The Tax Institute

Tax Update

May 2026

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

Brown Wright Stein tax partners:

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

www.bwslawyers.com.au

About Brown Wright Stein

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

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

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

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

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 Hall	**What happened?** The Full Federal Court allowed the ATO's appeal and held that the taxpayer could not deduct either home occupancy expenses for a spare room used as a home office or car expenses for travel between home and the ABC studios. The Court found the rent retained its private and domestic character, and the travel was ordinary home-to-work travel rather than travel undertaken in the course of producing assessable income. **Why it matters?** The decision reinforces that working from home, even where required by an employer or external circumstances, does not of itself make home occupancy costs deductible. It also confirms that travel between home and another work location will remain non-deductible where it is properly characterised as travel to or from income-producing activities rather than travel in the performance of those activities.	Page 7
Item 2.2 Botella	**What happened?** The ART held that loans recorded through progressive advances and book entries did not satisfy section 109N merely because a pro-forma loan agreement appeared in the company constitution. The unpaid 2018 loan balance was therefore treated as a deemed dividend under Division 7A, subject to a reduction in distributable surplus for the company's present payroll tax liability. The ART also held that the 2019 restructure amounted to a dividend stripping scheme, with the result that franking credits were denied and scheme penalties applied. **Why it matters?** The decision indicates that Division 7A compliance requires a real written loan agreement governing the advance, not just a constitutional boilerplate. It also shows the application of the dividend stripping provisions where retained profits are extracted through interposed entities and restructuring designed to avoid the ordinary dividend outcome.	Page 9
Item 2.4 Shell Energy	**What happened?** The Federal Court held that, for the purposes of former section 160ZZSC, Shell's 34.27% holding in Woodside had to be valued as part of a single deemed acquisition on 20 January 1997, not by reference to the quoted ASX price of an individual share. The Court accepted that the size of the holding conferred significant influence	Page 17

	and therefore justified an 18% premium over the listed trading price, producing a market value of $11.12 per share. **Why it matters?** The decision indicates that large minority holdings may attract a premium where they carry real strategic influence, which can materially affect CGT cost base outcomes, and may be relevant for other provisions in the tax laws that depend upon market value.	
Item 2.5 Frizelle	**What happened?** The ART held that amounts received by Megan Frizelle from a chain of non-resident trusts were assessable under section 99B to the extent they were paid to her or applied for her benefit, including by reducing her loan liability. Her attempt to rely on the corpus exception failed because she could not trace the funds through the trust structure or prove that the hypothetical resident taxpayer test was satisfied. **Why it matters?** The decision is a strong reminder that section 99B can apply broadly to foreign trust distributions, including indirect benefits and loan repayments. It also shows that taxpayers bear a heavy evidentiary burden to establish any corpus exclusion, and unsupported trustee letters or vague assertions will not be enough.	Page 20
Item 2.6 O'Neill	**What happened?** The ACT Supreme Court upheld the ACAT's decision that landholder duty should not apply to share transfers in the corporate trustee of the O'Neill Family Trust. Although the statutory deeming rules treated the trustee as a landholder, the Court accepted that it was open to find this inequitable because the transactions were undertaken to satisfy bank finance requirements and did not confer any new practical or economic benefit on the taxpayers. **Why it matters?** The decision confirms that, in appropriate cases, discretionary relief from trust deeming provisions may be available where a restructure changes legal form but not substantive control or economic interest. It also reinforces the relevance of the NSW authorities on practical or economic benefit when assessing whether the application of landholder duty deeming rules would be inequitable.	Page 23

2. Detailed case summaries

2.1 Hall – deductibility of occupancy expenses and car expenses

Facts

Nathaniel Hall was employed full-time by the ABC in Melbourne as a sports presenter and producer. His position comprised two separate roles, being the 'Digital Role', which involved producing the ABC Sport Digital Radio station, and the 'Live Role', which involved producing and presenting live sports broadcasts, primarily NRL football. The Digital Role accounted for 75% of his work, and the Live Role accounted for 25% of his work.

Nathaniel and his wife lived in a two-bedroom apartment in Armadale, approximately 8 kilometres from the ABC's Southbank Studios.

During the 2021 income year, as a result of the COVID-19 pandemic, Nathaniel was prevented from attending the Southbank Studios. This followed both the declaration of a state of emergency by the Victorian Government in March 2020 under section 198(1) of the *Public Health and Wellbeing Act 2008* (Vic), and the implementation by the ABC of its internal "Recovery Roadmap" policies. Under those policies, only staff who performed essential duties or had specific approval could attend the workplace.

Nathaniel was not permitted to attend the studios for the Digital Role at any time during the 2021 year. He was only authorised to attend the Southbank Studios for rostered live sports broadcasts.

Nathaniel undertook the Digital Role exclusively from his home. The Live Role was undertaken from the Southbank Studios, except on one occasion when Nathaniel attended the A-League Grand Final at AAMI Park in Melbourne. The work done for the Live Role is of a nature that requires specialised and complex broadcasting equipment that could not be easily or conveniently replicated in a domestic environment.

When required to attend the Southbank Studios, Nathaniel drove in his personal vehicle. He did not use public transport, citing the ABC's policy preference that staff avoid public transport due to COVID-related risks, and the late-night nature of his shifts. The ABC provided access to a rostered staff carpark and a car parking reimbursement scheme to support the use of private vehicles.

Nathaniel claimed the following deductions in the 2021 income year:

1. occupancy expenses in the amount of $5,878.87, calculated as 16.18% of the rent paid for the apartment, which corresponded to the floor area of the spare bedroom used exclusively as a home office; and
2. car expenses in the amount of $1,148.40, being the expenses on a "cents per kilometre" basis associated with travel from his home office to the Southbank Studios to perform his Live Role duties.

In relation to his occupancy expenses, Nathaniel argued the spare bedroom in his apartment was used exclusively and necessarily for the performance of his duties in the Digital Role. Nathaniel argued that working from home was not a matter of convenience, but the result of ABC policy, which only allowed limited staff on site, and Victorian Government directions.

The Commissioner argued the rent was a private or domestic expense, and not deductible under section 8-1 of the ITAA 1997. The Commissioner sought to rely on the High Court cases of *Handley v Commissioner of Taxation* [1981] HCA 16, *Commissioner of Taxation v Faichney* [1972] HCA 67, and *Commissioner of Taxation v Forsyth* [1981] HCA 15, which supported the long-standing view that rent for a residence used partly as a workplace is usually not deductible unless the area has a distinct and separate business character. The Commissioner claimed the room was not exclusively identifiable as a workplace, and its domestic location made it inherently private in nature. The Commissioner also relied on the ATO's administrative practice that

distinguishes between a place of convenience for occasional work, which is not deductible, and a place used in substitution for an employer-provided workspace, which is potentially deductible.

In relation to his car expenses, Nathaniel argued that he travelled between two workplaces, being his home office (for the Digital Role) and the ABC's Southbank Studios (for the Live Role). Nathaniel argued the travel was necessary to perform rostered duties at the Studios and he avoided public transport because of the ABC's COVID safety preferences, and the organisation supported private vehicle use with a reimbursement scheme and dedicated car park.

The Commissioner argued that the car expenses were not deductible as the travel was between Nathaniel's home and regular workplace, and thus private in nature. The Commissioner also argued that the fact that the ABC encouraged private vehicle use did not convert private travel into deductible work travel.

Nathaniel argued that his car expenses were deductible under section 28-12 (using the cents-per-kilometre method in section 28-25(3)(a)) or, alternatively, under the general deduction provision section 8-1. The ATO contended that section 28-12 did not operate independently of section 8-1 and that choosing a calculation method could not avoid the private or domestic exclusion in section 8-1(2).

On 16 September 2022, Commissioner disallowed Nathaniel's objection to amendments to Nathaniel's assessments which disallowed the claims in his 2021 income tax return for deductions for the rent and car expenses. Nathaniel applied to the ART for review of the objection decision.

At first instance, the ART held that the home occupancy expenses, as related to the room used by Nathaniel for his income producing activities, were deductible.

The ART accepted that Nathaniel began his working day at home performing the Digital Role before travelling to the Southbank Studios to perform the Live Role, and that he returned home afterwards. It did not expressly find that he resumed work at home after returning. The ART found that Nathaniel's job comprised two distinct roles, each tied to a specific location, and that his employment was not structured as two separate shifts. It concluded that on days when the respondent travelled from home to the Studios (and back), he was "at work the entire time" and that the travel was therefore "on work".

The ART accepted Nathaniel's estimate of business kilometres as reasonable under section 28-25(3) and allowed the car expense deduction.

The ATO appealed to the Full Federal Court.

Issues

1. Were the home occupancy expenses partly deductible?
2. Were the car expenses deductible?

Decision

<u>Home occupancy expenses</u>

The Full Court held that the ART erred. The Full Court noted that the High Court authorities had found that the "essential character" of rental expenses incurred on a property that is a person's home is private and domestic and there is no basis to apportion any amount to gaining or obtaining assessable income because it was being objectively used to gain or produce assessable income. The Full Court held that, contrary to the attempts by the ART to distinguish those earlier High Court authorities, they were binding on the Full Court (and the ART) and it was required to follow them.

The earlier High Court authorities - which included *Handley v Commissioner of Taxation* [1981] HCA 16, *Commissioner of Taxation v Faichney* [1972] HCA 67, and *Commissioner of Taxation v Forsyth* [1981] HCA 15

- relied heavily on the fact that, inherently, the premises being rented by the relevant taxpayers were private or domestic in nature. The outgoings had been outlaid to secure a home. The cases did not rely upon the fact that the taxpayers did not need to work from home and that they did so for mere convenience.

Car expenses

The Full Court held that it was unnecessary to resolve whether section 28-12 provides a specific deduction that excludes the operation of s 8-1. This was because the Nathaniel's travel did not occur in the course of producing assessable income. Accordingly, the travel could not qualify under section 28-25(3)(a), section 28-12 was not satisfied, and the expenses would also fail the positive limb of section 8-1(1)(a).

Nathaniel's work at home (the Digital Role) was distinct from his work at the Southbank Studios (the Live Role). He was not performing either role while driving. His travel between home and the studios was merely travel to or from income-producing activities, not travel in the performance of those activities. The trips were not part of an ongoing income-producing task already underway.

The Court held that the ART's conclusion that Nathaniel was “at work” for the entire journey was not supported by its findings of fact. As a result, the travel was not undertaken in the course of producing assessable income, and the car expenses were not deductible.

COMMENT – One reading of the reasons of Thawley J (with whom the other judges agreed) in the Full Court may be that, had the Court been free to decide the case without the shackles of prior High Court precedent, Thawley J may have upheld the ART's decision.

COMMENT – the Full Court decision demonstrates some fundamental principles for deductibility under section 8-1 as follows:

1. a loss or outgoing that has relevance to gaining or obtaining assessable income to some extent, can be denied deductibility for that extent under the private or domestic exclusion. That is, the private or domestic exclusion can deny deductibility for a loss or outgoing that is otherwise relevant and does not simply result in apportionment;
2. following on from the first point, a loss or outgoing to secure something that is inherently private or domestic in nature will not be partly deductible merely because the thing obtained is also used to produce income;
3. deductibility is not a "but for test". That is, it is not a question of asking "but for the loss or outgoing, would the income have been derived"?; and
4. it is also not a question of asking, in the case of work-related deductions, did the employer require the outgoing to be incurred?

Citation *Commissioner of Taxation v Hall* [2026] FCAFC 43 (Thawley, McElwaine and Wheatley JJ, Melbourne) w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCAFC/2026/43.html

2.2 Botella – Division 7A

Facts

In November 2007, Pipeline Plumbing Developments Pty Ltd (**PPD**) was incorporated. PPD operated a hydraulic plumbing, heating and air-conditioning business. John Botella was the sole director and shareholder of PPD.

PPD's constitution provided pro-forma terms for loans made by PPD to its members. Relevantly, the recitals of the pro-forma loan agreement noted "*The Company and the Member have agreed to enter into this Agreement to set out the terms and conditions of every Loan by the Company to the Member*" and “*the Company and the*

Member desire that all Loans meet the criteria set out in section 109N of Division 7A". The term "Loan" was defined in the pro-forma agreement to have the "same meaning as appeared in section 109D of the ITAA 1936 and including, amongst other things, an advance of money.

On 15 February 2018, Pipeline Plumbing Services Pty Ltd (**PPS**) was incorporated. John was the sole director and shareholder of PPS.

In March 2018, PPD's business was transferred to PPS. Following the business transfer, the shareholding in PPS changed, 80% of the shares became indirectly held by John, and 20% of the shares became indirectly held by Dimitri Stassos, the general manager of the business at that time.

In the income year ended 30 June 2018, the financial statements of PPD showed retained earnings of $1,008,918 and loans to John of $1,082,963. Subsequent examination of PPD's financial statements indicated that the actual amount loaned to John to be $1,315,258. These loans remained unpaid as at the lodgment day of PPD's 2018 tax return.

In March 2018, John sought advice from Gino Cassaniti. John became concerned about potential claims against PPD for plumbing works performed by PPD, and his personal financial position due to an upcoming family law dispute.

In August 2018, Gino and John met with Bruce Rowntree of Rubicon Lawyers. At that meeting, Bruce suggested a corporate restructure involving the incorporation of a new holding company to be interposed between John and PPD.

On 4 September 2018, Pipeline Plumbing Holding Pty Ltd (**PPH**) was incorporated with John as the sole director and shareholder. On the same day, John sold his PPD shares to PPH in exchange for the issue of 1,009,018 fully paid shares in PPH. John deferred the CGT payable on the disposal of his PPD shares by applying the Subdivision 122-A rollover.

On 21 September 2018, a series of transactions occurred between John, PPD and PPH. This resulted in PPH advancing a loan of $1,008,918 to John, and John's existing loan of the same amount being repaid to PPD. The transaction steps were as follows:

1. PPD issued a shareholder distribution statement in relation to declared dividend payable to PPH, indicating total franking credits of $382,693;
2. PPD issued a promissory note for $1,008,918 to PPH in satisfaction of the declared dividend;
3. PPH endorsed the promissory note to John, and a written loan facility agreement was executed between PPH and John, establishing an unsecured, interest-free, at call loan facility; and
4. John endorsed the promissory note back to PPD, to be applied as repayment of his pre-existing loan account with PPD.

On 1 October 2019, the ATO commenced an income tax review of John and his related entities.

In January 2020, Revenue NSW commenced a payroll tax audit of PPD, examining subcontractor payments for the years ended 30 June 2016 to 2019. On 19 February 2021, payroll tax assessments were issued totaling $476,654.61 (including penalties and interest). On 20 April 2021, objections were lodged.

On 5 July 2022, Revenue NSW allowed the objections in part and issued amended payroll tax assessments. On 26 August 2022, PPD commenced review proceedings in the NCAT.

Between 2019 to 2023, PPD was subject to a payroll tax dispute with the Chief Commissioner of State Revenue, resulting in amended payroll tax assessments issued for the 2016 and 2017 years totaling $476,654.61. The amount comprised primary tax of $347,589.67 and interest and penalties of $10,608.68 and $42,900.15 respectively.

In September 2022, Australand North Ryde Developments Pty Ltd commenced proceedings against PPD for work defects, which ultimately settled for about $130,000.

On 29 March 2023, the NCAT proceedings in relation to payroll tax were withdrawn by consent, and further amended payroll tax assessments were issued shortly afterwards.

On 14 May 2024, the ATO issued amended income tax assessments to John for the years ended 30 June 2018 and 2019, which included in his assessable income in each year an unfranked dividend of $1,008,918. The Commissioner's position was that the loan from PPD was a deemed dividend under to Division 7A of the ITAA 1936.

The Commissioner also determined that, in respect of the 2019 income year, John, PPD and PPH entered into a scheme “by way of or in the nature of dividend stripping”, within the meaning of section 177E of the ITAA 1936 and section 207-155 of the ITAA 1997. Under section 207-145 of the ITAA 1997, where a franked distribution is made to an entity as part of a dividend stripping operation, the amount of the franking credit on the distribution is not included in the assessable income of the entity and the entity is not entitled to a tax offset because of the distribution.

On 14 May 2024, PPH was issued an amended assessment for the year ended 30 June 2019 removing franking credits of $382,693.

The Commissioner also imposed scheme penalty and a false and misleading statement penalty against John for the income year ended 30 June 2019 under section 284-145 of Schedule 1 to the TAA.

On 31 May 2024, as a result of John's assessable income being increased, John was also issued with a Division 293 assessment for the year ended 30 June 2019.

John and PPH objected to the amended assessments issued to them. The objections were disallowed by the ATO.

John, PPD and PPH applied to the ART for review.

At the hearing, the Commissioner proposed at the hearing that the assessment under Division 7A and the assessments based on the dividend stripping scheme as alternatives.

Division 7A

In relation to the loans between John and PPD in the income years ended 2018 and 2019, the Commissioner contended that the pro-forma loan terms set out in PPD's constitution did not meet the criteria section out in section 109N of the ITAA 1936.

A section 109N complying loan agreement required that, before the lodgment day for the year of income, “the agreement that the loan was made under is in writing”.

John argued that, although there was no separate written loan agreement between PPD and John, the Constitution deemed loans made by PPD to members to be in accordance with the pro-forma loan agreement set out in the Constitution. They further submitted that PPD's constitution did not require any further actions to be taken by the relevant member or PPD to constitute a complying section 109N loan agreement.

The Commissioner submitted that advances to John occurred progressively by conduct and book entries, not under a contemporaneous written agreement between the company and John that specified the loan amount and terms. As a result, the loans were not made under an agreement that was in writing, as required by section 109N. The Commissioner further argued that, because section 109N was not satisfied, the unpaid loan balance as at 30 June 2018 was taken to be a dividend under section 109D. That deemed dividend was then included in John’s assessable income, subject only to the cap based on the company’s distributable surplus.

As an alternative argument, John and PPD contended that, even if section 109N was not satisfied, PPD's distributable surplus for the 2018 income year must account for contingent liabilities that were reasonably expected to crystallise, and this should include the payroll tax and defect claim liabilities.

The Commissioner conceded that PPD's payroll tax liability as at 30 June 2018 constituted a "present legal obligation" under section 109Y(2) of the ITAA 1936 for the purposes of calculating PPD's distributable surplus for the 2018 income year. The Commissioner also acknowledged that interest accrued on the unpaid payroll tax that remained unpaid as at 30 June 2018 would also constitute a 'present legal obligation', but noted that John, PPD and PPH had failed to prove the quantum of any interest that had accrued. However, the Commissioner maintained that other claimed liabilities, including penalties and later defect claims, were not present legal obligations at that time and could not reduce the distributable surplus.

Dividend stripping scheme

Section 177E of the ITAA 1936 applies to arrangements by way of or in nature of dividend stripping, which have the effect of placing the company profits in the hands of the original shareholders or their associates in a tax-free or largely tax-free form. The Commissioner may make a determination to include an amount in a taxpayer's assessable income for that year of income.

The Commissioner submitted that the transactions undertaken by John, PPD and PPH in the income year ended 30 June 2019 exhibited each of the six recognised characteristics of a dividend stripping scheme, as noted in the *Federal Commissioner of Taxation v Consolidated Press Holdings* [2001] HCA 32:

1. firstly, there was a target company, PPD, with substantial undistributed profits of $1,008,918 as at 30 June 2018, giving rise to a potential tax liability either in the hands of the company or its sole shareholder, John;
2. secondly, there was a sale or allotment of shares in the target company from John to PPH. On 4 September 2018, John sold 100% of his shares in PPD to PPH in exchange for shares issued by PPH;
3. thirdly, a dividend was paid to the purchaser of the shares out of the target company's profits. On 4 September 2018, PPD declared a fully franked dividend of $1,008,918 to PPH, corresponding to the entirety of PPD's retained earnings from the prior financial year;
4. fourthly, because the dividend was fully franked, PPH did not incur tax liability upon receipt;
5. fifthly, John received a capital sum for the shares in an amount equal to, or substantially the same as, the dividend paid. PPH issued John with 1,008,918 shares valued at $1 each, such that the value of the shares matched the dividend paid to PPH. Here, John elected CGT roll-over relief and therefore received the capital gain in a tax-free form; and
6. sixthly, as a result of the scheme, John was not required to pay tax on the undistributed profits held by PPD as at 30 June 2018.

John, PPD and PPH contended that the corporate restructure could be distinguished from the circumstances in *Consolidated Press Holdings*, namely in the second, fourth, fifth and sixth characteristic.

In relation to the second characteristics, John, PPD and PPH submitted that the dividend stripping scheme, when understood in historical context, was designed to target the conversion of taxable dividend income into tax-free capital receipts through the interposition of an external party. In this case, John did not sell his shares to the external dividend stripper.

With reference to the fourth characteristic, John, PPD and PPH submitted that PPH was an Australian resident company and its profits would always remain within the Australian tax net. They noted that Division 207 of the ITAA 1997 was intended to prevent double taxation and therefore did not constitute an "escape" from the Australian tax net. They further submitted that there was no "tax benefit" and that the arrangement which allowed John to obtain funds from PPH, so as not to trigger Division 7A, would not amount to "escaping" Australian tax.

With reference to the fifth characteristic, it was submitted that John did not extract any value from the arrangement, as he retained ownership of accumulated profits before and after the corporate restructure, and received no cash. They also noted that the CGT rollover merely deferred the CGT payable by John.

Finally, in relation to the sixth characteristic, John submitted that the commercial purpose of the restructure was asset protection.

Penalties

At the hearing, the Commissioner conceded that John should not be subject to a statement penalty under section 284-75(1) of the TAA. However, the Commissioner maintained that John was liable for a scheme penalty under section 284-145, on the basis that he had obtained a scheme benefit from a dividend stripping scheme in the year ended 30 June 2019.

Issues

1. Did the loan agreement in PPD's constitution satisfy section 109N for loans made in the 2018 income year?
2. Was PPD's distributable surplus for the 2018 income year reduced by the payroll tax and defect claim liabilities?
3. Did sections 177E and 207-145 apply to the corporate restructure in the 2019 income year?
4. Should scheme penalties apply?

Decision

Division 7A

The ART found that a pro-forma loan agreement set out in PPD's constitution did not satisfy the requirement under section 109N(1) that "the agreement that the loan was made under is in writing". In this case, the loans arose through progressive advances and were recorded by book entries, rather than being made pursuant to a written agreement specifying the loan amount and repayment obligations at the time the money was advanced.

The ART also found that the constitution could not, of itself, operate as an agreement between the company and John personally for the purposes of section 109N. A company constitution regulates the relations of members amongst themselves and with the company, but does not evidence a mutual intention between the company and the member personally to enter into a loan contract governing the advances

Having found that Division 7A applied, the ART turned to whether the amount of the deemed dividend should be reduced by reference to the distributable surplus of PPD. The ART applied the Full Federal Court's reasoning in *Commissioner of Taxation v H* [2010] FCAFC 128, which makes clear that a present legal obligation does not need to be quantified or assessed at the relevant date, but must have arisen by operation of law.

The ART agreed that PPD's liability for unpaid payroll tax as at 30 June 2018 constituted a 'present legal obligation' for the purpose of calculating PPD's distributable surplus, but that John was unable to discharge its onus of proof on the interest charge. The Member further noted that penalties on payroll tax liabilities had not crystallised as at 30 June 2018 and therefore were not a 'present legal obligation' in the 2018 income year.

As the Australand proceedings did not commence until 2022, the ART held that the defect claims were not 'present legal obligations' of PPD as at 30 June 2018.

The ART concluded that the distributable surplus should be reduced only by the unpaid payroll tax liability of $343,884, and varied the 2018 assessment accordingly.

Dividend stripping scheme

The ART rejected John, PPD and PPH's argument that the corporate structure was not a dividend stripping scheme.

The ART referred to the dividend stripping case of *Commissioner of Taxation v Michael John Hayes Trading Pty Ltd as trustee of the MJH Trading Trust* [2024] FCAFC 80 where the Full Court confirmed that a dividend stripper could be a related party of the target company or the vendor shareholder.

The ART also had regard to the earlier AAT decision in *Michael John Hayes Trading Pty Ltd as trustee of the MJH Trading Trust and Commissioner of Taxation* [2023] AATA 3005 which rejected a similar argument that the operation of the imputation system should not amount to an "escape" from tax. In the *Hayes* decision, the AAT noted that the relevant test was to "look to whether the dividend received, after associated credits or deductions or rebates, and in today's parlance tax offsets, bears taxation liability in a net sense".

The ART rejected John's argument that it was necessary for the capital sum to be received in cash. As per the Full Court decision in *Consolidated Press Holdings*, a capital sum could take the form of an allotment of shares. The ART also identified that the relevant tax benefit to be the amount of PPD's profits that would have been included in John's income, if PPD had declared a dividend to him. The application of the CGT roll-over relief was not of concern.

Looking at the scheme objectively, the ART was not persuaded that asset protection was the dominant purpose. It noted the absence of contemporaneous evidence of advice, the fact that the asserted risks materialised years later, and John's concession in cross-examination that a direct dividend would have achieved the same asset protection outcome.

The ART concluded that, when viewed objectively, the corporate restructure involved complex transactions that had characteristics common to dividend stripping schemes and was for the dominant purpose of avoiding tax.

Franking credits

Because the ART found that the arrangement constituted a dividend stripping scheme, the dividend paid to PPH was taken to have been made as part of a dividend stripping operation under section 207-155, with Subdivision 207-F operating mechanically to deny PPH both the inclusion of franking credits in assessable income and any entitlement to a corresponding tax offset.

Penalties

The ART upheld the imposition of scheme penalty and the Division 293 assessment, and noted that John was unable to demonstrate any basis to remit the scheme penalty or that the Division 293 assessment was excessive or incorrect.

COMMENT – the 'scheme' in this case is the subject of *Taxpayer Alert* 2023/1: https://www.ato.gov.au/law/view/document?DocID=TPA/TA20231/NAT/ATO/00001

Citation *Botella and Commissioner of Taxation (Taxation and business)* [2026] ARTA 604 (Deputy President G Lazanas, Sydney)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/604.html

2.3 Brisbane Club (No.2) – CGT cost base

Facts

On 8 May 1985, The Brisbane Club entered into a deed with a property developer that governed the redevelopment of the Club's premises and the construction of a new building, including an option for the Club to occupy specified levels once construction was completed.

Clause 27(b) of the deed fixed the maximum "building cost" payable by the Club for exercising that option at $600,000 per level, with an escalation mechanism of 0.5% per month calculated on a simple interest basis from 1 July 1985 until a certificate of classification was issued for the new building.

On 12 August 1985, the Club sent a letter indicating its intention to exercise the option to occupy part of the new building, which was later referred to in correspondence confirming that choice.

On 19 August 1985, the Club's position was confirmed in writing, and the parties proceeded on the basis that the option under the deed had been exercised, triggering the obligation to pay the capped construction amount for the relevant level.

On completion of construction, the Club paid $600,000 to the developer under clause 27(b) of the deed, being the capped amount for the construction of the level it intended to occupy.

On 24 June 1986, a separate development agreement was entered into between the developer and a third party, CML, which later became the lessor under a second sublease granted to the Club. The Court ultimately found there was no evidence that the developer assigned its rights under the original deed to CML.

On 21 January 2021, the Club disposed of the building, giving rise to a capital gains tax event and the need to determine the correct cost base of the relevant CGT assets. Under section 110-25(2)(a) of the ITAA 1997, the first element of an asset's cost base includes the total money paid, or required to be paid, in respect of acquiring that asset.

The Club treated the $600,000 payment as being the cost base of the second sublease. For CGT purposes, the Club indexed the original $600,000 to $928,378, reflecting the application of the pre-21 September 1999 CGT indexation rules, which allow the cost base of an asset acquired before that date to be increased by CPI up to 30 September 1999 in lieu of applying the CGT discount.

On 25 October 2023, the ATO issued an objection decision that excluded the indexed payment from the building's cost base, resulting in a higher assessed net capital gain.

The Club sought review of the decision in the Federal Court.

The Club argued that the $600,000 payment was made in respect of acquiring the second sublease. It submitted that the words "in respect of" in section 110-25(2)(a) are broad and capable of covering indirect connections, and that, as a matter of commercial substance, the payment was made to secure the right to occupy the relevant level, which the Club ultimately obtained through the second sublease.

The Commissioner argued that section 110-25(2)(a) requires a connection between the payment and the acquisition of the specific CGT asset. Because the second sublease was granted by CML and the payment was made to the developer, the Commissioner contended the payment could not form part of the cost base of the sublease. The Commissioner further submitted that, properly characterised, the payment was for the construction of the building itself and therefore, if included at all, belonged in the cost base of the building rather than the lease.

Issues

1. Was the $600,000 payment (indexed to $928,378) made by the Brisbane Club "in respect of" acquiring the second sublease, so that it formed part of the cost base of that lease for capital gains tax purposes?
2. Alternatively, was that payment made "in respect of" acquiring or constructing the building itself, so that it should be included in the cost base of the building rather than the second sublease?

Decision

Was the payment made "in respect of" acquiring the second sublease?

The Court began by focusing on the statutory question posed by s 110-25 of the ITAA 1997, which requires that money be paid "in respect of" acquiring the particular CGT asset whose cost base is being calculated. Although that phrase is recognised as having a wide meaning, the Court held that there must still be a real and identifiable connection between the payment and the specific asset said to be acquired.

The Court noted that the second sublease was not granted by the developer to the Brisbane Club, but by a different entity, CML. The $600,000 payment was made to the developer under the original deed, not to CML under the second sublease. There was no evidence that the developer had assigned its rights under the deed to CML, and no contractual route showing that the payment was consideration for the second sublease.

The Court rejected the Club's argument that the words "in respect of" were wide enough to capture an indirect or loosely connected payment. Even accepting the breadth of the expression, the Court held that a payment to one party could not, without more, be characterised as being made in respect of acquiring an asset from a different party. The necessary connection between the payment and the acquisition of the second sublease was missing.

The Court therefore concluded that the indexed $928,378 payment was not made in respect of acquiring the second sublease and could not be included in that asset's cost base.

If not the second sublease, was the payment made in respect of the building?

Having rejected the second sublease as the relevant asset, the Court then examined whether the payment was instead made in respect of acquiring or constructing the building itself. This required a close reading of clause 27 of the 1985 deed and the commercial context in which it operated.

The Court observed that clause 27(b) was expressly directed to construction. If the Club exercised its option to occupy certain levels, it was required to pay the "actual cost" of constructing those levels, subject to a cap of $600,000 per level. That capped amount was defined in the deed as the "building cost", and the clause carefully allocated construction cost risk between the parties, with the developer bearing any excess above the cap and retaining any saving if costs were lower.

This structure was inconsistent with the payment being consideration for a lease. Instead, it reflected a contribution by the Club to the cost of constructing part of the building it intended to occupy. The timing of the payment, being linked to practical completion, and the detailed definition of "actual cost" reinforced that the payment related to the building works themselves, not to the grant of leasehold rights.

The Court also emphasised that the label used in the deed was not decisive. Even though the payment amount was defined as the "building cost", the real question was the substance and operation of the clause. On its proper construction, the payment was plainly connected to the construction and acquisition of the building, rather than to any later sublease arrangements.

The Court concluded that the indexed $928,378 payment was made in respect of the building and therefore formed part of the building's cost base for capital gains tax purposes.

KEY TAKEAWAY

This case highlights how critical it is to identify the correct CGT asset to which a payment relates when determining cost base and the relevant element of cost base under which it is included. Not all capital payments in connection with the acquisition of an asset will be included in cost base.

COMMENT – the related case of *Brisbane Club v Commissioner of Taxation* [2026] FCA 220 (see our March 2026 Tax Training Notes) determined that the building was a pre-CGT asset. That meant the Club was keen to characterise the $600,000 payment as part of the cost base of the post-CGT sublease, because costs

attributed to a pre-CGT asset are effectively ignored for capital gains tax purposes, whereas including the amount in the sublease cost base would reduce the taxable gain on disposal of that post-CGT asset.

Citation *Brisbane Club v Commissioner of Taxation (No 2)* [2026] FCA 521 (Wheatly J, Brisbane)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2026/521.html

2.4 Shell Energy – CGT cost base and market valuation

Facts

On 17 August 1971, Woodside Petroleum Limited was incorporated in Victoria, and over the 1970s and 1980s companies within the Shell and BHP groups progressively acquired substantial shareholdings, including interests held indirectly through North West Shelf Development, which was jointly owned by Shell and BHP.

On 28 June 1990, BHP sold a 30% shareholding in Woodside to multiple institutional investors at a discount of 1.87% to the opening ASX price, followed on 31 October 1994 by the sale of a further 10% interest, again to institutional investors, at a discount of 3.64%. On the same day, the sale of shares by North West Shelf Development resulted in Shell disposing of its indirect 5.76% interest, leaving Shell with a direct holding of 34.27%, which internal documents described as sufficient to dominate general meetings and exert significant influence through board representation.

On 1 November 1994, Shell Australia Limited became by far the largest shareholder in Woodside, holding 34.27% of the issued capital, a position it maintained through the following years. On 20 January 1997, Woodside had 666,666,667 shares on issue, Shell continued to hold 34.27%, and trading that day amounted to just over 0.1% of shares, with a volume weighted average price of $9.41 and a closing price of $9.42.

Former section 160ZZSC of the ITAA 1936 applied where a public entity determined, under the former continuity rules, that there had been a change in majority underlying interests in an asset held since before 20 September 1985. In that circumstance, the provision deemed the asset to have been acquired by the entity on 20 January 1997 for a consideration equal to its market value at that time. The effect was to reset the asset's acquisition date and cost base to market value as at 20 January 1997, so that any later disposal would give rise to a taxable capital gain or loss calculated by reference to that deemed cost base. The provision operated as a statutory fiction and required market value to be determined by reference to the deemed acquisition, regardless of how or when the asset had actually been acquired.

On 9 August 1999, Shell Australia made a determination under former section 160ZZSA of the ITAA 1936 that there had not been continuity of majority underlying interests since 19 September 1985, with the consequence that its Woodside shares were deemed to have been acquired on 20 January 1997 at market value for capital gains tax purposes.

On 1 January 2003, a multiple entry consolidated group was formed with Shell Energy Holdings Australia Limited as provisional head company, and Shell Australia became a subsidiary member. Under the single entity rule in the consolidation provisions, the Woodside shares were treated for tax purposes as having always been held by Shell Energy Holdings Australia.

On 8 November 2010, Shell Energy Holdings Australia disposed of 78,340,163 Woodside shares, representing 10% of the issued capital, through an off-market block trade to institutional investors at $42.23 per share, a discount of 7.4% to the opening ASX price, reducing its holding to 24.27%.

On 17 June 2014, Shell undertook a further sell down of 78,271,512 shares, or 9.5% of Woodside, at $41.35 per share, a 2.2% discount to the opening market price, as part of a global divestment strategy.

On 13 November 2017, Shell Energy Holdings Australia disposed of its remaining 111,847,852 shares through an underwritten sale to institutional investors at $31.10 per share, a discount of 3.0% to the opening ASX price, bringing its long-standing investment in Woodside to an end.

On 10 May 2018, the ATO commenced a review of the 2014 and 2017 disposals, followed by a formal audit in September 2019.

On 9 June 2021, the ATO issued amended assessments that rejected the application of a premium to the 20 January 1997 market price, increasing Shell Energy Holdings Australia's taxable capital gains.

On 9 August 2021, Shell Energy Holdings Australia objected to the amended assessments, and on 23 February 2024 the Commissioner disallowed the objection. Shell Energy Holdings Australia commenced proceedings in the Federal Court seeking to set aside that objection decision.

Shell Energy Holdings Australia argued that the Woodside shares had to be valued in the context required by former section 160ZZSC of the ITAA 1936, which deemed all of the shares to have been acquired by a single entity on the same day. Shell Energy Holdings Australia said each share had to be valued as part of a hypothetical simultaneous acquisition of its entire 34.27% holding on 20 January 1997, rather than as an isolated minority share traded on the ASX. Because that holding conferred significant influence over Woodside, including the ability to block special resolutions and substantial board representation, Shell Energy Holdings Australia contended that the market value of each share was higher than the quoted trading price.

The Commissioner argued that the Woodside shares should be valued by reference to the ordinary ASX trading price on 20 January 1997, without any premium for Shell's 34.27% holding or the influence it conferred. Because Woodside shares were actively traded, the Commissioner said their market value was best reflected by the volume weighted average price of $9.41, and former section 160ZZSC of the ITAA 1936 did not require the shares to be valued as part of a single hypothetical acquisition of the entire holding.

The Commissioner also relied on practical market and legal constraints, including takeover thresholds, foreign investment approval under the *Foreign Acquisitions and Takeovers Act 1975* (Cth), and competition law issues, to argue that a single acquisition of 34.27% was unrealistic and should not underpin valuation. Historical block trades by BHP and Shell, all completed at discounts to market price, were said to show that large parcels attracted discounts rather than premiums. In addition, the Commissioner submitted that Shell had not shown any evidence of higher cash flows from influence alone and that reliance on post-1997 transaction data involved impermissible hindsight, reinforcing the view that no premium should be applied.

Issues

1. Did former section 160ZZSC require the Woodside shares to be valued as part of a single deemed acquisition of Shell's entire holding on 20 January 1997, rather than by reference to the ASX price of an individual share?
2. If so, did that holding confer significant influence such that a premium formed part of the market value?
3. If a premium was warranted, what was the appropriate premium as at 20 January 1997?

Decision

Single acquisition or trading price

The Federal Court held that former section 160ZZSC(1) of the ITAA 1936 operated as a deeming provision that fixed both the time and circumstances of acquisition for valuation purposes. The Court reasoned that paragraphs (a) and (b) of the provision were interdependent, with the words "so acquired" in paragraph (b) expressly linking market value to the deemed acquisition described in paragraph (a). As a result, the valuation exercise had to proceed on the statutory fiction that all shares were acquired by a single entity on the same day, rather than as a series of notional individual trades.

In reaching that conclusion, the Court applied orthodox principles concerning deeming provisions, including that such provisions require the hypothesis to be fully worked through, even if commercially unrealistic. The Court rejected the Commissioner's submission that real world legal, regulatory or financial impediments could constrain the statutory hypothesis, relying on authorities such as *Commissioner for Railways v Bain* (1965) 112 CLR 246 and *Chevron Australia Holdings Pty Ltd v Federal Commissioner of Taxation* [2017] FCAFC 62.

Each Woodside share had to be valued in the context of a hypothetical simultaneous acquisition of the entire 34.27% holding on 20 January 1997.

Did the holding attract a premium?

The Court considered whether the characteristics of the 34.27% holding affected market value. Applying established valuation principles derived from *Spencer v Commonwealth* (1907) 5 CLR 418 and *Commissioner of State Revenue (WA) v Placer Dome Inc* [2018] HCA 59, the Court held that market value must reflect all attributes of the asset that would be known to a hypothetical willing buyer and seller.

On the evidence, the Court found that the holding conferred significant influence, including the ability to block special resolutions, disproportionate voting power relative to other shareholders, and substantial board representation. The Court accepted that such influence has economic value, not only through potential effects on cash flows but also through risk reduction and strategic control. The Commissioner's reliance on historical block trades at discounts was rejected because those transactions involved multiple buyers who did not acquire influence, and therefore were not comparable to the statutory hypothesis. The Court also rejected the argument that influence required proof of higher contemporaneous cash flows, accepting that influence itself can justify a premium.

Appropriate premium

On quantification, the Court accepted the taxpayer's expert evidence because it reflected how valuations are carried out in real markets. That evidence used a market-based approach and drew on large sets of actual transactions to show that shareholdings giving a buyer significant influence are commonly valued at a premium to the listed share price.

The Court was not persuaded by the Commissioner's argument that looking at transactions after 1997 involved improper hindsight. It explained that later transactions can still be useful where they show stable and consistent market behaviour over time, helping to inform what well-informed market participants would likely have paid at the valuation date, as recognised in *Kilgour v Commissioner of Taxation* [2025] FCAFC 183.

The Court found that the degree of influence associated with the holding sat towards the upper end of the "significant influence" spectrum and accepted a premium of 18% over the 20 January 1997 closing price of $9.42. This produced a market value of $11.12 per share for cost base purposes. On that basis, the Court concluded that the amended assessments were excessive and set aside the Commissioner's objection decision.

COMMENT – former section 160ZZSC has since been rewritten and now sits within Division 149 of the Income Tax Assessment Act 1997, which continues to deal with the CGT consequences of changes in majority underlying interests in assets.

Citation *Shell Energy Holdings Australia Limited v Commissioner of Taxation* [2026] FCA 577 (Jackman J, Sydney)
w https://classic.austlii.edu.au/au/cases/cth/FCA/2026/577.html

2.5 Frizelle – distributions from foreign trusts

Facts

On 8 February 2001, a foreign trust known as the Plet Trust was established under Jersey law with Beresford Trustees as trustee and with initial beneficiaries including Megan Frizelle and her parents. The trust deed allowed income and capital to be distributed to beneficiaries or accumulated as capital.

On 9 August 2006, a second foreign trust, the Megan Trust, was established under Guernsey law with Oak Trust (Guernsey) as trustee. Megan was the sole beneficiary at that time, and the trustee was empowered to distribute income or capital, or to accumulate income as capital.

On 16 April 2011, changes were made to the Plet Trust under a deed of removal. Megan and her mother were removed as beneficiaries, leaving another foreign trust, the Robin Earl Gilmour Trust (**REG Trust**), as the sole beneficiary. Around the same period, on 14 April 2011, the REG Trust itself was established under Guernsey law with Oak Trust (Guernsey) as trustee, and with beneficiaries that included Megan's mother and the Megan Trust

The Plet Trust, Megan Trust and REG Trust were non-resident trusts for Australian tax purposes.

On 1 May 2012, Megan's husband, Gregory Martin Frizelle, was added as a beneficiary of the Megan Trust.

On 1 July 2016, Megan became an Australian tax resident after migrating to Australia and lodged income tax returns as a resident from that time. Between 2016 and 2020, she received funds originating from offshore trust structures, although she later said she believed the amounts were gifts or loans from her mother.

On 9 January 2019, Megan and Gregory entered into a loan agreement with Oak Trust (Guernsey), acting as trustee of the REG Trust, for USD 200,000. The stated purpose of the loan was to refinance earlier family lending connected with their home purchase in Australia.

Megan received the following three distributions connected to the Megan Trust:

Distribution One

On 14 June 2019, the REG Trust distributed GBP 78,845.70 to the Megan Trust. Of that amount, GBP 39,422.85 was recorded in the accounts of the Megan Trust as having been applied for Megan's benefit, by being paid on her behalf to the REG Trust in partial repayment of a loan that had been advanced earlier in 2019 to Megan and Gregory. The balance of the amount distributed to the Megan Trust was not applied for Megan's benefit.

Distribution Two

On 24 October 2019, the REG Trust distributed GBP 58,229.81 to the Megan Trust. Around the same time, a substantially larger amount was paid into a bank account held in the name of Megan's mother. On 4 November 2019, an amount equivalent to GBP 58,229.81 (AUD 109,384.62) was transferred from her mother's account into Megan's bank account.

Distribution Three

On 30 April 2020, the amount of AUD 20,000 was deposited into Megan's bank account from the Megan Trust. Megan characterised this as a gift from her mother.

It appears that the underlying funds for each of these payments originated from the Plet Trust and flowed through a chain of trusts. Specifically, it appears that the Plet Trust made distributions to the REG Trust, which

in turn distributed funds to the Megan Trust. The Megan Trust then either paid amounts directly to Megan or applied funds for her benefit, including by discharging liabilities owed by her.

ATO review

On 16 January 2023, after receiving information suggesting that Megan had received foreign trust distributions that had not been disclosed in her tax returns, the ATO commenced a review of Megan's tax affairs for the 2017 to 2020 income years. Megan did not make a voluntary disclosure. Instead, she maintained that the amounts she received were loans or gifts from her mother and asserted that she was unaware of the existence of the foreign trusts or her status as a beneficiary.

During the review process, a letter was produced purporting to explain the nature of the distributions. The evidence indicated that this letter had been drafted by Gregory, subsequently modified by Megan's tax agent, and ultimately signed by her mother. The letter asserted that the amounts paid to Megan were derived from capital and were not distributions of income.

On 2 May 2024, the ATO issued amended income tax assessments and penalty assessments for the 2019 and 2020 income years, including interest and administrative penalties imposed at a rate of 50% on the basis of recklessness.

Section 99B of the ITAA 1936 is designed to tax Australian residents who receive, or benefit from, distributions from foreign trusts. In broad terms, it brings to tax amounts of trust property that are paid to, or applied for the benefit of, an Australian resident beneficiary, regardless of whether the amount is described as a gift, loan repayment, or indirect benefit.

There is an exception in section 99B(2)(a) which excludes from assessment amounts that represent the capital of the trust, provided that capital is not attributable to income that would have been assessable if it had been derived by an Australian resident taxpayer. In practice, this requires a beneficiary to trace the source of the distribution and demonstrate that it does not represent accumulated foreign income that has simply been converted into trust capital.

Where distributions pass through multiple foreign trusts, the law applies a hypothetical resident taxpayer test at each level of the trust chain. This involves asking whether the amount would have been assessable if each trust, in turn, were assumed to be an Australian resident.

Section 102AAM of the ITAA 1936 provides for an interest charge on an amount that is assessable under s 99B(1) of the ITAA 1936, where the amount is income and profits that have not been subject to tax in a foreign country.

Megan disputed the Commissioner's position and argued that the amounts she received were not assessable income. She argued that they were properly characterised as capital distributions, falling within the 'corpus exception' in section 99B(2), or alternatively were sourced from loans or gifts. Megan further maintained that she did not have sufficient knowledge of the trust arrangements to understand the true character of the payments at the time she received them.

At the hearing, Megan provided only limited documentary evidence addressing the source and character of the distributions. Some material was provided at a late stage, including a letter from the trustee asserting that the distributions were made from capital rather than income. The evidence was not supported by underlying financial records tracing the source of the funds and, as the author of the letter was not called to give evidence, it was not subject to cross-examination.

During the course of the proceedings, further issues arose regarding the reliability of materials relied upon by Megan. In particular, references were made in submissions to legal authorities that could not be substantiated or did not exist.

The Commissioner ultimately did not press part of the first distribution or the entirety of the third distribution. However, the Commissioner maintained that half of the first distribution and the entirety of the second distribution were assessable to Megan under section 99B of the ITAA 1936.

Issues

1. Was any part of the trust distributions assessable income under section 99B(1) of the ITAA 1936?
2. Should the interest under section 102AAM of the ITAA 1936 have been a different amount?
3. Should the SIC for the 2019 year be remitted?
4. Were the administrative penalty assessments excessive?

Decision

Was any part of the trust distributions assessable under section 99B(1)?

The ART found that the amounts remaining in dispute, being half of the first distribution and the entirety of second distribution, were amounts of trust property paid to, or applied for the benefit of, Megan within the meaning of section 99B(1) of the ITAA 1936. In relation to the first distribution, the use of trust funds to repay a loan owed by Megan constituted an application of trust property for her benefit, even though she did not directly receive the money. In relation to the second distribution, the routing of funds through her mother's account did not alter their character. In substance, the funds were paid to Megan and therefore satisfied the statutory requirement.

The ART rejected Megan's reliance on the corpus exception in section 99B(2) of the ITAA 1936. It emphasised that the taxpayer bears the burden of proving both the source and character of the funds. Megan failed to adduce sufficient evidence to identify the origin of the amounts she received. Further, even if the distributions could be characterised as capital at the level of the Megan Trust, she was required to satisfy the hypothetical resident taxpayer test by demonstrating that the underlying amounts would not have been assessable when originally derived. Given the multi-layered trust structure, this required tracing the funds through the REG Trust to the Plet Trust and establishing their ultimate source. Megan did not discharge that burden, as there was insufficient evidence regarding the origin and nature of the funds flowing through the trusts.

The ART held that Megan's lack of knowledge of the trust structure was irrelevant, as section 99B operates objectively.

The trustee letter asserting that the distributions were capital was given little weight because it was unsupported by records, filed late against the ART's directions, and the individuals who signed it were not available to give evidence or answer questions.

The ART concluded that half of the first distribution and the entirety of the second were assessable income under section 99B(1) of the ITAA 1936.

Should the section 102AAM interest have been a different amount?

The ART explained that section 102AAM applies interest to foreign trust distributions assessed under section 99B unless the taxpayer can show why it should not apply or why a different amount is correct. In this case, interest was only imposed for the 2020 income year. While Megan referred to section 102AAM in submissions, she did not explain why the calculation was wrong, provide evidence of foreign tax paid, or propose an alternative figure. Because no evidence or reasoning was provided to justify a different amount, the interest as assessed was upheld.

Should the SIC for the 2019 year be remitted?

The ART refused to remit the SIC. It held that remission is only appropriate where it is fair and reasonable, which was not established in this case. Megan was given an opportunity to make a voluntary disclosure but did

not do so, instead maintaining that the amounts were gifts or loans without adequate support. There was no evidence of delay or inappropriate conduct by the Commissioner, and no indication that Megan had taken reasonable steps to determine the correct tax treatment of the amounts at the time of lodgment. Accordingly, there was no basis for remission.

Were the administrative penalties excessive?

The ART held that the administrative penalties for recklessness were not excessive. Megan failed to include substantial foreign amounts in her tax returns and did not make any meaningful inquiry into their nature, nor did she seek or rely on professional advice or take steps to understand the tax implications of the funds received. Megan's assertion that she was unaware of the trust structure was unsupported and did not adequately explain her failure to investigate significant overseas payments. On an objective assessment, her conduct fell short of the standard expected of a reasonable taxpayer and amounted to recklessness. Although the penalties were reduced to reflect the Commissioner's decision not to press part of the first distribution and the entirety of the third distribution, they were otherwise upheld.

COMMENT – This case highlights the strict evidentiary nature of the 'corpus exception' in section 99B(2). Taxpayers bear a heavy burden to trace the origin of funds through all layers of a trust structure and to demonstrate that the amounts would not have been assessable under the hypothetical resident taxpayer test. In the absence of detailed and contemporaneous evidence, this burden will be difficult to discharge, especially in complex offshore arrangements.

COMMENT – References to authorities that could not be substantiated, and documentary evidence of a questionable source, significantly undermine credibility. It is important to ensure that any material, whether generated with the assistance of AI or otherwise, is accurate and supported by primary evidence. Courts and tribunals give little weight to assertions that cannot be tested or corroborated.

TIP – In this case, the ART was not able to review a SIC remission decision for 2020 because the 20% threshold was not met. The ART can only review a refusal to remit SIC if the unremitted SIC exceeds 20% of the additional primary tax for the relevant income year. If that threshold is met, the refusal is a reviewable objection decision. If it is not met, the ART has no jurisdiction, regardless of the merits of remission. The 20% threshold applies separately for each income year, so a taxpayer may have review rights for one year but not another.

Citation *Frizelle and Commissioner of Taxation (Taxation and business)* [2026] ARTA 752 (8 May 2026) (Senior Member C Lyford, Perth)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/752.html

2.6 O'Neill – landholder duty and share transfers in corporate trustees

Facts

Mary O'Neill and William O'Neill are property developers in Canberra. They established a discretionary trust, the O'Neill Family Trust in 2006.

Prior to January 2013, Signature Enterprises Pty Ltd was the trustee of the trust. From January 2013, Five27 Pty Ltd has been the trustee. Mary and William have always been the directors of Five27.

Five27 holds several properties in its own name, as well as shares and units in other companies and trusts some of which hold property themselves, in its capacity as trustee of the trust.

As trustee of the trust, Five27 owned all the shares in Bond Projects Group 1 Pty Ltd which was the Crown lessee (or landholder) of 4-8 McGowan Place, Dickson, ACT (**Property**).

In the latter half of 2017, Bond 1 applied to the National Bank of Australia (**NAB**) for finance ($6.6 million) to develop the Property. The NAB raised concerns that there was a prohibited circular shareholding under the Corporations Act as Five27 held shares in Signature Enterprises, and Signature Enterprises held the sole share in Five27. To resolve this issue and allow bank finance to proceed, Signature Enterprises transferred its share in Five27 to William, and Five27 issued a second share to Mary, resulting in each of them holding one share in Five27. The bank then approved the loan sought by Bond Projects Group 1.

On 11 October 2019, the Commissioner for ACT Revenue issued notices to Mary and William seeking information about the 2017 share transactions under the *Taxation Administration Act 1999* (ACT). After reviewing the material provided, the Commissioner issued notices of assessment on 17 April 2020, assessing landholder duty on the basis that Five27 was a landholder and that the share transfers constituted relevant acquisitions. The assessments, which included duty, penalty tax and interest, exceeded $1 million.

The basis of this was that Five27 was a landholder due to the operation of section 82 of the Duties Act (ACT). That section provides as follows:

> ***82. Constructive ownership of landholdings and other property—discretionary trusts***
> *...*
> *(2) A beneficiary of a discretionary trust is taken to own or to be otherwise entitled to the property the subject of the trust.*
> *(3) For this part, any property that is the subject of a discretionary trust (the primary trust) is taken to be the subject of any other discretionary trust—*
> *(a) that is a beneficiary of the primary trust; or*
> *(b) any trustee of which (in the capacity of trustee) is a beneficiary of the primary trust.*
> *(4) Subsection (3) extends to apply to property that is the subject of a discretionary trust only by the operation of that subsection.*
> *(5) However, subsection (2) or (3) does not apply in a particular case if the commissioner—*
> *(a) is satisfied that the application of the subsection would be inequitable; and*
> *(b) determines, in writing, that the subsection does not apply.*
>
> ...

Five27 was a beneficiary of the O'Neil Family Trust and therefore was deemed to own the land of the trust under section 82.

On 16 June 2020, Mary and William lodged objections to the assessments. Following consideration of those objections, the Commissioner issued revised assessments on 2 February 2021 in the reduced amount of $1,046,106.58. Mary and William again objected on 14 May 2021, but those objections were disallowed on 26 October 2022, giving rise to a reviewable decision.

On 23 November 2022, Mary and William commenced proceedings in the ACAT seeking review of the Commissioner's decision. On the same day, they also wrote to the Commissioner requesting that he exercise a discretion under section 95(3) of the Duties Act (ACT) to extend the time for the shares to be reacquired, contending that the original transactions had been undertaken solely to secure bank finance.

On 1 July 2024, while the ACAT proceedings were on foot but before a decision was delivered, amendments to the Duties Act commenced which repealed section 95 and replaced it with a narrower exemption regime. Despite that legislative change, on 9 August 2024 the ACAT handed down its decision, finding in favour of Mary and William. The ACAT concluded that the share transactions were undertaken for the purpose of securing financial accommodation and that it would be inequitable to deem Five27 to be a landholder, and it extended the time for the shares to be reacquired.

The Commissioner appealed to the ACT Supreme Court. This summary only deals with the discretion under section 82(5) of the Duties Act.

Issue

Should the Commissioner exercise the discretion in section 82(5)?

Decision

The Court dismissed the Commissioner's appeal.

The Court held that section 82(5) of the Duties Act is directed to whether deeming a beneficiary of a discretionary trust to own or be entitled to trust property would be inequitable in the particular case. The Court noted that the ACAT was entitled to conclude that an inequity arose because the application of section 82(2) of the Duties Act would impose a substantial duty liability on the O'Neills without conferring any additional practical or economic benefit or control beyond that which they already enjoyed. The Court did not accept that the ACAT erred, as submitted by the Commissioner, in having regard to NSW authorities (including *Winston-Smith v Chief Commissioner of State Revenue (NSW)* [2019] NSWCA 75 and *Milstern Nominees Pty Ltd v Chief Commissioner of State Revenue (NSW)* [2015] NSWSC 68) for guidance on the meaning of "inequitable", nor in concluding that the principles applied in those cases supported the exercise of the discretion in favour of the taxpayers.

The Court noted that in *Winston-Smith* the NSW Court of Appeal upheld the imposition of duty because the relevant transaction delivered a real and identifiable practical or economic benefit to the taxpayer. In that case, the transfer of shares removed an intermediate corporate entity from the ownership structure. That entity carried accrued and prospective liabilities, and its removal meant that those liabilities could no longer interfere with the taxpayer's capacity to enjoy the income and value of the underlying land. The Court emphasised the passage relied upon by the ACAT, in which the Court of Appeal described the removal of a "layer of legal and beneficial ownership" as altering the taxpayer's underlying practical and economic interest in the land to his advantage.

By contrast, the Court held that the ACAT was correct to conclude that no comparable benefit arose in the present transactions. Although Signature Enterprises had a trading history, it was not a trustee and its liabilities could not give rise to any indemnity against the trust assets. At most, any liabilities incurred by Signature Enterprises might have resulted in its own winding up. That outcome did not enhance or protect the O'Neills' interests in the trust property in any meaningful practical or economic sense.

The Court also rejected the Commissioner's submission that the change in the legal form of control—from a combination of directorships and indirect shareholdings to direct shareholding—was itself decisive. It accepted a finding by the ACT that the effectiveness of control before and after the transactions was materially the same, and that the distinction was therefore formal rather than substantive. Unlike *Winston-Smith*, there was no removal of a liability-bearing entity that delivered tangible protection or advantage.

The Court considered that *Milstern Nominees* merely reinforced the ACAT's conclusion and not inappropriately relied upon. The Court accepted that the ACAT referred to *Milstern Nominees* not to expand the scope of the discretion under section 82(5), but to illustrate circumstances in which a transaction creates no new benefit beyond that already enjoyed.

In *Milstern Nominees*, the relevant transaction did not confer any additional practical or economic advantage on the taxpayer; rather, it confirmed or rearranged an existing position of control and entitlement. The ACAT drew a parallel between that factual matrix and the present case, observing that the O'Neills already effectively controlled the trust and its distributions prior to the share transactions. The transactions did not improve their capacity to direct income, profits, or enjoyment of the trust property.

The Court accepted that this use of *Milstern Nominees* was orthodox. It emphasised that the ACAT was not treating *Milstern Nominees* as establishing a distinct test, but as a comparative example supporting the conclusion that the imposition of duty in the absence of any new benefit could be inequitable. The inequity

identified was not abstract unfairness, but the specific consequence that section 82(2) would deem ownership and impose a substantial duty liability without any corresponding increase in control or economic advantage.

The Court held that the ACAT correctly framed and applied the discretion under section 82(5). The determination of what is "inequitable" is inherently discretionary and analogous to the NSW concept of what is "just and reasonable". The Commissioner failed to identify any error of principle in the ACAT's reasoning or its application of section 82(5) to the facts.

Citation *Commissioner for Act Revenue v O'Neill* [2026] ACTSC 105 (Muller J, Australian Capital Territory)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/act/ACTSC/2026/105.html

3. Cases in brief

3.1 Rowland – deductibility of clothing expenses

Catherine Rowland was employed by a global fashion company in a senior learning and development role that also involved acting as a brand ambassador. Catherine considered that wearing branded clothing was an integral part of her role and that the expenditure was incurred in the course of earning her assessable income.

Catherine lodged her 2024 income tax return claiming total deductions of $49,133, including $29,221 for work-related clothing. Following an audit, the ATO disallowed most of the claimed deductions, including the clothing expenses. Catherine objected, and while the ATO partially allowed the objection, the clothing expenses remained disallowed. Catherine applied to the ART for review. Prior to the hearing, she withdrew claims relating to other work-related expenses, leaving only the deductibility of the clothing expenditure in dispute.

Catherine argued that wearing the employer's branded clothing was expected, even if not formally mandated. She said the clothing helped project the correct corporate image and was central to her responsibilities as a brand ambassador. Catherine also relied on the fact that the employer paid a seasonal clothing allowance, which she said reinforced the expectation that staff in her position would wear branded garments at work. There was, however, no written policy, contractual term or express direction requiring her to do so.

Catherine bore the onus of proving that the assessment was excessive and of establishing what, if any, lesser amount should have been assessed. In doing so, the ART considered whether Catherine had discharged that burden by reference to the following questions:

1. whether Catherine had proved that work-related clothing expenses were incurred in the course of gaining or producing her assessable income and had a sufficient connection to her income-earning activities;
2. whether Catherine had proved that the work-related clothing expenses were not private or domestic in nature;
3. to the extent the claimed clothing expenses served a dual purpose or were of a mixed character, whether Catherine had proved that the claimed amounts had been apportioned on a reasonable basis; and
4. if those matters were established, whether Catherine had proved that the claimed work-related clothing expenses were properly and correctly incurred with adequate substantiation.

The ART accepted that Catherine occupied a senior and visible position and that professional presentation was relevant to her role. However, the ART found that her income-earning activities were the delivery of learning and development services, not the wearing of particular clothing. The fact that branded clothing may have assisted Catherine in presenting herself in a professional manner did not establish the necessary connection between the expenditure and the earning of income.

The ART also concluded that the clothing expenses were private in nature. The items purchased were conventional fashion garments that changed seasonally and were capable of being worn outside work. The ART considered that expenditure of this kind ordinarily retains its private character, even where it is worn in the course of employment.

Catherine further argued that the clothing constituted a corporate uniform. The ART rejected this argument and found that the clothing was not compulsory, distinctive or permanently identifiable with the employer. The presence of branding, and Catherine's belief that wearing the clothing was expected, were insufficient to transform ordinary clothing into a uniform.

Given these conclusions, the ART found that apportionment did not arise because the clothing expenses were wholly private. The ART also noted deficiencies in substantiation as Catherine largely relying on bank statements that did not identify the specific items purchased.

The ART found that Catherine had not discharged the onus of proving that the assessment was excessive and affirmed the Commissioner's objection decision.

COMMENT – the argument against deductibility of a clothing under section 8-1 is it lacks sufficient nexus and is also private or domestic in nature. There are some well-known exceptions to this. In *FC of T v Edwards* 94 ATC 4255 a deduction was permitted for the personal secretary of the wife of the Queensland Governor for the cost of clothing the personal secretary would not have otherwise acquired. Gummow J, in the Federal Court, affirmed the deductibility on the basis that the "occasion of the outgoing operates to give it the essential character of a working expense". The Full Court, in dismissing the Commissioner's appeal, rejected the proposition that the cost of conventional clothing is always non-deductible. In *Mansfield v FC of T* 96 ATC 4001 a deduction was permitted for a flight steward for the cost shoes and hosiery, due to the dress standards imposed by the airline.

COMMENT – the cases on conventional clothing have not considered whether the cost of the clothing would be deductible over time as a depreciating asset. The nexus test for depreciating assets in section 40-25 of the ITAA 1997 is different to the nexus test in section 8-1 of the ITAA 1997. Importantly, in section 40-25, there is no positive limb requirement as with section 8-1 and the denial of the deduction is based on the use of the asset, not the essential character of the cost of the asset.

Citation *Rowland and Commissioner of Taxation (Taxation and business)* [2026] ARTA 561 (General Member N Augoustinos, Sydney)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/561.html

3.2 Maietta – disqualification as SMSF trustee

Roberto Maietta established the Diglesias and Rmaietta Superannuation Fund in November 2021 with assistance from iCare Super. The fund had a corporate trustee, with Roberto and his wife as directors and members. An investment strategy prepared at establishment contemplated a diversified portfolio across multiple asset classes, with an emphasis on liquidity and the ability to meet liabilities as they fell due. In January 2022, the fund was registered following an ATO pre-registration audit, during which the trustee was reminded of ongoing obligations, including the requirement to lodge annual returns and to ensure the fund was maintained solely for retirement purposes.

On 18 January 2022, Roberto participated in a telephone interview with the ATO and confirmed a general understanding of his responsibilities as a director of the trustee, although he indicated that compliance matters would be handled by iCare. In February 2022, a bank account was opened for the fund, and in April 2022 approximately $120,000 was rolled over from another superannuation fund. Shortly thereafter, Roberto caused the trustee to enter into an "Investment Agreement" with Maietta Property Group, a Spanish company wholly owned and controlled by him. Under that agreement, the fund advanced money in tranches to support completion of a villa in Spain, with repayment of principal and a 10% annual return contingent on the eventual sale of the property. The development had commenced many years earlier and had been funded personally by Roberto. The arrangement was unsecured, had no fixed repayment date, and repayment depended entirely on a future sale.

Between April 2022 and June 2024, substantially all of the fund's assets, including interest earned, were advanced under this arrangement, leaving only a minimal cash balance. Roberto did not disclose this intended investment to the ATO during the establishment process. Throughout 2023 and 2024, service providers repeatedly advised that the fund's annual returns and audits were outstanding and that preparation of accounts, audits and lodgments were mandatory. Despite those warnings, Roberto chose not to engage those services, terminated his relationship with iCare, and declined to incur the costs of remedial work identified by an auditor.

Following an audit, the ATO issued an audit position paper in September 2024 identifying contraventions of the *Superannuation Industry (Supervision) Act 1993* (Cth) (**SIS Act**), including breaches of the sole purpose test and failures to lodge annual returns. In October 2024, a delegate of the Commissioner decided to disqualify Roberto as a director of an SMSF trustee under section 126A(2), and that decision was affirmed on internal review in February 2025.

The ART found that the fund contravened section 62 of the SIS Act. Although the investment was capable of producing a commercial return, Roberto's own evidence established that one purpose of the arrangement was to fund and accelerate completion of his pre-existing property development. That collateral purpose meant the fund was not maintained solely for retirement benefits. The ART also found serious and sustained breaches of section 35D arising from the failure to lodge annual returns over multiple years. The ART did not find contraventions of section 65, concluding that the evidence did not establish that Roberto or any relative received financial assistance. Given the seriousness of the breaches and the absence of corrective action, the ART affirmed the Commissioner's decision to disqualify Roberto as a responsible officer of an SMSF trustee.

KEY TAKEAWAY

Disqualification of an SMSF trustee is ultimately about future compliance risk: sustained non-compliance (eg failing to lodge returns) and related-party/in-house investments that compromise liquidity and/or introduce a collateral purpose can justify disqualification even without dishonesty.

Citation *Maietta and Commissioner of Taxation (Taxation)* [2026] ARTA 534 (Senior Member M Harrowell, Sydney)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/534.html

3.3 Gleeson (Trustee) v Eades – bankruptcy and SMSFs

Stephen Philip Eades and Dianne Eades established the Eades Superannuation Fund in June 2006 as a self-managed superannuation fund, with Stephen as the sole member and both Stephen and Dianne acting as individual trustees. As trustees of the fund, they acquired a commercial property in Brookvale, New South Wales, which was held on trust for the SMSF.

On 6 May 2025, the Federal Circuit and Family Court of Australia ordered that the estates of Stephen and Dianne be sequestrated under the *Bankruptcy Act 1966* (Cth), and Bruce Gleeson was appointed as trustee of their bankrupt estates. By reason of their bankruptcies, Stephen and Dianne became disqualified persons for the purposes of the SIS Act. Under the terms of the fund's trust deed, this vacated their offices as trustees, leaving the SMSF without any eligible trustees and unable to operate or be wound up in compliance with the SIS Act, including the trustee requirements in section 17A.

Bruce encountered significant difficulty administering the bankrupt estates. Although the Brookvale property was likely to generate sufficient funds to satisfy creditors in full and facilitate annulment of the bankruptcies, the property was held on trust for the SMSF and was excluded from divisible property under section 116(2)(a) of the Bankruptcy Act. While Stephen, and potentially Dianne, had equitable rights of indemnity arising from their former roles as trustees, those rights did not confer a straightforward power on Bruce to realise the trust asset. Stephen's status as sole member of the fund also did not give rise to any present legal or beneficial interest in the property, as a member's superannuation interest does not crystallise prior to a condition of release and remains quarantined from creditors.

As a result, the fund was effectively paralysed. It had no eligible trustees, could not comply with the SIS Act, and could not sell the Brookvale property through ordinary superannuation or bankruptcy mechanisms. In those circumstances, Bruce applied to the Federal Court of Australia for orders appointing him as receiver and manager of the Brookvale property under section 30 of the Bankruptcy Act. Stephen and Dianne appeared in person and supported the proposed sale.

Justice Stellios held that, although the property was held on trust for an SMSF and excluded from divisible property, Stephen and Dianne's equitable rights of indemnity as former trustees gave rise to a sufficient beneficial interest to vest the property in Bruce under section 58(1), subject to the equities affecting the trust. The Court accepted that the superannuation structure nonetheless prevented Bruce from exercising ordinary trustee powers to realise the asset. In circumstances where all parties consented and a sale was likely to satisfy creditors and enable annulment of the bankruptcies, the Court appointed Bruce as receiver and manager for the limited purpose of sale.

KEY TAKEAWAY

Bankruptcy can trigger disqualification under section 120(1)(b) of the SIS Act, automatically vacating trustee offices and leaving the fund unable to satisfy section 17A of the SIS Act or exercise basic powers such as selling assets or winding up. More broadly, the decision reinforces the importance of trustee composition and succession planning in SMSFs, as loss of trustee capacity can paralyse fund administration and necessitate costly court intervention.

Citation *Gleeson (Trustee) v Eades, in the matter of Eades (Bankrupt)* [2026] FCA 477 (Stellios J)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2026/477.html

3.4 ISPT – private landholder duty

ISPT acquired 75.8% of a widely held NSW landholder (**FSREC**) in February 2022 (not a relevant acquisition at that time as a 90% acquisition threshold applies for public landholders).

In July 2022, ISPT acquired a further 19.46% (total 95.26%) after FSREC became a private landholder.

Revenue NSW assessed landholder duty by aggregating the February and July acquisitions under the "statement period" rules in section 155(3) of the *Duties Act 1997* (NSW).

The Court found that section 155(3) applied to the July acquisition, because the acquisition statement disclosed an earlier acquisition in the same landholder during the statement period. The February acquisition therefore had to be aggregated with the July acquisition when calculating landholder duty, despite FSREC having been a public landholder at the time of the February acquisition.

The Court concluded that the legislation operated exactly as intended and that the duty consequences resulted from ISPT's chosen transaction structure. The fact that a different structure could have produced a more favourable duty outcome did not make the actual assessment unjust or unreasonable. Therefore, no exemption or reduction under section 163H of the Duties Act was warranted.

COMMENT – another example of where a prior not dutiable acquisition in a landholder subsequently becoming dutiable in the 3 year statement period is where the land was below the $2m threshold at the time of the earlier acquisition but the value exceeded the threshold at the time of the later acquisition.

KEY TAKEAWAY

When advising on staged acquisitions, assume earlier (non-dutiable) interests in the same landholder can be aggregated for duty once a later acquisition becomes dutiable within the statement period.

Citation *ISPT Pty Ltd (ACN 064 041 283) as Trustee of ISPT Retail Australia Property Trust (FSREC Fund) v Chief Commissioner of State Revenue* [2026] NSWSC 424 (Richmond J, Sydney)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2026/424.html

3.5 Marshall – transfer to daughter after marital breakdown

On 7 May 2023, Suzanne's marriage to Alan Marshall was dissolved. The former couple jointly owned a residential property in New South Wales, which formed part of their matrimonial property. On 15 February 2024, consent orders were made under the *Family Law Act 1975* (Cth) requiring Alan to transfer his 50% interest in the property to Suzanne, in exchange for payment of an agreed sum.

On 7 March 2024, the transfer was completed electronically through the PEXA system. Instead of transferring the interest solely to Suzanne, the property was transferred to both Suzanne and her daughter Keeley, with Keeley receiving a 33% interest. The inclusion of Keeley as a transferee was initiated by Suzanne, but the transfer was signed and completed with Alan legally represented.

Following an investigation, Revenue NSW reassessed the transfer to Keeley for ad valorem duty, arguing the exemption for marriage breakdown did not apply because the transfer did not strictly follow the court order.

The dispute turned on section 68 of the Duties Act. Section 68 provides for an exemption of duty on transfers of matrimonial property if two conditions are met:

1. the transferees must fall within the class in section 68(1)(a) of the Duties Act, which includes parties to the marriage and their children; and
2. under section 68(1)(b) of the Duties Act, the transfer must be effected by or in accordance with specified instruments, including a court order or an agreement made to divide matrimonial property after breakdown.

While it was accepted that the transfer was to a former spouse and a child of the marriage, the dispute focused on whether the transfer was effected by or in accordance with an "agreement" made for the purpose of dividing matrimonial property.

The Chief Commissioner argued that the exemption did not apply because the Family Court orders only provided for a transfer to Suzanne, and there was no formal written agreement covering the transfer to Keeley.

The NCAT rejected that narrow construction. Relevantly, section 68(1)(b)(iia) of the Duties Act refers to "an agreement" made to divide matrimonial property after the breakdown. Nothing in the text limits that agreement to a formal written document. The broader statutory scheme also points against such a restriction. The Duties Act recognises that dutiable transactions, including agreements, may occur with or without an instrument, and it provides mechanisms for dealing with unwritten transactions. A construction that denies exemption for informal agreements, while allowing it for written ones, would create arbitrary outcomes inconsistent with the purpose of the legislation.

The NCAT therefore interpreted the "agreement" in section 68(1)(b)(iia) according to its ordinary meaning. An agreement can arise from conduct and need not be formally documented.

On the facts, NCAT found that such an agreement existed. Although there was no prior discussion or written variation of the consent orders, the husband knowingly executed the transfer naming both Suzanne and Keeley as transferees. He was legally represented and instructed the transaction to proceed. From this conduct, NCAT inferred a binding agreement to transfer the property to both parties. The terms of that agreement were reflected in the transfer instrument itself. The NCAT also concluded that the electronic transfer documentation satisfied any statutory writing requirements under the *Conveyancing Act 1919* (NSW) and the *Electronic Transactions Act 2000* (NSW).

Because the transfer was effected in accordance with an agreement satisfying section 68(1)(b)(iia), both limbs of section 68 were met. The transfer therefore qualified for the exemption. The NCAT revoked the duty assessment.

COMMENT – Revenue offices typically administer duty concessions on a technical and strict basis, so taxpayers should not assume a concession will apply unless the transfer is effected precisely by (or in accordance with) the relevant instrument (e.g. court order or agreement) and the documentation clearly evidences that connection.

Citation *Marshall and Anor v Chief Commissioner of State Revenue* [2026] NSWCATAD 116 (Senior Member EA MacIntyre)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCATAD/2026/116.html

3.6 Seid – evidence of share transfer

On 15 November 2021, Lulu Seid and his business partner Abdul Oumer each held 50% of the shares and were directors of two property development companies, Emanda Pty Ltd and Emanda Estate Pty Ltd. Each company owned Victorian land valued well above $1 million and was therefore a landholder for the purposes of the *Duties Act 2000* (Vic).

In late 2021, the companies required urgent refinancing as a short-term loan was expiring. Lulu and Abdul approached Archer Wealth Pty Ltd. Lulu later gave evidence that the lender raised concerns about Abdul's creditworthiness and required Abdul to be removed as a director and shareholder to improve the prospects of approval. The arrangement was agreed to as a temporary and administrative step only, with no intention that Lulu would become the true sole owner of either company.

On 18 January 2022, ASIC "Change to company details" forms were lodged, recording that Abdul had ceased to be a director and shareholder of both companies effective from 15 November 2021, and that Lulu held 100% of the shares beneficially. Lulu maintained that no consideration was paid and that he held Abdul's shares on trust.

Archer Wealth ultimately declined to lend, and the companies refinanced through Bligh Finance in March 2022. Loan and anti-money laundering documents described Lulu as the beneficial owner of all shares. Lulu accepted signing those documents but said he relied heavily on advice from his accountant and finance broker and that, despite the wording, the parties' understanding remained that Abdul retained a beneficial interest.

In August 2022, following refinancing with Perpetual Corporate Trust Limited, Abdul's 50% shareholdings and directorships in both companies were reinstated. ASIC records later reflected both men again holding 50% beneficial interests.

On 19 July 2023, the Commissioner assessed Lulu to landholder duty on the basis that he had acquired Abdul's 50% interests on 15 November 2021, giving him a 100% interest. Penalty tax and interest were also imposed. Lulu objected, arguing no duty was payable because he held the shares on trust and, in any event, no relevant acquisition had occurred on that date. The objection was disallowed and Lulu sought review in the VCAT.

The VCAT considered extensive contemporaneous evidence, including January 2022 emails between Abdul and accountant Esrael Maru. Those emails confirmed that Abdul expected to be removed only during the loan process and reinstated afterwards. Esrael expressly confirmed that ownership and directorships would be restored following settlement. A power of attorney executed in December 2021 authorised Esrael and Abdul to act on behalf of Emanda and was signed by both Lulu and Abdul as directors, notwithstanding ASIC records suggesting Abdul had already ceased to hold that role.

The VCAT focused first on whether there had been any relevant acquisition on 15 November 2021. Although the ASIC forms recorded a backdated transfer, the VCAT found the broader evidence displaced their evidentiary weight. The forms were lodged two months later, contemporaneous emails referred expressly to "backdating", and critical transactional documents such as share transfer forms and updated company registers

were absent. The December 2021 power of attorney, signed by Abdul as a director, was inconsistent with the ASIC position.

On the balance of probabilities, the VCAT concluded that no transfer occurred on 15 November 2021. The assessment, together with penalty tax and interest, was therefore set aside. The VCAT left open the possibility of a later acquisition and briefly noted a further unresolved issue as to whether Emanda Estate was a landholder at all, due to potential joint venture interests held by purchasers.

COMMENT – ASIC lodgements (e.g. a 'change to company details' notice) are not themselves a transfer of shares; they are, at most, a notification that a transfer is said to have occurred. A transfer of shares generally requires an executed instrument of transfer and the company updating (by entering the transferee in) the register of members.

Citation *Seid v Commissioner of State Revenue* [2026] VCAT 271 (Deputy President R Tang, Melbourne)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2026/271.html

3.7 Pappas – transfer in conformity with Will

Eugenia Pappas died in February 2021 leaving a will dated 30 January 2014. At the date of her death she owned:

1. a residential property in Weston, ACT, valued at $1 million; and
2. bank account proceeds of approximately $357,000.

On 22 April 2021 Bill was appointed executor and probate was granted. Under the will, Eugenia's three children, Bill, Paul and Georgina, were entitled to equal and undifferentiated shares of the residue of the estate.

The will contained an express power of appropriation. The beneficiaries agreed that the estate would be divided equally and that Bill would satisfy his entitlement by taking an in-specie appropriation of the Weston property, with Paul and Georgina receiving cash. To give effect to this arrangement, the beneficiaries entered into a Deed of Family Arrangement dated 28 October 2021. Under the deed, each beneficiary was entitled to approximately $450,000 after expenses. Bill received an appropriation of part of the Weston property valued at $447,569 and, together with his wife Helen, purchased the balance of the estate's interest so that Bill and Helen each held a 50% interest as tenants in common.

Settlement occurred on 24 November 2021, with $570,000 paid to the estate. Cash distributions of $447,569 were made to Paul and Georgina. On 5 January 2022, the Commissioner for ACT Revenue issued a conveyance duty assessment of $18,597, treating the transfer as made "under, but only partly in conformity with" the will under section 232D(3) of the Duties Act 1999 (ACT). Duty was assessed on two-thirds of the unencumbered value of the Weston property.

Bill objected, arguing that the dutiable value should be reduced by the value of his overall one-third entitlement to the estate, rather than by one-third of the Weston property alone. The objection was disallowed and the Original Tribunal confirmed the Commissioner's decision. Bill appealed.

On appeal, Bill submitted that beneficiaries of a residuary estate have no proprietary interest in specific assets during administration and that the appropriation of the Weston property to satisfy his one-third share was therefore in conformity with the will. The Commissioner contended that section 232D required a strict and narrow approach, focusing only on the beneficiary's entitlement to the specific dutiable property.

The Appeal Tribunal dismissed the appeal. While it accepted that the Original Tribunal had made some errors in its reasoning, the Appeal Tribunal held that the ultimate decision was correct. The Appeal Tribunal concluded that section 232D(2) and (3) operate only where there is a specific devise or gift of the dutiable property. A

transfer of property to satisfy a share of an undifferentiated residual estate is not, even partly, "in conformity" with the trusts of the will, regardless of the existence or exercise of a power of appropriation. The reference to "the property" in section 232D(3) was found to mean the dutiable property itself, not the estate as a whole. The Commissioner's assessment of duty was therefore confirmed.

Citation *PAPPAS v COMMISSIONER FOR ACT REVENUE* (Appeal) [2026] ACAT 17 (President M – T Daniel)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/act/ACAT/2026/17.html

3.8 Appeal updates

Hicks/lerna

The High Court refused the Commissioner's applications for special leave to appeal from the Full Federal Court decision in *Federal Commissioner of Taxation v Hicks*; *Federal Commissioner of Taxation v Hicks Beneficiary Pty Ltd*; *Federal Commissioner of Taxation v Ierna* [2025] FCAFC 171.

This leaves standing the Full Federal Court's decision that neither section 45B nor Part IVA applied to the City Beach corporate restructure. The outcome confirms that the selective capital reduction used to repay Division 7A liabilities did not give rise to dividend substitution or anti-avoidance concerns in the circumstances.

w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCADisp/2026/96.html
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCADisp/2026/97.html
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCADisp/2026/98.html

Kilgour

The High Court refused the taxpayers' applications for special leave to appeal from the Full Federal Court decision in *Kilgour & Anor v Commissioner of Taxation* [2025] FCAFC 183.

This leaves intact the Full Federal Court's decision that the taxpayers could not reduce the value of their shares below the capital proceeds received by reference to "synergistic" or control value. The case confirms that, where shares are sold as part of a coordinated arm's-length sale, the agreed price is strong evidence of market value, including any value attributable to control, and cannot be discounted to access the small business CGT concessions

w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCADisp/2026/78.html

Charles Apartments

The High Court refused Charles Apartments' application for special leave to appeal from the Full Federal Court decision in *Charles Apartments Pty Ltd v Commissioner of Taxation* [2025] FCAFC 180, finding no issue of general importance and inadequate prospects of success.

This leaves intact the Full Federal Court's decision denying an interest deduction under section 8-1 of the ITAA 1997, on the basis that the expense arose from group financing arrangements rather than an income-producing borrowing. The case confirms that a "but for" causal link is insufficient, and that the statutory nexus under section 8-1 must be properly established.

w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCADisp/2026/104.html

Ziegler

The High Court has refused the special leave to appeal to the taxpayers from the decision of the Full Court in *Ziegler v Commissioner of Taxation* [2025] FCAFC 168 (see our February 2026 Tax Training Notes).

w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCADisp/2026/89.html

Toowoomba Carpark

The Full Federal Court allowed the Commissioner's appeal and rejected Logan J's earlier conclusion that Grand Central Shopping Centre's car park was not a "commercial parking station". The Court held that "commercial" does not require a profit-making purpose and that the facility could be a commercial parking station for FBT purposes, with the effect that employee parking can be subject to car parking fringe benefits where such a facility is within 1km of an employer's premises.

Citation *Commissioner of Taxation v Toowoomba Regional Council* [2026] FCAFC 50 (McElwaine, Feutrill and Wheatley JJ)
w https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCAFC/2026/50.html

3.9 Other tax and super related cases from 10 Apr 2026 to 12 May 2026

Citation	Date	Headnote	Link
Hardy and Commissioner of Taxation (Taxation) [2026] ARTA 528	10 April 2026	Taxation – genuine redundancy – industry redundancy fund contributions – whether payment made by fund a genuine redundancy payment – whether payment exceeds amount that could be reasonably expected to be received in consequence of voluntary termination of employment at time of dismissal – decision affirmed	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/528.html
SN Casey Pty Ltd as trustee for Casey Family Trust v Chief Commissioner of State Revenue [2026] NSWCATAD 105	13 April 2026	ADMINISTRATIVE LAW - administrative review - assessment - objection - review by Civil and Administrative Tribunal STATE TAXES - land tax - surcharge land tax - interest - assessment - unfairness - act of grace payment	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCATAD/2026/105.html
Twilley and Commissioner of Taxation (Taxation and business) [2026] ARTA 562	15 April 2026	TAXATION – GOODS AND SERVICES TAX – whether applicant entitled to be registered – whether applicant carrying on an enterprise – whether reasonable expectation of profit – whether assessments excessive – decision affirmed TAXATION – FUEL TAX CREDITS – whether applicant entitled to be registered for GST – whether assessments excessive – decision affirmed TAXATION – AUSTRALIAN BUSINESS NUMBER (ABN) – whether applicant entitled to an ABN – whether applicant carrying on an enterprise – decision affirmed	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/562.html

Citation	Date	Headnote	Link
		TAXATION – ADMINISTRATIVE PENALTIES – whether applicant reckless – whether remission appropriate – decision affirmed	
Deputy Commissioner of Taxation v Houston [2026] NSWSC 392	20 April 2026	INCOME TAX – Summary judgment – Shortfall interest charge – Administrative penalties	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWSC/2026/392.html
Commissioner of Taxation v Huang (No 2) [2026] FCA 482	21 April 2026	TAXATION – administrative law – decision of the Administrative Appeals Tribunal that the Commissioner of Taxation's objection decision be varied to allow the taxpayer's objection to shortfall penalties set aside – decision of the Tribunal that Commissioner's objection decision not be varied to affirm the Commissioner's decision to disallow taxpayer's objection to amended assessments stand as decision on review – Commissioner's decision to disallow respondent's objections to Commissioner's assessment of shortfall penalty remitted to Administrative Review Tribunal	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2026/482.html
Prestige Form Group NSW Pty Ltd and Commissioner of Taxation (Taxation and business) [2026] ARTA 627	22 April 2026	TAXATION – fringe benefits tax – car fringe benefits – whether applicant could use operating cost method for calculating fringe benefit taxable amount – whether applicant required to use statutory formula method – whether applicant elected to use operating cost method – whether applicant complied with recordkeeping and substantiation requirements – whether applicant kept compliant log book records – whether discretion to allow extension of time to declaration date should be exercised – objection decision under review set aside and remitted to respondent for reconsideration on the basis of findings by the Tribunal that car fringe benefits arose in relation to only some of the applicant's vehicles but were to be determined under the statutory formula method.	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ARTA/2026/627.html
Gauci v Chief Commissioner of State Revenue [2026] NSWCATAD 120	30 April 2026	TAXES AND DUTIES – Land tax – Application by the Respondent for dismissal of the proceedings for want of prosecution – Applicant lives with a very serious physical impairment – Appointment of three separate Guardians ad Litem to represent the Applicant – Proceedings not advancing expeditiously – Proper	https://www.caselaw.nsw.gov.au/decision/19dd74e5a359196eb247fa15

Citation	Date	Headnote	Link
		examination of the material provided by Applicant in support of his case and analysis of his case is warranted – Application for dismissal refused	
Wallace v Chief Commissioner of State Revenue [2026] NSWCATAD 129	5 May 2026	TAXES AND DUTIES – Land tax – Surcharge land tax – Foreign person	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCATAD/2026/129.html
K J Cooke ATF Cooke Investment Trust v Chief Commissioner of State Revenue [2026] NSWCATAD 130	5 May 2026	TAXES AND DUTIES – Land tax – Liability – Whether trust deed amendments sufficient to satisfy the criteria for a fixed trust TAXES AND DUTIES – Land tax – Liability – Fixed trust – present entitlement to income	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCATAD/2026/130.html
Gervais v Chief Commissioner of State Revenue [2026] NSWCATAD 133	6 May 2026	ADMINISTRATIVE LAW – Revenue – surcharge land tax − foreign person −absence from Australia – use and occupation – principal place of residence – need for physical presence – exemption based on residence requirement – discretion where exceptional circumstances − brief absence – how measured	https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCATAD/2026/133.html

4. Legislation

4.1 Progress of legislation

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

4.2 $1,000 standard deduction for work-related expenses

On 20 April 2026, Treasury released exposure draft legislation proposing a $1,000 standard deduction for work-related expenses, to apply from the 2026-27 income year. The measure forms part of the *Treasury Laws Amendment Bill* 2026 and is intended to simplify the process for individual taxpayers by reducing the need to substantiate smaller claims.

The proposal allows Australian tax residents who earn assessable work-related income to claim a standard deduction of up to $1,000 without incurring or substantiating work-related expenses. Taxpayers who incur more than $1,000 in genuine expenses may instead continue to claim deductions under existing rules, in which case the standard deduction is reduced to zero. The standard deduction is effectively limited to the lesser of $1,000 or the taxpayer's total assessable work-related income.

Certain deductions remain available in addition to the standard deduction. These include expenses not related to earning work-related income, such as investment expenses, as well as specific deductions such as charitable donations, income protection premiums, and union or professional association membership fees.

The draft Bill also includes consequential changes to support the new approach. These include aligning substantiation rules by removing small-amount concessions for work-related expenses, updating transport expense provisions, and restricting the use of low-value pools for depreciating assets used mainly to produce work-related income.

In addition, new integrity rules are proposed in the *Fringe Benefits Tax Assessment Act 1986* (Cth) to prevent taxpayers from combining the standard deduction with salary packaging arrangements. In particular, the 'otherwise deductible' rule will not apply to salary packaged expense payment fringe benefits for expenses covered by the standard deduction, and exemptions for work-related items will be limited where benefits are provided through salary packaging.

w https://consult.treasury.gov.au/c2026-757530

4.3 Draft foreign resident CGT legislation

Exposure draft legislation proposes amendments to strengthen and clarify Australia's foreign resident CGT regime in Division 855 of the ITAA 1997. The stated policy intent is to ensure that foreign residents are subject to Australian CGT on gains from assets that have a close economic connection to Australian land and natural resources, whether held directly or indirectly, and to address integrity concerns identified following recent judicial decisions.

The measures were announced in the 2024–25 and 2025–26 Federal Budgets and are proposed to commence on the first 1 January, 1 April, 1 July or 1 October after Royal Assent.

Expanded and clarified scope of taxable Australian real property

Introduction of a statutory definition of "real property"

The exposure draft proposes inserting an inclusive definition of "real property" into subsection 995-1(1) of the ITAA 1997. The new definition is intended to apply across the income tax law and the TAA 1953 under the one-term, one-meaning principle.

Under the proposed definition, "real property" would include (but not be limited to):

1. any interest in or right over land, regardless of how that interest is characterised under State or Territory law;
2. a personal right to call for or be granted an interest in or right over land;
3. licences or contractual rights exercisable over or in relation to land;
4. things, or combinations of things, fixed or installed on land for the majority of their useful life (including plant and infrastructure), regardless of whether they are fixtures at general law; and
5. leases, licences or contractual rights over such fixed or installed assets.

State and Territory severance provisions would be disregarded when determining whether an asset is real property for income tax purposes.

Changes to taxable Australian real property

The exposure draft proposes to amend paragraph 855-20(a) of the ITAA 1997 so that 'taxable Australian real property' (**TARP**) would include real property that:

1. is situated in Australia;
2. relates to land situated in Australia; or
3. relates to a thing, or combination of things, fixed or installed on land situated in Australia.

In addition, TARP would expressly include:

1. water entitlements in relation to a water resource situated in Australia; and
2. options or rights to acquire assets that are themselves taxable Australian real property.

Mining, quarrying and prospecting rights would continue to be treated as taxable Australian real property, and information relating to such rights is proposed to be treated as taxable Australian real property for certain valuation purposes.

Retrospective clarification of TARP

The exposure draft proposes that certain aspects of the amended meaning of "real property" apply retrospectively for foreign resident CGT purposes. Specifically, paragraph 855-20(a), as it applies to foreign

resident CGT, would be taken always to have applied since 12 December 2006 as if references to real property situated in Australia included:

1. interests in or rights over land, regardless of State or Territory classification;
2. things fixed to land for the majority of their useful life; and
3. leases of such fixed assets.

The retrospective amendments are intended to clarify, rather than change, the operation of the foreign resident CGT regime and to confirm that State and Territory laws were never intended to narrow the federal CGT tax base for foreign residents.

Indirect Australian real property interests and the principal asset test

365-day principal asset test

The exposure draft proposes to amend the principal asset test used to determine whether a foreign resident's non-portfolio membership interest is an indirect Australian real property interest. Currently, the test is applied at a single point in time immediately before the CGT event.

Under the proposed amendments, the test would be satisfied if, at any time during the 365 days preceding the CGT event, more than 50% of the market value of the entity's assets was attributable to taxable Australian real property.

This change is intended to address integrity risks associated with temporarily altering asset composition shortly before disposal.

Inclusion of mining, quarrying and prospecting information

The exposure draft also proposes that mining, quarrying and prospecting information be taken into account when applying the principal asset test. While such information would not itself be taxable Australian real property, its value would be required to be included when determining whether the underlying entity's value is principally attributable to taxable Australian real property.

Changes to foreign resident CGT withholding – vendor notifications

Notification requirement for large non-indirect Australian real property interest transactions

The exposure draft proposes amendments to the foreign resident CGT withholding regime in Schedule 1 to the TAA.

For disposals of membership interests with an aggregated market value of $50 million or more, a foreign resident vendor who gives a declaration that the interest is not an indirect Australian real property interest would also be required to notify the ATO in the approved form within specified timeframes.

A purchaser would only be entitled to rely on the vendor's declaration if the notification requirement has been satisfied. The existing declaration framework would continue to apply for transactions below the $50 million threshold.

Purchaser knowledge threshold

The exposure draft proposes replacing the existing subjective purchaser knowledge test with an objective standard. A purchaser would be denied reliance on a vendor declaration if they know, or could reasonably be expected to know, that the declaration is false. This change is intended to increase due diligence expectations for purchasers.

Treaty alignment

The exposure draft proposes amendments to the *International Tax Agreements Act 1953* (Cth) to clarify that references to "real property", "immovable property" or "land" in Australia's tax treaties are to be interpreted as taxable Australian real property within the meaning of the ITAA 1997, unless the treaty provides otherwise. This is intended to ensure alignment between domestic law and treaty outcomes.

Application and commencement

If enacted, the proposed amendments would generally apply:

1. to CGT events occurring on or after commencement (for Division 855 changes); and
2. to income years starting on or after commencement (for consequential amendments).

Limited retrospective application is proposed in relation to the meaning of real property for foreign resident CGT purposes, back to 12 December 2006.

w https://consult.treasury.gov.au/c2026-755475

4.4 Renewable energy asset CGT discount for foreign residents

Exposure draft legislation proposes a time-limited 50% capital gains tax discount for certain foreign residents who dispose of Australian renewable energy assets, or eligible indirect interests in such assets. The proposal is intended to operate as transitional relief in the context of broader reforms to the foreign resident CGT regime and would apply to CGT events occurring from commencement until 30 June 2030, if enacted.

The discount would be implemented through new provisions in the *Income Tax (Transitional Provisions) Act 1997* and would operate separately from the ordinary CGT discount rules in Subdivision 115-A of the ITAA 1997.

Entities eligible for the discount

Under the exposure draft, the discount would be available only where, just before the CGT event:

1. the taxpayer is a foreign resident other than an individual; or
2. the taxpayer is a trustee of a foreign trust for CGT purposes.

Foreign individuals would not be eligible for the discount.

CGT events covered

The proposed discount would apply where a CGT event happens on or after commencement and before 1 July 2030 in relation to a CGT asset that is taxable Australian property and is either:

1. an Australian renewable energy asset; or
2. a membership interest that satisfies the renewable energy asset test.

The discount would operate by treating the relevant capital gain as a discount capital gain and applying a 50% discount percentage when calculating the entity's net capital gain under section 102-5 of the ITAA 1997.

Australian renewable energy assets

An Australian renewable energy asset is proposed to be defined as a CGT asset that:

1. is taxable Australian real property; and

2. has the primary purpose of generating, or directly facilitating the generation of, electricity in Australia using an eligible renewable energy source within the meaning of the *Renewable Energy (Electricity) Act 2000*, whether generation occurs presently or in the future.

The "primary purpose" requirement is intended to focus the concession on assets predominantly used for renewable electricity generation. Assets that are partly constructed, under development, or not yet operational may satisfy this requirement where objective evidence demonstrates that they are genuinely intended to be used solely or predominantly for renewable electricity generation.

General electricity transmission infrastructure (such as poles and wires) would not, of itself, be treated as a renewable energy asset for these purposes, whereas assets essential to renewable generation (including certain battery energy storage systems) may be within scope depending on their function.

Indirect interests and the renewable energy asset test

For indirect disposals (such as shares or units), the discount would apply only where the membership interest is an indirect Australian real property interest and passes the renewable energy asset test.

Under the proposed test, a membership interest would pass if the market value of the test entity's Australian renewable energy assets is equal to or greater than nine times the market value of its other taxable Australian real property.

This ratio effectively requires at least 90% of the relevant taxable Australian real property value of the entity to be attributable to renewable energy assets.

The test would operate after the entity has already met the principal asset test under Division 855 of the ITAA 1997. Membership interests are treated on a look-through basis, with the holding entity's proportionate participation interest applied to the underlying asset values.

Integrity rules

The exposure draft includes integrity provisions to prevent manipulation of asset values for the purpose of satisfying the renewable energy asset test. In particular:

1. assets acquired for a more-than-incidental purpose of ensuring that a membership interest passes the test are to be disregarded; and
2. rules apply to prevent double counting of renewable energy assets within corporate groups where corresponding liabilities are created through intra-group arrangements.

These rules mirror, and operate consistently with, existing integrity concepts in Division 855 and do not displace the general anti-avoidance rules in Part IVA of the ITAA 1936.

Commencement

If enacted, the proposed amendments would commence on the first 1 January, 1 April, 1 July or 1 October occurring after Royal Assent. The CGT discount would apply only to qualifying CGT events occurring from commencement until 30 June 2030.

w https://consult.treasury.gov.au/c2026-755475

4.5 Payday Super – out-of-cycle qualifying earnings

The draft *Superannuation Guarantee (Administration) (Out-of-Cycle Qualifying Earnings) Determination* 2026 supports the implementation of Payday Super by clarifying when employers can access additional time to make SG contributions.

Under the Payday Super regime, SG contributions must generally be received within 7 business days of each payday. However, the determination recognises that certain payments made outside an employer's normal pay cycle could create unnecessary administrative burden if they required immediate separate contributions.

To address this, the instrument identifies the following specific "out-of-cycle" qualifying earnings:

1. allowances;
2. bonuses;
3. commissions;
4. loadings;
5. payments in advance; and
6. back payments.

Where a payment qualifies as out-of-cycle, employers are allowed extra time to make the associated SG contribution. Rather than the standard 7-day deadline from the payment date, the contribution can be made up to 7 business days after the next regular payday, allowing employers to align contributions with their usual pay cycle.

This treatment only applies where:

> *(a) the employer has an established timing, pattern or schedule for making payments of qualifying earnings to or for an employee; and*
>
> *(b) the payment of qualifying earnings of a kind mentioned in subsection (1) is made on a day that falls outside that established timing, pattern or schedule for making payments of qualifying earnings to or for the employee.*

Payments made on a normal payday, even if they are bonuses or similar, are not considered out-of-cycle and remain subject to the standard timing rules

LI 2026/D3
w https://www.ato.gov.au/law/view/document?docid=OPS/LI2026D3/00001

4.6 Draft TPB sanctions legislation

The TPB has released exposure draft legislation that proposes to:

1. introduce criminal penalties for unregistered tax return preparers;
2. increase the maximum amounts for civil penalties;
3. allow infringement notices for alleged breaches of some civil penalty provisions;
4. enable enforceable voluntary undertakings;
5. allow contingent and interim suspensions of registration in certain circumstances;
6. introduce new civil penalties for:
   (a) breaches of the Code of Professional Conduct by registered tax practitioners; and
   (b) false or misleading statements by unregistered preparers; and
7. extend the maximum period before a terminated practitioner can reapply for registration from 5 years to 10 years.

A significant proposed change is introduction of new section 50-21 of the *Tax Agents Services Act 2009* (Cth) as follows:

> ***50-21 False and misleading statements made to Commissioner or Board by unregistered persons***
>
> *(1) You contravene this subsection if:*
>
> *(a) you provide a service that you know, or ought reasonably to know, is a tax agent service; and*
> *(b) you are not a registered tax agent or BAS agent; and*
> *(c) you:*
> *(i) make a statement to the Commissioner or Board; or*
> *(ii) you prepare a statement that you know, or ought reasonably to know, is likely to be made to the Commissioner by an entity; and*
> *(d) you know, or are reckless as to whether, the statement:*
> *(i) is false, incorrect or misleading in a material particular; or*
> *(ii) omits any matter or thing without which the statement is misleading in a material respect.*
>
> *Civil penalty:*
> *(a) for an individual—2,500 penalty units; and 33*
> *(b) for a body corporate—50,000 penalty units.*

Tax agent service is defined broadly under the TASA and includes services relating to:

1. ascertaining liabilities, obligations or entitlements of an entity that arise, or could arise, under a taxation law; or
2. advising an entity about liabilities, obligations or entitlements of the entity or another entity that arise, or could arise, under a taxation law; or
3. representing an entity in their dealings with the Commissioner; and

Legal practitioners regularly provide tax agent services but are carved out from the prohibition on providing most tax agents services if unregistered as long as they are not prohibited from providing the services under the relevant State or Territory law regulating the legal practitioner: see section 50-5(1)(e) of the TASA.

COMMENT – if enacted, the expanded sanctions regime may change how lawyers accept engagements in acting for taxpayers. Although it is noted that lawyers are already regulated by the relevant solicitors conduct rules of the State or Territory in which they are registered.

w https://consult.treasury.gov.au/c2026-760185

4.7 Tasmanian Short Stay Levy Bill

On 16 April 2026, the Tasmanian Government introduced the *Short Stay Levy Bill* 2026, which proposes a 5% levy on short-stay accommodation. The levy applies to short-term rentals such as those listed on platforms like Airbnb and Stayz, but does not extend to hotels, pubs, bed and breakfasts, or caravan parks.

The levy is intended to be paid by consumers using the accommodation rather than by property owners. It is proposed to apply to stays from 1 July 2026. However, platform operators and providers that accept direct bookings will have until 30 June 2027 to register, with the first lodgment and annual payment due by 30 July 2027.

w https://www.parliament.tas.gov.au/bills/bills2026/short-stay-levy-bill-2026-13-of-2026

4.8 Queensland Home Ownership Bill

On 23 April 2026, the *Home Ownership and Other Legislation Amendment Bill* 2026 (Qld) was introduced into the Queensland Legislative Assembly. The Bill makes a range of amendments to revenue and grant legislation administered by the Commissioner of State Revenue, primarily to clarify and maintain the operation of existing regimes.

The Bill proposes changes to the *Duties Act 2001* (Qld), *First Home Owner Grant and Other Home Owner Grants Act 2000* (Qld), and *Land Tax Act 2010* (Qld) to clarify how these laws apply to participants in the Queensland 'Boost to Buy' and Commonwealth 'Help to Buy' shared equity schemes, with retrospective effect from 15 December 2025 and 5 December 2025 respectively.

The Bill also introduces a number of targeted amendments to the Duties Act, including broadening the concept of “vacant land” for first home concessions to cover land with certain existing structures, updating exemptions for vesting dutiable property to align with the *Property Law Act* 2023, and correcting a drafting error affecting reassessments for additional foreign acquirer duty in build-to-rent developments. Further changes update vehicle duty concessions and extend eligibility for service personnel to include both current and former defence force members.

In relation to home ownership support, the Bill ensures that homes previously sold under certain builder arrangements are treated as “new homes” for first home owner grant and transfer duty purposes, and clarifies the Commissioner’s discretion to vary or waive residence requirements by restoring the intended interpretation of “good reasons".

The Bill also addresses broader tax administration matters. It confirms that, for payroll tax purposes, multiple entities can be excluded from a group so that they may form a new group, and amends the *Taxation Administration Act 2001* (Qld) to ensure that taxpayers may challenge related tax matters in either the Supreme Court or QCAT, but not both.

w https://www.legislation.qld.gov.au/view/html/bill.first/bill-2026-010

4.9 Northern Territory payroll tax increase

The *Treasury Legislation Amendment Bill 2026* (NT) introduces a new payroll tax rate of 6.5% for large employers and payroll groups with Australia-wide wages of $100 million or more. The higher rate is proposed to apply from 1 July 2026 to taxable Northern Territory wages.

The Bill also implements a 12-month extension of the 'HomeGrown Territory Grant'. This extends eligibility for first home buyers to enter into contracts or commence building until 30 September 2027, along with the associated residency requirements. After this date, the grant is intended to revert to its original settings

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

5. Rulings

5.1 Employer for the short-term visit exception

The ATO has released a draft consolidation of *Taxation Ruling* TR 2013/1, updating its view on how to identify the "employer" for the purposes of the short-term visit exception in Australia's tax treaties. The update is intended to align the ruling with TR 2023/4 and recent High Court and Full Federal Court decisions on the meaning of "employee" and "employer".

The draft confirms that, because the term "employer" is not defined in the OECD Model Tax Convention or in most treaties, it takes its meaning from Australian domestic law, interpreted in light of the context, object and purpose of the short-term visit exception.

Under this approach, the "employer" is generally the enterprise to which the non-resident individual provides services in an employment relationship, rather than necessarily the entity named in a formal contract. Determining the employer requires an examination of the substance of the arrangement, including whether the work is performed as part of the enterprise's business activities.

In identifying the relevant employer, the Commissioner will consider the ordinary meaning of "employee" under Australian domestic law, as set out in TR 2023/4, together with the purpose of the short-term visit exception. This reflects a move away from the detailed list of employment indicators previously contained in TR 2013/1, with taxpayers instead directed to the broader domestic law principles.

The draft also reinforces that the analysis is fact-specific and based on the totality of the relationship. While factors such as control, integration into the business, responsibility for risk, and payment of remuneration remain relevant, no single factor is determinative, and the substance of the arrangement will prevail over its form.

Overall, the draft consolidation clarifies that identifying the employer for treaty purposes requires a holistic assessment grounded in Australian employment law principles, applied in a way that is consistent with the policy intent of the short-term visit exception.

The due date for comments on the draft Consolidation is 12 June 2026.

ATO reference *Draft Taxation Ruling* TR 2013/1DC
w https://www.ato.gov.au/law/view/document?docid=DTC/TR20131DC1/NAT/ATO/00001

5.2 WA payroll tax treatment of paid parental leave (PPL)

The Commissioner has issued Revenue Ruling PTA 037.3, clarifying the payroll tax treatment of payments made under the Commonwealth PPL scheme.

The ruling explains that, although parental leave payments may be made through employers, they are funded by the Commonwealth and paid on its behalf. As a result, these amounts are not regarded as wages for payroll tax purposes, as they are not paid by the employer in respect of services performed by the employee.

The same treatment applies to superannuation contributions paid by the ATO on Commonwealth-funded parental leave pay, which are also not treated as wages. However, the ruling distinguishes amounts provided by employers directly, confirming that voluntary superannuation contributions paid by an employer on parental leave pay do constitute wages and are therefore subject to payroll tax.

w https://www.wa.gov.au/government/publications/payroll-ruling-paid-parental-leave

6. Private Rulings

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

6.1 GST and tripartite arrangements

Facts

The taxpayer entered into an agreement relating to a government incentive scheme established by a government department (Entity Z) to increase the number of specialists in a particular workforce area.

Under the scheme, eligible specialist workers commencing their first year of training in the relevant jurisdiction are entitled to receive a one-off incentive payment. The scheme is funded to support a specified cohort of trainees and is administered by the taxpayer as one of several organisations engaged to manage the program.

The taxpayer and the government department are both registered for GST.

The taxpayer is responsible for managing applications under the scheme and for making incentive payments to participants once they commence training at accredited facilities within the jurisdiction.

The taxpayer is paid a fee by the government department for administering the program and makes the incentive payments to participants on behalf of the government department.

Questions

1. Is the taxpayer making a taxable supply to Entity Z under section 9-5 of the GST Act by administering the agreement, for which the taxpayer receives a fee?
2. Is the taxpayer making a taxable supply under section 9-5 of the GST Act to Entity Z or to Persons Y by providing the incentive payments to Persons Y under the agreement?

Ruling

Is administering the agreement a taxable supply?

Entering into the agreement itself constituted a supply because it involved the creation of contractual rights and obligations between the taxpayer and Entity Z, which is recognised as a supply under section 9-10 of the GST Act. Consistent with the High Court's analysis in *Commissioner of Taxation v MBI Properties Pty Ltd* [2014] HCA 49, an executory contract generally gives rise to at least two supplies:

the creation of enforceable rights and obligations on entry into the contract; and
a further supply through performance of those obligations.

In this case, the taxpayer made the second supply by performing the agreed program administration services.

The supplies were made for consideration because the fee paid by Entity Z had a sufficient nexus to the taxpayer's obligations under the agreement. Section 9-15 of the GST Act requires that a payment be in connection with, and in response to or for the inducement of, a supply. The fee was paid specifically because the taxpayer undertook to administer the program and actually carried out those services. The remaining

elements of section 9-5 were also satisfied: the taxpayer carried on an enterprise, was registered for GST, and the supply was connected with the indirect tax zone because the services were performed in Australia. As the supply was neither GST-free nor input taxed, it was a taxable supply.

Is providing incentive payments a taxable supply?

Although the payments formed part of the broader program administration, the taxpayer made those payments as an agent for Entity Z, not in its own capacity. The agreement authorised the taxpayer to distribute government funding to eligible participants, establishing an agency relationship for GST purposes consistent with the principles set out in GSTR 2000/37. When acting as an agent, the taxpayer was effectively "standing in the shoes" of Entity Z when making the payments.

From a GST perspective, the act of paying money does not itself constitute a supply under section 9-10 of the GST Act, because subsection 9-10(4) expressly excludes money from being a supply unless it is provided as consideration for a money-for-money supply. The incentive payments were merely a disbursement of funds belonging to Entity Z to third parties and did not involve the taxpayer supplying anything to either Entity Z or Persons Y. As no supply was made by the taxpayer in relation to the incentive payments, the threshold requirement of section 9-5 was not met and the payments could not be taxable supplies. The disbursement activity was instead treated as part of the taxpayer's overall administration service, for which the taxpayer was remunerated separately by the administration fee.

ATO Reference *Edited Private Advice Authorisation No.* 1052479123827
w https://www.ato.gov.au/law/view/document?docid=EV/1052479123827

6.2 Rent from parents is assessable income

Facts

The taxpayer acquired a residential property with the intention that it would be their main residence and occupied it from acquisition. The property was held in equal legal ownership interests.

The taxpayer later purchased another dwelling and relocated to that property shortly after settlement.

Following the taxpayer's relocation, the taxpayer's parents moved into the original property and have resided there on an ongoing basis.

There is no formal rental or tenancy agreement between the taxpayer and the parents, and the arrangement is managed privately rather than through an agent.

Under the arrangement, the parents make regular weekly payments to the taxpayer to contribute towards the mortgage and other property-related expenses. These payments are made directly into the home loan account.

The amount paid by the parents is less than the market rent that would be expected for a comparable property.

Question

Was the income received by the taxpayer from their parents for residing at the taxpayer's other property assessable income under section 6-5 of ITAA 1997?

Ruling

The ATO concluded that the amounts paid by the taxpayer's parents are assessable as ordinary income under section 6-5 of ITAA 1997. Section 6-5 brings to tax income according to ordinary concepts, which includes rent derived from property. While the legislation does not define "ordinary income", it is well established through

case law that rental receipts ordinarily have the character of income, particularly where they are regular, recurrent and received in return for granting exclusive possession of property. In this case, the parents made weekly payments on an ongoing basis, which satisfied the indicia of periodicity and regularity commonly associated with income.

In determining whether the payments retained their income character despite being below market value and paid under a family arrangement, the ATO relied on judicial authority recognising that motive and purpose are relevant but not determinative. In *Federal Commissioner of Taxation v Kowal* (1983) 79 FLR 75, the Full Federal Court held that rent received from a relative at below-market rates was still assessable where the taxpayer had a dual purpose: providing affordable accommodation to a family member and deriving income. The presence of a private or familial motivation did not deny the receipts their income character. Applying this reasoning, the ATO accepted that, although the taxpayer intended to assist their parents by charging less than market rent, there was also an objective intention to derive income from the property, evidenced by the regular payments being applied directly to the mortgage.

The ATO also distinguished between rental income and board or lodging arising from a purely domestic arrangement. Amounts received for board and lodging within a shared household may fall outside assessable income where they are incidental to a domestic arrangement, as illustrated in *Federal Commissioner of Taxation v Groser* 82 ATC 4478. However, that principle is limited to situations where only part of a residence is used and the arrangement is essentially domestic in nature. In this case, the taxpayer vacated the property entirely and the parents occupied the whole dwelling on an ongoing basis. This was not a shared household arrangement but the grant of exclusive possession of the property, which is characteristic of a rental arrangement rather than domestic board.

The fact that the arrangement was informal, privately managed and non-commercial in the sense that rent was below market value did not alter the income character of the receipts. The ATO emphasised that rental income remains assessable even where charged at concessional rates to family members. A non-commercial rate may affect the availability and quantum of deductions, but it does not, of itself, convert rent into a non-assessable domestic receipt. This approach is consistent with the ATO's administrative guidance on non-commercial rentals, which recognises that income is still derived, although deductions may be capped to the amount of rent received.

Because the parents' payments were made regularly, were referable to their exclusive use of the entire property, and were objectively connected to the use of the property as an income-producing asset (albeit at below market rates), the ATO concluded that the payments constituted ordinary income assessable under section 6-5 of ITAA 1997.

ATO Reference *Edited Private Advice Authorisation No.* 1052495279620
w https://www.ato.gov.au/law/view/document?docid=EV/1052495279620

6.3 Absolute entitlement and main residence

Facts

The taxpayer acquired an ownership interest in a residential property through a deceased estate. The property is situated on less than two hectares of land and was acquired pre-CGT.

The property was the deceased's main residence at the time of death and had not been used for income-producing purposes at any stage.

Under the deceased's will, the taxpayer was appointed as both the sole executor and sole beneficiary. The deceased's spouse had predeceased them.

The taxpayer obtained probate and substantially completed the administration of the deceased estate. All testamentary expenses were paid, financial accounts were finalised, and the estate residue was ascertained, although legal title to the property was not transferred from the taxpayer's capacity as legal personal representative to their capacity as beneficiary.

The property remained vacant for a period following the deceased's death and was later occupied by the taxpayer as their main residence. It continued to be treated as the taxpayer's main residence until the taxpayer moved into a nursing home shortly before their death.

The taxpayer died intestate. As legal title to the property had not been updated, a state trustee was appointed to administer the relevant estates and to facilitate the sale of the property.

Legal title to the property was transferred to the state trustee in their capacity as trustee of the earlier deceased estate, and the property was sold, with settlement occurring within two years of the taxpayer's death.

In administering the taxpayer's estate, the trustee elected to continue treating the dwelling as the taxpayer's main residence for the period from when the taxpayer moved into residential care until their death.

Questions

1. Does a capital gains tax event happen to the taxpayer, in their capacity as trustee of the first deceased estate, on the disposal of the property under the ITAA 1997?
2. Does section 118-195 of the ITAA 1997 apply to disregard any capital gain made by the taxpayer, in their capacity as trustee of the second deceased estate, on the disposal of the property?

Ruling

CGT event

The ATO concluded that no capital gains tax (**CGT**) event happened to the trustee of the first deceased estate because, for CGT purposes, the property was not treated as being owned by that estate at the time of disposal. Under section 106-50 of the ITAA 1997, where a beneficiary of a trust becomes absolutely entitled to a CGT asset as against the trustee, the asset is taken to be owned by the beneficiary rather than the trustee. Absolute entitlement arises when the beneficiary has a vested and indefeasible interest in the asset and can call for it to be transferred to them, even if legal title has not yet been updated.

In this case, the taxpayer was both the sole executor and sole beneficiary of the first deceased estate. The administration of that estate had been substantially completed: all liabilities and testamentary expenses were paid, other estate assets had been realised or distributed, and the residue of the estate had been ascertained. The only outstanding step was the formal transfer of legal title to the property from the taxpayer in their capacity as legal personal representative to themselves as beneficiary. On these facts, the ATO considered that the taxpayer had an absolute entitlement to the property and was therefore treated as the owner of the property for CGT purposes under section 106-50 of the ITAA 1997.

As a result, when the property was ultimately disposed of, the CGT event did not happen to the trustee of the first deceased estate. Instead, for CGT purposes, the disposal was taken to occur to the taxpayer (and, following their death, to their estate), because the trust was effectively ignored once absolute entitlement arose.

Main residence exemption

The ATO determined that section 118-195 of the ITAA 1997 applied to disregard the capital gain made on the disposal of the property by the trustee of the second deceased estate. That provision allows a full CGT exemption for a dwelling that passes from a deceased person if, broadly, the dwelling was the deceased's main residence at the time of death (and not used to produce assessable income), and the ownership interest is disposed of by the deceased's legal personal representative or beneficiary within the required period.

For CGT purposes, the ATO treated the taxpayer as having been the owner of the property from the time they became absolutely entitled to it under section 106-50 of the ITAA 1997. The property was the taxpayer's main residence until they moved into a nursing home, and it was not used for income-producing purposes. Following the move into residential care, the trustee of the taxpayer's estate chose to continue treating the dwelling as the taxpayer's main residence under section 118-145 of the ITAA 1997, which allows a dwelling to retain its main residence status for a period after it ceases to be occupied.

The property was sold by the trustee within two years of the taxpayer's death. Taking these factors together, the ATO concluded that the conditions in section 118-195 of the ITAA 1997 were satisfied. Accordingly, any capital gain arising on the disposal of the property by the trustee of the second deceased estate was disregarded in full.

ATO Reference *Edited Private Advice Authorisation No.* 1052501229278
w https://www.ato.gov.au/law/view/document?docid=EV/1052501229278

6.4 Deed of arrangement

Facts

The taxpayer is the legal personal representative of a deceased estate. The deceased died leaving a will and a codicil, and probate was granted to the executors.

Under the will, Asset Z was bequeathed to one beneficiary (Beneficiary B).

Another beneficiary (Beneficiary A) commenced legal proceedings seeking further provision from the estate, including a claim over Asset Z.

To resolve these claims, the relevant parties proposed entering into a Deed of Arrangement, which would settle and bring to an end the legal action initiated by Beneficiary A.

Under the proposed Deed of Arrangement, no property of the estate would pass to any person who is not a beneficiary, and no beneficiary would provide any external consideration in connection with entering into the deed.

At the time of entering into the Deed of Arrangement, the administration of the estate would not yet be complete.

All beneficiaries of the estate are Australian residents for taxation purposes.

Questions

1. Does the proposed Deed of Arrangement meet the requirements of section 128-20 of the ITAA 1997?
2. Will the proposed transfer of Asset Z under the Deed of Arrangement give rise to a capital gains tax liability for the executors of the estate?

Ruling

Deed of arrangement

The ATO concluded that the proposed Deed of Arrangement satisfies section 128-20 of the ITAA 1997 because it operates to settle a genuine claim by a beneficiary to participate in the distribution of a deceased estate. Section 128-20 provides that a CGT asset is taken to "pass" to a beneficiary of a deceased estate where the beneficiary becomes the owner of the asset under a deed of arrangement entered into to resolve such a claim.

A critical requirement is that the only consideration provided by the beneficiary consists of the variation or waiver of their claim to other CGT assets forming part of the estate. In this case, Beneficiary A entered into the deed to resolve legal proceedings seeking further provision from the estate, including an interest in Asset Z. The consideration given by Beneficiary A was limited to the relinquishment or modification of claims to other estate assets, with no money or other external consideration provided.

As these conditions were met, the arrangement fell squarely within section 128-20(1)(d) of the ITAA 1997.

CGT liability

Having established that the Deed of Arrangement meets section 128-20 of the ITAA 1997, the ATO then applied the special CGT rules for deceased estates in Division 128. Under section 128-15 of the ITAA 1997, any capital gain or capital loss made by a legal personal representative is disregarded where a CGT asset owned by the deceased immediately before death passes to a beneficiary of the estate.

Because Asset Z was owned by the deceased and, under the qualifying Deed of Arrangement, is taken to pass to Beneficiary A for CGT purposes, the transfer is treated in the same way as a distribution under the will. As a result, any capital gain that would otherwise arise on the transfer of Asset Z by the executors is disregarded. The ruling therefore concludes that the executors do not incur a CGT liability on the transfer of Asset Z to Beneficiary A under the Deed of Arrangement.

ATO Reference *Edited Private Advice Authorisation No.* 1052508828359
w https://www.ato.gov.au/law/view/document?docid=EV/1052508828359

7. ATO and other materials

7.1 *Hall* decision impact statement

The ATO has released its Interim Decision Impact Statement in relation to the *Commissioner of Taxation v Hall* [2026] FCAFC 43.

In relation to home office occupancy expenses, the ATO emphasises that deductibility under section 8-1 of the ITAA 1997 depends on the essential character of the outgoing, and that both the positive and negative limbs must be satisfied. Even where there is a clear connection to income-earning activities, an expense will remain non-deductible if its character is private or domestic. The decision confirms that a home office, including a separate room used regularly or exclusively for work, will ordinarily remain part of the home rather than constituting business premises. This remains the case even where working from home is required by an employer or external circumstances such as COVID-19 restrictions.

The ATO highlights that the Full Court rejected an approach that treats part of a single expense, such as rent, as a separate deductible outgoing. Instead, the correct approach is to consider the character of the expense as a whole. In this case, the rent was incurred to secure domestic accommodation and retained that character, notwithstanding that part of the premises was used for work. The decision confirms that necessity, convenience, or exclusive work use does not of itself change the character of the expense.

In relation to car expenses, the ATO reiterates that travel between home and a regular place of work is ordinarily not deductible. The Full Court confirmed that where a taxpayer performs work at home and at another location, those activities may still be treated as separate income-earning activities. Travel between home and the employer's premises in such circumstances is properly characterised as ordinary commuting, occurring before or after work rather than in the course of work.

The ATO further emphasises that this position applies even where the taxpayer undertakes some work duties at home, where travel occurs during work hours, or where working from home is required. In these cases, the travel remains a prerequisite to earning income rather than expenditure incurred in gaining or producing assessable income.

The ATO states that it will continue to administer the law in accordance with this decision, which is consistent with its existing public guidance in TR 93/30, TR 2021/1, and its employee work expenses materials. The decision therefore does not represent a change in ATO practice but rather confirms the correctness of its long-standing views.

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

7.2 ATO Tax Time 2026 focus areas

The ATO has warned taxpayers to be cautious of tax misinformation ahead of the 2026 tax season, particularly online content that promises inflated refunds, shortcuts or tax hacks. The ATO notes that advice from AI tools, social media and informal sources may be inaccurate or outdated, and emphasises that taxpayers remain responsible for the correctness of their returns.

For 2026, the ATO's compliance focus will be on areas where errors are most common, particularly work-related deductions and omitted income. Taxpayers are reminded to follow the core principles for deductions, including ensuring expenses are genuinely work-related, personally incurred, and supported by appropriate records.

The ATO also confirms that taxpayers can claim working-from-home expenses using either the actual cost method or the fixed rate method (70 cents per hour), with record-keeping requirements differing for each approach. Tools such as the ATO's myDeductions app can assist in tracking and substantiating claims.

In addition, the ATO stresses the importance of declaring all sources of income, including side-hustles, cash payments, interest and rental income. It also encourages taxpayers to consult official ATO guidance or registered tax professionals to identify legitimate deductions and avoid errors.

w https://www.ato.gov.au/media-centre/from-hacks-to-half-truths-ato-warns-of-tax-time-misinformation-and-reveals-focus-areas

7.3 Under-reported income compliance focus

The ATO has announced an increased focus on businesses that omit or under-report income, particularly in cash-based transactions. Since July 2025, audit activity has intensified, with 300 small businesses reviewed, more than $70 million in unpaid tax identified, and over $26 million in penalties imposed.

This compliance focus forms part of the ATO's broader effort to address shadow economy behaviour. It is supported by increased intelligence gathering, including over 1,000 community tip-offs each week, as well as the use of data analytics to detect discrepancies across bank records, point-of-sale systems and third-party reporting.

The ATO highlights common risks such as failing to report cash income, issuing incomplete records, or paying staff off the books. It emphasises that these practices undermine the tax system and create unfair competition for compliant businesses.

Recent enforcement outcomes demonstrate that significant penalties may be imposed where under-reporting is deliberate. The ATO's message is that businesses should ensure all income is reported accurately and records are properly maintained to avoid compliance action.

w https://www.ato.gov.au/businesses-and-organisations/small-business-newsroom/strengthening-compliance-action-on-under-reported-income

7.4 Personal services income (PSI) compliance focus

The ATO has highlighted an increased compliance focus on arrangements involving the alienation of PSI, particularly where significant amounts of income are diverted away from the individual who generated it.

Under its approach in PCG 2025/5, the ATO is encouraging taxpayers to review their arrangements and take steps to move to a lower-risk position. Where a taxpayer makes a genuine attempt to address higher-risk behaviour by 30 June 2027, the ATO indicates it will not seek to apply Part IVA if the arrangement is reviewed. This is not an amnesty, but a compliance approach recognising early corrective action.

The ATO expects taxpayers to self-assess whether PSI has been inappropriately diverted, take steps to correct arrangements, and ensure current and, where necessary, prior year returns are compliant. Where reviews are already underway, the ATO will take into account voluntary efforts to rectify non-compliance.

The guidance also distinguishes between PSI-based businesses and broader professional practices. Where income is derived mainly from an individual's services, the PSI rules and Part IVA risks remain relevant, whereas more developed businesses may not involve PSI but fall within the separate profit allocation framework.

w https://www.ato.gov.au/businesses-and-organisations/business-bulletins-newsroom/spotlight-on-personal-services-income-compliance-focus

7.5 Foreign resident CGT amendments

The ATO has indicated that the proposed amendments to the foreign resident CGT regime (see item 3.3 of these notes) are intended to clarify, rather than change, how the law has long been administered. In particular, the draft legislation confirms the ATO's existing view that the concept of *"real property"* is not limited to a narrow legal meaning.

Although the amendments are proposed to apply retrospectively, the ATO does not expect to alter its current compliance approach. It has stated that it will continue to apply its existing approach to disposals that are already under review or that have occurred within the previous 4 years.

The ATO has also made it clear that it does not intend to reopen settled matters that were intended to be final, except in very limited circumstances. In practice, the amendments are not expected to affect a broad range of taxpayers, but rather to provide greater certainty for those already within the ATO's compliance focus or subject to review.

w https://www.ato.gov.au/about-ato/new-legislation/in-detail/businesses/strengthening-the-foreign-resident-cgt-regime

7.6 ATO moving taxpayers to different GST reporting

The ATO has released a business bulletin reminding growing businesses to review whether they are using the correct GST reporting and accounting methods after exceeding key GST turnover thresholds.

Businesses with GST turnover of $10 million or more are required to:

use full BAS reporting (rather than simpler BAS reporting); and
account for GST on a non-cash (accruals) basis, rather than a cash basis.

Businesses with GST turnover of $20 million or more are required to move to monthly GST reporting instead of quarterly BAS lodgment. This change also affects reporting for wine equalisation tax, luxury car tax and fuel tax credits, which must also be reported monthly.

The ATO has indicated it will begin moving affected businesses to the correct GST reporting and accounting methods from 1 July 2026 and will notify businesses or their tax agents where changes are made. However, businesses do not need to wait for ATO action and may voluntarily update their GST reporting method through Online services for business.

Where a business moves to full BAS reporting, it must complete all GST labels, rather than reporting only totals at labels G1, 1A and 1B.

COMMENT – this update is part of the ATO's broader data-matching and profitability review activities and reinforces the need for advisers to regularly reassess GST turnover, particularly for fast-growing or acquisitive groups. Clients transitioning to monthly reporting should also factor in cash-flow impacts and ensure systems and processes are capable of supporting more frequent lodgment and payment obligations.

w https://www.ato.gov.au/businesses-and-organisations/business-bulletins-newsroom/time-to-review-your-gst-turnover

7.7 Changes to visibility of FTEs and IEEs

The ATO has updated the Online services for agents reporting for family trust elections (**FTEs**) and interposed entity elections (**IEEs**), providing agents with greater visibility over elections lodged for their clients. The changes are intended to make it easier to verify key election details and improve record-keeping.

FTEs

In addition to existing details (including the income year specified, election commencement date, specified individual and date of birth), the report now also shows:

1. the date the election was received by the ATO;
2. the form type, being election made (E), variation (V) or revocation (R); and
3. where an election has been revoked, the election end year and end date.

IEEs

For IEEs, the report has been expanded to include:

1. the date the election was received;
2. the form type (election made or revocation); and
3. for revocations, the election end year.

The ATO emphasises that the additional information does not represent any opinion as to whether the substantive requirements for a valid FTE or IEE have been satisfied. Trustees and advisers remain responsible for ensuring elections are validly made and supported by appropriate records.

The ATO has confirmed that no action is required as a result of the update. The additional information is already available through Online services for agents.

w https://www.ato.gov.au/tax-and-super-professionals/for-tax-professionals/tax-professionals-newsroom/increased-visibility-for-trust-elections

7.8 Transfer pricing for inbound distribution arrangements

On 22 April 2026, the ATO issued a significantly revised version of *Practical Compliance Guideline* PCG 2019/1, replacing the version originally published in March 2019. Although much of the update involves restructuring and modernisation of language, the revised Guideline also contains a number of substantive changes to scope, risk assessment and profit benchmarking.

Clarification of 'inbound distributors'

For the purposes of the risk assessment framework, the Guideline explains that inbound distributors are business-to-business intermediaries in a distribution channel or supply chain. They resell products to retailers, merchants, contractors or industrial, institutional or commercial users, rather than to household consumers. While an inbound distributor may undertake some retail activity, the ATO emphasises that its primary sales channel is not its own retail operations.

The definition and scope of "inbound distribution arrangements" has been clarified in paragraphs 16 to 26. In particular, the revised Guideline now expressly addresses digital products and services, with a new paragraph 18 stating:

> *18. In relation to digital products or services, we consider you to be an inbound distributor for the purposes of this Guideline if:*

• your business comprises selling on your own behalf digital products or services to third parties, and any intellectual property relating to those products or services is substantially held by related foreign entities, and

• you or your related entities do not significantly contribute to the creation (including alteration) of the digital products or services, or the intellectual property in the digital products or services, in Australia. For example, you significantly contribute to the creation of digital products or services if you or your related entities own or operate significant equipment in Australia used to host or provide the products or services you are selling or distributing.

Insertion of new material clarifying excluded activities

Additional guidance has been inserted at paragraph 25 clarifying activities that insurance activities or financial arrangements, including those linked to sales activities, are not considered to be part of inbound distribution arrangements. The transfer pricing risk associated with financial arrangements and insurance activities should be assessed separately.

Revised risk assessment framework

The structure of the risk assessment framework has been revised. While the core concept of white, low, medium and high-risk zones remains, the framework in paragraphs 47 to 53 has been reorganised to better explain how profit outcomes, value-adding activities and industry-specific indicators interact in determining risk.

A new paragraph 31 notes that:

Where the most appropriate transfer pricing methodology for your circumstances is a multi-sided method such as the profit split, this Guideline may not be relevant for your inbound distribution arrangement.

The Guideline also makes clear at paragraph 52 that taxpayers may be required to self-assess and disclose the risk rating of their inbound distribution arrangements. Where the ATO requests this information in writing, or where the taxpayer is required to complete a Reportable tax position schedule, the taxpayer must disclose the self-assessed risk zone for relevant distribution arrangements.

Updated profit markers and benchmarking

The ATO has also updated the profit markers set out in the Schedules. The ATO has revised benchmark EBIT margins across all covered industries, including:

1. general distributors (Schedule 1);
2. life sciences distributors (Schedule 2);
3. information and communications technology distributors (Schedule 3); and
4. motor vehicle distributors (Schedule 4).

These updated profit markers are based on more recent benchmarking and economic data. In several cases, the boundaries between low, medium and high-risk zones have shifted, meaning that taxpayers previously assessed as low risk may now fall into higher risk categories (and vice versa), without any change in their underlying arrangements.

Removal of detailed APA guidance

The revised Guideline significantly shortens the section dealing with advance pricing arrangements (**APAs**). An APA is an arrangement between a taxpayer and the ATO (and, in some cases, foreign tax authorities) that prospectively agrees the transfer pricing methodology to be applied to specified related-party transactions for a fixed period of time, providing a degree of pricing certainty. In the original version, paragraphs 55 to 62 set out extensive guidance on the interaction between the Guideline and the APA program, including discussion of

early engagement, circumstances where APAs may be difficult to agree (particularly for high-risk arrangements), EBIT mismatches, and the availability of "pre-qualified" APAs aligned to the profit markers in the Guideline. That material has been removed in full.

In its place, the revised Guideline (now paragraphs 58 and 59) retains only a high-level statement that taxpayers may engage with the ATO through the APA program to seek prospective transfer pricing certainty, regardless of risk zone. References to pre-qualification, reduced information requirements, reliance on ATO-provided benchmarks, and the interaction with diverted profits tax outcomes have been deleted.

Application date

The revised *PCG 2019/1* applies to income years finishing after 22 April 2026 and is expressed to apply to both existing and new inbound distribution arrangements.

ATO reference *PCG 2019/1*
w https://www.ato.gov.au/law/view/document?docid=COG/PCG20191/NAT/ATO/00001

7.9 Vulnerability in debt collection and lodgment

The ATO has updated its practice statements on debt collection and lodgment to give greater weight to taxpayers experiencing vulnerability.

Under PS LA 2011/14, vulnerability is now explicitly recognised as a relevant factor when the ATO considers how to recover tax debts or whether to agree to payment arrangements. This includes circumstances such as family violence, financial coercion, homelessness, or serious mental health challenges.

Similarly, PS LA 2011/15 has been updated so that experiences of vulnerability can be treated as exceptional or unforeseen circumstances when seeking a deferral of lodgment obligations. This broadens the situations in which taxpayers may be granted additional time to meet compliance requirements.

The vulnerability framework can be found here: https://www.ato.gov.au/about-ato/commitments-and-reporting/our-support-for-people-experiencing-vulnerability/our-vulnerability-framework

ATO reference *PS LA 2011/4*
w https://www.ato.gov.au/law/view/document?docid=PSR/PS20114/NAT/ATO/00001
ATO reference *PS LA 2011/15*
w https://www.ato.gov.au/law/view/document?docid=PSR/PS201115/NAT/ATO/00001

7.10 Payday Super transition tips

The ATO has updated its website guidance with some tips for how employers should manage the transition from quarterly superannuation guarantee to Payday Super, which commences on 1 July 2026.

The ATO explains that, during the transition to Payday Super from 1 July 2026, employers may need to operate under both systems concurrently. This includes making a final quarterly contribution for the June quarter by 28 July, while also meeting the new requirement to ensure super contributions are received by employees' funds within 7 business days of each payday.

The ATO emphasises that understanding which obligations apply during this changeover is critical to managing cash flow and avoiding late payment penalties, particularly as July may involve multiple overlapping super payments. Employers may need to fund both the final quarterly liability and several payday-based contributions in a short period, making advance planning essential.

The ATO emphasises the importance of preparing cash-flow, payroll systems and reporting processes ahead of commencement. In particular:

1. employers must transition away from the Small Business Superannuation Clearing House, which closes permanently on 1 July 2026, and download records before closure;
2. Single Touch Payroll reporting will expand from 1 July 2026 to require reporting of year-to-date qualifying earnings and super liability for each employee on each payday; and
3. employers should review SuperStream compliance, error handling processes and fund allocation timeframes to ensure the 7-day rule can be met.

The guidance also highlights that the transition involves broader operational changes. From 1 July, super is calculated on qualifying earnings rather than ordinary time earnings and must be reported through Single Touch Payroll each payday. This requires employers to update payroll systems, ensure accurate employee data, and adjust reporting processes to align with the new timing rules.

In addition, existing infrastructure may no longer be available. The Small Business Superannuation Clearing House will close on 30 June 2026, requiring affected employers to move to alternative payment solutions and ensure they can meet the accelerated processing timeframes.

To assist with these changes, the ATO provides practical guidance, tools and checklists aimed at helping employers prepare their systems, manage payment timing, and implement the new requirements in a controlled and timely way.

w https://www.ato.gov.au/businesses-and-organisations/super-for-employers/payday-super/payday-super-how-to-manage-super-during-the-changeover
w https://www.ato.gov.au/businesses-and-organisations/not-for-profit-organisations/not-for-profit-newsroom/where-quarterly-super-and-payday-super-meet

7.11 Payday Super resources

The ATO has published a series of fact sheets and checklists to assist employers in preparing for the introduction of Payday Super. These materials include guidance on key changes to the super guarantee system, the concept of qualifying earnings, and updates to SuperStream, alongside practical tools such as an employer checklist and a checklist for transitioning away from the Small Business Superannuation Clearing House.

w https://www.ato.gov.au/businesses-and-organisations/super-for-employers/payday-super/payday-super-resources

7.12 ATO payday super webinar for employers

On 21 April 2026, the ATO hosted a webinar about payday super for employers. The recording has been posted online. The webinar features Rowan Fox, Deputy Commissioner Small Business, Emma Rosenzweig, Deputy Commissioner Payday Super and small business owner Tony Sama discussing:

latest information and key Payday Super changes;
product updates that will enable employers to pay super each payday; and
steps a small business owner needs to take to prepare their business.

w https://www.ato.gov.au/businesses-and-organisations/small-business-newsroom/payday-super-breaking-down-the-basics

7.13 SuperStream updates for Payday Super

The ATO has published website guidance explaining how SuperStream is being upgraded to support the introduction of Payday Super from 1 July 2026. The guidance emphasises that most employers already use SuperStream-compliant payroll or clearing house services, but are encouraged to confirm that their current arrangements will support the enhanced requirements in sufficient time before commencement.

Under Payday Super, superannuation guarantee contributions must generally be received by the super fund within 7 business days after each payday. The upgraded SuperStream framework is intended to reduce errors, accelerate payment processing and surface issues earlier, helping employers meet the tighter timeframes.

Key enhancements include:

1. faster payments via the New Payments Platform (NPP), allowing near real-time settlement of super contributions;
2. Member Verification Requests (MVR) for new employees, enabling employers to confirm in advance that a fund can accept a contribution; and
3. more specific error messaging, improving visibility of rejected or unprocessable payments and the steps required to resolve them.

The ATO highlights the importance of accurate record-keeping, noting that correct employee, fund and payment data are critical to avoiding processing failures and demonstrating reasonable compliance efforts within Payday Super timeframes.

The guidance also notes that not all payroll providers will deliver all SuperStream upgrades at the same time. Employers are encouraged to check whether their payroll software supports NPP payments, MVR functionality and enhanced error reporting to ensure a smooth transition.

The ATO has directed employers, particularly small businesses, to tailored communication channels (including the Small Business Newsroom and subscription updates) to stay informed as implementation approaches.

w https://www.ato.gov.au/businesses-and-organisations/small-business-newsroom/payday-super-made-simpler-with-superstream

7.14 Super fund stapling

On 16 April 2026, the ATO published updated website guidance reminding employers of three key aspects of the superannuation fund stapling regime when onboarding new employees.

Super fund stapling is a rule in Australia's superannuation system that links an employee to one existing superannuation account, so that account follows them when they change jobs.

The purpose of super fund stapling is to:

1. reduce the number of multiple super accounts people accumulate over their working lives;
2. minimise erosion of retirement savings from duplicate fees and insurance premiums; and
3. make it easier for employees to keep their super consolidated as they change jobs.

Legislation introduced in the Treasury Laws Amendment (Supporting Choice in Superannuation and Other Measures) Bill 2025 changes how super products may be advertised to employees when they start a new job.

Under associated changes around advertising of super funds, there is a requirement that new employees must be shown information about their existing super fund, if they have one, alongside any other advertising of

information about alternative funds. This is intended to prevent employees from unintentionally or inadvertently opening new super accounts.

The ATO emphasises that recent legislative changes are intended to strengthen employee choice without adding to employer obligations. While superannuation software and onboarding providers are now restricted from advertising or promoting alternative super funds unless information about an employee's existing super fund is also displayed, these changes do not introduce new steps or processes for employers. Employers should ensure any payroll or onboarding provider requesting stapled super details on their behalf is appropriately authorised through ATO Access Manager.

The guidance reinforces that requesting stapled super fund details through the ATO is a key safeguard against fraud. Before releasing stapled fund information, the ATO confirms a genuine employer-employee relationship. Employers are reminded to establish this relationship early in the onboarding process, typically by lodging an STP pay event or a tax file number declaration. Accurate and complete employee details are critical, as stapled fund requests cannot be completed where information does not match ATO records. The ATO notes that, in 2024–25, a significant number of requests were rejected where no employer-employee relationship had been established.

The ATO also reports that super fund stapling continues to deliver its intended outcomes. Since its introduction in 2021, stapling has reduced the number of Australians holding multiple super accounts. ATO data shows a steady increase in consolidation, with the proportion of individuals holding a single super account rising from 76% in 2022 to 79% in 2025.

w https://www.ato.gov.au/media-centre/super-fund-stapling-3-things-every-employer-needs-to-know

7.15 ATO warning about super early release for dental treatment

The ATO and the Australian Health Practitioner Regulation Agency (**AHPRA**) have issued a joint media release warning Australians to be wary of predatory practices encouraging early access to superannuation on compassionate grounds to fund dental treatment.

The regulators express concern that some health practitioners and third parties are pressuring individuals to access superannuation early for overpriced, unnecessary or non-qualifying dental procedures. The ATO reiterates that compassionate release of superannuation is intended as a last-resort safety net and is only available in limited circumstances, such as treatment for a life-threatening illness or to alleviate acute or chronic pain or mental illness.

The release highlights a range of red flags, including:

1. advertising early access to super for dental or cosmetic procedures (particularly via social media);
2. practitioners or facilitators requesting a taxpayer's myGov login details;
3. reliance on telehealth assessments instead of in-person examinations;
4. steering patients toward more expensive treatments where cheaper effective options exist;
5. encouraging the use of super rather than other payment options (such as payment plans);
6. requiring upfront payment of full treatment costs without clear disclosure of ongoing costs; and
7. charging fees for assisting with super release applications without being a registered tax agent.

AHPRA and the Dental and Medical Boards of Australia have issued updated guidance for practitioners, emphasising that treatment recommendations must be based on clinical need rather than financial incentives. AHPRA is also trialling the use of AI to identify problematic advertising and has several investigations underway.

Between 2019 and 2025, AHPRA received 95 complaints relating to medical and dental practitioners involved in compassionate release of superannuation, most commonly concerning treatment outcomes and payment disputes. Disciplinary action has included tribunal referrals, cautions and conditions imposed on registration.

The ATO confirms it is undertaking compliance activity in this area and encourages tip-offs where inappropriate conduct is suspected, including false or misleading medical reports prepared to support compassionate release applications.

w https://www.ato.gov.au/media-centre/ato-and-ahpra-sound-alarm-on-dodgy-super-dental-offers

7.16 Tax Ombudsman review of engagement with First Nations taxpayers

The Tax Ombudsman has commenced a review into how the ATO engages with First Nations taxpayers, focusing on barriers that may limit effective participation in the tax system. The review recognises that First Nations taxpayers can face challenges such as lower digital access, limited financial literacy, difficulty obtaining identity documents, and lower levels of trust in government institutions.

The review is intended to identify both existing barriers and practical improvements that could enhance accessibility, responsiveness and cultural safety in ATO services. It will examine how the ATO supports First Nations taxpayers and those who assist them, as well as how staff are trained and resourced to manage these interactions.

The review will result in recommendations to improve how the ATO delivers services and interacts with First Nations taxpayers, with feedback open until 4 September 2026 and final outcomes expected later in 2026.

w https://taxombudsman.gov.au/reviews_reports/review-ato-engagement-with-first-nations-taxpayers/

7.17 Northern Territory 2026-27 Budget

The Northern Territory 2026-27 Budget introduces a targeted increase in payroll tax for large employers. The payroll tax rate will rise from 5.5% to 6.5% from 1 July 2026 for employers and payroll tax groups with Australia-wide wages of $100 million or more.

This higher rate applies both to entities that exceed the threshold individually and to those that are part of a payroll group whose combined wages meet the threshold. Employers below this level will continue to be taxed at the existing 5.5% rate.

w https://budget.nt.gov.au/papers

7.18 Victorian 2026-27 Budget

The Victorian 2026-27 Budget includes targeted changes to duties and payroll tax, alongside adjustments to existing concessions.

A key housing measure is the extension of the temporary land transfer duty concession for off-the-plan properties by a further six months, now applying to contracts entered into up to 21 April 2027.

For payroll tax, the Government will revise the exemption framework for non-government schools by aligning the income-per-student threshold with the Schooling Resource Standard. From 1 July 2026, schools with income per student up to $16,397 will remain exempt, with the threshold to increase annually in line with Commonwealth benchmarks.

The Budget also removes concessional duty treatment for higher-value green passenger vehicles. From 1 July 2027, these vehicles will be subject to the same motor vehicle duty rates as other vehicles above the luxury threshold.

w https://www.budget.vic.gov.au/

7.19 Western Australia 2026-27 Budget

The WA 2026-27 Budget introduces expansion of first home buyer concessions. From 7 May 2026, higher value thresholds apply, including full transfer duty exemptions for established homes up to $600,000 and vacant land up to $450,000, with concessional rates extending to higher property values.

The Budget also removes the link between first home duty concessions for vacant land and eligibility for the First Home Owner Grant, ensuring buyers can still access duty relief even if the overall project exceeds grant thresholds.

To support housing supply, a new foreign buyers duty exemption is introduced for developers who construct and sell new dwellings within two years. This applies broadly to development activities, expanding beyond existing rules that were limited to large projects.

In addition, previously announced changes to the off-the-plan concession are highlighted, including a two-year extension to 30 June 2028 and more generous thresholds and coverage for eligible developments.

w https://www.ourstatebudget.wa.gov.au/