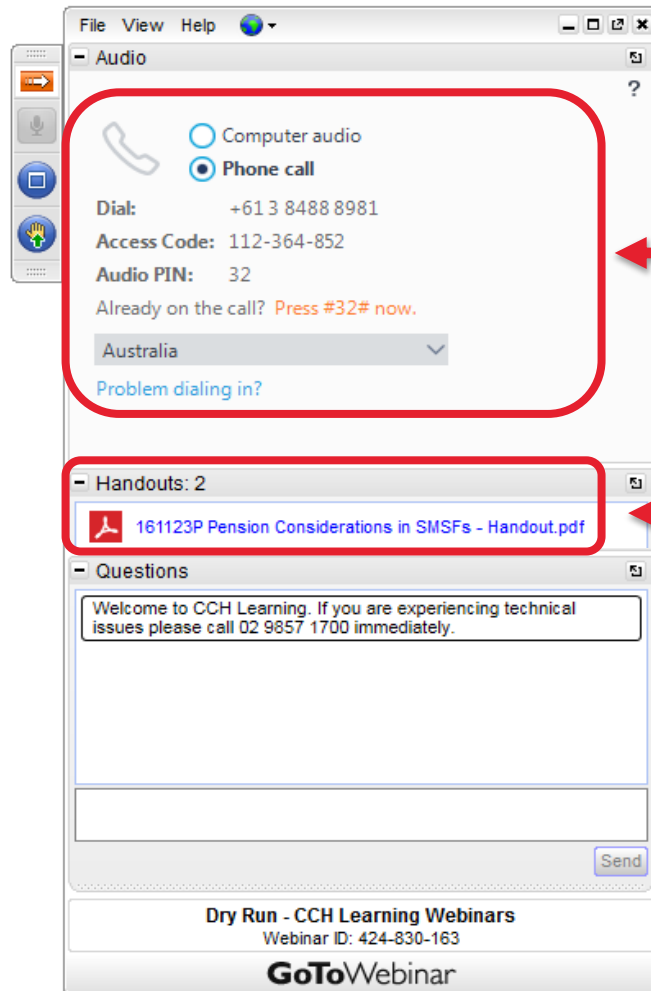

Tax Technical Update – April 2024

Carlo Di Loreto

Tuesday 23 April 2024



How to Participate Today



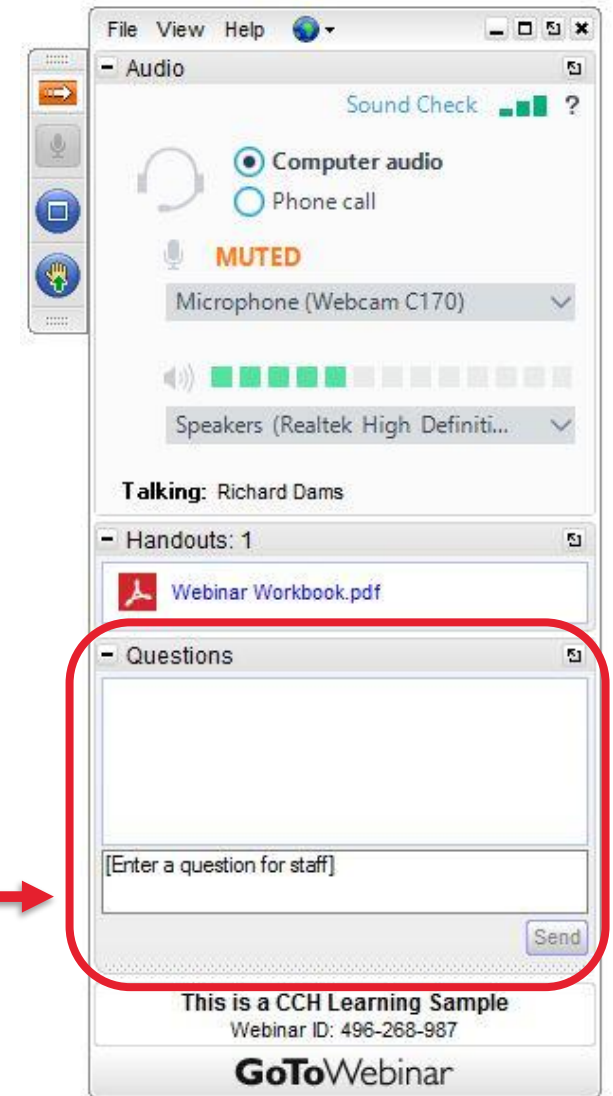
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Alison Wood
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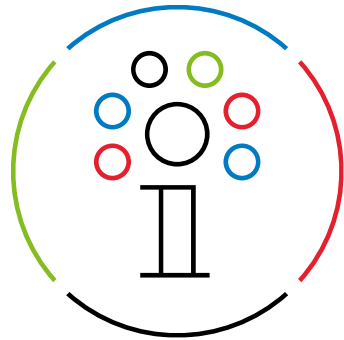
Your Presenter



Carlo Di Loreto

Partner - Tax Advisory
Crowe Australasia, an affiliate of Findex

Today's session will cover



April Tax Update

- Federal Parliament update
- Bills update
- ATO and Government Announcements
- ATO Rulings
- Cases



Federal Parliament & Bills Update

Federal Parliament Update

Sitting Days 2024

Sitting Days First Half 2024	Sitting Days Second Half 2024
January – No sitting days	July – 4 House; 4 Senate
February – 11 House; 8 Senate	August – 8 House; 8 Senate
March – 8 House; 8 Senate	September – 4 House; 8 Senate
April – No sitting days	October – 3 House; 3 Senate
May – 6 House; 4 Senate	November – 12 House; 5 Senate
June – 8 House; 5 Senate	December – No sitting days

Treasury Laws Amendment (Making Multinationals Pay Their Fair Share—Integrity and Transparency) Bill 2023

- Received *Royal Assent 8 April 2024*
- Contains 2022–23 October Budget measures to implement thin capitalisation reforms and to introduce a new public tax disclosure requirement on multinational groups
- New rules on the disclosure of information about *subsidiaries by Australian public companies* in their annual financial reports
 - The requirements will apply to annual reports for financial years that commence on or after 1 July 2023
- *Thin capitalisation* applicable to income years commencing on or after 1 July 2023
 - replace the existing asset-based tests (safe harbour test and worldwide gearing test) with new earnings-based tests (a fixed ratio test and a group ratio test) for a new single “general class” of investors

Treasury Laws Amendment (Making Multinationals Pay Their Fair Share—Integrity and Transparency) Bill 2023

- Thin capitalisation changes:
 - Will exclude authorised deposit-taking institutions who are not affected by this change and continue to be subject to the existing thin capitalisation rules
 - The *fixed ratio test* will allow an entity to claim up to 30% of earnings (tax EBITDA) as debt deductions
 - *Retain an arm's length debt test* - in the form of a third-party debt test ie only for an entity's external or third-party debt
 - Introduce *new debt deduction creation rules* which disallow deductions if considered to be incurred in relation to debt creation schemes
- Retains \$2 million exclusion threshold

Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023

- Passed by the House of Representatives
- Referred to the Senate Economics Legislation Committee for inquiry and *report by 18 April 2024*
- Changes include:
 - Expanding the operation of the promoter penalty provisions
 - Sharing of certain protected information
 - Taxation Administration Act 1953 to extend whistleblower protections to eligible whistleblowers who make disclosures to the Tax Practitioners Board (TPB)
 - Reverse the burden of proof for certain claims of protection
 - Tax Agent Services Act 2009 in relation to the TPB Register and the TPB's delegation powers

Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Bill 2024

- Introduced to the House of Representatives 27 March 2024
- *Clarify the tax treatment of “exploration”* in the Petroleum Resource Rent Tax Assessment Act 1987 (PRRTA Act) and “mining, quarrying and prospecting rights” in ITAA 1997
- Provide legal certainty for the *payment of financial adviser fees from a member’s superannuation fund account* and remove red tape that adds to the cost of financial advice with no benefit to consumers
- Strengthen the PRRTA Act anti-avoidance rules
- Changes to *Film Location Tax Offset* and *Producer Tax Offset*
- General technical and miscellaneous amendments to areas such as value shifting rules, transfer pricing rules

Paid Parental Leave Amendment (More Support for Working Families) Bill 2023

- Received *Royal Assent 20 March 2024*
- Amends the Paid Parental Leave Act 2010 to:
 - *increase the maximum period of flexible paid* parental leave by 2 weeks each year from 1 July 2024 to 26 weeks from 1 July 2026;
 - *increase the reserved period for partnered claimants* by one week each year from 1 July 2025 to 4 weeks from 1 July 2026;
 - *increase the number of days* that can be taken concurrently by multiple claimants to 4 weeks by 1 July 2025; and
 - make minor and technical amendments relating to eligibility for parental leave pay in exceptional circumstances.

Superannuation (Objective) Bill 2023

- Passed by House of Representatives 20 March 2024 and now before the Senate
- Referred to Senate Economics Legislation Committee, which reported back on 28/03/2024
- *Enshrines the objective of superannuation in legislation*
- Requires policy makers to assess future changes to superannuation legislation for compatibility with this objective
- Requires a statement of compatibility to be included in the explanatory materials accompanying bills and regulations relating to superannuation
- Bill will commence 28 days after Royal Assent

Exposure Draft Pillar Two Global Minimum Tax Rate

- Treasury has released exposure draft materials on implementation of a 15% global minimum tax and domestic minimum tax as part of the OECD/G20 Two Pillar Solution
- *Applies to multinational companies with annual global revenue of at least **EUR 750 million** (approx. A\$1.2 billion)*
- 3 draft Bills to impose tax payable under the global and domestic minimum taxes
- Establish the liability and framework for the global and domestic taxes
- Consultation paper seeking feedback on matters such as hybrid mismatch rules, CFC rules and Foreign Income Tax Offsets
- Core rules proposed to commence on 1 January 2024

Bills to establish Administrative Review Tribunal

- *Administrative Review Tribunal Bill 2024*
- *Administrative Review Tribunal (Consequential and Transitional Provisions No 1) Bill 2024*
- *Administrative Review Tribunal (Consequential and Transitional Provisions No 2) Bill 2024*
- Passed by House of Representatives with amendments:
 - strengthen requirements for merit-based appointment processes
 - insert a requirement for a statutory review of the operation of the package of Bills
 - ensure that parties to an Administrative Review Tribunal review are able to access adequate statements of reasons for a decision, and
 - provide a pathway for parties to reviews of social services decisions to seek second review of Administrative Review Tribunal decisions
- Senate Committee to report by 24 July 2024

Crimes and Other Legislation Amendment (Omnibus No 1) Bill 2024

- Bill has been introduced to the House of Representatives
- *Increase the penalty unit value* from \$313 to \$330 for offences committed on or after 1 July 2024
- Amends the Crimes Act 1914 to increase the value of the penalty unit for Commonwealth criminal offences
- Existing indexation mechanism to automatically increase the value of the penalty unit every 3 years in line with the Consumer Price Index (CPI) will continue to apply, with the next indexation to occur on 1 July 2026
- This measure was announced in the Mid-Year Economic and Fiscal Outlook for 2023–24

Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Bill 2023

- Passed by the Senate 27 March 2024
- Contains the following key measures:
 - Temporary increase to *instant asset write off threshold from \$1,000 to \$30,000* from **1 July 2023 to 30 June 2024**
 - Initially \$20,000 but increased under amendments proposed in the Senate
 - Amendments include *increase in Small Business Entity threshold to \$50 million* to access this temporary increase
 - *Small business energy incentive* – 20% bonus deduction for electrification or more efficient energy use incurred from 1 July 2023 to 30 June 2024
 - Super Fund non-arm's length expense rules
- Various other measures

Digital ID Bill 2024

- Passed by Senate on 27 March 2024 – application date to be fixed by proclamation
- Establishes an accreditation scheme for entities providing digital ID services
- Expands the Australian Government Digital ID System
- Provides for privacy safeguards and a range of governance arrangements, including establishing the Australian Competition and Consumer Commission as the Digital ID Regulator
- Expanding the role of the Information Commissioner to regulate privacy protections for digital IDs
- Allows the Commissioner of Taxation to offer accredited identity provider services and accredited attribute provider services
- A secure and voluntary way to verify who you are online against existing government-held identity documents without having to hand over any physical information

Exposure Draft Medicare levy lump sum exemption

- *Exempting lump sums payments in arrears from the Medicare levy*, Treasury website, 5 April 2024
- Proposed to apply to assessments for 2024–25 and later income years in relation to eligible lump sums accrued before, at or after commencement of the amendments
- Exempts eligible lump sum payments in arrears from the Medicare levy from 1 July 2024
- To ensure low-income taxpayers do not pay higher amounts of Medicare levy as a result of receiving an eligible lump sum payment, such as compensation for underpaid wages
- The total arrears amount must be 10% or more of the individual's normal taxable income after deduction of the total arrears amount for Medicare levy relief to apply
- The individual must also have been eligible for a reduction in Medicare levy in the 2 most recent years, or income year, to which the lump sum accrues

Exposure Draft Medicare levy lump sum exemption

- To qualify for the exemption from Medicare levy, a lump sum payment in arrears must be:
 - salary or wages that *accrued during a period of more than 12 months* before they were paid
 - salary or wages *paid to a person after re-instatement to duty* following a period of suspension, to the extent that the payment accrued during the suspension period
 - a superannuation income stream, annuity, compensation or sickness and accident payment *covered by s 12-80 or 12-120 in Sch 1 to the Taxation Administration Act 1953*
 - a Commonwealth education or training payment
 - an exempt pension, benefit, allowance or settlement payment covered by Div 52, 53 or 55 of ITAA 1997, or
 - payments under a law of a foreign country of exempt pensions, benefits, allowances and settlement amounts.

Exposure draft legislation - Build to Rent

- 2023–24 Budget measure to encourage investment and construction in the build-to-rent sector
- For eligible new build-to-rent projects where construction commences **after 7:30 pm AEST on 9 May 2023**
- Increase the rate for the capital works tax deduction from 2.5% to 4% per year
- Reduce the final withholding tax rate on eligible fund payments from *managed investment trust* investments from 30% to 15%
- Consulting on implementation details, including:
 1. whether a minimum proportion of dwellings should be offered as affordable tenancies
 2. the length of time dwellings must be retained under single ownership before being able to be sold (the announcement indicated a 10-year period).

Exposure draft legislation - Build to Rent

- Requires a minimum proportion of dwellings to be made available as affordable tenancies
 - Consultation on how this will be defined, including approached by different States
- Includes a minimum period of 15 years during which dwellings must be retained under single ownership
 - whether this period strikes the right balance between investment needs and meeting public demand for long term tenancy availability,
 - analysis of the impacts of reducing or extending this period.
- Some states and territories apply a 15-year period in relation to certain build-to-rent concessions
- Allows for sale of the property during the 15-year period provided a single entity continues to own the property

Exposure draft legislation - Build to Rent requirements

- Building must have 50 or more dwellings
- Each of the dwellings is:
 - available to the public to be tenanted by way of lease for a period of 3 years or more;
 - must be residential premises and taxable Australian real property and not commercial residential premises;
 - all the dwellings and common areas for the dwellings are owned by a single entity;
 - for 10% or more of the dwellings (the affordable dwellings) rent payable under any lease offered to the public for the dwelling is 74.9% or less of the market rate
 - each of the dwellings that is not an affordable dwelling is the same size and has the same amenities as at least one of the affordable dwellings

ATO / Government Announcements

Director ID ASIC action against director

- Australian Securities and Investments Commission (ASIC) commenced the first prosecution case against a director for *failing to comply with the obligation to have a director identification number (director ID)* in place
- Measures commenced operation on 4 April 2021 – eligible officer must have a unique director ID
- *Directors appointed prior to 1 November 2021* had until 30 November 2022 to apply
- *New directors appointed for the first time between 1 November 2021 and 4 April 2022* had 28 days from their appointment to apply
- *From 5 April 2022*, all intending new directors must apply for a director ID prior to being appointed as a director
- Maximum penalty is 60 penalty units (\$1,878)

Trust tax return form changes

- *Applies from 1 July 2024* and affects 2024 and later years tax returns
- Change to the labels in the statement of distribution section of trust tax returns:
 - Addition of *4 capital gains tax (CGT) labels* into the trust tax return statement of distribution
 - Modifying the labels in the *statement of distribution*
 - A new '*trust income schedule*' that all trust beneficiary types who receive trust income will need to lodge with their tax return
 - Addition of *new data validations* to the trust tax return form in the practitioner lodgment service
- Part of the *Modernisation of Trust Administration Systems* project - first announced in the March 2022 Budget as the 'Digitalising trust income reporting and processing' measure

Private health insurance rebate income thresholds for 2024–25

- The new income thresholds for 2024–25 are as follows:

Family Status	Base tier	Tier 1	Tier 2	Tier 3
Single	\$97,000 or less	\$97,001 - \$113,000	\$113,001 - \$151,000	\$151,001 or more
Family	\$194,000 or less	\$194,001 - \$226,000	\$226,001 - \$302,000	\$302,001 or more

- Note: The family income threshold is increased by \$1,500 for each Medicare levy surcharge dependent child after the first child.

Not for profit reporting

- Speech by Jennifer Moltisanti, Assistant Commissioner
- Reminder that 'not for profit' (NFP) organisations must lodge the *'self-review return'* for the first time *for 2024 income year*
- *Due between 1 July and 31 October 2024*
- Applies to NFPs who self-assess as exempt, not for registered charities and PBIs
- ATO will be writing to NFPs shortly (end of April and early May) and then again in July
- NFPs should:
 - review their purpose against eligibility,
 - check governing documents,
 - update authorised contacts, and
 - arrange to register for Online services for business so they can lodge their NFP self-review return

ATO Practices – notifying people about debts

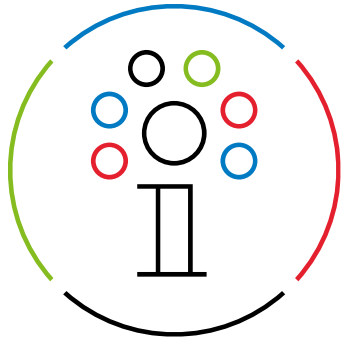
- The *best practice principles* the ATO have agreed to apply when re-raising and notifying people about older debts that have been “written off” or “paused”
 - Be transparent and accountable
 - Tell people what the debt is and where it comes from
 - Provide clear information for requesting review, debt waivers and repayment arrangements
 - Provide contacts for people to find out more information
 - Learn and improve
- *For active debts*
 - Be fully transparent with the taxpayer
 - explain the debt and where it comes from
 - provide payment options
 - continuously improve their practices

ATO Practices – notifying people about debts

- Debts are placed on hold by the ATO - where it is considered uneconomical for the ATO to pursue them
- *For debts placed on hold since 2017*
 - Does not actively seek payment of such debts
 - It is legally obliged to use credits or refunds to reduce the amount of the debts on hold
 - ATO is reviewing its approach to improve communications with taxpayers about these debts
- *Debts placed on hold before 2017*
 - ATO is also undertaking a review on its approach to debts placed on hold prior to 2017 and has paused all action (including using credits or refunds) in relation to these debts

Poll Question #1

Can an entity sell a 'build to rent' property before the 15-year time limit is reached?



- a) Yes
- b) No

FBT rates & thresholds 2024-25

Record-keeping exemption

- The exemption threshold under s 135C of the Fringe Benefits Tax Assessment Act 1986 (FBT Act) for the FBT year commencing on 1 April 2024 is \$10,334 (\$9,786 commenced 1 April 2023)

Non-remote housing factors

- The indexation factors for valuing non-remote housing under s 28 of the FBT Act for the FBT year commencing on 1 April 2024 are:

New South Wales 1.073	South Australia 1.063
Victoria 1.050	Western Australia 1.084
Queensland 1.085	Tasmania 1.022
Northern Territory 1.055	Australian Capital Territory 1.038

FBT rates & thresholds 2024-25

FBT benchmark interest rate

- The benchmark interest rate to be used for the FBT year commencing on 1 April 2024 is 8.77% per annum (7.77% commencing on 1 April 2023)
- Used to calculate the taxable value of a fringe benefit provided:
 - By way of a loan, and
 - A car fringe benefit where an employer chooses to value the benefit using the operating cost method

Electric Vehicles FBT Exemption

- ATO website update
- Conditions for exemption
 - The car is a zero or low emissions vehicle
 - The first time the car is both held and used is on or after 1 July 2022
 - The car is used by a current employee or their associates (such as family members)
 - Luxury car tax (LCT) has never been payable on the importation or sale of the car
- Zero or low emission
 - Battery electric vehicle
 - Hydrogen fuel cell electric vehicle
 - Plug-in hybrid electric vehicle (up to 31 March 2025 only)
 - Car designed to carry a load of less than 1 tonne and fewer than 9 passengers

Electric Vehicles FBT Exemption

- LCT thresholds 2023–24
 - \$89,332 (fuel efficient vehicles)
 - \$76,950 (other vehicles)
- LCT rate is 33%
- Associated car expenses are also exempt from FBT:
 - Registration
 - Insurance
 - Repairs or maintenance
 - Cost of electricity to charge electric cars
 - Fuel
- Home charging station is not a car expense – may be a property or expense payment fringe benefit

Electric Vehicles FBT Exemption

- *Private use of an electric vehicle is reportable*
- Cost of electricity – *4.2 cents per kilometre EV home charging rate under PCG 2024/2*
- Cannot include commercial charging station costs if this rate is used
- For *plug-in hybrids* – must calculate actual electricity expenses – cannot use EV home charging rate

Early access to superannuation

- Speech by Assistant Commissioner, Justin Micale to the Tax Institute Superannuation Intensive addressing *illegal early access*
- \$635 million of superannuation left the system illegally over a two-year period
 - In 2020 ATO estimates \$380 million of super was illegally withdrawn by trustees
 - In 2021 over \$255 million of super was illegally accessed
- *Prohibited loans* are another concern for ATO
 - Trustees not permitted to provide financial assistance to members and relatives or related parties where they *breach the in-house asset rules*
- SMSFs entered into over \$200 million in loans each year of ATO review
- Attitudes to super and lack of knowledge are key drivers

Early access to superannuation

- Many people who dip into their super illegally are experiencing some form of financial stress
- *ATO red flag* - where new SMSFs have received a rollover and don't lodge their first ever annual return
- Currently *16% of funds registered in 2022 have failed to lodge their first return*
- Of these, *50% or 2,500 appear to have rolled money into their SMSF*
- ATO also note existing trustees who inappropriately access their super and *stop lodging to avoid detection*
- 2022 year – approx. *14,000 funds that for the first time have failed to lodge* which have members who have not reached preservation age
- ATO also seeing existing trustees who continue to lodge but breach the operating standards and a *contravention is reported by their SMSF auditor*

Early access to superannuation

- 2022 year - almost 34% of all *reported contraventions* indicate trustees may have inappropriately accessed their retirement savings by:
 - breaching payment standards,
 - entering into prohibited loans with members and relatives, or
 - not meeting in house asset requirements.
- *ATO risk assesses all SMSF registrations* to ensure trustees are entitled to set up a fund and are not simply doing so to illegally access their super
- This program also acts as a safeguard against *identity fraud*
- Where trustees fail to meet their lodgment obligations, *ATO withhold the SMSF's complying status* on SuperFund Lookup to restrict the fund from receiving rollovers and employer contributions

ATO advice under development

- ATO is reviewing several products that provide guidance on the meaning of the term 'employee'
- To reflect High Court decision in [*Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd \[2022\] HCA 1*](#)
- Currently, there are the following rulings:
 - SGR 2005/1 Superannuation guarantee: who is an employee?
 - SGR 2005/2 Superannuation guarantee: work arranged by intermediaries
 - TR 2013/1 Income tax: the identification of 'employer' for the purposes of the short-term visit exception under the Income from Employment Article, or its equivalent, of Australia's tax treaties
 - SGR 2009/1 Superannuation guarantee: payments made to sportspersons
 - ATO ID 2014/28 Superannuation Guarantee Status of the Worker: Pizza delivery drivers as employees.

ATO advice under development

- Related products include:
 - Taxation Ruling TR 2023/4 Income tax: pay as you go withholding – who is an employee?
 - Practical Compliance Guideline PCG 2023/2 Classifying workers as employees or independent contractors – ATO compliance approach published on 6 December 2023

Disaster relief payments

- ATO website update
- Government support payment because of a natural disaster may be non-assessable, non-exempt (NANE) income
- *Cyclone Seroja 11 April 2021 recovery grant*
 - Category C grant under the Disaster Recovery Funding Arrangements 2018, it is NANE income for the 2021–22 and later income years
- *2021 Storms and floods recovery grant*
 - storms and floods that occurred in Australia between 19 February 2021 and 31 March 2021
 - Category D grant under the Disaster Recovery Funding Arrangements 2018 is NANE income for the 2020–21 and later income years

Disaster relief payments

- *2019–2020 Bushfires Relief recovery payment*
 - Australian bushfires in the 2019–20 financial year
 - bushfire relief or recovery funding from government, such as:
 - the Australian Government
 - a state or territory government
 - a municipal corporation
 - a local governing body.
 - These payments or non-cash benefits are NANE income for the 2019–20 and later income years

Disaster relief payments

- *2019 North Queensland floods recovery grants*
 - Small businesses, primary producers or non-profit organisations affected by the North Queensland monsoonal trough flooding between 25 January 2019 and 28 February 2019
 - Category C or D grant under the Disaster Recovery Funding Arrangements 2018
 - NANE income for the 2018–19 and later income years
- *2019 Restocking, replanting or farm infrastructure grants*
 - Primary producers impacted by the North Queensland flood between 25 January 2019 and 28 February 2019
 - Grants for replacing, repairing, restocking or replanting farm infrastructure, or similar
 - NANE income for the 2018–19 and later income years



ATO Rulings

PCG 2018/4 - liability of a legal personal representative of a deceased person

- Updated 10 April 2014
- Enables *legal personal representatives of less complex estates* to finalise those estates before the expiration of the relevant review (amendment) period
 - without concern that they have to fund an outstanding tax-related liability of the deceased out of their own assets
- Increases the *total market value of the assets* of a less complex estate from \$5 million to \$10 million at the date of death
- Expands the assets of the deceased person's estate to *include cash investments, home contents, and other personal assets*
- Expands the safe harbour to deceased estates that pass assets to certain tax-exempt entities
- Makes changes to the description of a “less complex” deceased estate

PCG 2018/4 - liability of a legal personal representative of a deceased person

- Less complex if all the following apply:
 - In the 4 years before the deceased person's death, the deceased:
 - did not carry on a business
 - was not assessable on a share of the net income of a discretionary trust
 - was not a member of a self-managed superannuation fund.
 - The assets of the deceased person's estate consist only of:
 - public company shares or other interests in widely held entities
 - superannuation death benefits
 - Australian real property
 - cash, cash investments and any other personal assets such as cars, jewellery, and home contents

PCG 2018/4 - liability of a legal personal representative of a deceased person

- Less complex if all the following apply:
 - The total market value of the assets of the deceased person's estate was less than \$10 million as at the date of the deceased person's death.
 - None of the assets of the deceased person's estate pass to:
 - a foreign resident
 - a trustee of a complying superannuation entity, or
 - a tax-exempt entity (*ignoring assets that are testamentary gifts of property where section 118-60 of the Income Tax Assessment Act 1997 (ITAA 1997) applies to disregard the capital gain*)

GSTR 2006/6 Draft Update

- ATO has issued a draft update to GST Ruling GSTR 2006/6
- Sets out the Commissioner's view on the meaning of the phrase *improvements on the land* for the purposes of:
 - Subdiv 38-N (grants of land by governments), and
 - Div 75 (margin scheme for supplies of freehold interests) of the GST Act
- The draft update proposes amendments to GSTR 2006/6
 - To clarify that each freehold land title is to be considered separately for the purposes of applying ss 38-445, 38-450 and 75-10(3) of the GST Act, including for long-term leases
 - To reflect the decision *FC of T v Landcom [2022] FCAFC 204*

GSTR 2006/6 Draft Update

- Whether there are *improvements on the land* is relevant: *[paras 13 & 14]*
 - in establishing whether a *supply made by the Commonwealth, a State or Territory* is GST-free under sections 38-445 and 38-450 of the GST Act, and
 - if a taxable supply of real property is made under the *margin scheme* and the margin for the supply is calculated under subsection 75-10(3)

GST Margin Scheme

- If subsection 75-10(3) applies, the margin for the supply is the difference between:
 - the consideration for the supply, and
 - an approved valuation of the real property at the relevant date specified in the table in paragraph 75-10(3)(b)

GSTR 2006/6 Draft Update

- Whether there are improvements on the land may determine which item in the table applies to the supply [\[para 15\]](#)
- In most cases the valuation date is 1 July 2000, unless GST registration is after this date

Improvements on the land [\[para 21 to 24\]](#)

- Not a defined term
- There must be some human intervention
- This intervention must be physically located on the land
- The human intervention must enhance the value of the land, the usefulness of the land, or both value and usefulness
- List of examples [\[para 25\]](#)

GSTR 2006/6 Draft Update

Supply of land with multiple titles [para 47]

- Each freehold title must be considered separately
- Example 1 considers the supply of 10 certificates of title by a State entity that is to be used as a school site
- Sale of entire school site is for a single price – but each of the 10 titles must be considered separately
- Must use a fair and reasonable method of apportioning the consideration to each of the 10 freehold interests being sold

TD 2024/1 2024-25 FBT rates for private use of vehicle

- The following rates are to be applied on a *cents per kilometre basis*
- For calculating the taxable value of a fringe benefit arising from the private use of a motor vehicle other than a car
- Applies to the fringe benefits tax (FBT) year commencing on 1 April 2024

Engine capacity	Rate per kilometre 31 March 2025	Rate per kilometre 31 March 2024
0-2500cc	66c	62c
Over 2500cc	77c	73c
Motorcycles	19c	18c

TD 2024/2 2024-25 FBT reasonable food and drinks amount

- TD 2024/2 sets out the amounts that the Commissioner considers reasonable under s 31G of the Fringe Benefits Tax Assessment Act 1986 *for food and drink expenses incurred by employees receiving a living-away-from-home allowance (LAFHA)* fringe benefit for the **FBT year commencing on 1 April 2024**
- Where the total of food and drink expenses for an employee (including eligible family members) does not exceed the amount the Commissioner considers reasonable, those *expenses do not have to be substantiated under s 31G*
- Weekly amounts that are reasonable – within Australia:

Number of adults and children	31 March 2025 Per week	31 March 2024 Per week
One adult	\$331	\$316
2 adults	\$497	\$474
3 adults	\$663	\$579

FBT determinations finalised for adequate alternative records

- Applies to **FBT years ending 31 March 2025 and onwards**
- Alternative records are required to be written in English and contain the relevant information specified in the applicable instrument

Temporary accommodation relating to relocation

- *Fringe Benefits Tax Assessment (Adequate Alternative Records – Temporary Accommodation Relating to Relocation) Determination 2024*
- Specifies records the Commissioner will accept as an alternative to an employee declaration in respect of certain *expense payment fringe benefits, housing fringe benefits or residual fringe benefits relating to temporary accommodation*
- alternative records are required to contain specified information about the employee and the nature of the temporary accommodation provided

FBT determinations finalised for adequate alternative records

Private use of vehicles other than cars

- *Fringe Benefits Tax Assessment (Adequate Alternative Records – Private Use of Vehicles Other Than Cars) Determination 2024*
- Specifies records the Commissioner will accept as an alternative to an employee declaration in respect of a *residual fringe benefit* in relation to the *private use of a motor vehicle other than a car*
- Alternative records are required to contain specified information about the vehicle and kilometres travelled

FBT determinations finalised for adequate alternative records

Fly-in fly-out and drive-in drive-out employees

- *Fringe Benefits Tax Assessment (Adequate Alternative Records – Fly-in Fly-out and Drive-in Drive-out Employees) Determination 2024*
- Specifies records the Commissioner will accept as an alternative to an employee declaration in respect of *living-away-from-home allowance fringe benefits, exempt accommodation expense payment benefits or exempt residual benefits* consisting of the use of a unit of accommodation relating to fly-in fly-out and/or drive-in drive-out arrangements
- Alternative records are required to contain specified information about the employee and the fly-in fly-out and/or drive-in drive-out arrangement

FBT determinations finalised for adequate alternative records

Car travel to employment interview or selection test

- *Fringe Benefits Tax Assessment (Adequate Alternative Records – Car Travel to Employment Interview or Selection Test) Determination 2024*
- Specifies records the Commissioner will accept as an alternative to an employee declaration in respect of *expense payment fringe benefits* relating to *employment interview or selection tests* in relation to the employee's employment
- Alternative records are required to contain specified information about the employee and travel details

FBT determinations finalised for adequate alternative records

Car travel to certain work-related activities

- *Fringe Benefits Tax Assessment (Adequate Alternative Records – Car Travel to Certain Work-Related Activities) Determination 2024*
- Specifies records the Commissioner will accept as an alternative to an employee declaration in respect of *expense payment fringe benefits relating to certain work-related activities*.
- Alternative records are required to contain specified information about the employee and travel details.

FBT determinations finalised for adequate alternative records

Relocation transport reimbursed on cents per kilometre basis

- *Fringe Benefits Tax Assessment (Adequate Alternative Records – Relocation Transport) Determination 2024*
- Specifies records the Commissioner will accept as an alternative to an employee declaration in respect of *expense payment fringe benefits* relating to reimbursement of eligible relocation transport expenses *calculated on a cents per kilometre basis*
- Alternative records are required to contain specified information about the recipient of the benefit and travel details

FBT determinations finalised for adequate alternative records

Overseas employment holiday transport reimbursed on cents per kilometre basis

- *Fringe Benefits Tax Assessment (Adequate Alternative Records – Overseas Employment Holiday Transport) Determination 2024*
- Specifies records the Commissioner will accept as an alternative to an employee declaration in respect of *expense payment fringe benefits relating to eligible overseas employment holiday transport reimbursed on a cents per kilometre basis*
- Alternative records are required to contain specified information about the employee who received the benefit, the number of family members who travelled in the car and other travel details

FBT determinations finalised for adequate alternative records

Travel Diaries

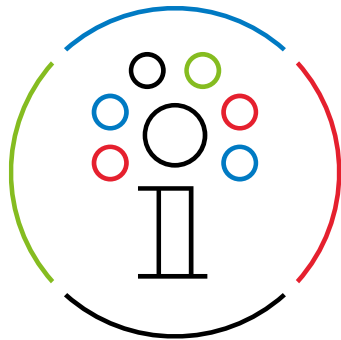
- *Fringe Benefits Tax Assessment (Adequate Alternative Records – Travel Diaries) Determination 2024*
- specifies records the Commissioner will accept as *an alternative to a "travel diary"* (as defined in s 136(1) of the FBTA)
- Alternative records are required to contain *specified information about the employee who received the benefit, duration of travel and activities undertaken* in the course of producing their assessable income while travelling
- Does not apply to international aircrew expense payment, property or residual benefits

FBT determinations finalised for adequate alternative records

Living-away-from-home benefits

- *Fringe Benefits Tax Assessment (Adequate Alternative Records – Living-Away-From-Home – Maintaining an Australian Home) Determination 2024*
- Specifies records the Commissioner will accept as an alternative to an employee declaration in certain circumstances *where an employee is required to live away from where they usually reside in Australia and maintains a home in Australia*
- Alternative records are required to contain specified information about the employee who received the benefit, their usual place of residence in Australia and details about the circumstances in which they were required to live away from their usual place of residence.

Poll Question #2



Which of the following expenses is not exempt from FBT under the electric vehicle FBT exemption?

- a) Insurance
- b) Repairs
- c) Home charger
- d) Fuel
- e) Electricity



Cases

Bechtel Australia Pty Ltd v FC of T [2024] FCAFC 33

Overview

- Considered the deductibility of travel expenses for FIFO employee
- Full Federal Court found that the costs would not have been deductible under s 8-1 of ITAA 1997 if incurred personally by the employees
- Costs were not “*otherwise deductible*” for the purposes of s 52(1) of FBTAA

Facts

- Bechtel engaged in project to perform engineering, procurement and construction (EPC) contracts for liquefied natural gas projects on Curtis Island (located near Gladstone in Queensland)
- Commenced during the FBT year ended 31 March 2010

Bechtel Australia Pty Ltd v FC of T [2024] FCAFC 33

Facts (cont)

- Bechtel compelled to recruit its additionally required workforce on a “*Fly In Fly Out*” (FIFO) basis
- Constructed, maintained and operated temporary accommodation on Curtis Island for FIFO employees
- FIFO employees travelled from their respective point-of-origin airports to Gladstone to undertake duties at Curtis Island
- Travel from a FIFO employee’s point-of-origin airport to Curtis Island and back was organised and paid for by Bechtel
- FIFO employees made their own arrangements in relation to travel to (or from) their residence to (or from) that point-of-origin airport
- Paid a “*project allowance*” in recognition of the inconvenience of having to work on Curtis Island

Bechtel Australia Pty Ltd v FC of T [2024] FCAFC 33

Facts (cont)

- The air travel expenses incurred by Bechtel in respect of field non-manual FIFO employees who could not be accommodated on the mainland in or near Gladstone were included in FBT assessments for the FBT years ended 31 March 2012 to 31 March 2019 (inclusive) as being the taxable value of the residual fringe benefits

Issue

- Bechtel accepted that the travel expenses were residual fringe benefits
- Objected to the assessments on the basis that the taxable value should be reduced to nil because the expenses satisfied the “*otherwise deductible*” test under s 52(1) of the FBTA

Bechtel Australia Pty Ltd v FC of T [2024] FCAFC 33

Decision

- Appeal dismissed
- Distinction between:
 - expenditure on travel that was a prerequisite to the earning of income, and
 - expenditure on travel incurred in or in the course of producing such income
- Found that the earning of the employees' income occurred at Curtis Island
- Primary judge did not err in concluding that the employees did not commence to perform employment duties prior to arrival at Curtis Island
- The travel to and from Curtis Island, and to and from Gladstone, *did not occur in the course of gaining or producing assessable income*
- Costs would not have been deductible under section 8-1 ITAA 1997

Konebada Pty Ltd ATF William Lewski Family Trust v FC of T [2024] FCAFC 42

Overview

- Full Federal Court has dismissed the t/p's appeal
- T/p *not entitled to input tax credits for acquisitions of legal services* that were not made in carrying on an enterprise.

Facts

- T/p paid invoices rendered by lawyers acting on behalf of individual beneficiaries and certain related entities – part of a complex Litigation Funding arrangement
- T/p claimed input tax credits in respect of the payment of those invoices
- An individual who controlled the appellant instructed and received advice from lawyers
- T/p's BASs showed no taxable supplies made in most tax periods

Konebada Pty Ltd ATF William Lewski Family Trust v FC of T [2024] FCAFC 42

Issue

- Whether the individual engaged the lawyers on behalf of the t/p
- Whether the scope of t/p's enterprise included acquisition of legal services provided to beneficiaries of family trust and family group companies
- Whether the t/p acquired *taxable supplies*
- Whether the acquisitions *were made in carrying on an enterprise* for a *creditable purpose*

Decision

- The previous court agreed that the t/p acquired taxable supplies
- The appeal court then focussed on whether the acquisitions were made for a '*creditable purpose*'

Konebada Pty Ltd ATF William Lewski Family Trust v FC of T [2024] FCAFC 42

Decision

- Creditable purpose means:
 - *to the extent that you acquire it in carrying on your enterprise*
- An *'enterprise'* is:
 - an activity, or series of activities, done in the form of a business or in the form of an adventure or concern in the nature of trade [s11-15(1) GST Act]
 - there are other aspects of the definition, but these were not relevant for this case
- The court did not accept that the key individual of the t/p undertook various actions and activities on behalf of the t/p
- The court was critical of the quality of the evidence provided by the key individual
- No evidence that acquisitions made in the course of an enterprise

Quy v FC of T [2024] AATA 245

Overview

- The t/p has *appealed to the Federal Court* against the decision in *Quy v FC of T [2024] AATA 245*
- Found to be an Australian resident under ‘ordinary concepts’ test and ‘domicile’ test

Facts

- T/p worked in Dubai for 5 years on an international posting
- Maintained multiple vehicle registrations and private health insurance in Australia
- Lack of social connections in Dubai
- T/p’s spouse did not relocate – continued to reside in family home
- T/p stayed in family home on return visits

Mylan Australia Holding Pty Ltd v FC of T [2024] FCA 253

Overview

- Federal Court allowed t/p's appeal against ATO's Part IVA determinations
- ATO disallowed deductions and carry forward losses in relation to the acquisition of a global pharmaceutical business
- The t/p obtained a tax benefit, but did not have dominant purpose of obtaining the benefit as required under s177D of ITAA 1936

Facts

- Mylan pharmaceutical group (US headquartered) entered into share purchase agreement (SPA) with Merck (Netherlands) to acquire five Merck group companies for USD\$7 billion
- SPA allowed Mylan to substitute an affiliate entity to acquire the shares in target entities, including Alphapharm

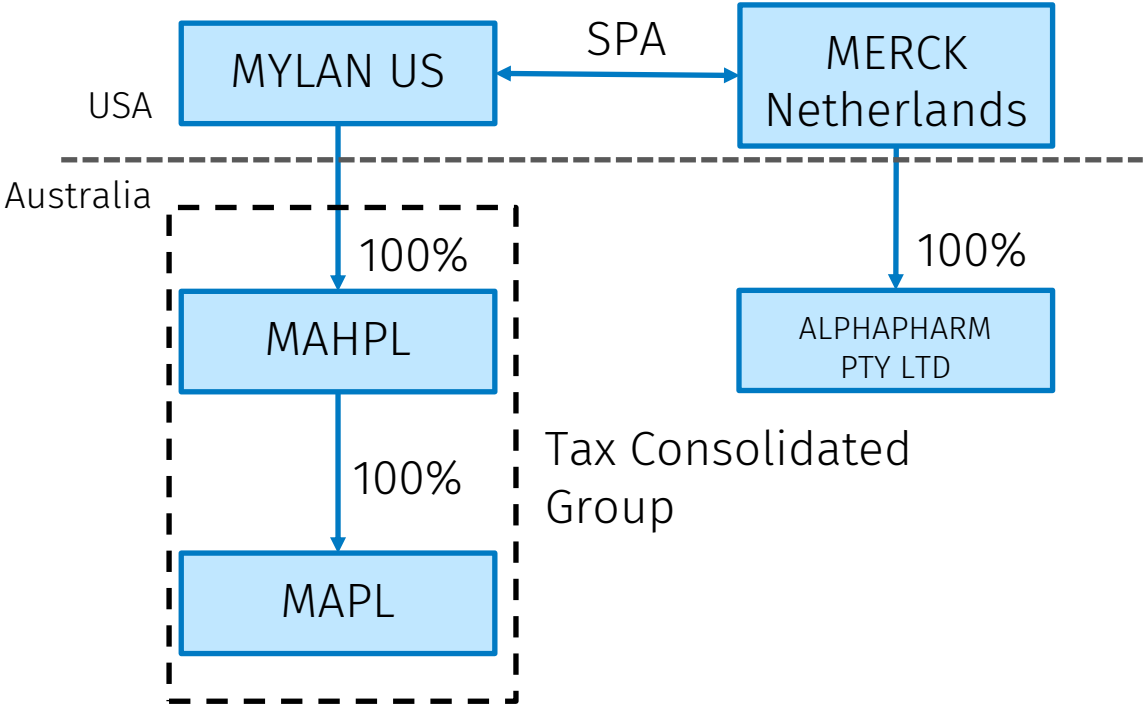
Mylan Australia Holding Pty Ltd v FC of T [2024] FCA 253

Facts

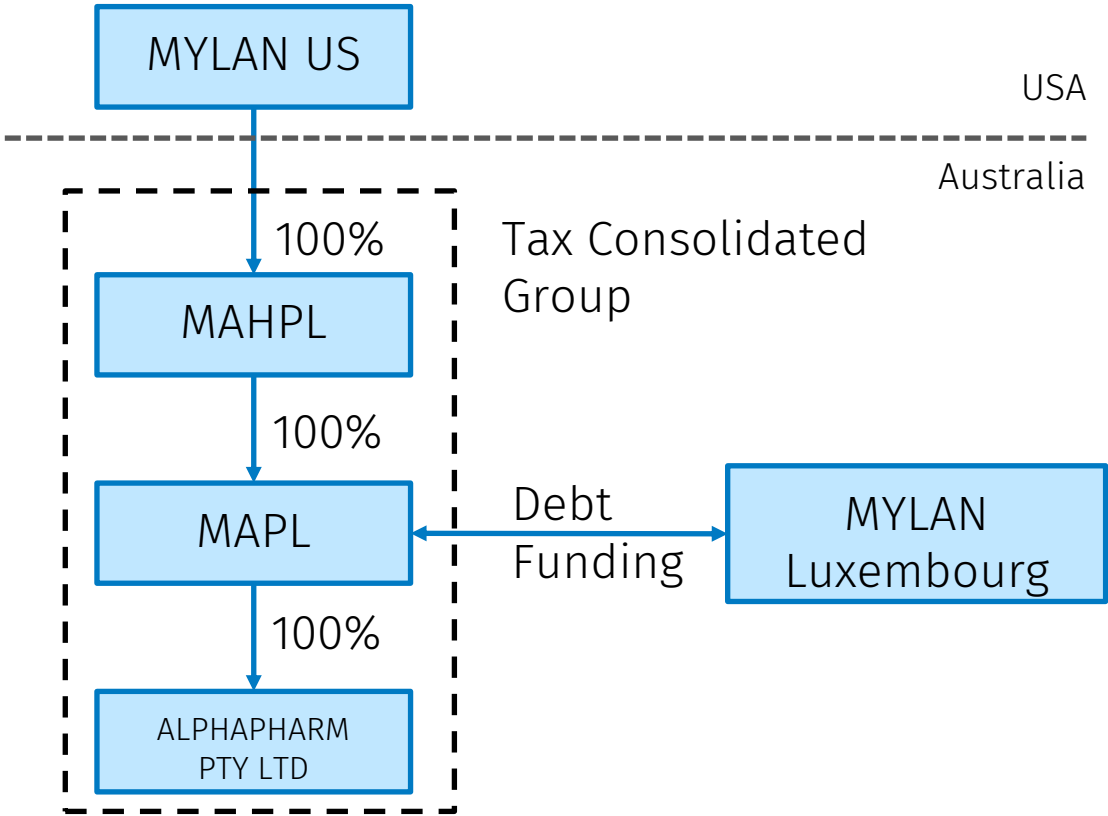
- After receiving tax advice, Mylan incorporated an Australian holding company (MAHPL), with a wholly owned Australian subsidiary company (MAPL) - tax consolidation election made
- MAPL then substituted in SPA as acquirer of shares in Alphapharm and acquired all of the shares in October 2007
- Australian entities used combination of equity and related party debt (up to thin capitalisation 'safe harbour' amount at the time) to fund acquisition
- The debt comprised an AUD loan from Mylan subsidiary in Luxembourg at a 10.15% fixed rate of interest - originally floating rate, but fixed with retrospective effect

Mylan Australia Holding Pty Ltd v FC of T [2024] FCA 253

Step 1: Incorporate Aust Structure

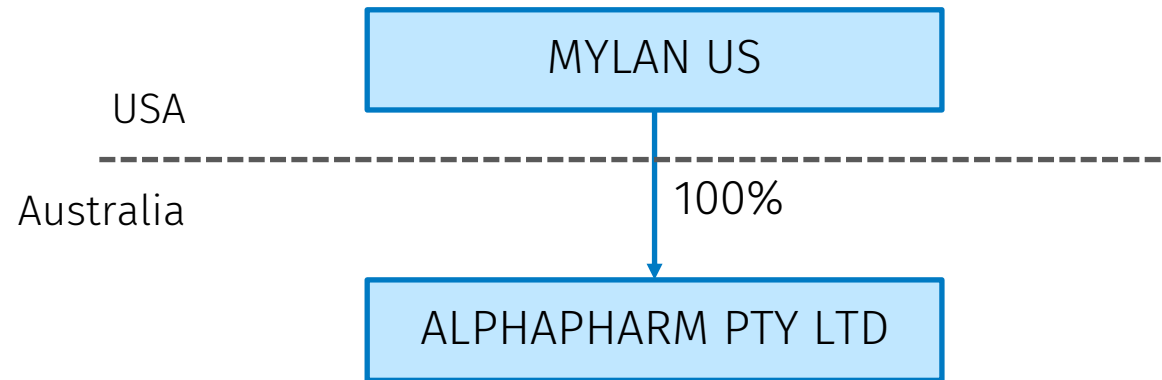


Step 2: Nominate MAPL to acquire ALPHAPHARM



Mylan Australia Holding Pty Ltd v FC of T [2024] FCA 253

Alternative: MYLAN US acquires shares



Mylan Australia Holding Pty Ltd v FC of T [2024] FCA 253

Issues

- ATO applied Part IVA to the arrangement and issued amended assessments to MAHPL disallowing \$589 million in interest deductions
- ATO identified a 'wider' scheme:
 - Incorporate Australian subsidiaries
 - Amend SPA to have MAPL acquire shares in Alphapharm
 - Issue of the related party debt
- Counterfactual to 'wider scheme'
 - MAPL not incorporated
 - Alphapharm acquired by other Mylan group company with no pushdown of debt into Australia

Mylan Australia Holding Pty Ltd v FC of T [2024] FCA 253

- Narrower scheme
 - Australian entities incorporated
 - Issue of related party debt at high interest rate
 - Relaxed principal repayment schedule, capitalisation of interest and refinancing of related party debt
- Counterfactual to narrower scheme
 - MAPL borrows a lesser amount at lower variable interest rate
 - Terms of loan (including principal repayment schedule) equivalent with Mylan's external borrowing for global acquisition

Mylan Australia Holding Pty Ltd v FC of T [2024] FCA 253

Decision

- There was a tax benefit – difference between the deductions MAHPL claimed and deductions it would have claimed under the counterfactual
- ATO's counterfactual that no debt pushdown into Australia at all was rejected
- After considering the 8 factors in subsec 177D(b) ITAA 1936 – no conclusion that Mylan or any other entity entered into the scheme in order to enable MAHPL to obtain a tax benefit
- Part IVA did not apply to deny any part of the interest deductions

Mylan Australia Holding Pty Ltd v FC of T [2024] FCA 253

Decision

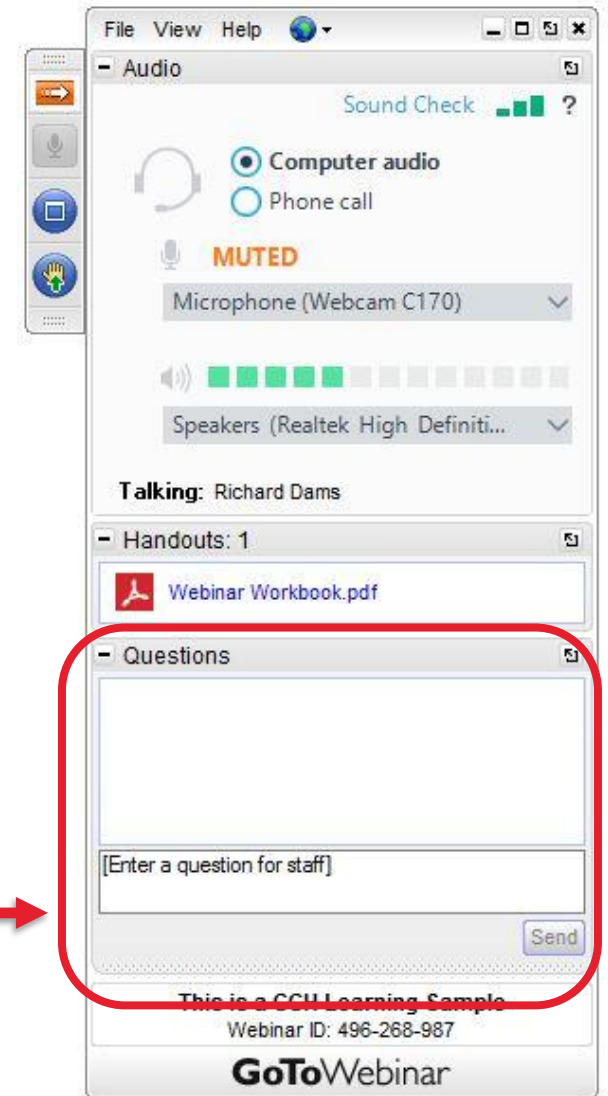
- The following matters did not support ‘dominant purpose’:
 - Incorporation of MAPL and MAHPL and election to consolidate
 - Structuring of transaction and changes to SPA
 - Quantum of debt and debt/equity ratio
 - Fixed rate of interest on related party borrowing
 - Flexible borrowing terms
 - Availability of alternative means of repatriating cash from Australia
- Tax motivation must objectively be the ruling or most influential purpose
- Choosing between alternative transactions based on tax outcomes is not necessarily sufficient to trigger Part IVA

Questions?

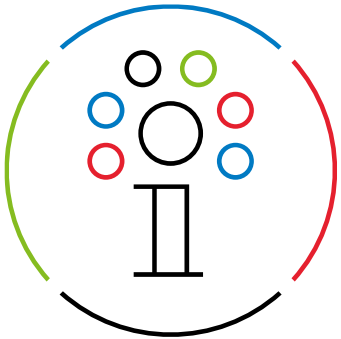


Alison Wood
CCH Learning Moderator

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Questions?



You can type them in the “Questions” box now,
Or contact me via:

Carlo Di Loreto

Partner - Tax Advisory

Crowe Australasia, an affiliate of Findex

carlo.diloreto@crowe.com.au

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