part of penalty should be remitted – decisions varied.	
Hampton and Commissioner of Taxation (Taxation) [2026] ARTA 952	29 May 2026	N/A	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/952.html
THWD and Commissioner of Taxation (Taxation) [2026] ARTA 958	2 June 2026	TAXATION – application for review of objection decision – amended assessments – default assessments – taxpayer's burden of proof – role of Tribunal in Part IVC proceedings – failure by Applicant to discharge burden of proof on balance of probabilities – incomplete documentary record – Applicant an unreliable witness - penalty assessments – shortfall administrative penalties – 'intentional disregard' of a taxation law – safe harbour provisions not applicable – reviewable objection decision affirmed as it relates to the amended assessments for the 2010 and 2014 years and the penalty assessments for the 2009 to 2014 years	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/958.html
Zhao v Chief Commissioner of State Revenue [2026] NSWCATAD 166	3 June 2026	ADMINISTRATIVE LAW – administrative review – assessment – objection – review by Civil and Administrative Tribunal STATE TAXES – land tax – surcharge land tax – whether applicant a "foreign person" – whether the principal place of residence exemption under section 10(1)(r) of the Land Tax Management Act 1956 (NSW) applies – whether discretion under section 5B of the Land Tax Act 1956 (NSW) applies	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCATAD/2026/166.html
Le & Le Pty Ltd ATF Le & Le Family Trust v Chief Commissioner of State Revenue [2026] NSWCATAD 167	3 June 2026	TAXES AND DUTIES — Land Tax — Surcharge Land Tax — foreign person – failure in discretionary trust deed to contain a no foreign beneficiary clause and a no amendment clause	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCATAD/2026/167.html
Jawad and Commissioner of Taxation (Practice and procedure) [2026] ARTA 1001	5 June 2026	PRACTICE AND PROCEDURE – Application to issue a summons to an ATO officer – Application refused	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/1001.html

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			
Treasury Laws Amendment (Tax Reform No. 1) Bill 2026	28/5	4/6			

4.2 Capital gains tax adjustments

The Treasury Laws Amendment (Tax Reform No. 1) Bill 2026 has been introduced into Commonwealth Parliament to give effect to the Federal government's proposed changes to CGT and negative gearing has announced in the 2026 Budget. The Bill also introduces the Working Australians tax offset and the standard deduction for work related expenses.

This section provides a summary of the CGT reforms. The proposed legislative amendments to give effect to the CGT reforms are extensive and the following provides a summary of the key operative amendments.

Categories of capital gains

A new section 102-6 is to be introduced in the ITAA 1997 providing the definitions of four categories of capital gains as follows:

1. residential capital gains;
2. deferred residential capital gains.
3. non-residential capital gains; and
4. deferred non-residential capital gains.

These categories are important for the order in which losses are applied when calculating a net capital gain. The calculation steps are set out in further detail later in this section.

<u>Residential capital gain</u>

A residential capital gain is a capital gain to which section 102-6(5) of the ITAA 1997 does not apply and arises from a CGT event happening to a CGT asset that is or was a "residential dwelling".

A residential capital gain is the portion of a capital gain attributable to periods when a dwelling was used to provide residential accommodation. It is calculated by applying the proportion of the ownership period from 1 July 2027 during which the dwelling was so used to the total capital gain. Periods already covered by the main residence exemption are excluded, as any gain for those periods is disregarded entirely.

EXAMPLE – Assume a taxpayer bought a house in 2028, converted it into professional offices in 2030, and then sold it in 2040 after it had been used solely as offices for 10 years. Part of the gain is still a residential capital gain because the asset “was” once a residential dwelling, even though it had long ceased to have any residential character by the time of the CGT event.

"Residential dwelling" is defined in proposed new section 26-160 as follows:

(1) A residential dwelling means a dwelling other than any of the following:
(a) a caravan, mobile tiny home, or other mobile home;
(b) a hotel, motel, inn, hostel or boarding house;
(c) a dwelling providing accommodation to students in connection with a school or an education institution that is not a school;
(d) a boat or other marine vessel;
(e) a dwelling in a class of dwellings determined by the Minister by legislative instrument for the purposes of this paragraph.

(2) For the purposes of subsection (1), a residential dwelling is taken to include any of the following things to the extent that the thing is available for use by an occupant of the dwelling:
(a) land adjacent to the dwelling;
(b) a garage, storeroom or other structure associated with the dwelling.

COMMENT – This exclusion from "residential dwelling" for commercial residential uses is narrower than the GST concept of "commercial residential premises". For example, under the GST definition, commercial residential premises include not only hotels, motels, inns, hostels and boarding houses, but also premises that are similar to those kinds of premises. By contrast, the proposed definition here excludes only specified categories, without extending to premises of a similar character.

EXAMPLE – A serviced apartment complex or apartment hotel may be commercial residential premises for GST purposes because it is similar to a hotel or motel, but it may still fall within the proposed definition of "residential dwelling" here because the exclusion does not extend to premises of a similar character. This distinction is more relevant to the negative gearing changes discussed below.

A residential capital gain is worked out using the following formula:

$$\textit{Amount of the capital gain} \times \frac{\textit{Residential accommodation days}}{\textit{Days in the post-July 2027 ownership period}}$$

The "post-July 2027 ownership period" is the part of the relevant ownership period that falls on or after 1 July 2027 and ends when the CGT event happens. If the taxpayer made the gain directly, this is their own ownership period of the asset. If the taxpayer is taken to have made the gain as a beneficiary of a trust, it is the trustee's ownership period instead. In either case, the period excludes any day, or part of a day, for which the gain could reasonably be expected to be disregarded under Subdivision 118-B, such as under the main residence exemption.

"Residential accommodation days" means the total number of days in the "post-July 2027 ownership period" during which the asset is used, or held, for residential accommodation. A full day counts where the asset is used, or held, wholly for that purpose. If the asset is only partly used, or held, for residential accommodation on a particular day, only the relevant fraction of that day is counted.

COMMENT – The definition of "residential accommodation days" requires apportionment of a day where the asset is only partly used, or held, for residential accommodation. It is simply whole-day test and may create practical complexity where premises have mixed use during a day or are used in different ways by different occupants.

COMMENT – The expression “residential accommodation” is not separately defined. Presumably, it is intended to bear its ordinary meaning, although that may still leave room for debate, particularly where premises are used for short-term, mixed or non-traditional forms of occupation.

COMMENT – The main residence days for the dwelling, as can be expected in accordance with the existing rules, reduce the total taxable capital gain and therefore reduce the residential capital gain and the non-residential capital gain amounts. However, for the remaining capital gain after the main residence exemption is applied, the effect of the main residence days is to increase the residential capital gain portion as against the non-residential capital gain portion.

The Explanatory Memorandum provides an Example of how to calculate the residential capital gain and non-residential capital gain where a dwelling is used as a main residence and for multiple purposes:

> ***Example 1.8 Calculating residential capital gains***
>
> *On 13 October 2027, Minh Anh becomes the owner of seaside land on which a large, two-level residential dwelling is constructed. She commences using the lower level as her main residence and providing the top level as residential accommodation.*
>
> *On 8 May 2032, at the ending of a tenancy for the part used for residential accommodation, the dwelling is demolished. A building suitable for use as a wellness retreat is constructed and Minh Anh leases out the property to commercial tenants.*
>
> *On 14 June 2035, Minh Anh ceases to be the owner of the property when it is sold. The capital gain that would be made on the sale of the property, apart from the application of the CGT main residence exemption and after taking into account cost base indexation, would be $3.9 million.*
>
> *Minh Anh applies the Subdivision 118-B main residence exemptions to reduce the amount of that capital gain, taking into account:*
>
> *• the number of non-main residence days in the ownership period (1132 of 2792); and*
>
> *• the reasonable extent to which the original dwelling was used for an income producing purpose (40 per cent).*
>
> *On the application of those exemptions, Minh Anh reduces the capital gain of $3.9 million by $1,391,260.*
>
> *The amount of capital gain to be included in determining if Minh Anh has a net capital gain for the 2034/35 income year is $2,508,740.*
>
> *None of this gain is a deferred residential capital gain or a deferred non-residential capital gain. The amount of the gain that is a residential capital gain is equal to the amount of the capital gain multiplied by a fraction, being the number of residential accommodation days divided by the total number of days in the post-1 July 2027 ownership period. The remainder of the gain will be a non-residential capital gain.*
>
> *The residential accommodation days includes the fractional part of those days in which the dwelling was used for providing residential accommodation, with the fraction determined based on the extent of use. Based on the apportionment made for the main residence exemption this is a 4/10th fraction of 1660 days = 664.*
>
> *Days in the post-2027 ownership period is 2792, reduced by the parts of days for which it is reasonable to expect a capital gain has been disregarded by the operation of the main residence exemption. In Minh Anh’s circumstances, it is reasonable to ascertain on the basis of the attribution made under the exemption that this will be a 6/10th fraction of each of the 1660 days. Given this, the days in the post-2027 ownership period are 1796 (2792 less 996).*

As a result, Minh Anh has:

- *a residential capital gain of $927,507 ($2,508,740 x 664/1796)*
- *a non-residential capital gain of $1,581,233.*

<u>Deferred residential capital gain</u>

A deferred residential capital gain is a capital gain to which section 102-6(5) applies and arises from a CGT event happening to a CGT asset that is or was a "residential dwelling".

Section 102-6(5) applies to a capital gain if section 112-160(3)(a) or 112-170(3)(a) treats the taxpayer as having made the capital gain; or because of section 115-215, the taxpayer is taken to have made the capital gain as a beneficiary of a trust in relation to the trust's deferred gain (within the meaning of section 112-170(3)(a)). The application of the rules in section 112-160 and 112-170 are discussed below.

A deferred residential capital gain is worked out using the following formula:

$$\textit{Amount of the capital gain} \times \frac{\textit{Residential accommodation days}}{\textit{Days in the pre-July 2027 ownership period}}$$

The "pre-July 2027 ownership period" is the part of the relevant ownership period that ends on 30 June 2027. If the taxpayer made the gain directly, this is their own ownership period of the asset. If the taxpayer is taken to have made the gain as a beneficiary of a trust, it is the trustee's ownership period instead. In either case, the period excludes any day, or part of a day, for which the gain could reasonably be expected to be disregarded under Subdivision 118-B, such as under the main residence exemption.

"Residential accommodation days" means the total number of days in the "pre-July 2027 ownership period" during which the asset is used, or held, for residential accommodation. A full day counts where the asset is used, or held, wholly for that purpose. If the asset is only partly used, or held, for residential accommodation on a particular day, only the relevant fraction of that day is counted.

<u>Non-residential capital gain</u>

A "non-residential capital gain" is the residual category of capital gain, comprising any capital gain that is neither a "residential capital gain" nor a capital gain to which section 102-6(5) applies.

<u>Deferred non-residential capital gain</u>

A capital gain that is not a "residential capital gain" but is one to which section 102-6(5) does apply is a "deferred non-residential capital gain".

Indexation of cost base of CGT assets

<u>CGT event after 1 July 2027</u>

A new section 110-36(1A) is inserted into the ITAA 1997. It provides that the cost base of a CGT asset includes indexation of the elements of the cost base (except the third element) for the purposes of working out the capital gain of an individual or a trust from a CGT event happening in relation to the CGT asset if the CGT event happens on or after 1 July 2027 and the requirements of Division 114 are met.

Section 114-10(1) is proposed to be amended to provide that you only index expenditure including in the cost base of a CGT asset under section 110-36(1A) if the asset was acquired at least 12 months before the time of the CGT event. A sale and reacquisition taken to have happened because of the 1 July 2027 transitional rules is disregarded. These transitional rules are discussed further below.

There is a residency requirement for indexation under section 110-36(1A). This is a strict eligibility condition that must be satisfied throughout a defined period. An individual will only be entitled to include indexed amounts in the cost base of a CGT asset if they maintain continuous Australian residency status over the relevant timeframe.

The critical concept is the "testing period". This period begins at the later of 1 July 2027 or the time the asset is acquired, and ends when the CGT event happens. Throughout this entire period, the individual must not be a foreign resident or a temporary resident at any time. If the individual fails this requirement at any point during the testing period, indexation is not available at all for the capital gain.

COMMENT – The rule operates on an "all-or-nothing" basis. It does not permit apportionment of indexation for periods of Australian residency, as the CGT discount currently does. Even a brief period of non-residency or temporary residency during the testing period will deny indexation in full. The effect is to confine indexation to taxpayers who are continuously Australian residents (excluding temporary residents) from the relevant start date through to disposal of the asset. The Explanatory Memorandum states that there is currently no apportionment mechanism for periods of non-residency, but notes that future amendments may consider allowing partial access to indexation where an individual is only an Australian resident for part of the ownership period.

The provision also incorporates a continuity rule designed to prevent outcomes being manipulated through changes in ownership. Where the acquisition time of the asset is determined under the deemed acquisition rules in section 115-30 (for example, in certain rollover or trust situations), the individual is taken to have had the same residency status as the prior owner for the relevant earlier period. This means that any periods of foreign or temporary residency of a prior owner can be attributed to the current taxpayer, potentially disqualifying indexation.

COMMENT – The Explanatory Memorandum makes clear that a corresponding outcome arises for beneficiaries who are assessable on trust capital gains. In those cases, the residency requirement effectively applies at the beneficiary level, so that indexation will not flow through to a beneficiary who does not meet the same continuous residency requirement.

EXAMPLE – Assume an individual acquired a CGT asset in September 1998 for $600,000, comprising a first element cost base of $550,000 and second element acquisition costs of $50,000. Assume indexation to 30 September 1999 increases those indexed elements to $572,000 and $52,000 respectively, giving an indexed cost base of $624,000.

1. *Step 1 – Deemed disposal and re-acquisition on 1 July 2027:* Under the transitional rules which are discussed below, the taxpayer is treated as having disposed of and re-acquired the asset on 1 July 2027 for its market value. Assume the market value on that date is $1,800,000. This means the pre-1 July 2027 economic gain is $1,200,000 ($1,800,000 less the unindexed historical cost base of $600,000). For CGT assets acquired before 21 September 1999, the pre-1 July 2027 gain must be worked out under the old law, meaning the taxpayer effectively chooses between applying indexation (to September 1999) or the CGT discount, but cannot apply both.
2. *Step 2 – Deferred gain for the pre-1 July 2027 period:* The pre-1 July 2027 growth is brought to account under the deferred gain rules. In this example, that deferred gain is based on the gain referable to the period ending on 30 June 2027. Assume the taxpayer uses the CGT discount method rather than indexation for the pre-1999 period. The 50% CGT discount is applied to that pre-1 July 2027 gain under the transitional rules, with the discounted gain being $600,000;
3. *Step 3 – Post-1 July 2027 gain and indexation:* Assume the taxpayer later sells the asset in August 2032 for $2,400,000. The post-1 July 2027 gain is worked out by reference to the deemed re-acquisition cost

of $1,800,000, producing an unindexed gain of $600,000. As the 12-month acquisition requirement is met, and assuming the taxpayer satisfies the continuous Australian residency condition, indexation can apply to the post-1 July 2027 cost base under section 110-36(1A). Assume the indexed cost base at the time of sale is $1,950,000. The indexed post-1 July 2027 gain would therefore be $450,000 ($2,400,000 less $1,950,000).

On these assumptions, the total capital gain is $1,050,000 comprising the deferred discount capital gain of $600,000 for the pre-1 July 2027 period and the indexed gain of $450,000 for the post-1 July 2027 period. By contrast, if the law had not changed and the entire $1,800,000 gain ($2,400,000 less $600,000) qualified for the 50% CGT discount, the net capital gain would have been $900,000 rather than $1,050,000.

The indexation rules in section 110-36(1A) do not apply to an asset to which the provisions in proposed section 115-102 (about new residential dwellings) and proposed section 115-125 (about affordable housing) apply to the capital gain. These provisions are discussed further below.

There are special rules for calculating capital gains through trusts where indexation has been applied. Under section 115-225(4), these rules apply where a capital gain of a trust estate:

1. has been calculated using a cost base that includes indexation under section 110-36(1A); and
2. is being brought to account in circumstances where a mismatch may arise between the trust's treatment and the treatment that would apply to the beneficiary or the relevant concession. These circumstances are as follows:
   (a) where the beneficiary is taken, under section 115-215, to have made a corresponding capital gain but, hypothetically, would not have been entitled to include indexation in the cost base had the beneficiary directly owned the asset; or
   (b) where the attributed gain is, or gives rise to, a discount capital gain to which provisions such as section 115-102 or section 115-125 apply; or
   (c) where the amount is relevant to trustee assessments under section 115-220 or section 115-222.

Where one of those conditions is satisfied, section 115-225(5) prescribes that, for the purposes of the relevant attribution calculation, the capital gain is to be re-determined on the assumption that indexation had not been applied to the cost base. This involves recalculating the amount of the capital gain at its original, pre-reduction stage under the method statement in section 102-5, but with the cost base modified to remove any uplift attributable to indexation.

EXAMPLE – Assume a trust sells a new residential dwelling after 1 July 2027 and makes a capital gain of $400,000 after applying indexation under section 110-36(1A). Assume the gain would otherwise satisfy the requirements in section 115-102, so that, if made directly by an individual, it would be a discount capital gain entitled to the 50% discount under Division 115. Also assume a beneficiary is specifically entitled to the gain and is therefore taken, under section 115-215, to have made the corresponding capital gain. In that case, section 115-225(4) is engaged because the trust's gain was worked out using indexation, but the attributed gain is one to which section 115-102 would apply (i.e. where the trustee has effectively chosen indexation rather than the discount). Section 115-225(5) then requires the trust capital gain to be re-determined, for attribution purposes, on the assumption that indexation had not been applied. If the gain calculated without indexation would have been $520,000, the amount of the capital gain used for attribution purposes to the beneficiary under subdivision 115-C is worked out by reference to that $520,000 amount, rather than the indexed $400,000 amount. The beneficiary's entitlement to the discount under section 115-102 is then worked out on that re-determined gain. The purpose of the provision is therefore to prevent indexation at the trust level from reducing the gain that is then subjected to a discount outcome under section 115-102.

The removal of indexation does not affect the manner in which capital losses, prior year losses or quarantined amounts have been applied, including the quantum of those amounts used to reduce the gain.

EXAMPLE – Assume a trust makes a capital gain of $500,000 after applying indexation under section 110-36(1A). Assume further that, before applying indexation, the gain would have been $700,000. The trust also has current year capital losses of $200,000, all of which are applied in working out the trust's capital gain under the method statement in section 102-5. On the indexed calculation, the trust's net gain is therefore $300,000.

If a beneficiary is specifically entitled to that gain and the gain is one to which section 115-102 would apply, section 115-225(4) is engaged. Under section 115-225(5), the gain must then be re-determined on the assumption that indexation had not been applied. On that re-determination, the starting gain is $700,000 (being the gain before reductions under section 102-5), but the same $200,000 capital losses remain applied. The result is a recalculated gain of $500,000 for attribution purposes.

A Note is to be added into section 152-205 (which concerns the active asset reduction) stating that the 50% active asset reduction in the small business CGT concessions applies after indexation.

<u>CGT event before 1 July 2027</u>

The Bill proposes amendments that apply to the indexation of the cost base of a CGT asset for individuals and trusts where the most recent acquisition of the asset occurred at or before 11.45 am (by legal time in the Australian Capital Territory) on 21 September 1999, the CGT event happens before 1 July 2027 and the requirements in Division 114 are met.

These provisions mirror the existing indexation choice available to individuals and trusts.

Indexation cannot be chosen for a CGT event arising from for a sale and reacquisition taken to have happened because of the 1 July 2027 transitional rules. These transitional rules are discussed further below.

Removal of 50% CGT discount other than for certain residential dwellings

For a discount capital gain from a CGT event happening on or after 1 July 2027, a discount of at least 50% is only available if the CGT event relates to a "new residential dwelling", to the provision of affordable housing, or to other CGT assets of a kind determined by the Minister.

<u>CGT discount for individuals and trusts</u>

Section 115-100(a), which provides for discount capital gains for individuals and trusts, is to be amended.

There are now only two scenarios where a discount percentage applies for trusts and individuals under section 115-100(a):

where a capital gain is covered by the new concession for "new residential dwellings"; and
for capital gains arising from CGT events that occur before 1 July 2027.

Outside of these specific cases, the discount percentage is 0%.

The concession for "new residential dwellings" is contained in proposed section 115-102 of the ITAA 1997. The provision only applies to a "discount capital gain". This means the gain must already satisfy the requirements of Division 115, including the characterisation of the gain and the ordinary conditions for discount treatment (such as the 12-month holding rule). The provision then imposes additional threshold requirements. It applies only where the taxpayer is an individual, and where the gain is not excluded by the foreign or temporary resident limitations.

The relevant capital gain must arise from a CGT event happening on or after 1 July 2027, and that event must relate to a qualifying CGT asset. The class of qualifying assets is defined exhaustively in section 115-102(2), being either a "new residential dwelling" or another class of CGT assets specified by the Minister via legislative instrument.

While the term "residential dwelling" is defined in the proposed amendments, the term "new residential dwelling" is not. Instead, proposed section 26-160(3) provides that a "residential dwelling is a new residential dwelling in relation to you if the requirements determined under subsection (4) are met in relation to you and the residential dwelling". Subsection (4) then provides that as follows

4. *The Minister must, by legislative instrument, determine requirements for the purposes of subsection (3). Without limiting this subsection, the requirements may include requirements relating to one or more of the following:*
   - *(a) the kind of residential dwelling;*
   - *(b) the kind of interest you hold in the residential dwelling and the circumstances in which you acquired your interest (such as whether you were the builder or a subsequent purchaser of the residential dwelling);*
   - *(c) circumstances relating to the creation of the residential dwelling (such as whether the residential dwelling was built on vacant land, was created through substantial renovations of an existing building, or was built to replace a demolished residential dwelling);*
   - *(d) whether the residential dwelling has a separate title, equitable title or similar legal interest that can be acquired by an entity;*
   - *(e) whether the residential dwelling genuinely adds to the supply of residential dwellings in Australia.*

While the concession is limited to individuals, the section also expressly accommodates gains derived through trusts. Where a trust makes a capital gain that satisfies the conditions, the provision applies where, because of section 115-215, a beneficiary is taken to have made a corresponding gain. The effect is that the concession attaches at the level of the trust gain and flows through to beneficiaries in accordance with the existing attribution mechanism in Subdivision 115-C.

Once the conditions in section 115-102 are satisfied, the capital gain is subject to a 50% discount in accordance with section 115-100(a), as discussed above.

Under section 115-102(5), the taxpayer, or in the case of a trust a trustee, may choose for the provision not to apply to the relevant discount capital gain. If that choice is made, the gain is not subject to any percentage reduction under Division 115. Instead, the taxpayer may rely on the indexation regime in section 110-36(1A).

<u>CGT discount for affordable housing</u>

Before the proposed amendments, section 115-125 operates as a specific modification to the Division 115 discount rules for gains connected with affordable housing. It applies to a discount capital gain made by an individual, or a gain attributed to an individual under section 115-215, where the statutory affordable housing conditions are satisfied, with the key condition being that the dwelling was used to provide affordable housing on at least 1095 days prior to the CGT event.

The Bill proposes to make changes that are largely to ensure that the affordable housing concession integrates with the broader new CGT discount rules. For a qualifying gain, section 115-125 increases the ordinary 50% discount by up to a further 10 percentage points, so that up to 60% of the gain is disregarded at the discount stage of the section 102-5 method statement. The discount percentage will be between 50% and 60%, depending upon whether the number of days it is used to provide affordable housing over the total ownership period and subject to the residency apportionment rules.

Where the discount percentage is 60%, there is a choice to apply indexation and disapply the CGT discount.

In trust cases, the concession flows through the Subdivision 115-C attribution rules, so that a beneficiary taken to have made the relevant gain under section 115-215 receives the enhanced discount if the underlying trust gain satisfies section 115-125. The practical effect is that a qualifying affordable housing gain is reduced by 60%, rather than the standard 50%, in working out the taxpayer's net capital gain.

Transitional rules for CGT assets acquired prior to 1 July 2027

The Bill proposes to insert a new Subdivision 112-E into the ITAA 1997. This Subdivision provides transitional rules for all CGT assets, including Pre-CGT assets.

A snapshot summary of Subdivision 112-E for pre-1 July 2026 capital gains is set out in the following table:

Provision	Asset type	Treatment of pre-1 July 2027 gain
s 112-155 / s 112-165	Post-CGT assets	Deferred (ss 112-160 / 112-170)
s 112-175	Pre-CGT assets	Disregarded
s 112-180	K6 gains on pre-CGT interests	Deferred

<u>Australian resident individuals (post-CGT assets)</u>

Section 112-155 establishes a deemed disposal and reacquisition mechanism for certain CGT assets held by Australian resident individuals as at 1 July 2027.

Eligibility

Section 112-155 applies where an individual:

1. holds a CGT asset on 30 June 2027 that is not a pre-CGT asset;
2. acquired and continuously held the asset before that date;
3. continues to hold the asset until a later realisation event occurring on or after 1 July 2027; and
4. satisfies specified conditions – the foreign/temporary resident discount rules would not apply, the asset is not subject to concession regimes for new residential premises or affordable housing

COMMENT – This condition does not impose a general requirement of continuous Australian residency. Rather, the deemed disposal and reacquisition mechanism is excluded only where the foreign or temporary resident discount rules in Division 115 would apply to the gain. An individual who has been a foreign or temporary resident for part of the ownership period is not automatically ineligible. The test is whether those provisions would apply to the hypothetical discount capital gain. The rule is intended to ensure that the deemed disposal and reacquisition cannot be used to restore or increase access to the CGT discount for foreign or temporary residents. Paragraph 1.119 of the Explanatory Memorandum also notes that further consideration may be given to the treatment of part-period residents.

COMMENT – The deemed disposal and reacquisition mechanism does not apply to a new residential dwelling that benefits from the new discount in section 115-102 or affordable housing covered by section 115-125.

If the section applies, subsection 112-155(2) deems that the taxpayer sold the asset just before 1 July 2027 and reacquired the asset immediately after that sale. The deemed sale occurs on 30 June 2027 and the reacquisition on 1 July 2027.

The consequence is that the cost base of the asset is reset for CGT purposes at the transition date.

Capital proceeds and cost base reset

The capital proceeds for the deemed disposal are the asset's market value just before 1 July 2027, unless the taxpayer elects to apply an apportionment method determined under section 112-185.

COMMENT – The apportionment method is to be determined by the Minister in a legislative instrument. No apportionment methods have yet been proposed.

The same amount becomes the first element of the cost base of the reacquired asset. This mechanism establishes a new cost base corresponding to the asset's value (or an apportioned amount) at the transition date.

Deferral of gain or loss

Although a CGT event is deemed to occur on 30 June 2027, any resulting gain or loss is not recognised at that time. Instead, section 112-160 treats the previously disregarded amount as a deferred gain or loss in the income year of the eventual CGT event.

Section 112-160 applies where, under section 112-155(2)(a), an individual is taken to have made a capital gain (**initial notional gain**) or a capital loss (**initial notional loss**) from the deemed sale just before 1 July 2027.

Subsection 112-160(2) provides that the initial notional gain or loss is disregarded at the time it arises, except for the purposes of the later deferral rules.

Where the deemed event produces a gain, subsection 112-160(3) provides that:

1. in the income year in which the realisation event occurs, the taxpayer is treated as having made a capital gain (**deferred gain**);
2. the deferred gain is attributed to the deemed CGT event under section 112-155(2)(a); and
3. the amount of the deferred gain is equal to the initial notional gain.

Where the deemed event produces a loss, subsection 112-160(4) provides that in the income year of the realisation event, the taxpayer is treated as having made a capital loss (the deferred loss) equal to the initial notional loss.

As with gains, the loss is only recognised at the time of the later CGT event.

Interaction with the later realisation event

Section 112-160 contemplates that, in the income year of the realisation event, there may be two separate CGT outcomes:

1. the deferred gain or loss attributable to the pre-1 July 2027 period; and
2. a separate capital gain or loss arising from the actual realisation event, reflecting post-1 July 2027 changes in value.

The second amount is calculated using the reset cost base established under section 112-155(2)(b).

Treatment of acquisition time for concession purposes

For the purposes of determining whether the capital gain from the realisation event qualifies as a discount capital gain and for the small business CGT concessions, subsections 112-160(5) and (6) require that the deemed sale and reacquisition under section 112-155(2) be disregarded.

Accordingly, the asset is treated as having been acquired at its original acquisition time, not the reset time of 1 July 2027, when testing eligibility for these concessions.

EXAMPLE – assume the following facts:

1. individual taxpayer acquires a CGT asset (that is not a new residential dwelling or affordable housing) on 1 July 2015 for $100,000;

2. the market value at 30 June 2027 is $180,000;
3. the asset is sold on 1 July 2030 for $250,000;
4. the taxpayer is eligible for the CGT discount;
5. there are no capital losses or other adjustments; and
6. section 112-155 applies.

Step 1 — Deemed sale at 30 June 2027 (section 112-155)

The taxpayer is taken to dispose of the asset for $180,000 and reacquire it for $180,000.

Initial notional gain is 180,000−100,000=80,000. However, this gain is disregarded at that time and deferred under section 112-160.

Step 2 — Realisation event on 1 July 2030

(A) Deferred gain (pre-1 July 2027 component)

Under s 112-160(3), in the 2030 income year, the taxpayer is taken to make a capital gain equal to $80,000. It retains its discount capital gain status and the deemed event is treated as occurring at the time of the realisation event for discount purposes.

(B) Actual gain (post-1 July 2027 component)

The separate gain from the realisation event is $70,000, calculated as follows:

Post-2027 gain= 250,000−180,000= 70,000

This uses the reset cost base under section 112-155(2)(b).

Step 3 — Total capital gains recognised in 2030

In the income year of disposal, the taxpayer has:

Component	**Amount**
Deferred gain (pre-1 July 2027)	$80,000
Realisation gain (post-1 July 2027)	$70,000
Total capital gains	**$150,000**

Step 4 — Discount treatment for deferred gain

Under section 112-160(3)(c), the deemed CGT event is treated as occurring at the time of disposal.

Accordingly, the 12-month rule is satisfied, and the deferred gain can qualify for the CGT discount.

The deferred gain is reduced by 50% to $40,000. The realised gain is not reduced, meaning a total net capital gain of $110,000, noting that there were no current year or prior year capital losses.

<u>Trusts (post-CGT assets)</u>

Section 112-165 applies to a CGT asset of a trust estate where:

1. the asset is not a pre-CGT asset at 30 June 2027;
2. the trustee acquired and continuously held the asset before that date;
3. the trustee continues to hold the asset until a realisation event on or after 1 July 2027; and

4. if a discount capital gain were made on that later event, at least one relevant beneficiary would not be subject to the foreign or temporary resident discount restrictions; and
5. the asset is not wholly within regimes for new residential dwellings or affordable housing

Deemed sale and reacquisition

If the section applies, subsection 112-165(2) provides that the trustee is taken to have sold the asset just before 1 July 2027, and to have reacquired it immediately after for the same amount.

Capital proceeds and cost base reset

Under subsection 112-165(3), the capital proceeds for the deemed disposal are the asset's market value just before 1 July 2027, unless the trustee chooses to use an apportionment method under section 112-185.

That same amount becomes the first element of the cost base of the reacquired asset.

Deferral of gains and losses

As with section 112-155, any gain or loss arising on the deemed disposal:

1. is not recognised at 30 June 2027;
2. is disregarded at that time; and
3. is deferred until the income year of the later realisation event.

The operative deferral rules are contained in section 112-170, which applies at the trust level (and flows through to beneficiaries via Subdivision 115-C).

As with section 112-160, section 112-170 provides for an initial notional gain or an initial notional loss. The initial notional gain or loss is disregarded other than for the purpose of the deferral rules.

The trust is then treated as having a deferred capital gain in the income year of a later realisation event. The timing rules apply the same as with section 112-160.

Interaction with beneficiaries

A key feature of section 112-165 is its integration with the trust CGT streaming regime:

1. the deemed gain or loss at the trust level is ultimately brought to account when the realisation event occurs;
2. at that time, the gain may be allocated to beneficiaries under section 115-215; and
3. the eligibility conditions in subsection 112-165(1)(d) ensure that the discount can operate appropriately at the beneficiary level.

<u>Pre-CGT assets</u>

Section 112-175 applies where a taxpayer holds an asset that is a pre-CGT asset on 30 June 2027, and the taxpayer continues to hold the asset until a later realisation event on or after 1 July 2027.

If the section applies, subsection 112-175(2) provides that the taxpayer is taken to have sold the asset just before 1 July 2027 and to have reacquired it immediately on 1 July 2027.

Capital proceeds and cost base reset

The capital proceeds for the deemed disposal are the asset's market value just before 1 July 2027, unless the taxpayer chooses to apply an apportionment method under s 112-185. That same amount becomes the first element of the cost base of the reacquired asset.

Any capital gain from the deemed sale is disregarded.

Consequence for pre-CGT status

The effect of the deemed sale and reacquisition is that the asset ceases to be a pre-CGT asset from 1 July 2027; and it becomes subject to the CGT regime going forward.

CGT event K6 triggered by deemed disposal

Section 112-180 applies where:

1. a taxpayer holds shares in a company or an interest in a trust;
2. those interests are subject to a deemed sale and reacquisition under section 112-175(2) (i.e. they were pre-CGT assets at 30 June 2027);
3. that deemed sale triggers CGT event K6 on 30 June 2027;
4. the taxpayer makes a capital gain (**initial notional gain**) from that K6 event; and
5. the taxpayer continues to hold the shares or interest until a later realisation event on or after 1 July 2027.

COMMENT – CGT event K6 will only happen if the market value of the post-CGT property represents at least 75% of the net value of the trust or company as at 30 June 2027. For more information about the application of CGT event K6, see TR 2004/18.

Subsection 112-180(2) provides that the initial notional gain is disregarded, except for the purposes of applying the deferral mechanism.

Subsection 112-180(3) provides that:

1. in the income year in which the later realisation event occurs, the taxpayer is treated as having made a capital gain (the **deferred gain**);
2. that gain is taken to arise from CGT event K6; and
3. the amount is equal to the initial notional gain.

The deferred gain is a discount capital gain if the initial notional gain would have been a discount capital gain.

Apportionment method

Section 112-185 allows the Minister to determine, by legislative instrument, a method for apportioning capital gains and losses for relevant CGT assets. The provision applies where an asset is subject to a deemed sale and reacquisition under section 112-155 (individuals), section 112-165 (trusts), or section 112-175 (pre-CGT assets) and a later realisation event occurs in relation to that asset.

Any method determined under section 112-185 must recognise the deemed acquisition on 1 July 2027 and any expenditure incurred on or after that date, including indexation adjustments.

The method must allow the calculation of the capital proceeds for the deemed disposal; and the cost base and reduced cost base at the time of reacquisition.

The method may also take into account any other matter the Minister considers relevant.

If the trustee elects to use an apportionment method under section 112-185, the relevant CGT event for making that choice is the later realisation event and the choice can be made as late as the lodgment of the trust's return for that income year.

Giving information on capital gains to beneficiaries

Section 115-235 imposes a reporting and disclosure obligation on trustees in relation to capital gains that are attributed to beneficiaries under Subdivision 115-C, particularly in the context of the expanded categorisation and indexation rules.

Section 115-235 applies where a trust has capital gains for an income year; and a beneficiary is taken, under section 115-215(3), to have made one or more capital gains in relation to those trust gains.

Under subsection 115-235(1), the trustee must:

1. prepare a statement for each relevant beneficiary;
2. ensure the statement complies with prescribed content requirements; and
3. give the statement to the beneficiary within the period specified by the Commissioner.

A failure to comply can give rise to an administrative penalty under the TAA 1953.

Subsection 115-235(2) specifies that the statement must:

1. be in the approved form;
2. state the amount of each capital gain the beneficiary is taken to have made;
3. classify those gains into the relevant categories, namely:
    (a) non-residential capital gains;
    (b) residential capital gains;
    (c) deferred non-residential capital gains;
    (d) deferred residential capital gains; and
4. set out the effect of key modifying provisions in relation to each capital gain, being:
    (a) section 115-215(4) (discount status and small business adjustments); and
    (b) section 115-225(5) (adjustments removing indexation effects where relevant).

Calculation of net capital gains under section 100-50 and section 102-5

Section 100-50 currently operates as a relatively simple ordering provision for working out a taxpayer's net capital gain. It allows taxpayers a significant degree of flexibility in how capital losses are applied. In broad terms, current year capital losses are applied first against capital gains of the same year, followed by any unapplied net capital losses from prior years. After those reductions, any remaining discount capital gains are reduced by the CGT discount, and then any small business concessions are applied. The remaining gains are then aggregated to arrive at the net capital gain. A notable feature of the current law is that, within each step, taxpayers can generally choose the order in which gains from different assets are reduced by current or prior year losses.

The proposed amendments in the Bill retain the same overall sequencing logic but substantially alter how it operates in practice. Under the proposed section 100-50, capital gains must still be reduced first by current year capital losses and then by prior year net capital losses. However, taxpayers are no longer free to apply those losses in any order they choose. Instead, the legislation requires that "certain kinds" of capital gains be reduced before others, with the detail of that ordering set out in the amended method statement in section 102-5.

The amended section 102-5 distinguishes between residential and non-residential capital gains, as well as "deferred" versions of each category that relate to transitional rules applying for gains accrued up to 1 July 2027. These categories are integral to the new ordering rules and must be tracked separately for the purposes of applying losses and other adjustments. Losses must be applied to capital gains in the following order:

1. deferred non-residential;
2. deferred residential;

3. non-residential;
4. residential.

The Bill introduces an entirely new steps (new Steps 3 and 4) into the calculation process: the application of "quarantined amounts" relating to residential property. These amounts arise from the proposed restrictions on deducting excess expenses associated with residential dwellings under proposed section 26-155. Under the amended section 100-50, those quarantined amounts must be applied to first reduce deferred residential capital gains and then against residential gains.

The quarantined amounts do not form part of the cost base of the CGT asset. Proposed new subsection 110-38(8A) states that "*[e]xpenditure does not form part of any element of the cost base to the extent that section 26-155 prevents it being deducted*."

Section 152-1 is to be amended to refer to the fact that the quarantined amounts first reduce capital gains before the small business CGT concessions active asset reduction, replacement asset rollover and small business retirement exemption are applied to further reduce the capital gain.

The steps in the method statement in section 102-5 to calculate a taxpayer net capital gain for the year will be as follows:

Step 1 – apply current year capital losses against capital gains, subject to the ordering rules across the relevant categories of capital gains;
Step 2 – apply prior year net capital losses, subject to the same ordering rules;
Step 3 – apply any quarantined amount to reduce remaining deferred residential capital gains;
Step 4 – apply any remaining quarantined amount to reduce remaining residential capital gains;
Step 5 – apply the CGT discount, where available, by reducing any remaining discount capital gains by the applicable discount percentage (noting that, from 1 July 2027, the discount percentage is generally 0% unless a specific concession applies);
Step 6 – apply the small business CGT concessions, where available, including Subdivision 152-C, Subdivision 152-D and Subdivision 152-E; and
Step 7 – add together all remaining capital gain components across categories to arrive at the taxpayer's net capital gain.

The following example illustrates how the new method statement operates.

EXAMPLE – Assume an individual taxpayer for the 2029 income year has the following capital gains and losses:

1. a non-residential capital gain of $100,000, for which the ownership period was less than 12 months;
2. a residential capital gain of $100,000, which is a discount capital gain with a discount percentage of 50%;
3. current year capital losses of $80,000;
4. prior year net capital losses of $20,000;
5. a quarantined amount of $30,000 from denied residential rental losses on a different residential property;
6. no small business concessions; and
7. no deferred capital gains.

Under the current rules, the taxpayer can choose how to apply losses. A prudent strategy is to apply losses against gains that will not be discounted. The taxpayer applies the $80,000 current year capital loss and the $20,000 prior year net capital loss entirely against the non-residential gain. The result is that the non-residential gain is reduced to nil and the residential gain remains $100,000. The 50% discount is then applied to the residential gain, producing a net capital gain of $50,000.

If the residential capital gain is in respect of a new residential dwelling

Under the proposed rules, Step 1 requires current year capital losses to be applied first against non-residential gains, noting there are no deferred gains in this example. The $80,000 current year capital losses are therefore applied to the non-residential gain, reducing it from $100,000 to $20,000. No current year capital losses remain to apply against the residential gain. After this step, the non-residential gain is $20,000 and the residential gain remains $100,000.

Step 2 of the method statement requires prior year net capital losses to be applied in the same order. The $20,000 prior year net capital loss is therefore applied against the remaining non-residential gain, reducing that gain to nil. The residential gain remains $100,000.

Step 3 of the method statement provides that any quarantined amount is first applied against deferred residential gains, of which there are none in this example. Accordingly, no adjustment is made at this step.

Step 4 of the method statement then requires any remaining quarantined amount to be applied against residential capital gains. The $30,000 quarantined amount is therefore applied against the residential gain, reducing it from $100,000 to $70,000.

Step 5 of the method statement requires that any available CGT discount be applied to the remaining discount capital gains. In this case, the residential gain continues to qualify for a 50% discount (for example, because it relates to a new residential dwelling). The 50% discount is applied to the remaining $70,000 residential gain, reducing it to $35,000.

Step 6 does not apply, as there are no small business CGT concessions available.

Step 7 requires that the remaining capital gains be added together. As the non-residential gain has been reduced to nil, the taxpayer’s net capital gain is $35,000.

If the residential capital gain is in relation to a pre-existing dwelling

Step 1 requires current year capital losses to be applied against capital gains in the prescribed order. As there are no deferred gains in this example, the $80,000 current year capital losses are first applied to the non-residential gain, reducing it from $100,000 to $20,000. No current year capital losses remain to apply against the residential gain. After this step, the non-residential gain is $20,000 and the residential gain remains $100,000.

Step 2 of the method statement requires prior year net capital losses to be applied in the same order. The $20,000 prior year net capital loss is therefore applied against the remaining non-residential gain, reducing that gain to nil. The residential gain remains $100,000.

Step 3 provides that any quarantined amount is first applied against deferred residential gains, of which there are none in this example. Accordingly, no adjustment is made at this step.

Step 4 then requires any remaining quarantined amount to be applied against residential capital gains. The $30,000 quarantined amount is therefore applied against the residential gain, reducing it from $100,000 to $70,000.

Step 5 requires that any available CGT discount be applied to the remaining discount capital gains. In this case, the residential gain is not eligible for any discount, so no reduction is applied.

Step 6 does not apply, as there are no small business CGT concessions available.

Step 7 requires that the remaining capital gains be added together. As the non-residential gain has been reduced to nil, the taxpayer’s net capital gain is $70,000.

Minimum rate of tax on capital gains

Proposed new Division 119 introduces a regime imposing a minimum effective rate of taxation on certain capital gains of Australian resident individuals. It operates as a top-up tax mechanism, ensuring that specified gains are taxed at no less than 30% (before offsets).

Division 119 applies where:

1. the taxpayer is an individual;
2. the individual is an Australian resident at any time during the income year; and
3. the individual has a “minimum tax capital gain” and a resulting minimum tax gap amount.

If these conditions are met, the individual is liable to pay additional income tax in respect of those gains. Section 119-10 imposes the additional tax liability. An individual must the pay extra income tax where they have a minimum tax capital gain and they have a minimum tax gap amount.

"Minimum tax capital gain" is defined as the total of certain capital gains remaining after step 6 of the method statement in section 102-5 (i.e. after losses, discount and small business concessions have been applied). It includes residential capital gains and non-residential capital gains (being post-1 July 2027 gains), but excludes:

1. deferred residential and non-residential capital gains; and
2. gains to which section 115-102 (new residential dwellings) or section 115-125 (affordable housing) apply (unless the taxpayer chooses indexation instead of the discount).

The "minimum tax gap amount" is calculated using a multi-step method:

1. Step 1 - multiply the minimum tax capital gain by 30%;
2. Step 2 - work out the taxpayer’s basic income tax liability, ignoring Division 119;
3. Step 3 - recalculate that liability assuming the taxpayer’s taxable income is reduced by the minimum tax capital gain;
4. Step 4 - subtract step 3 from step 2 to determine the actual tax attributable to the gains;
5. Step 5 - subtract the actual tax (step 4) from the 30% amount (step 1) and round down to the nearest dollar;
6. Step 6 - if the result is positive, it is the minimum tax gap amount. This is also the additional tax payable.

EXAMPLE – Assume an Australian resident individual has taxable income of $220,000 for an income year, including a minimum tax capital gain of $100,000. Assume the taxpayer’s basic income tax liability for the year, ignoring Division 119, is $62,000. Assume further that, if the taxpayer’s taxable income were reduced by the $100,000 minimum tax capital gain, the taxpayer’s recalculated basic income tax liability would be $34,000.

1. *Work out 30% of the minimum tax capital gain:* The amount under step 1 is $30,000, being 30% of the $100,000 minimum tax capital gain.
2. *Work out the actual tax attributable to the minimum tax capital gain:* Under steps 2 to 4, compare the taxpayer’s actual basic income tax liability with the liability that would arise if the minimum tax capital gain were excluded. On these assumptions, the actual tax attributable to the gain is $28,000, being the difference between $62,000 and $34,000.
3. *Calculate the minimum tax gap amount:* Under step 5, subtract the actual tax attributable to the gain ($28,000) from the 30% amount ($30,000). The result is $2,000. Because that amount is positive, it is the taxpayer’s minimum tax gap amount under step 6. Under section 119-10, the taxpayer is therefore liable to pay an additional $2,000 of income tax for the year.

<u>Exception</u>

Division 119 does not apply where the individual receives certain specified payments, namely:

1. social security payments; or
2. other payments determined by the Minister that are based on:
3. means or financial position; or
4. impaired ability to work.

This operates as an exclusion for certain classes of taxpayers.

Interaction with the CGT framework

The minimum tax capital gain is calculated after applying:

1. capital losses;
2. prior year losses;
3. discount (Division 115); and
4. small business concessions (Division 152).

COMMENT – Division 119 does not affect the amount of a capital gain included in assessable income. Accordingly, entitlement to a foreign income tax offset under section 770-10 of the ITAA 1997 for capital gains that are also taxable in another jurisdiction continues to be determined by reference to the amount of the foreign capital gain that is included in Australian assessable income (after applying the steps in section 102-5).

In practical terms, this means that where indexation, discounts or loss application reduce the amount of a foreign capital gain that is assessed in Australia, the available FITO is correspondingly reduced. However, Division 119 then applies to increase the taxpayer's Australian tax liability if the tax payable on that reduced assessable gain is less than 30% of the minimum tax capital gain. The result appears to be that a taxpayer may be required to pay additional Australian tax on the gain, while only being able to recognise a proportionately reduced FITO.

Treasury Laws Amendment (Tax Reform No. 1) Bill 2026
w https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7493

4.3 Limiting negative gearing

Section 26-155 applies where, for an income year, the taxpayer has amounts relating to using or holding residential dwellings as residential accommodation, and the deductions exceed the assessable income from those activities.

To the extent of that excess, the deduction is denied for the current year, and the denied amount becomes a "quarantined amount".

Under subsection 26-155(1), excess deductions (i.e. losses or outgoings exceeding relevant income) are:

1. not deductible in that income year;
2. carried forward as a quarantined amount; and
3. applied under the CGT method statement in section 102-5, to reduce deferred residential capital gains and then residential capital gains.

To the extent any quarantined amount remains after applying section 102-5, it is carried forward to the next income year and treated as a similar amount in that year. By deeming the quarantined amount to be an amount "relating to" the relevant activities in a later year, it is taken into account in applying subsection 26-155(1) for that later year. This allows the amount to be effectively recouped to the extent that assessable income from those activities in that year exceeds current-year deductions.

Exceptions

Subsection 26-155(2) excludes certain classes of residential dwellings from the regime. The quarantining rule does not apply to:

1. dwellings acquired before 7.30 pm, by legal time in the Australian Capital Territory, on 12 May 2026;
2. new residential dwellings;
3. dwellings used for activities or purposes specified by the Minister; or
4. dwellings used in certain specified business or enterprise contexts.

Traditional negative gearing can continue to apply to these kinds of dwellings.

Subsection 26-155(4) provides that the quarantining rule does not apply to:

1. widely held unit trusts;
2. complying superannuation entities; or
3. other entities specified by the Minister.

Special adjustments

The section contains several modifying rules.

Offset by gains and non-quarantined income

Subsection 26-155(6) of the ITAA 1997 reduces the quarantined excess by any net income from non-quarantined residential dwellings, and gains realised from residential dwellings that are revenue assets.

COMMENT – This is directed at preventing a double benefit. Under section 26-155(1), a quarantined excess can in a later income year effectively be deducted against income from using or holding residential dwellings as residential accommodation for that year. If subsection 26-155(6) also reduces the quarantined excess by income from a new residential dwelling, the provision is intended to ensure that the same amount is not both absorbed against that income and also retained as a quarantined amount available for later use.

Trust beneficiaries

Under subsection 26-155(7) of the ITAA 1997, amounts included in a beneficiary's assessable income from a trust are treated as residential dwelling income to the extent they are referable to such activities.

COMMENT – By deeming trust distributions to be income from using or holding residential dwellings as residential accommodation, section 26-155(7) allows the beneficiary to recoup their own current year or carried forward quarantined excess amounts against the income from the trust.

The Explanatory Memorandum for the Bill makes the following statement about section 26-155(7):

> *2.65 Similarly, the modification ensures that where an entity takes out a loan to acquire an interest in a unit trust, the interest costs for the loan will be subject to the operation of the general rules for loss quarantining for a property acquired by the unit trust that distributes net income to the entity.*

COMMENT – Despite the statement in the Explanatory Memorandum, it is not clear that subsection 26-155(7) in fact produces that outcome. The subsection appears only to deem certain trust distributions to be income from using or holding residential dwellings as residential accommodation, but it is not obvious that this is sufficient, of itself, to subject interest incurred on borrowings to acquire the trust interest to the quarantining rule.

Bankruptcy rule

Subsections 26-155(8)-(9) provide that where a taxpayer becomes bankrupt (or similar) unapplied quarantined amounts may be extinguished and no longer carried forward.

Treasury Laws Amendment (Tax Reform No. 1) Bill 2026
w https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7493

4.4 Working Australians Tax Offset

Subdivision 61-E applies where:

1. the taxpayer is an individual;
2. the individual is an Australian resident at any time during the income year; and
3. the individual has net labour income exceeding the tax-free threshold.

Where these conditions are satisfied, the individual is entitled to a tax offset.

"Net labour income" is "Labour amounts" less "Labour deductions". "Labour amounts" is the sum of the following amounts included in a person's assessable income:

1. assessable labour income;
2. business income derived as an individual (excluding partnership/trust income);
3. personal services income;
4. an ESS discount included under section 83A-25 (upfront tax ESS schemes); and
5. payments subject to withholding under labour-hire or similar arrangements.

"Assessable labour income" is income from which an amount must be withheld under any of the following provisions in Schedule 1 of the TAA 1953:

1. section 12-35 (payment to employee);
2. section 12-40 (payment to company director);
3. section 12-45 (payment to office holder);
4. section 12-47 (payment to religious practitioners);
5. section 12-50 (return to work payment);
6. Subdivision 12-C (payments for retirement or because of termination of employment); or
7. paragraph 12-110(1)(ca) (parental leave pay).

"Labour deductions" deductions relating to earning that labour income, such as:

1. general deductions incurred in producing employment or PSI income;
2. deductions for carrying on a business as an individual;
3. certain specific deductions (e.g. s 25-130 standard deduction);
4. depreciation deductions for relevant assets; and
5. other specified work-related deductions.

The amount of the working Australians tax offset is the lesser of $250, and an amount determined under a method prescribed by the Minister.

This measure is proposed to start from 1 July 2027.

Treasury Laws Amendment (Tax Reform No. 1) Bill 2026
w https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7493

4.5 Standard deduction for work-related expenses

Section 25-130 introduces a standard deduction for work-related (labour) expenses for individuals.

Section 25-130 applies where:

1. the taxpayer is an individual;
2. the individual is an Australian resident at any time during the income year; and
3. the individual derives assessable labour income in that year.

If these conditions are met, the individual may claim a deduction under this section.

The deductible amount is the lesser of $1,000 and the individual's total assessable labour income for the income year. The meaning of "assessable labour income" is discussed above.

The standard deduction is reduced by the sum of various work-related deductions claimed for the same income year, including:

1. general deductions under s 8-1 (to the extent they relate to labour income);
2. car expense deductions (Division 28);
3. travel between workplaces deductions (s 25-100);
4. deductions for repairs, depreciation and balancing adjustments relating to assets used to earn labour income; and
5. deductions for COVID-19 tests.

However, for the purposes of the reduction, certain deductions (e.g. insurance premiums and professional association fees) are disregarded when applying the reduction.

This measure is proposed to start from 1 July 2026.

Treasury Laws Amendment (Tax Reform No. 1) Bill 2026
w https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7493

4.6 Payday Super declaration – Maximum Contributions Base

The Superannuation (Productivity Benefit) (Continuing Contributions) Amendment (Payday Superannuation) Declaration 2026 amends the Superannuation (Productivity Benefit) (Continuing Contributions) Declaration 2013 to update the method for calculating "continuing contributions" for affected employees from 1 July 2026.

The purpose of the instrument is to align the PB Act contribution framework with amendments to the *Superannuation Guarantee (Administration) Act 1992* introduced by the Treasury Laws Amendment (Payday Superannuation) Act 2025. Those SGAA amendments change the basis of employer contributions from a quarterly ordinary time earnings model to a system based on "qualifying earnings" at the time of payment (QE days), fix the contribution rate at 12%, and replace the quarterly maximum contribution base with an annual maximum contributions base.

Consistent with those changes, the instrument replaces the existing contribution table with a new table that links continuing contributions directly to the employee's "individual superannuation guarantee amount" under the SGAA for employees with weekly salary of $112.75 or more. This has the effect of aligning PB Act contributions with the SG minimum contribution requirements from 1 July 2026.

The amendments preserve the existing minimum contribution floor for low-income employees. Where weekly salary is less than $112.75, a fixed weekly contribution of $13.53 continues to apply, ensuring that contributions for this cohort remain above the SG minimum.

The instrument also removes references to repealed SGAA concepts, including the variable "charge percentage" and the quarterly "maximum contribution base", and replaces them with the new SGAA settings, including the fixed 12% rate and the annual maximum contributions base.

The amendments apply to pay periods ending on or after 1 July 2026, with the previous rules continuing to apply to earlier periods.

COMMENT — The maximum contributions base operates as a cap on the *amount of earnings taken into account* for SG purposes, rather than a cap on the obligation itself. Once qualifying earnings for an employee reach the annual threshold for the year, no further SG contributions are required on additional earnings for that employee for the remainder of the year, although separate obligations to make contributions under an award or enterprise agreement continue to apply independently of this cap.

w https://www.legislation.gov.au/F2026L00648/asmade/text

4.7 Business register changes

The Treasury Laws Amendment (Business Registries Stabilisation and Uplift) Bill 2026 has been introduced to strengthen Director ID regime, enhance ASIC's powers to administer business registers, and give effect to the Government's decision to cease the Modernising Business Registers (**MBR**) program.

Enhancements to the Director ID regime

Schedule 1 proposes amendments to strengthen the Director ID regime, which has applied since November 2021. The amendments are directed at improving corporate transparency and reducing unlawful activity, including illegal phoenix behaviour.

The Bill requires directors to obtain a Director ID and provide it to companies and requires companies and registrable bodies to provide those Director IDs to ASIC as part of registration, ongoing reporting and notification processes. Director ID information will be linked to ASIC's Companies Register.

The amendments also expand ASIC's role by introducing enforcement powers, including the ability to disqualify directors who fail to obtain a Director ID. ASIC is also given powers relating to the publication and management of Director ID information, while the Registrar's infringement notice powers are repealed to ensure that ASIC is the sole enforcement body. The Registrar is given an express corrections power for information it possesses.

Expanded ASIC powers in relation to business registers

Schedule 2 strengthens ASIC's powers to administer over 30 Commonwealth business registers. The amendments clarify and expand ASIC's ability to manage registry information and maintain accurate and accessible records.

The proposed changes allow ASIC to deregister companies in certain circumstances, correct registry information, determine how information is provided, and control the disclosure of registry information (including applying a public interest test to publication or withholding of data). ASIC is also empowered to facilitate improved communication with entities and allow alternative addresses for service to enhance privacy protections.

These reforms are intended to ensure that ASIC has the necessary tools to effectively administer registry systems and improve data integrity.

Stabilisation of business registers and cessation of the MBR program

Schedule 3 gives effect to the Government's decision to discontinue the MBR program and unwind legislative changes enacted between 2020 and 2022. The MBR program aimed to centralise business registers under a single Registrar but was discontinued following a review which found that costs outweighed expected benefits.

Responsibility for business registers will revert fully to ASIC, and legislative amendments made to facilitate the MBR program will be repealed or adjusted accordingly. Targeted reforms will instead be pursued to improve registry functionality and regulatory outcomes.

The Bill also makes consequential amendments, including ensuring appropriate alignment of administrative arrangements following the removal of the MBR framework.

Application and status

The Bill implements measures announced in prior Budgets and in response to the independent review into the MBR program. It has been referred to the Senate Economics Legislation Committee for inquiry and report by 17 June 2026.

w https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7480

4.8 ART proclamation

A proclamation has been made for the commencement of Schedule 1 to the *Administrative Review Tribunal and Other Legislation Amendment Act 2026*. The act amends the *Administrative Review Tribunal Act 2024* (Cth) to expand the circumstances in which the ART may determine a proceeding without conducting a hearing. In particular, the amendments permit the ART to dispense with a hearing where the issues in dispute can be adequately resolved without the presence of the parties, it is reasonable in the circumstances to do so, and the parties (other than non-participating parties) have been given a reasonable opportunity to make submissions which the ART has taken into account.

Schedule 1 commenced on 18 May 2026 pursuant to the proclamation.

w https://www.legislation.gov.au/F2026N00319/asmade/text

4.9 Deduction rate for car expenses

The ATO has released a draft legislative instrument proposing to set the cents per kilometre rate for work-related car expense deductions at 91 cents per kilometre for the 2026–27 income year.

This applies to taxpayers using the cents per kilometre method. The Commissioner has the power to set this rate under the tax law.

The proposed 91-cent rate applies only for 2026–27 and is based on a base rate of 89 cents, adjusted for CPI, plus a one-off 2% increase due to fuel price pressures and uncertainty. For later income years, the rate will be reviewed and set by the Commissioner based on CPI data at the time.

The instrument is expected to start on 1 July 2026 and will replace the current determination, which set the rate at 88 cents per kilometre for 2024–25 and 2025–26.

Legislative Instrument – Draft Income Tax Assessment (Cents per Kilometre Deduction rate for Car Expenses)
w https://www.ato.gov.au/law/view/document?docid=OPS/LI2026D12/00001

5. State Legislation

5.1 Building legislation and tax relief (Vic)

The *Building Legislation and Treasury Legislation (Tax Relief) Amendment Bill 2026* (Vic) has been introduced in Victoria to amend the provisions relating to the principal place of residence (**PPR**) exemption in the *Land Tax Act 2005* (Vic) as well as provisions in other Victorian building legislations.

The key amendments to the *Land Tax Act 2005* (Vic) are:

1. to limit the circumstances in which the PPR exemption can be claimed by a joint owner of land who ceases to use and occupy their principal place of residence and commences construction or renovation of a new principal place of residence;
2. to extend the application of the PPR to circumstances in which the construction or renovation of a PPR takes longer than 4 years;
3. to amend the definition of 'works start date' and allow the owner of land to nominate the date of issue of certain permits as the works start date; and
4. to provide for the deferral of tax for land where the works start date for the construction or renovation of a residence had occurred in the preceding year and the works finish date had occurred on or after 1 July also in the preceding year.

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

5.2 Duty relief for victims of domestic, family and sexual violence (SA)

The South Australian Government announced that it will introduce a new scheme to abolish stamp duty for victims of domestic, family and sexual violence, as part of a broader effort to help them secure safe and stable housing.

Under this new ex gratia scheme, eligible victims will receive 100 per cent stamp duty relief when purchasing a home, and may also qualify for the First Home Owner Grant even if they have previously owned property.

The scheme will apply to eligible property transactions entered into on or after 4 June 2026. It will provide full stamp duty relief for both new and established homes, while access to the First Home Owner Grant will apply to eligible new home or vacant land purchases. Applicants must generally meet existing eligibility criteria (such as occupying the home as a principal place of residence), although flexibility may be provided where violence prevents compliance with standard residency requirements.

In SA Premier stated that women fleeing violence often face homelessness and that the reform is designed to give them a better opportunity to secure safe housing. He also linked the measure to the Government's broader commitment of $674 million over ten years to implement recommendations from the Royal Commission into Domestic, Family and Sexual Violence, including expanding housing support.

Revenue SA has issued Information Circular 110 for this relief.

The Circular explains that the relief is delivered through an ex gratia scheme approved by the Treasurer, rather than by legislative amendment. It operates alongside existing regimes under the *Stamp Duties Act 1923* (SA) and the *First Home and Housing Construction Grants Act 2000* (SA), but allows departures from the usual eligibility rules in defined circumstances.

It states that, depending on the transaction, eligible applicants may receive full stamp duty relief and/or an amount equivalent to the First Home Owner Grant.

The Circular sets out three core eligibility conditions:

1. the applicant must have vacated a prior home because of family, domestic or sexual violence, either experienced directly or by a dependent child. Importantly, the concession is tightly confined: only that vacated home is disregarded, and any other prior property ownership continues to count in the usual way;
2. the applicant must not have received, or become entitled to receive, a "material financial benefit" from the vacated home before entering into the new transaction. The Circular gives concrete content to that concept, stating that it includes rent, sale proceeds, or amounts arising under a settlement, court order or agreement in which the home is treated as an asset. It also clarifies timing and entitlement: a benefit only counts where there is a legally enforceable right, and unresolved proceedings or negotiations do not of themselves trigger ineligibility. There is also a limited discretion for the Commissioner to disregard minor or incidental benefits;
3. the applicant must otherwise satisfy the ordinary first-home buyer requirements (including those for stamp duty relief and/or the FHOG). This includes the standard requirement that the property be occupied as the applicant's principal place of residence for a continuous 12-month period. However, the Circular introduces an important modification: where violence prevents compliance, variations or waivers of the residency requirement may be granted, including complete relief from repayment obligations if the applicant cannot move in at all.

The Circular also details the evidentiary framework for accessing the concession. Applicants must provide information about their prior home, ownership, and any financial settlement, supported by a declaration such as an affidavit or statutory declaration. In addition, evidence of violence may include intervention orders, police reports, or reports from an "authorised professional", such as a lawyer, doctor, psychologist, social worker, or domestic violence support worker.

w https://www.revenuesa.sa.gov.au/resources/publications/information-circulars/information-circulars/information-circular-110
w https://www.premier.sa.gov.au/media-releases/news-items/abolishing-stamp-duty-for-victims-of-domestic,-family-and-sexual-violence

6. Rulings

6.1 Ruling on rental property income and deductions for individuals

The ATO has finalised its guidance for individuals that earn income from their rental property by issuing *Taxation Ruling* TR 2026/1. This ruling replaces the earlier draft TR 2025/D1, which was released for public comment on 12 November 2025 (see our February 2026 Tax Training Notes).

A compendium of comments was also released with TR 2026/1 summarising the submissions received by the ATO during the public consultation on TR 2025/D1 and provides the ATO's responses.

The finalised version of TR 2026/1 clarifies:

1. that the principles to determine a primary production business in TR 97/11 can also apply to non-primary producers;
2. that the term 'holiday home' includes a 'type of leisure facility', and includes a definition of 'leisure facility';
3. that the question of whether a holiday home is used (or held for use) mainly to produce rent is determined by reference to objective factors and does not depend on the subjective intentions of the owner;
4. that the term 'mainly' in section 26-50 of the ITAA 1997 takes its ordinary meaning of chiefly or principally and this requires an objective assessment of all relevant facts and circumstances relating to both the use of, and holding of, the property;
5. the role of 'peak periods' and 'peak seasons' in determining whether a holiday home is used or held mainly to produce assessable income;
6. the transitional compliance approach by providing that the Commissioner will not devote compliance resources to reviewing the application of section 26-50 to expenses incurred in relation to holiday homes that are rental properties, where those expenses are incurred before 1 July 2026;
7. that, for the purpose of deducting land tax for rental properties, land tax is incurred when the land tax liability arises, not when an assessment is issued or an amount is paid; and
8. that where section 26-50 denies a deduction for losses or outgoings relating to the ownership or use of a holiday home, those expenses may form part of the third element of the cost base of the asset.

TR 2026/1 applies to years of income commencing both before and after its date of issue, being 20 May 2026, subject to the transitional compliance approach set out in the ruling.

ATO reference TR 2026/1
w https://www.ato.gov.au/law/view/document?docid=TXR/TR20261/NAT/ATO/00001
ATO reference TR 2026/1EC
w https://www.ato.gov.au/law/view/document?docid=CTR/TR2026EC1/NAT/ATO/00001

6.2 Aggregation of transactions and exceptions for domestic builders (Vic)

The State Revenue Office of Victoria has issued an updated ruling on the aggregation of dutiable transactions and more guidance on the domestic builder exception into a separate ruling.

Revenue Ruling DA.026v3 explains when multiple dutiable transactions are grouped and treated as a single transaction for duty purposes. It has been updated to reflect case law since 2014, includes worked examples, and outlines the relevant exceptions under the *Duties Act 2000 (Vic)*. The updated ruling applies from 1 June 2026.

Revenue Ruling DA-071 is a new ruling that sets out when registered domestic builders can access an exception from aggregation when acquiring multiple vacant land parcels. It provides further detail on eligibility, including who must be registered as a domestic builder under section 24(2)(b), and explains when reassessments may occur under section 24A (for example, if residential premises are not built or not built within 5 years).

This new ruling applies to:

1. transactions occurring on or after 1 June 2026 under contracts entered into on or after that date; and
2. transactions occurring on or after that date that do not arise from a contract.

It does not apply to transactions occurring on or after 1 June 2026 under contracts entered into before that date.

Revenue Ruling DA-026v3
w https://www.sro.vic.gov.au/about-us/laws-legal-cases-and-rulings/public-rulings/aggregation-dutiable-transactions-1
Revenue Ruling DA-071
w https://www.sro.vic.gov.au/about-us/laws-legal-cases-and-rulings/public-rulings/exception-aggregation-domestic-builders

6.3 Duty on incorporation or amalgamation of associations (Vic)

The SRO has also updated a draft ruling on duty exemptions for land transfers arising from the incorporation or amalgamation of associations. The update modernises legislative references, improves clarity, and adds examples.

Submissions are invited by 24 June 2026.

Revenue Ruling DA-020
w https://www.sro.vic.gov.au/about-us/laws-legal-cases-and-rulings/public-rulings/associations-and-amalgamation-incorporated-associations-transfer-land

6.4 First home owner concessions (WA)

The WA Office of State Revenue has updated a number of Commissioner practice documents dealing with the first home owner grant (FHOG) and the first home owner rate of duty, including guidance on:

1. separated spouses/de facto partners (FHOG DA 37);
2. residential property held subject to a trust (FHOG DA 38);
3. variations to the prescribed residence requirements (FHOG DA 39); and
4. whether a home is a person's principal place of residence (FHOG DA 40).

The guidance confirms that eligibility for the FHOG and the first home owner rate turns not only on the applicant's circumstances, but also those of the applicant's spouse, including a legally married spouse or a de facto partner of 2 years or more at the commencement of the eligible transaction. In that context, the updated separation guidance is relevant because prior grant history and prior ownership of residential property by the applicant and/or their spouse can affect eligibility.

The guidance also confirms that applicants must generally hold the home in their own capacity and not as trustee, except in limited disability-related cases. The updated trust guidance is therefore relevant where an applicant holds, or has previously held, residential property subject to a trust, as this may affect whether the prior ownership rules are satisfied and what evidence the Commissioner requires.

A key condition remains that each applicant must occupy the home as their principal place of residence for a continuous period of at least 6 months, commencing within 12 months of completion of the eligible transaction. The Commissioner may consider a shorter residence period, an extended take-up period, or (for joint applicants) an exemption where there are good reasons the residence requirements cannot be met, with relevant factors including whether the applicant genuinely intended to live in the property, whether the circumstances were unforeseen or beyond the applicant's control, and whether the variation sought is proportionate.

The updated materials also reinforce that whether a home is genuinely the applicant's principal place of residence remains central to both the FHOG and the concessional duty rate. Where the residence requirement is not met and no approved variation is obtained, the applicant may be required to repay the FHOG, lose access to the first home owner rate of duty, and may also be exposed to penalties.

w https://www.wa.gov.au/organisation/department-of-treasury-and-finance/first-home-owner-grant-fhog?utm_source=redirect&utm_medium=finance_wa_fhog

7. ATO and other materials

7.1 ATO Decision Impact Statement - Morton

The ATO has issued a Decision Impact Statement in relation to the Full Federal Court's decision in *Commissioner of Taxation v Morton* [2026] FCAFC 31, in which the Commissioner was unsuccessful. The Court held that proceeds from the subdivision and sale of land were not assessable, as they arose from the mere realisation of a capital asset rather than a business or profit-making scheme.

The case concerned a retired farmer who owned a 10-acre parcel of land that had been part of a family farm for decades. Following rezoning to residential use and increasing holding costs, he entered into development agreements with a third-party developer, who carried out all subdivision, development and sales activities. The taxpayer retained ownership of the land and received a percentage of sale proceeds, but had limited involvement in the development itself.

The Commissioner argued that the proceeds were assessable on the basis that the taxpayer was carrying on a business, or had undertaken a profit-making scheme. Both the primary judge and the Full Federal Court rejected this, finding that the taxpayer had not embarked on a business of property development nor committed the land to a profit-making undertaking. Instead, he had realised his asset in an advantageous way.

The Court reaffirmed that the distinction between income and capital depends on a holistic assessment of all the facts. Relevant factors include the intention at acquisition, the level of involvement in development activities, the commercial structure adopted, and whether the taxpayer has moved beyond merely realising an asset. The Court placed weight on the taxpayer's limited involvement, his motivation to exit farming due to external pressures, and his adherence to conservative "tenets" designed to limit risk rather than maximise profit.

The ATO accepts that the decision applies established principles and does not change the law. It emphasises that determining whether activities amount to a business, a profit-making scheme, or a mere realisation remains a fact-dependent inquiry requiring a holistic evaluation.

The ATO considers that the decision in *Morton* turned on its particular facts and the Court's acceptance of the taxpayer's evidence. In particular, the ATO noted that the taxpayer adhered to two key constraints:

1. the land could not be used as security for the developer's borrowings, and
2. the taxpayer was to receive a fixed percentage of sale proceeds so that the developer could not reduce the family's entitlement by inflating costs.

According to the ATO, those features were treated by the Court as indicating that the taxpayer was not seeking to maximise profit in the way expected of a property developer or profit-making undertaking. However, the ATO said the case does not establish any general principle that risk-mitigating steps, or accepting a lower profit outcome, will of themselves mean a transaction is a mere realisation. Rather, the ATO said each case will continue to turn on its own facts. The ATO also said the questions whether a taxpayer is carrying on a business of property development, or whether profits are assessable under section 6-5, section 15-15 or Division 70, remain separate inquiries requiring independent analysis.

The ATO will continue to apply existing guidance, including TR 97/11 and TR 92/3, on a case-by-case basis.

COMMENT – It is unsurprising that the ATO said the decision turns on its own facts, and also unsurprising that the ATO highlighted particular features as central to the outcome. Cases on mere realisation, business and profit-making undertakings have long been treated as highly fact-sensitive, requiring a consideration of matters such as the purpose for which the asset was acquired, the extent of development or subdivision activity, the degree of organisation and repetition, the role of borrowed funds, the level of personal involvement, and whether the taxpayer has moved beyond simply realising an asset in an advantageous way. In that context, it is predictable that the ATO would resist any suggestion that *Morton* establishes a broader safe harbour, and instead seek to confine the decision to its particular combination of facts.

w https://www.ato.gov.au/law/view/document?docid=LIT/ICD/VID578of2025/00001

7.2 ATO Decision Impact Statement - Shaw

The ATO has released a Decision Impact Statement on *Commissioner of Taxation v Shaw* [2026] FCA 197, in which the Federal Court dismissed the Commissioner's appeal and upheld the taxpayer's entitlement to claim meal expense deductions.

The case involved a long-haul truck driver who calculated his deduction by applying the Commissioner's reasonable daily amounts in TD 2020/5 to the number of days spent away from home. Although he claimed less than he said he spent, the Commissioner argued that substantiation was still required. This argument was rejected by both the ART and the Federal Court.

The ATO accepts that the decision confirms established principles, particularly that entitlement to a deduction under section 8-1 is distinct from substantiation under Division 900 of the ITAA 1997. A taxpayer must first establish that an expense was incurred in producing assessable income and then consider whether a substantiation exception or relief provision applies.

The ATO notes that, while detailed records may not be required where an exception applies, claims will continue to be assessed by reference to all available evidence.

Importantly, the decision does not create an automatic deduction merely because a claim falls within the Commissioner's reasonable amounts, nor does it remove the need for apportionment or suggest that particular forms of evidence will always be sufficient.

The ATO is reviewing its existing guidance in light of the decision, including whether to issue a Practical Compliance Guideline on the substantiation of work-related travel expenses.

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

7.3 ATO Decision Impact Statement - Baya Casal

The ATO has issued a Decision Impact Statement in relation to the Full Federal Court's decision in *Commissioner of Taxation v Baya Casal* [2026] FCAFC 11. In that case, the Commissioner was unsuccessful, with the Court concluding that a termination payment was a genuine redundancy payment and therefore tax-free.

The taxpayer was employed part-time as an early learning assistant for 34.56 hours per week. As part of a restructure, the employer offered alternative roles involving reduced hours of approximately 20% to 40% and a corresponding reduction in remuneration, although the duties were broadly similar. The taxpayer declined redeployment on those terms and instead accepted redundancy, receiving 13 weeks' pay on termination.

The Commissioner argued that a redundancy only arises where the employee's position ceases to exist, and that the availability of similar work suggested no redundancy. The Full Federal Court rejected this narrow approach, holding that whether a position has become redundant requires a holistic, evaluative assessment of the role, including changes to hours, remuneration, duties and overall scope.

The ATO accepts that a material reduction in hours and remuneration can be a relevant factor in determining whether a position has become genuinely redundant. However, the ATO emphasises that redundancy remains a question of fact and degree, assessed on the totality of the circumstances. The decision does not establish a bright-line test, and a reduction of 20% to 40% in hours or pay will not, of itself, be determinative in all cases.

The ATO is reviewing its guidance, including *Taxation Ruling* TR 2009/2, to ensure it reflects the principles affirmed by the Court.

w https://www.ato.gov.au/law/view/document?docid=LIT/ICD/VID322of2025/00001

7.4 SMSF trustee disqualification

The ATO has updated PS LA 2006/17, which sets out the Commissioner's approach to disqualifying individuals from acting as trustees of self-managed superannuation funds.

The practice statement confirms that an individual may be disqualified under section 126A where they have contravened the superannuation law, or where they are otherwise not a fit and proper person. The decision to disqualify is directed at protecting the integrity of the superannuation system and involves a holistic assessment of all relevant circumstances.

The updated guidance emphasises that the nature, seriousness and frequency of contraventions are key considerations, along with whether the individual presents a future compliance risk. Relevant factors include deliberate or repeated breaches, misuse of fund assets, and conduct that undermines the superannuation system.

The ATO also highlights the importance of assessing whether an individual is a fit and proper person, including their understanding of trustee obligations, their conduct and integrity, and whether they have demonstrated genuine remorse and behavioural change.

In addition, the updated practice statement clarifies procedural aspects, including that individuals may be given the opportunity to wind up their SMSF before disqualification, and that continuing to act as a trustee while disqualified constitutes an offence.

COMMENT – This procedural clarification about providing notice prior to disqualification is useful. There was previously some uncertainty about the practical position once a disqualification decision had been made but is being disputed, including what steps the individual or fund should take pending the outcome of any challenge. The process outlined in the updated guidance should make that position clearer.

w https://www.ato.gov.au/law/view/document?docid=PSR/PS200617/NAT/ATO/00001

7.5 Payday super and independent contractors

On 18 May 2026, the ATO released guidance on how Payday Super will apply to superannuation obligations for independent contractors. While the reforms do not change which contractors are entitled to super, they do change the timing of when contributions must be paid.

Employers must continue to pay super for contractors where required under existing rules, including where a contractor is engaged primarily for their labour, skills or time rather than to achieve a specific result. This may apply even where the contractor has an ABN, issues invoices or is engaged under a contractor agreement.

From 1 July 2026, super for eligible contractors must be paid on each payday and received by the super fund within 7 business days. Where contractors are paid on invoice, the payday is the date the invoice is paid, meaning super must be remitted within 7 business days of that payment.

There are no changes to Single Touch Payroll reporting requirements. Employers who do not currently report contractor payments through STP are not required to do so. However, where contractors are reported through STP, employers must report both qualifying earnings and superannuation liabilities from 1 July 2026.

The ATO encourages businesses to review their contractor arrangements and superannuation processes ahead of the commencement of Payday Super to ensure compliance.

w https://www.ato.gov.au/businesses-and-organisations/business-bulletins-newsroom/when-to-pay-contractors-super-under-payday-super

7.6 Maximum Contributions Base under Payday Super

The ATO has updated its guidance on the maximum contribution base in the context of Payday Super, which applies from 1 July 2026. The maximum contribution base represents the annual ceiling on an employee's qualifying earnings for which an employer is required to pay super guarantee contributions.

For the 2026–27 income year, the maximum contribution base is $270,830. Once an employee's qualifying earnings reach this threshold, employers are no longer required to pay super guarantee on any additional qualifying earnings for the remainder of that financial year.

The maximum contribution base is calculated by reference to the concessional contributions cap and the super guarantee rate. From 1 July 2026, this is based on a concessional contributions cap of $32,500 and a super guarantee rate of 12%.

The guidance clarifies that the cap applies on a financial year basis under the Payday Super framework, rather than quarterly. However, it does not affect any additional super obligations arising under industrial instruments such as awards or enterprise agreements.

The ATO also notes that once the threshold is reached, employers may cease paying super guarantee contributions (and potentially reporting qualifying earnings in STP for that purpose) until the next financial year, when the obligation resets. High-income employees with multiple employers may also seek an exemption certificate to manage their super guarantee obligations across employers.

w https://www.ato.gov.au/businesses-and-organisations/super-for-employers/payday-super/paying-super-on-payday/what-payments-are-qualifying-earnings/maximum-contributions-base

7.7 Final countdown to Payday Super

On 30 May 2026, the ATO released guidance outlining key steps for employers ahead of the commencement of Payday Super on 1 July 2026, highlighting three main focus areas.

First, employers should ensure their systems are ready. Payroll and superannuation processes must be updated to support SuperStream changes and enable reporting of qualifying earnings through STP. The ATO notes that it may take several pay cycles to adjust, and suggests that businesses consider moving to more frequent super payments in advance of commencement.

Secondly, businesses are encouraged to fix issues early. Employers should test systems and verify employee data to reduce the risk of rejected payments and avoid exposure to the super guarantee charge.

Finally, employers should plan for July, when multiple super obligations may arise, including contributions on each payday and the final quarterly payment due on 28 July 2026. Reviewing pay cycles and managing cash flow will be critical during the transition.

w https://www.ato.gov.au/businesses-and-organisations/business-bulletins-newsroom/its-the-final-countdown-to-payday-super

7.8 Exceptional circumstances concession under Payday Super

On 27 May 2026, the ATO released PS LA 2026/D3 outlining how the Commissioner will exercise the power under section 18C(4) of the SGA to provide additional time for employers to meet Payday Super obligations where they are affected by "exceptional circumstances".

The Commissioner may make a legislative determination applying to classes of employers, rather than individual employers, and may define those classes by reference to location, industry or reliance on particular systems. The determination must also specify the relevant period of relief.

The draft guidance limits exceptional circumstances to two categories:

1. natural disasters and
2. widespread outages of communication or technology services affecting multiple employers on a large scale.

It emphasises that the provision is directed at an employer's ability to complete the contribution process, and not their financial capacity to make contributions.

Where a determination is made, affected employers are given additional time to comply. If the determination is made before the relevant QE day, employers have 20 business days after that day to make contributions. If the determination is made on or after that day, the 20-business-day period runs from the day after the determination is made.

The draft PS LA also clarifies that ordinary operational issues, such as routine payroll or system disruptions, will not qualify as exceptional circumstances. Nor will the mere occurrence of a natural disaster or outage automatically result in relief. There must be a demonstrable causal connection between the event and the employer's inability to make contributions on time.

In deciding whether to make a determination, relevant factors include the nature and duration of the disruption, the scale of its impact, and the interests of employees in receiving timely super contributions.

The guidance also provides examples to illustrate when relief would and would not be appropriate.

Submissions on the draft close on 26 June 2026.

w https://www.ato.gov.au/law/view/document?docid=DPS/PSD20263/NAT/ATO/00001

7.9 ATO EOFY tips for trustees

On 2 June 2026, the ATO released guidance setting out key end-of-financial-year considerations for trustees to avoid common errors and compliance risks.

The ATO's key tips are as follows:

1. *Understand how income is defined in the trust estate*: Trustees must carefully review the trust deed and correctly determine trust income for each year. Errors commonly arise where trustees rely on accounting profit rather than the definition of income in the deed, or act inconsistently with the deed's terms;
2. *Identify the trust's beneficiaries*: Trustees need to ensure distributions are made only to valid beneficiaries under the trust deed. Particular care is required where family trust elections or interposed entity elections apply, to avoid distributing outside permitted groups;
3. *Make valid resolutions and establish present entitlement*: distribution resolutions must be made by 30 June and comply with the terms of the trust deed. Failure to do so may result in default beneficiaries being assessed or the trustee being taxed at the highest marginal rate. Timely and properly documented resolutions are critical;
4. *Keep accurate and complete records*: Trustees must retain sufficient documentation to substantiate expenses and losses. Bank and accounting records alone may not be adequate, and inadequate records can result in denied deductions or loss of carried forward losses; and
5. *Check holding period rules*: Trustees and beneficiaries must satisfy holding period rules to access franking credits. This requires reviewing distributions and ensuring the relevant interests have been held for the required period.

w https://www.ato.gov.au/businesses-and-organisations/business-bulletins-newsroom/our-top-5-eofy-tips-for-trustees

7.10 ATO tips for electing family trusts

On 4 June 2026, the ATO released guidance outlining key year-end considerations for entities with a FTE or IEE, aimed at reducing the risk of FTDT liabilities.

The ATO's key tips are as follows:

1. *Review whether elections are still appropriate*: Trustees should revisit their FTEs and IEEs and consider whether a variation or revocation is possible or appropriate. Variations are limited (for example, changing the specified individual only once and subject to conditions), and revocation is only available in narrow circumstances;
2. *Understand the family group:* Trustees must clearly identify all members of the relevant "family group" and ensure distributions remain within that group. Distributions outside the family group will trigger FTDT at 47%, payable by the trustee or related party;
3. *Maintain strong records*: Accurate records should be maintained for all elections, beneficiaries in the family group, and distributions. Records must generally be kept for at least 5 years, and election details must continue to be reported in tax returns while the election remains in force;
4. *Act early on FTDT liabilities*: The ATO highlights an opportunity to obtain up to 80% remission of GIC for late-paid FTDT where trustees proactively identify and pay liabilities before ATO intervention; and
5. *Use ATO resources*: Trustees are encouraged to rely on ATO guidance and tools, including enhanced reporting on elections through Online services for agents, to support compliance.

w https://www.ato.gov.au/businesses-and-organisations/business-bulletins-newsroom/family-trusts-tips-for-electing-entities

7.11 Fact sheet on foreign investment framework reforms

Treasury has released a fact sheet outlining proposed reforms to Australia's foreign investment framework, following the 2026 Budget. The reforms aim to streamline processes for low-risk investments while strengthening compliance, risk management and oversight of higher-risk arrangements.

The reform package includes:

1. introducing a target to determine all low-risk applications within 30 days (from 1 January 2027);
2. reviewing and removing outdated or ineffective conditions attached to existing approvals;
3. amending foreign investment legislation (and related laws) to streamline processes and strengthen the regulatory framework;
4. simplifying and improving reporting requirements under the Register of Foreign Ownership of Australian Assets; and
5. extending the temporary ban on foreign purchases of established dwellings until 30 June 2029.

w treasury.gov.au/sites/default/files/2026-05/p2026-769058.pdf

7.12 Rental property deductions

The ATO has finalised two practical compliance guidelines relating to rental properties. These guidelines operate alongside *Taxation Ruling* TR 2026/1 (see item 5.1 of these notes).

PCG 2026/2 – apportionment of deductions

PCG 2026/2 sets out the ATO's compliance approach in relation to apportioning rental property deductions when the property is used partly to produce assessable income and partly for other uses, such as private residence or holiday home. It replaces Draft PCG 2025/D6 (see our February 2026 Tax Training Notes).

The following changes have been made to PCG 2026/2 on finalisation:

1. Example 2 illustrates a cottage owned by workers at a nearby restaurant in a summer holiday destination that is rented out during colder months. The example has been updated to make it clear that it is rented in the off-season to itinerant workers, rather than being rented to holiday-makers (which would have made it a leisure facility and denied deductions under section 26-50 of the ITAA 1997);
2. Example 3 of the draft Guideline was intended to illustrate time-based apportionment in situations where section 26-50 does not apply. However, Gail and Craig used the property themselves for just 30 days in the year. Example 3 has been clarified to say that Gail and Craig do not use the property for their holidays and recreation, so it is not their holiday home, and deductions are still available based on time-based apportionment;
3. the term 'days used to produce income' has been clarified at paragraph [14] to include the days for which rent is paid even if the property is not physically occupied;
4. the references to 'outside annual holiday periods' and 'no pets' at paragraph [17] have been removed as factors that are relevant in determining if the property is not available for rent on commercial terms. The reference to 'holiday periods' was removed on the basis that there may be one-off events outside holiday periods which would genuinely create high demand for short-term accommodation in the local area. The reference to 'no pets' was removed, as such clauses are still permissible for short-term accommodation rentals, notwithstanding changes to residential tenancies laws in various jurisdictions;
5. if a property is a 'leisure facility' (including a holiday home), no deductions are available. Content has been included at paragraph [14] to clarify that a taxpayer can only use the time-based method for deductions that are not denied because the property is a holiday home;
6. a definition of 'Common areas' has been included at paragraph [30] to clarify that common areas can include shared outdoor spaces. Example 6 has also been updated to clarify that no common outdoor space existed to be taken into account when apportioning; and
7. paragraph [44] now provides that where expenses that would otherwise be deductible exceed the rent received, the Commissioner will accept that it is fair and reasonable to limit deductions to the amount of rental income from the property. An example has been added at Example 7 to illustrate this.

PCG 2026/3 – holiday homes

PCG 2026/3 explains how the ATO will allocate compliance resources where deductions relating to holiday homes are claimed, by setting out a three-zone framework categorising behaviours according to whether they indicate the property is mainly used (or held) for rental purposes or mainly for private purposes. It replaces PCG 2025/D7 (see our February 2026 Tax Training Notes).

The following changes have been made on finalisation:

1. Table 1 and paragraphs [24], [42] and [56] now clarify that 'peak holiday season' covers times when a property is desirable as a destination for holidays or recreation, such as during school holidays, public holidays or peak seasonal demand periods. This replaces the previous terminology of 'periods of high rental';
2. Example 3 has been added to illustrate where a holiday home is used mainly to produce income from rent and apportioned deductions remain available, because personal use is minimal, in low rental periods and income producing use is prioritised;
3. Example 4 has been added to illustrate where a holiday home is considered to be used 'mainly' to produce income from rent because income producing use is prioritised, notwithstanding local government annual 180-day short-term rental limits;
4. Example 6 relates to an apartment that is used by the owners when they want to attend major sporting events at nearby venues and is otherwise rented to third parties. The example has been updated to clarify that if the owners want their usage to move into the 'green zone', they should reduce their use of the apartment to attend sporting events when the property has high income-earning potential; and
5. Example 8 has been updated to clarify that blocking off guests' access to a wine and fine art collections, boat and jet-ski, reduces the appeal of the property to guests and points to prioritising use of the property for his holidays and recreation.

ATO reference *PCG 2026/2* w https://www.ato.gov.au/law/view/document?docid=COG/PCG20262/NAT/ATO/00001https://www.ato.gov.au/law/view/document?DocID=COG/PCG20262/NAT/ATO/00001&PiT=99991231235958 ATO reference *PCG 2026/2EC* w https://www.ato.gov.au/law/view/document?docid=COG/PCG20262EC/NAT/ATO/00001 ATO reference *PCG 2026/3* w https://www.ato.gov.au/law/view/document?DocID=COG/PCG20263/NAT/ATO/00001 ATO reference *PCG 2026/3EC* w https://www.ato.gov.au/law/view/document?docid=COG/PCG20263EC/NAT/ATO/00001

7.13 Deductions for home-based business expenses

The ATO has updated its website guidance on deductions for home-based business expenses, outlining how taxpayers can claim deductions where they operate some or all of their business from home. A home-based business generally exists where an area of the home is set aside and used exclusively as a place of business, although some deductions may still be available without a dedicated workspace.

Only the business portion of expenses is deductible, and where GST credits are available, deductions must be claimed on a GST-exclusive basis. The types of deductions available depend on how the business is conducted and the relevant business structure.

Running expenses

Running expenses relate to the use of facilities in the home and may be claimed even where the area does not qualify as a place of business. Examples include electricity, phone and internet, cleaning, repairs, and decline in value of equipment. Acceptable methods include the actual cost method, fixed rate method, or (where applicable) the floor area method, provided the approach is reasonable and supported by records.

Depreciation of business assets

Taxpayers can claim decline in value for business assets such as laptops, phones and office furniture, with apportionment required where there is mixed use. Small businesses (aggregated turnover under $10 million) may be able to access simplified depreciation rules and the instant asset write-off.

Occupancy expenses

Occupancy expenses, such as rent, mortgage interest, council rates and insurance, are only deductible where part of the home has the character of a place of business. These are typically calculated based on floor area and period of use. The ATO notes that PSI rules may limit the availability of these deductions.

w https://www.ato.gov.au/businesses-and-organisations/income-deductions-and-concessions/income-and-deductions-for-business/deductions/deductions-for-home-based-business-expenses

7.14 Deductions for digital product business expenses

The ATO has updated its website guidance on deductions for digital product expenses, confirming that businesses can claim deductions for costs incurred in using digital products in their operations.

The timing of the deduction depends on whether the expense is an operating or capital expense, with some capital costs eligible for immediate or accelerated deductions.

Operating expenses

Operating expenses are incurred in the day-to-day running of the business and are generally deductible in the year incurred. Examples include cloud storage, internet fees, lease payments, website maintenance, and software subscription fees.

Capital expenses

Capital expenses include depreciating assets and costs of establishing or improving a business, such as computers, mobile devices, POS systems, and website development. These are generally deductible over time, unless an immediate deduction is available under the depreciation rules.

Software expenses

Subscription fees and short-life software are generally deductible immediately, while longer-life software may be treated as in-house software and deducted over time or through a software development pool.

Apportionment and records

Expenses must be apportioned between business and private use, with only the business portion deductible. Where GST credits are available, the GST component must be excluded. Businesses must also keep adequate records to substantiate their claims.

w https://www.ato.gov.au/businesses-and-organisations/income-deductions-and-concessions/income-and-deductions-for-business/deductions/deductions-for-digital-product-expenses

7.15 Record-keeping rules for businesses – ATO guidance

The ATO has published guidance outlining the general record-keeping obligations for businesses in relation to tax and superannuation matters.

As a starting point, businesses are required to keep records that adequately explain their transactions. Records must contain enough information for the ATO to understand the essential features and purpose of those transactions and determine the business's tax position.

The ATO sets out five core record-keeping rules:

1. *Keep all relevant records*: businesses must retain records relating to the full lifecycle of the business, including starting, running, changing, selling or closing the business, as well as all transactions relevant to tax and superannuation obligations;
2. *Ensure records are not altered*: records must not be changed and must be stored securely to protect them from alteration, damage or loss. Systems should allow the original data to be reconstructed if required;
3. *Retain records for at least 5 years*: most records must be kept for 5 years, generally from when they are prepared or the relevant transaction is completed, although longer retention periods may apply in some cases;
4. *Ensure records are accessible*: businesses must be able to provide records to the ATO on request. This includes ensuring records can be accessed, extracted and converted into a usable format where stored electronically; and
5. *Keep records in English*: records must be in English or readily convertible into English.

w https://www.ato.gov.au/businesses-and-organisations/preparing-lodging-and-paying/record-keeping-for-business/overview-of-record-keeping-rules-for-business

7.16 ATO small business directory

The ATO has published a directory of links to information, tools and resources to assist small businesses in meeting their tax and superannuation obligations.

Key resources include:

1. *Helping small business get it right:* outlines key compliance risk areas identified by the ATO, including omitted income, misuse of business funds, incorrect deductions and operating outside the tax system;
2. *Income tax return*: guidance on when and how to lodge a business income tax return, noting that returns must be lodged even if no income is earned;
3. *Concessions for eligible businesses*: information on available concessional regimes, such as small business concessions and other targeted relief measures;
4. *Business deductions:* guidance on claiming deductions for expenses incurred in earning assessable income, including examples of allowable and non-allowable deductions;
5. *ATO app and myDeductions:* digital tools that allow businesses to manage tax and super affairs, track income and deductions, and support record-keeping throughout the year;
6. *Calculators and tools*: a range of interactive tools to help businesses estimate tax liabilities, compare performance and manage obligations more effectively.

w https://www.ato.gov.au/tax-and-super-professionals/for-tax-professionals/prepare-and-lodge/tax-time/tax-time-toolkits/tax-time-toolkit-small-business/a-helpful-directory-for-small-businesses-this-tax-time

7.17 ATO small business guides

The ATO has published a directory of guides and fact sheets to assist small businesses in meeting their tax and superannuation obligations.

Key topics covered include:

1. *Home-based business expenses*: guidance on claiming deductions where a home is used as a place of business;
2. *Motor vehicle expenses*: explanation of how business vehicle costs can be deducted, including available calculation methods;
3. *Travel expenses*: guidance on deductibility of travel costs incurred for genuine business purposes;
4. *Digital product expenses*: guidance on claiming costs of digital products such as cloud services, websites and technology;
5. *Using business money and assets*: guidance on tax and record-keeping implications where business funds or assets are used for private purposes (e.g. salary, dividends, loans or benefits); and
6. *Pausing or closing a business*: guidance on ongoing or final tax and record-keeping obligations when a business is paused or ceases operations.

w https://www.ato.gov.au/tax-and-super-professionals/for-tax-professionals/prepare-and-lodge/tax-time/tax-time-toolkits/tax-time-toolkit-small-business/small-business-guides

8. Tax professionals

8.1 ATO radar for R&D claims

The ATO has released guidance via its website as to areas of concern for research and development tax incentive claims. Advisers should ensure that clients are properly advised on the eligibility requirements for the research and development tax incentive (R&DTI) program, rather than assuming eligibility based on high-level descriptions of activities. It is critical that clients understand that receiving a registration receipt from the Department of Industry, Science and Resources does not constitute approval of the activities, and that the claim may still be reviewed and challenged.

The ATO has outlined key risk areas for R&DTI claims ahead of tax time, emphasising the need for advisers to ensure claims are robust and supported to avoid amendments and repayments.

The ATO's focus includes ensuring that:

eligibility criteria are properly understood and applied;
only eligible R&D expenditure is claimed based on underlying accounting data;
a clear distinction is maintained between business-as-usual activities and genuine R&D activities;
registration with DISR does not equate to approval of activities; and
deductions are not claimed for unpaid amounts to associates.

The ATO also notes that claims are subject to joint review with DISR and data-matching against other sources to verify accuracy.

Separately, the ATO has raised concerns about unlicensed or aggressive promoters of R&DTI claims and is encouraging tip-offs in relation to misleading advice, with potential consequences for tax agents through the Tax Practitioners Board.

COMMENT – This reflects the ATO's increasing compliance focus on R&D tax offset claims. The ATO has publicly indicated that it is using risk-based reviews and audits to scrutinise claims, with particular attention to large or high-expenditure claims, possible fraudulent claims, and adviser-driven arrangements that seek to access the offset where eligibility is doubtful.

w https://www.ato.gov.au/tax-and-super-professionals/for-tax-professionals/tax-professionals-newsroom/what-s-on-our-radar-for-r-and-dti-claims

8.2 Trust tax returns - what tax agents need to know for Tax Time 2026

The ATO has confirmed a number of Modernisation of Tax Administration Systems (**MTAS**)-driven changes impacting the 2025–26 trust tax return and downstream reporting for beneficiaries.

A key change is the pre-fill of trust distribution data into beneficiary returns where the assessment calculation code (label V) is"12" or "30", enabling automatic population of distribution information for individuals. The ATO encourages early lodgment of trust returns from 1 July 2026 to maximise this pre-fill functionality.

To support this, the statement of distribution has been expanded to include the following new labels:

B1 – Non-primary production managed investment scheme amount
U2 – Franked distribution related to investments amount
H1 – Other assessable foreign source income from a financial investment amount

These labels feed into the beneficiary's individual return, supporting automated calculation of Net financial investment loss at label IT5 without requiring separate reporting to beneficiaries.

The ATO has also introduced enhanced validation rules within the trust return, including checks that:

individual beneficiaries have a date of birth recorded;
non-individual beneficiaries do not have a date of birth;
the date of birth aligns with under/over-18 assessment codes; and
date of death values align with codes 15 or 16 for deceased estates or no present entitlement scenarios.

In relation to closely held trusts, trustees must ensure that beneficiaries quote their TFN before distribution resolutions, with failure triggering withholding at the top marginal rate. TFN reports for June quarter distributions remain due 31 July 2026, although proposed legislative changes may remove this reporting requirement from 1 July 2026 if enacted.

w https://www.ato.gov.au/tax-and-super-professionals/for-tax-professionals/tax-professionals-newsroom/mtas-what-tax-agents-need-to-know-for-tax-time-2026

8.3 Zone offset calculator improvements

From 1 July 2026, the ATO will enhance its Zone or overseas forces tax offset calculator to make it easier to assess eligibility and calculate the offset.

Key improvements include:

1. searchable locations with automatic zone recognition;
2. more flexible data entry for complex living arrangements; and
3. simplified inputs for adjusted taxable income (ATI), including for clients with dependants.

For the 2026 tax return, Online services for agents will prompt tax agents where a client's address suggests they may live in a remote zone. The message encourages agents to check eligibility using the calculator.

These prompts do not automatically apply the offset. Agents must still manually determine eligibility based on the client's circumstances.

w https://www.ato.gov.au/tax-and-super-professionals/for-tax-professionals/tax-professionals-newsroom/zone-or-overseas-forces-tax-offset-calculator-improvements

8.4 Tax practitioner assistance

On 21 May 2026, the ATO updated its webpage outlining the operation of its Tax Practitioner Assistance (**TPA**) service, designed to support tax practitioners where issues remain unresolved after using standard ATO channels. TPA is intended as an escalation pathway, rather than a first point of contact, for administrative client-specific or practice management matters

The service is available to registered tax and BAS agents who represent clients in a professional capacity and have authority to act on their behalf. Practitioners are expected to first attempt to resolve issues through existing support channels before lodging a TPA request.

TPA is *not* available for tax practitioners seeking assistance with:

1. applying for a private ruling;

2. ATO advice and guidance;
3. client debts or payment plans;
4. client remission requests;
5. insolvency;
6. lodging a complaint;
7. lodging an objection;
8. lodgment obligations; or
9. tailored technical assistance.

Requests that duplicate matters already raised as complaints will be closed and must be dealt with through the Complaints team and management processes.

Requests must be lodged through practice mail in Online services for agents, with a separate request required for each client or matter. Once submitted, practitioners will receive a receipt ID to track progress. The ATO will contact practitioners if further information is required, and the TPA team will liaise with the relevant ATO areas to resolve the issue. Requests are generally processed within 28 calendar days, although more complex matters may take longer, with updates provided where required.

w https://www.ato.gov.au/tax-and-super-professionals/for-tax-professionals/support-and-communication/tax-practitioner-assistance-service

8.5 Income from digital platforms

The ATO has reminded advisers that income earned through digital platforms and apps does not automatically pre-fill in tax returns and must be actively identified and reported. The ATO notes that such income is generally assessable and may arise from ride-sourcing, short-term accommodation, asset sharing, digital content and freelance platform work.

The ATO also highlights that, under the Sharing Economy Reporting Regime, platform operators now report income data directly to the ATO, which is used for data-matching and compliance activity.

COMMENT – This is consistent with the ATO's broader focus on under-reported income. Advisers should proactively ask clients about platform-based activities, as omissions are likely to be increasingly visible through third-party reporting.

w https://www.ato.gov.au/tax-and-super-professionals/for-tax-professionals/tax-professionals-newsroom/do-your-clients-earn-income-from-digital-platforms-or-apps