The Big Picture & Tax Planning Basics

Zero to Mini Hero Program

19 April 2023

Lisa Greig
Principal, Perigee Advisers

Say hi in the chat!

This is an interactive event!

01 Ask us questions via Q&A

02 Banter and comments in the chat

03 Participate!

This session is being recorded.
Replays available for VIP and Team subscribers.

Welcome!

Lisa Greig

Principal, Perigee Advisers

Agenda

Questions & Answers
will be taken throughout
the session!

Looking at the 'Big Picture'

- Preparing a Group Tax Summary
- Calculating the effective tax rate for a group

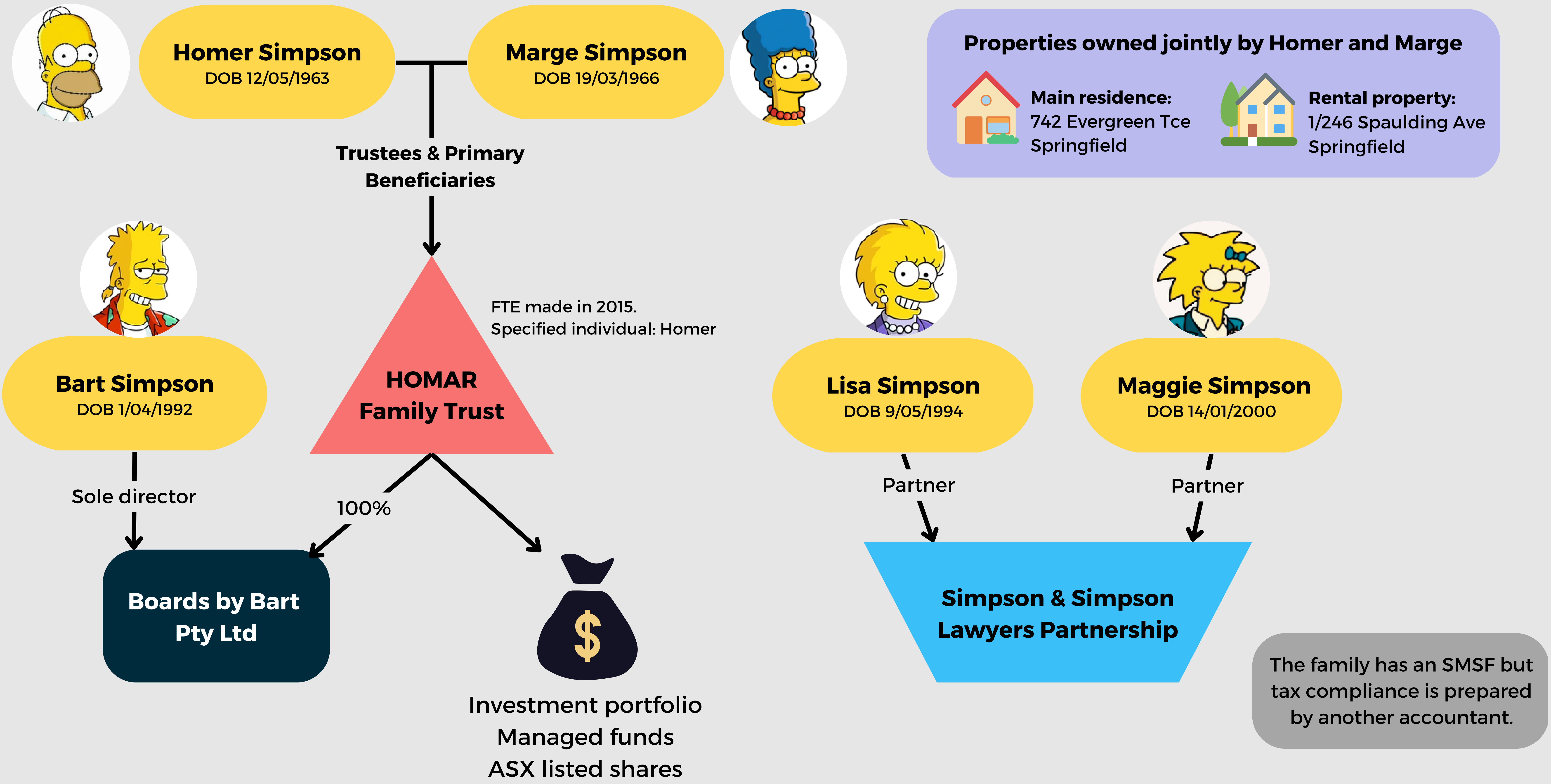
Tax Planning Basics

- What is tax planning?
- General anti-avoidance - Part IVA
- What do you need for tax planning?
- Distribution resolutions

Case Study Recap

The Simpson Family Group

Simpson Family Group Structure



Looking at the 'Big Picture'

Preparing a Group Tax Summary

At the completion of a compliance job, doing a **group tax summary** is a good idea as it shows the tax positions of the entities across the client group.

You can create one in a spreadsheet that is an amalgamation of the tax reconciliations you have prepared separately.

It is also a good resource to have when signing off the current year's accounts and tax returns with your client, and as the starting point of tax planning discussions.

If your practice doesn't have a template for a group tax summary, just preparing a basic spreadsheet will work too!

Calculating the Effective Tax Rate

The effective tax rate across the group is calculated by:

Total tax liability ÷ Total taxable income

This can be calculated on an entity or client group basis.

For individual clients, this might be a better reflection of "how much tax" they are paying on their income overall, after taking the marginal tax rates and any tax offsets into consideration.

Let's take a look at the group tax summary spreadsheet for our case study, the Simpson Family Group...

Tax Planning Basics

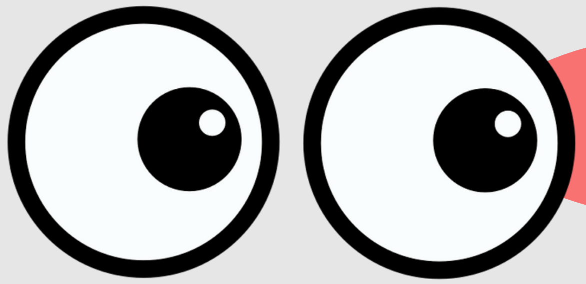
What is tax planning?

From the ATO:

You have the right to arrange your financial affairs to keep your tax to a minimum. This is often referred to as tax planning, or tax-effective investing.

Tax planning is legitimate when you do it within the intent of the law. However tax minimisation schemes that are outside the spirit of the law may attract our attention. We refer to these as tax avoidance schemes or arrangements.

A tax avoidance scheme involves the deliberate exploitation of our tax and superannuation systems. We take these schemes seriously, and will take action when they are not lawful.



So umm...
How do we know when (or if) something becomes a "tax avoidance scheme"?

General Anti-Avoidance - Part IVA

The general anti-avoidance provision is commonly referred to as Part IVA (because it is found in Part IVA of the ITAA 1936).

It focuses on blatant, artificial, or contrived arrangements that are entered into by the taxpayer, which has the sole or dominant purpose of obtaining a tax benefit (by reducing assessable income or obtaining a tax deduction).

Part IVA requires two elements:

- Was there a **scheme?**
- Did the taxpayer **obtain a tax benefit** that would not otherwise have been available?

The definition of a 'scheme' is incredibly broad, but the tax benefit **must have been obtained** in connection with the scheme. It is important to note that the ATO can identify the purported 'scheme' and can identify multiple 'schemes'.

General Anti-Avoidance - Part IVA

Part IVA outlines **eight matters** to consider whether it be objectively concluded that the sole or dominant purpose of entering into the scheme was to obtain a tax benefit. Briefly, these are:

1. **Manner** in which scheme was entered into or carried out
2. **Form and substance** of the scheme
3. **Time** at which the scheme was entered into, and length of time during which the scheme was carried out
4. **Result** achieved by the scheme if Part IVA does not apply
5. **Change in the financial position of the taxpayer** as a result of the scheme (or reasonably expected to result from the scheme)
6. **Change in the financial position** of any person who has/had any connection to the taxpayer, including family, business, or connections of other nature, as a result of the scheme (or reasonably expected to result from the scheme)
7. Any other consequences for the taxpayer or connected person
8. Nature of any connection between the taxpayer and connected person

Pro Tip!

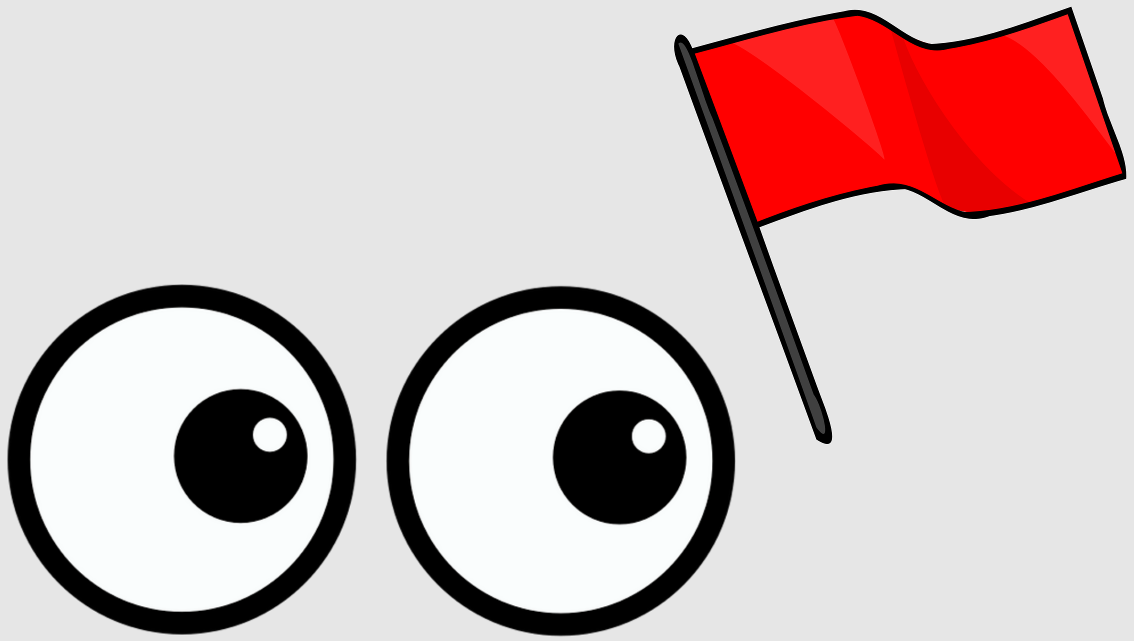
Part IVA also applies at the discretion of the ATO.

It is not a provision that is automatically applied.

The provision can also only apply to schemes that have been entered, i.e. not hypothetical situations.

Pro Tip!

Distributing purely for tax savings might be a red flag to the ATO...



What do you need for tax planning?

The best way to approach tax planning is to **KNOW YOUR CLIENT!**

To start with, you could query the following:

- For individuals: estimated income and significant deductions relating to employment
- Expected income from investments - get YTD investment reports, if available
- Estimated business profit/loss - get management reports
- Estimated rental profit/loss
- Any significant acquisitions and/or disposals - especially for CGT assets like cryptocurrency, shares, and property/real estate
- Any life milestones and changes - e.g. marriages, separations, children, minors turning 18, career changes, moving to new cities/countries, retirement
- New or proposed activities - e.g. thinking of starting a new business, new investments

Ideally, your client will also tell you many of these things during the year, so you can provide proper advice before they act!

What do you need for tax planning?

Other things you will need, especially if it's a first-time client:

- Corporate documents, such as the company constitution
- Trust deed - READ IT!
- Family trust elections - if FTE/IEE reports aren't available on the ATO Portal; ask the client for copies of the signed forms
- Distribution resolutions - the trustee(s) need to decide and document their decisions!

Other issues to consider might be:

- Does the client have any existing financing commitments that need to be serviced, e.g. they need a certain amount of income for their home loan?
- Do certain beneficiaries have special circumstances that the trustee needs to consider?
- Does a Division 7A deemed dividend need to be taken up, or a Minimum Yearly Repayment (MYR) need to be made for a prior year loan?
- Are there new Division 7A issues that will become problems in the next year, e.g. new shareholder loan has been drawn in the current year or sub-trust arrangement is ending and needs to be paid out?

Pro Tip!

Don't send a massive checklist to your clients to complete every year!

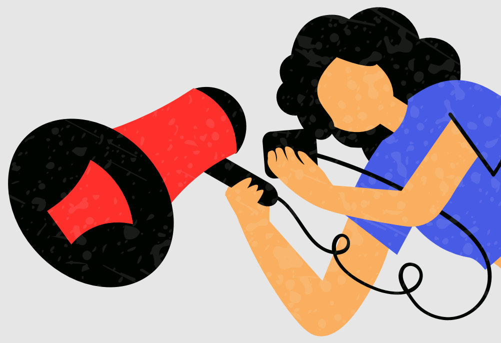
Build relationships with your clients and customise your questions.

Know what to ask, and how to ask, to get the most helpful answers.

A recap of distribution resolutions...

Distribution Resolutions

Trustees of discretionary trusts need to make resolutions if they want to make beneficiaries specifically entitled to the income.



The requirements and powers of the trustee for making a trust distribution resolution also depends on the trust deed. Remember...

READ THE DEED!

In any case, the resolutions should be documented on or before the end of the relevant financial year (30 June for most clients).

If there is no resolution:

- There is no beneficiary who becomes presently entitled to any share of the income of the trust estate, the trustee is assessed on the income, UNLESS
- There is a default beneficiary clause, in which case that default beneficiary will be presently entitled to all of the income, even if the income has been given to someone else

The ATO has a checklist for trustees making distribution resolutions.

Distribution Resolutions

Make sure you check:

- The terms of the deed
- If the beneficiary is eligible
- Whether there is a family trust election made
- There is a written record of streaming for capital gains and franked dividends
- The distribution wording should be **clear and unambiguous** as to the beneficiaries' entitlements

Other things to note:

- The ATO will accept that a resolution has been made, even if the records are created AFTER 30 June (year end) as long as the resolution has been validly made by 30 June
- You can also make interim distributions throughout the year
- Remember that resolutions sometimes do not need to be in writing...

The ATO has a checklist for trustees making distribution resolutions.

Pro Tip!

Don't just roll forward prior year's distribution resolution! Check it!

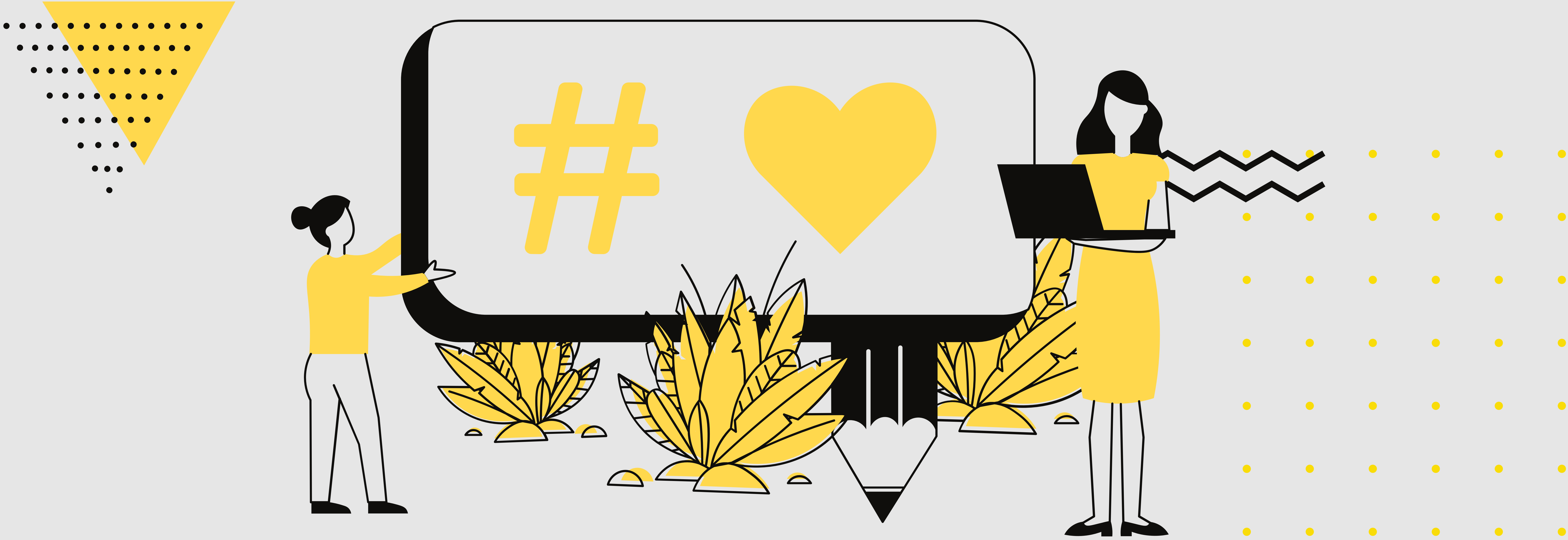
(Just like any other workpaper or document!)

We're done!

Thanks for joining the Zero to Mini Hero Program!

Q & A

How would you rate today's session?
Do you have any feedback?



THANKS!

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