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Let's chat

Mid-Year [Case] Dream – Payroll tax, land tax and trusts – September 2025

With:

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Information provided is general in nature; precise application depends on specific circumstances



Chief Commissioner of State Revenue v Uber Australia [2025] NSWCA 172

- Payroll tax case
- Whether driving (and rating) was a service supplied by drivers to Uber under the driver contracts?
 - If so, was Uber a deemed employer?
- Whether driving (and rating) was ancillary to the use of the driver's vehicles?
 - Whether an exemption applies.
- Whether payments from Uber to drivers were deemed 'wages' as they were made 'for or in relation to the performance of work?'
 - If so, wages forms part of Payroll Tax amounts
- Was Uber a payment intermediary, and not be liable for payroll tax?



Chief Commissioner of State Revenue v Uber Australia [2025] NSWCA 172

- Uber argued it was a payment facilitator
- Court determined drivers were performing a service for Uber (the transportation of riders); and accordingly, Uber derived revenue from ridesharing as it was the foundation of Uber's business
- Substance over form
- Actions over written words



Chief Commissioner of State Revenue v Uber Australia [2025] NSWCA 172

- Note a contractor exemption where services provided are ancillary to the supply of goods
- Court noted drivers' services fell within definition of 'relevant contracts'
- Rejected argument the service of driving is ancillary to the use of the car
- Agreed that driving service cannot be separate from the use of the vehicle



Chief Commissioner of State Revenue v Uber Australia [2025] NSWCA 172

- Question on whether payments to drivers were taxable wages for Payroll Tax purposes
- Primary decision noted payments were reimbursements and accepted Uber as collection agent
- Appeal overruled this interpretation as being too narrow in scope
- 'For or in relation to the performance of work' = payments made by Uber to drivers were 'in relation to 'the drivers' work of transporting riders
- Statutory interpretation of relevant contract provisions capturing gig economy models must prevail over platform-based payment mechanics



Chief Commissioner of State Revenue v Uber Australia [2025] NSWCA 172

- Back to the fundamentals:
 - Is there a relevant contract?
 - Who has performed the work?
 - Has a payment been made in relation to that work?
- Whether captured depends on terms of the contract and arrangements
- Importantly, actions of parties must also align with form of the contract



Chief Commissioner of State Revenue v Uber Australia [2025] NSWCA 172

- Is there a relevant contract where Uber derives a benefit?



Chief Commissioner of State Revenue v Uber Australia [2025] NSWCA 172

[24] Moreover, no assumption should be made that the provisions should be construed as intended only to apply to the particular types of business structures which were being used and were causing concern at the time they were introduced. And in any event, it is by no means clear that Uber's business model is very distinct from the sorts of structures which were of concern, **even if the 21st century label of “gig economy” is applied. It has some similarities**, for instance, with the Victorian Minister's second example quoted above **relating to sub-contractors who are integral to the operations of an organisation**. After all, whether or not Uber should be treated as an employer – or drivers should be treated as something akin to an employee – is a matter which has been the subject of litigation in various forums, applying various particular tests, with various results (e.g. *Uber BV v Aslam* [2021] UKSC 5; 4 All ER 209; *Rasier Operations BV v E Tū Inc* [2024] NZCA 403; [2025] 2 NZLR 150 (now on appeal to the Supreme Court)).



Chief Commissioner of State Revenue v Uber Australia [2025] NSWCA 172

[26] There was no quarrel with the primary judge's description of Uber's business as a **“rideshare system”** nor as to how the Uber system works (see from [27]-[46] of the primary judgment) and we do not propose here to repeat that account, save as may be necessary for the determination of the issues in the appeal/cross-appeal. Nor is it necessary to set out in detail the relevant contractual arrangements between Uber and the drivers (the driver contracts) (summarised by his Honour at [47]-[56]) and between Uber and riders (the rider contracts) (summarised at [57]-[59]).

[27] We do, however, note that **Uber emphasises** that the driver contracts recite that Uber's business is to provide **“lead generation services” in return for a service fee** (as recorded by his Honour at [53(1)]) and the **rider contracts** are to a similar effect; and that Uber is appointed under the driver contracts as a **“limited payment collection agent for the driver”** (as noted by the primary judge at [53(6)]) (see AT 5).



Chief Commissioner of State Revenue v Uber Australia [2025] NSWCA 172

[28] The **relevant services** that the **Chief Commissioner** ultimately contended were **supplied to Uber by the drivers** (the Chief Commissioner's position as to this having changed during the course of the objection and review process) for the purposes of s 32(1)(a) of the Payroll Tax Act were: first, **transporting riders to their destination** (driving); second, **giving feedback about riders** (rating); and third, **referring people to Uber to become drivers** (referring). **Uber, on the other hand, contended** that the driver contracts were not "relevant contracts" because: **the driving services were not provided "to" Uber (but, rather, to the riders); the rating service was not provided "under" the driver contracts and in any event was de minimis; and the referring service was provided under separate contractual arrangements from the driver contracts, and in any event was again de minimis.**



Chief Commissioner of State Revenue v Uber Australia [2025] NSWCA 172

[108] The driver contracts also govern or control the driver's performance of the driving service. For example, they include the following provisions with which the driver is required to comply when performing the driving service:

The driver agrees that the driver “alone will choose the most effective and safe manner to perform each instance of Transportation Services”. That is a promise by the driver to Uber to perform the services effectively and safely (leaving it to the driver to determine how to do so).

The driver promises to “provide the Transportation Services with due skill, care and diligence”, to “maintain high standards of professionalism, service and courtesy”, and that the driver's vehicle will be “kept in a clean and sanitary condition, and maintained in good operating condition consistent with industry safety and maintenance standards”.

The driver promises that:

unless consented to by a [rider], [the driver] may not transport or allow inside [their] vehicle individuals other than a [rider] and any individuals authorised by such [rider], during the performance of Transportation Services for such [rider]. [The driver] acknowledge[s] and agree[s] that all [riders] should be transported directly to their specified destination, as directed by the [rider], without unauthorised interruptions or stops.



Chief Commissioner of State Revenue v Uber Australia [2025] NSWCA 172

[111] In conclusion as to Issue 1, lest it be suggested that in dealing with the sub-issues sequentially, we have made the same claimed error for which the primary judge is criticised (of construing the several parts of the compound phrase separately or failing to have regard to context and purpose), **we have arrived at the conclusion that the driving service was supplied to Uber (in the sense that it was a service provided to riders from which Uber derived its service fees and on which its business financial model depends – as Uber readily accepts, see AT 22) and that it was supplied “under” the driver contracts (for the reasons given above), having considered the question of supply of services to Uber under the driver contracts in a composite way.**



Chief Commissioner of State Revenue v Uber Australia [2025] NSWCA 172

- Are the amounts collected and paid by Uber ‘for or in relation to the performance of work’?



Chief Commissioner of State Revenue v Uber Australia [2025] NSWCA 172

[363] The payments by Uber to drivers are payments related to the work performed by the drivers in transporting riders, notwithstanding that these represent part of the payments received by Uber from riders in discharge of the riders' obligation to pay for the transportation service obtained through use of the Rider App. They are calculated by reference to the driving service (e.g. duration and time of trip), less Uber's service fee, which itself is just a percentage proportion of the fare (see judgment at [41]). There is, thus, a direct relationship between the performance of work and what was payable by Uber to drivers, along with what Uber itself was entitled to retain. The fact that Uber has an obligation to drivers to account for the amounts received (less the service fee) does not change the nature of the payments as being in relation to the performance of work.



Chief Commissioner of State Revenue v Uber Australia [2025] NSWCA 172

[363] Uber argued (AT 106-107) that at least Thomas & Naaz could be distinguished because it was not apparent that the applicant in that case was merely a payment collection agent for the doctors. The Court there noted that the precise legal nature of what occurred was unclear, but it nevertheless proceeded to consider the position as if the doctors were beneficially entitled to the funds paid to the applicant (see at [7] and [61]-[64]). The claimed distinction is not made out. **In any case the claim that Uber is a mere collection agent is unpersuasive. It has a significant role in organising rides and in setting fares. Notably, Uber rides are organised through the Uber app, created and operated by it (or associated entities), by drivers selected by it. As between Uber and the driver, Uber calculates the “recommendation” fare for a ride, and it has the right to change the fare calculation, where continued use of Uber services by the driver after the change is taken to be the driver’s consent (see the example clauses quoted by the primary judge at [174]-[176]). As between Uber and the rider, Uber has a discretion to establish, remove or revise charges.**



Chief Commissioner of State Revenue v Uber Australia [2025] NSWCA 172

- Practical takeaway?
 - Non-GP clinics beware
 - Just have fees paid directly to Doctors
 - Failing that, the agreement must be structured where it cannot be said that the Doctor is performing work for a Clinic
 - Remembers, GPs now exempt in Queensland
 - Clinics should just consider restructuring payment flow of funds to reduce potential risk
- Do appreciate
 - Uber's business model included a 'driver contract' and 'rider contract'
 - Uber is known to be a ridesharing service
 - Revenue derived from ridesharing is therefore fundamental to Uber's business



Wright ATF IB Quadrant Trust v QRO – [2025] QCAT 301

- Whether land tax home exemption applied to a discretionary trust?
- Whether company was a beneficiary of the trust within the meaning of the *Land Tax Act 2010* (Qld)



Wright ATF IB Quadrant Trust v QRO – [2025] QCAT 301

- Paradise Point property held by a Discretionary Trust
- During relevant years (2021-2022 and 2022-2023) Trust made distributions to a beneficiary company
- QRO assessed property not exempt from land tax because ‘all the beneficiaries of the trust’ did not use it as a home
- Applicant objection failed
- Went to QCAT



Wright ATF IB Quadrant Trust v QRO – [2025] QCAT 301

- Applicant argued
 - Deed of Variation made in 2017 did not allow a company or trust to have any beneficial interest in the property nor benefit from any income or capital from the trust related to the property
 - Section 24 Land Tax Act does not apply because it only applies if it relates to 'taxable land'.
 - Also, section 24 Land Tax Act not intended to alter the definition of 'beneficiary' in Schedule 4 but rather to define a discretionary trust



Wright ATF IB Quadrant Trust v QRO – [2025] QCAT 301

- Regarding the definition of beneficiary:
 - Schedule 4 defines beneficiary to include a person entitled to a beneficial interest in land or income derived from that land that is subject of the trust. It also includes a *Note – See also section 24 for deciding who is a beneficiary of a discretionary trust when a liability for land tax arises*
 - Section 24 notes beneficiaries of a discretionary trust when a liability for land tax arises are the persons in whose favour a power of appointment has been exercised during the 12 month period ending when the liability arises where a discretionary trust means a trust over property for which a person has a power of appointment
- The Applicant's arguments rejected as section 24 applies in the case of a discretionary trust



Wright ATF IB Quadrant Trust v QRO – [2025] QCAT 301

- Regarding the Deed of Variation:
 - The effect of the Deed of Variation was merely to preclude the Company from having a beneficial interest in the Property, but it did not prevent the Company from receiving distributions from the trust derived from other trust assets
- As the Company received distributions from the trust in relevant years and, accordingly, was a person in whose favour a power of appointment was exercised in the relevant years – the Company was a beneficiary



Wright ATF IB Quadrant Trust v QRO – [2025] QCAT 301

- A case of trying to be ‘cute’
- A case where the most logical interpretation is what it should be
- Advising on land tax without reading the legislation?
- Buying the home via a trust?
 - Clean entity
 - Care if other investments made through the trust
 - Data-matching between authorities



Trustee for Goldenville Family Trust v FCT – [2025] ATA 1355

- Were trust resolutions made valid?
- Wife sole director of Trustee Company
- Husband undertook dealings of Trust and considered as a 'shadow director'
- Minutes of director meetings purportedly showed on 30 June each year that resolution made to distribute interest income of the Trust to a non-resident beneficiary (Husband's sister)
 - Interest income in excess of \$7m over 3 income years



Trustee for Goldenville Family Trust v FCT – [2025] ATA 1355

- Evidence found minutes prepared after 30 June and there was no meeting between the Wife (Director) and Husband (Shadow Director) before the end of the year
- Failed resolutions meant that the default beneficiaries were entitled in equal shares
- Separate note that Tribunal not satisfied Trust made loans that would generate interest return (not a key issue in this situation)



Trustee for Goldenville Family Trust v FCT – [2025] ATA 1355

- Comments regarding Husband evidence:
 - Limited spoken English, unable to read or write in English
 - Evidence hard to accept including how he came to give large sums of money as 'loans'
 - In cross-examination, witness could not recall what he said in witness statement and whether it was correct about important details (including who approached who for money)
 - Lack of contemporaneous record
- Comments regarding Wife's evidence:
 - Does not speak, read or write English
 - Entirely reliant on husband and made no independent decisions herself
 - Evidence contradictory to other witnesses comments made to ATO in earlier interviews
 - Evidence likely a product of great preparation rather than her own recollection



Trustee for Goldenville Family Trust v FCT – [2025] ATA 1355

- Comments regarding evidence of Borrower of funds:
 - Speaks limited English
 - Not considered a reliable historian of arrangements entered into between Borrower and Husband
 - Evidence differs from Husband
 - Accounting documents do not support proposition that Trust lent funds; they showed loans from Husband personally
 - Documents not form and could have been prepared for the purposes of the hearing
 - Hard to accept
- Comments regarding Accountant:
 - Generally accepted as reliable and in accordance with the usual practice of taxation accountants



Trustee for Goldenville Family Trust v FCT – [2025] ATA 1355

- The Trust Deed tidbits:
 - Deed was an ACIS deed (standard case)
 - No evidence document translated into Mandarin
 - Tribunal inferred Husband and Wife have not read nor have any real understanding of the terms of the Trust deed or how it is meant to operate
 - ‘Mr Hung *[Accountant]* must have read the Deed, given the substantial extracts from it are included, **unusually**, in the resolutions which are at the heart of this matter



Trustee for Goldenville Family Trust v FCT – [2025] ATA 1355

- The validity of resolutions:
 - Question when they were made, or [**more importantly**] whether they recorded resolutions made prior to 30 June each year
 - Note following from Wife (named director):
 - INTERPRETER: Meaning I asked my husband to deal with the money because I don't know how to do it. Every year, my husband deals with the money. I **authorised my husband to do whatever he – seemed was – he thought was right to do.**
 - Tribunal finds it hard that Wife and Husband therefore had meetings prior to 30 June each any relevant year
 - Wife noted she could not use a computer and did not read the mail
 - Husband stated any discussions were made prior to 30 June which lead to this exchange regarding the potential income of the Trust:
 - MS GATLAND: Are you saying that you estimated a figure and came to \$2.79 million before 30 June 2015?
 - INTERPRETER: Yes



Trustee for Goldenville Family Trust v FCT – [2025] ATA 1355

- The validity of resolutions:
 - Exchange was not noted in Husband's witness statement, nor did he mention 'estimating' the figure of \$2.79m prior to the relevant distribution year
 - Tribunal found it hard to accept that the estimate figure happened to match the figure in the finalised income tax return prepared by the Accountant after having an opportunity to review all transactions
 - Signatures on resolutions also differed without explanation
 - Timing also disputed despite Wife claiming signing before 30 June:
 - Accountant:
 - *I helped the clients to prepare the Trust Resolutions in each of the relevant years and made the Resolution 30 June in each of the relevant **years because the client advised me that the meeting in each of the relevant years took place on 30 June.** Before 2022 when the ATO changed its practice, all Minutes of Resolution were prepared based on records of the client and based on instructions from the client as to distributions having been made as at 30 June in each year*



Trustee for Goldenville Family Trust v FCT – [2025] ATA 1355

- The validity of resolutions:
 - Husband evidence that he contacted accountant **before 30 June** each year
 - Included words interpreted as: 'And I said to my accountant, 'I want 2.79 million paid to my eldest sister and the rest I paid to my wife.'
 - Above related to 2015 income year
 - Similar exercise for other income years



Caldwell & Caldwell – **[2025] FedCFamCiF 506**

- Relationship breakdown
- Family trusts and separation
- When are trust assets a financial resource v property of a marriage
- Detailed analysis as to history, source of funds and terms/purpose of the trust



Caldwell & Caldwell – **[2025] FedCFamCiF 506**

[217] Whether trust assets are property of a husband and/or wife within the meaning of s depends on the circumstances of case. In particular, it may depend on the **terms of any trust deed, the purpose of the trust, the origin of the trust assets, whether a spouse party has control of the trust, whether that party has the power to distribute capital to one or other of the spouse-parties, the history of any dealings of trust property, and whether but for the trust, the property would unquestionably be the property of the spouse-party or spouse-parties.** However, without the control of the trustee, whether direct or indirect, and a power to benefit by distributions one or other of the spouse-parties, there is little prospect, if any, of successfully arguing the trust assets are property for the purposes of s 79.



Caldwell & Caldwell – **[2025] FedCFamCiF 506**

- Kennon v Spry raised
- Distinguished however as the Caldwell family have been in business for over four generations and the assets of the trust are a product of that growth over the generations
- Accepted assets of the trust not a result of husband or wife contributions
- Not a case of husband exercising control over trusts utilised for the benefit of the husband and his family (he has not received distributions from the trust during the marriage or since separation)
- Recital B stating trust created *‘to ensure that sound financial provision is made for certain members of the family and for the operation and administration’* of the family business



Caldwell & Caldwell – **[2025] FedCFamCiF 506**

- Beneficiaries drafted to be lineal descendants
- Exclusion provisions inserted to exclude non lineal descendants
- Husband holds power to change those in control of the trustee, but his duties are to be exercised in good faith and in accordance with the purposes of the trust and to give real and genuine consideration to the interests of all potential beneficiaries
- **[233] If the husband exercised his powers for the purpose of benefiting the wife whether directly or indirectly, even if not the dominant purpose, he would be in breach of the proper purpose rule. To do so would diminish the trusts' assets and while no potential beneficiary has a legal or equitable interest in the trusts' assets, they each have a right to due consideration as an object of benefaction and a right to due administration of the trusts, and to enforce those rights**



Caldwell & Caldwell – **[2025] FedCFamCiF 506**

- Conclusion of case outlines reasons why trust not property of the marriage
- Goes for 1.5 pages



Williams v Robba [2025] QSC 203

- Self-managed superannuation fund
- Payout of death benefit of deceased
- Trustee has absolute discretion to pay out residual death benefits to one or more of a member's dependants
- Only potential recipients are four children and second wife of deceased
- Paid 50% (less \$750) to second wife and balance for one of the children (Peter)
- Note Trustees (Paul and Mark) were also children of deceased
- There was a fourth child - Louise



Williams v Robba [2025] QSC 203

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- Trustee has absolute discretion to pay out residual death benefits to one or more of a member's dependants
- Only potential recipients are four children and second wife of deceased
- Paid 50% (less \$750) to second wife and balance for one of the children (Peter)
- Note Trustees were not related to deceased
- Paul and Mark (children of deceased) disputed Trustee decision
- There was a fourth child - Louise



Williams v Robba [2025] QSC 203

- Trustees sought information of potential beneficiaries' circumstances
- Various emails to dependants to consider
- Note Peter had health issues and was entirely dependent on NDIS and family support
- Mark and Paul made relevant issues known to Trustees
- Also made alleged disentitling conduct known to Trustees of the second wife (illegally withdrawing money from the Fund for her own benefit)
- Mark and Paul sought 'at least 95% of all available benefits, if not 100% of all available benefits, be accorded to Mr Peter Williams'



Williams v Robba [2025] QSC 203

- Limbs which a Court will be permitted to review an exercise of a trustee's absolutely discretionary power:
 - If the discretion was not exercised in good faith
 - If the discretion was not exercised upon real and genuine consideration
 - If the exercise was not in accordance with the purposes for which the discretion was conferred
 - If the trustee chose to state their reasons for the exercise of the discretion
- Question was whether second limb required reviewing
- Court noted investigations were made by the Trustee
- Not for the Court to determine whether the inquiries made were sufficient or what supplementary inquiries they could or should have made
- 'Not require the Trustee to ask every single question that may be relevant'

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