

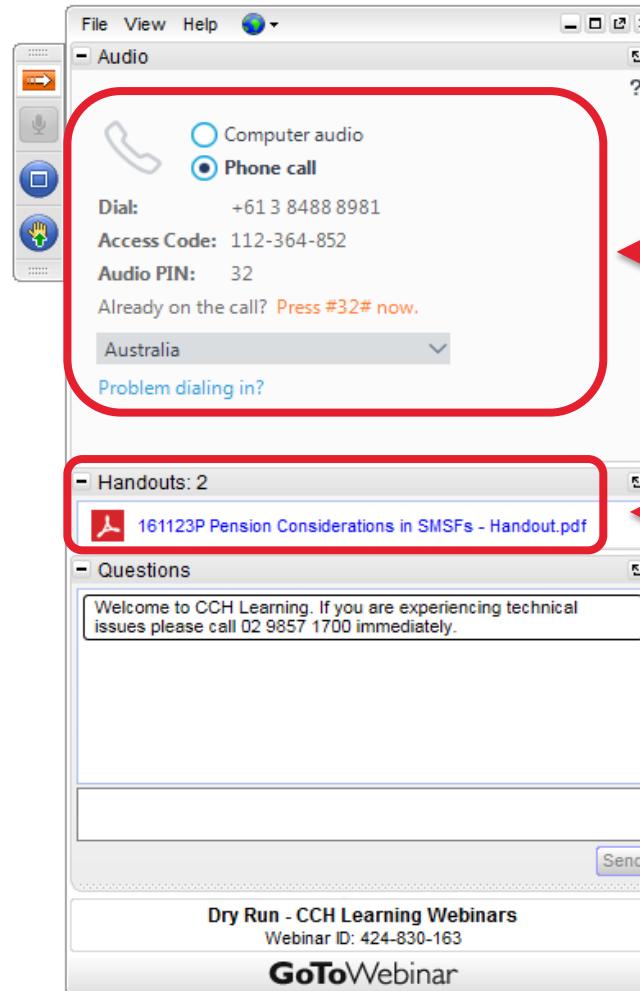
Tax Technical Update – April 2025

Carlo Di Loreto

Tuesday, 29 April 2025



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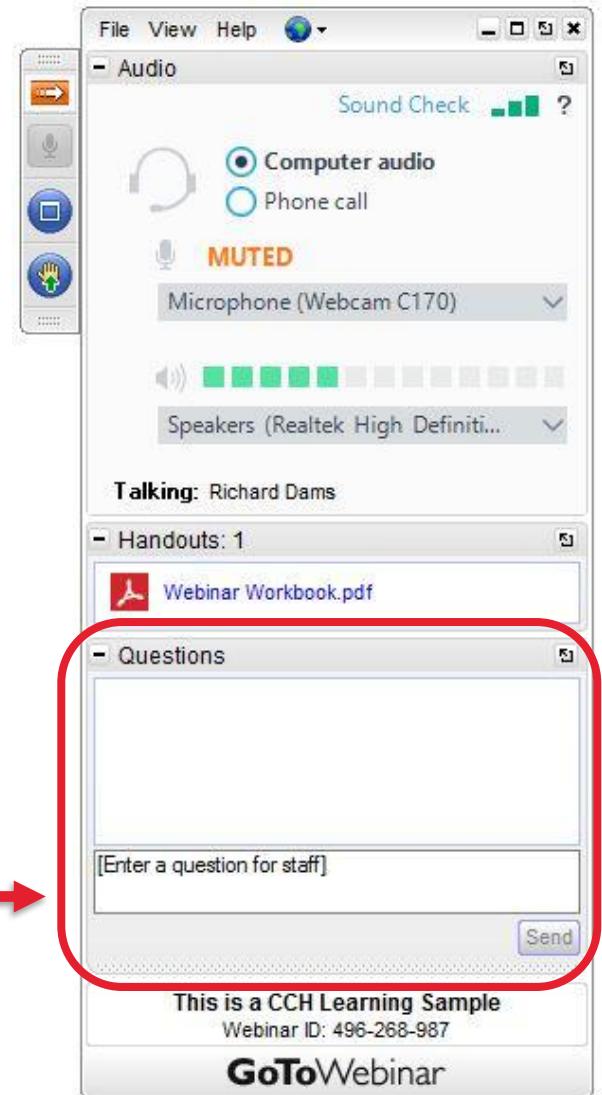


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Alison Wood
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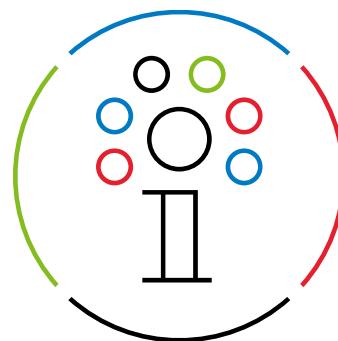
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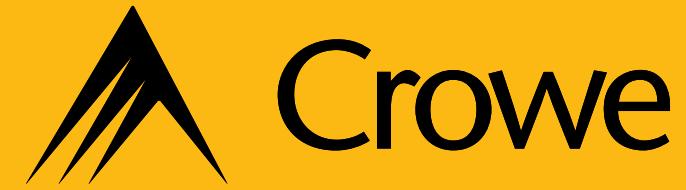
Carlo Di Loreto
Partner - Tax Advisory
Crowe Australasia, an affiliate of Findex

Today's session will cover



April Tax Update

- Federal Budget 2025-26
- Federal Parliament update
- Bills update
- ATO and Government Announcements
- ATO Rulings
- Cases



Federal Budget 2025-26 Highlights

Federal Budget 2025-26

Personal Tax Rate Cuts

- Proposed cuts to the personal income tax rate for the income threshold (\$18,200-\$45,000) from 16% to 15% (from 1 July 2026) and 14% (from 1 July 2027)

| Taxable income (\$) | 2024-25 & 2025-26 (legislated) | 2026-27 (proposed) | 2027-28 (proposed) |
|---------------------|--------------------------------|--------------------|--------------------|
| 0 - 18,200 | 0% | 0% | 0% |
| 18,201 - 45,000 | 16% | 15% | 14% |
| 45,001 - 135,000 | 30% | 30% | 30% |
| 135,001 - 190,000 | 37% | 37% | 37% |
| 190,001+ | 45% | 45% | 45% |

- Tax rates for foreign residents remain unchanged from 2024-25:
 - \$0 - \$135,000 (30%)
 - \$135,001 - \$190,000 (37%)
 - \$190,001+ (45%)



Federal Budget 2025-26

Personal Tax Rate Cuts

- No change to the Low Income Tax Offset (LITO)

| Taxable income (TI) | Amount of offset |
|---------------------|--|
| \$0 - \$37,500 | \$700 |
| \$37,501 - \$45,000 | \$700 - $([TI] - \$37,500) \times 5\%$ |
| \$45,001 - \$66,667 | \$325 - $([TI] - \$45,000) \times 1.5\%$ |
| \$66,668 + | Nil |

ATO Enforcement

- \$717.8 million over 4 years from 1 July 2025 for a 2-year expansion and a one-year extension of the Tax Avoidance Taskforce
- \$155.5 million over 4 years from 1 July 2025 to extend and expand the Shadow Economy Compliance Program
- \$75.7 million over 4 years from 1 July 2025 to extend and expand the Personal Income Tax Compliance Program



Federal Budget 2025-26

ATO Enforcement (cont)

- \$50.0 million over 3 years from 1 July 2026 to extend the Tax Integrity Program
 - To enable ATO to continue engagement program to ensure timely payment of tax and superannuation liabilities by medium and large businesses and wealthy groups

MIT Measures

- Proposes amendments to clarify that concessional final MIT withholding tax rates for fund payments made by MITs (being 15% ordinarily or 10% for clean building MITs) will continue to be available where the MIT is ultimately owned by a single foreign specified widely-held investor

Foreign Resident CGT Measures

- Start date deferred from 1 July 2025 to the later of beginning of quarter after Royal Assent received



Federal Budget 2025-26

Superannuation

- No major new measures announced
- Proposed Division 296 regime for superannuation balances above \$3 million not yet passed
- Bill lapsed when Parliament dissolved
- Start date of 1 July 2025 may be delayed

Government Energy Bill rebate

- Extended until the end of 2025 by providing a further 2 instalments of \$75 for households and small businesses



Federal Budget 2025-26

Help to Buy Home scheme

- Increase in equity investment of \$800 million (to \$6.3 billion)
- Government will provide an equity contribution up to 40% of the purchase price to assist up to 40,000 eligible first home buyers to purchase a new or existing home
- Increase the scheme's income cap from \$90,000 to \$100,000 for individuals, and from \$120,000 to \$160,000 for joint applicants and single parents

Reduction of HELP Debts

- Reduce Higher Education Loan Program (HELP) and other student debts for more than 3 million people by around \$19 billion
- Will reduce outstanding student debts by 20% before indexation is applied on 1 June 2025



Federal Budget 2025-26

Tax Practitioner Regulation

- Strengthen sanctions that available to the Tax Practitioners Board (TPB)
- Modernise the registration framework for practitioners
- Provide funding to TPB to undertake additional compliance targeting higher risk practitioners
- Includes reintroducing criminal penalties for unregistered preparers
- Broadening and increasing civil penalties under TASA for breaches of the Code of Conduct
- Over 4 years from 1 July 2025
- Will NOT introduce other sanctions as proposed by the review of the TPB in 2019 relating to quality assurance audits, permanent disbarment and external intervention

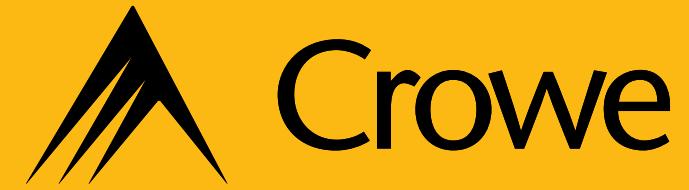


Federal Budget 2025-26

No mention of the following

- Instant asset write off
- Division 7A or any proposal to amend the law because of Bendel
- Division 7A general reform
- Corporate residency





Federal Parliament & Bills Update

Federal Parliament Update

Sitting Days 2025

| Sitting Days First Half 2025 | Sitting Days Second Half 2025 |
|------------------------------|-------------------------------|
| January – No sitting days | July – TBA |
| February – 7 House; 7 Senate | August – TBA |
| March* – 3 House; 3 Senate | September – TBA |
| April – Nil | October – TBA |
| May – TBA | November – TBA |
| June – TBA | December – TBA |

*Federal Election called, and writs issued on 31 March 2025. Parliament concluded.



Personal income tax cuts

- *Treasury Laws Amendment (More Cost of Living Relief) Bill 2025*
- New tax cuts from 1 July 2026, in addition to the first round of tax cuts that have been rolling out since 1 July 2024

| Threshold (\$) | 2024–25 and 2025–26 (%) | 2026–27 (%) | 2027–28 (%) |
|-----------------|-------------------------|-------------|-------------|
| 0–18,200 | 0 | 0 | 0 |
| 18,201–45,000 | 16 | 15 | 14 |
| 45,001–135,000 | 30 | 30 | 30 |
| 135,001–190,000 | 37 | 37 | 37 |
| >190,000 | 45 | 45 | 45 |



Personal income tax cuts

- Increase the following thresholds in line with movements in the Consumer Price Index (CPI) retrospectively from the 2024–25 income year:
 - Medicare levy low-income thresholds for individuals and families (along with the dependent child/student component of the family threshold)
 - Medicare levy low-income thresholds for individuals and families eligible for the Senior Australian and Pensioner Tax Offset (SAPTO) (along with the dependent child/student component of the family threshold), and
 - Surcharge low-income threshold
- Bill passed by both houses and received Royal Assent on 27 March 2025



Fuel Efficient vehicles and other matters

- *Treasury Laws Amendment (Tax Incentives and Integrity) Bill 2024*
- Passed by both houses and received Royal Assent on 27 March 2025
- Tightens the definition of “fuel-efficient vehicle” by reducing maximum fuel consumption from 7 litres per 100 kilometres to 3.5 litres per kilometre – *from 1 July 2025*
- Aligns the indexation rates for luxury car tax (LCT) thresholds from All Groups CPI to motor vehicle purchase sub-group of the CPI – *from 1 July 2025*
- Denies deductions for interest charges for General Interest Charge and Shortfall Interest Charge
- Extends the ATO notification period for retaining refunds – *from 1 April 2025*
- Extends the \$20,000 instant asset write-off for small business entities by 12 months until 30 June 2025



Lapsed Bills

Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023

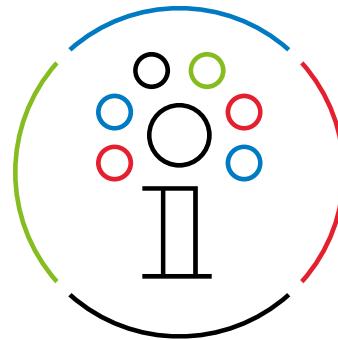
- reduce the tax concessions available to individuals with total superannuation balances exceeding \$3 million

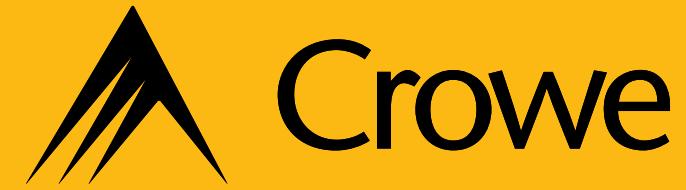


Poll Question

The change to the definition of 'fuel efficient vehicle' takes effect from 1 July 2025

- a) True
- b) False





ATO/Government Announcements

Election promises

Labor government

- Labor government will extend \$20,000 instant asset write off for a further year to 30 June 2026
- \$1,000 instant tax deduction for work-relate expenses from 2026-27 - no need to substantiate
 - Excludes charitable donations and non work-related deductions

LNP government

- First home buyers will be able to claim a tax deduction on mortgage interest payments
 - Available in first 5 years of a mortgage
 - Limited to interest paid on mortgage up to \$650,000 – but no cap on actual mortgage size
 - For individuals earning up to \$175,000 and joint applicants earning up to \$250,000
- One-off cost of living tax offset of \$1,200 for eligible Australians earning up to \$144,000
 - Phases out above \$104,000



Election promises

LNP government (cont)

- Entrepreneurship Accelerator
 - Will provide newly incorporated businesses with, for the first 3 years of their operation, a tapered tax offset starting at 75% of their first \$100,000 of taxable income, and 50% for their second \$100,000 of income in their first year of operation
 - For its first 2 years of government, the Coalition will also provide a tax deduction of \$2,000 for eligible technology investments of \$4,000 or more for small businesses
- Early Stage investors in innovative start ups
 - Will double the early-stage venture capital cap to \$100 million
 - Lift the venture capital cap to \$500 million
 - From July 2026, both limits will be indexed in line with the consumer price index



General Interest Charge & Shortfall Interest Charge Rates

- ATO has issued the general interest charge (GIC) rates and shortfall interest charge (SIC) rates for the period from 1 April 2025 to 30 June 2025
- The rates are as follows:
 - the GIC rate is 11.17%
 - the GIC daily compounding rate is 0.03060274%
 - the SIC rate is 7.17%, and
 - the SIC daily compounding rate is 0.01964383%.
- The interest rate on overpayments, early payments and delayed refund interest 4.17%



Private health insurance rebate percentages for 2025–26

- The private health insurance rebate percentages that apply from 1 April 2025 have been released

| | 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 |
| Families | \$194,000 or less | \$194,001 – \$226,000 | \$226,001 – \$302,000 | \$302,001 or more |
| Under 65 | 24.608%/24.288% [^] | 16.405%/16.192% [^] | 8.202%/8.095% [^] | 0% |
| 65–69 | 28.710%/28.337% [^] | 20.507%/20.240 % [^] | 12.303%/12.143% [^] | 0% |
| 70 or older | 32.812%/32.385% [^] | 24.608%/24.288% [^] | 16.405%/16.192% [^] | 0% |

Next 5,000 common CGT errors

- ATO website update on Next 5,000 privately owned and wealthy groups
- Includes Australian residents who together with their associates, control net wealth of over \$50 million
- Range of common CGT mistakes found during ATO reviews, including
 - cost base errors
 - reporting of transactions in the wrong year, or not at all
 - incorrect characterisation of ordinary income as capital income
 - beneficiaries that fail to gross up discounted share of capital gain distributed by trusts
 - unsubstantiated carried forward capital losses
 - inability to substantiate assets sold to related parties
- These matters will attract ATO attention in Next 5,000 reviews



Next 5,000 common CGT errors

- When preparing tax returns for wealthy groups, make sure that you:
 - Understand the nature of the transaction and the asset
 - Keep records of all matters that are relevant to working out whether a capital gain or loss arises from a CGT event
 - Obtain independent valuations to support the sale of assets between related parties
- Good tax risk management practice for Next 5,000 private groups involves identification of tax risks before a CGT event occurs
- Clients should be encouraged to seek tax advice before any significant transaction occurs



Focus on legal profession

- ATO website update
- Recent work by ATO with the legal profession has revealed some lawyers are failing to lodge returns, are making errors, or not paying their taxes on time
- Review of over 250 lawyers found that 85% did not lodge income tax returns
- Lawyers incorrectly reporting distributions from partnerships and associated service trusts
- For clients who are legal practitioners:
 - Check trust and partnership distributions carefully
 - Ensure lodgment is up to date
 - Account for all income
 - Lodge on time
 - Ensure allocation of profits to service entities complies with PCG 2021/4



Foreign persons registration of residential property

- From 1 April 2025 to 31 March 2027, foreign persons are banned from purchasing established dwellings in Australia (limited exceptions apply)
- Includes temporary residents purchasing an established dwelling for use as a principal place of residence - temporary residents can still apply for approval to purchase vacant land or new dwellings.
- Foreign persons must register once they become the owner of an Australian residential property
- Registration is via 'Online services for foreign investors'
<https://onlineservices.ato.gov.au/foreigninvestorlogin.html>
- Registration is required for all foreign owners – regardless of whether ownership is as joint tenant or tenants in common
- Must register within 30 days of the date of settlement
- Must register if a person becomes a foreign person while holding an interest in Australian residential property

Foreign persons buying residential property

- A foreign person must apply for approval or for an exemption certificate from the ATO before buying a residential property in Australia
- Can apply for an exemption certificate if intention to purchase only one property
- Can be a new or near-new dwelling, or a single block of vacant land for development
- There is a fee when you apply for an exemption certificate - payable at the time of applying
- Approval must be granted before entering into any contract to buy residential property - ATO must firstly grant approval or an exemption certificate
- Exemption certificate application can be made even if a contract has already been signed



Superannuation rates and thresholds 2025-26

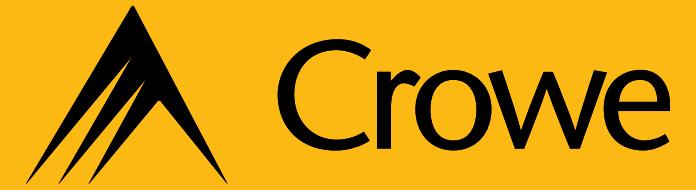
- Capital gains tax (CGT) cap amount – \$1.865 million
- Maximum superannuation contributions base – \$62,500 per quarter
- Low-rate cap amount – \$260,000
- Untaxed plan cap amount – \$1.865 million
- General transfer balance cap – \$2 million
- Defined benefit income cap – \$125,000
- Maximum co-contribution entitlement remains at \$500



Superannuation rates and thresholds 2025-26

- Lower income threshold increases to \$47,488
- Higher income threshold increases to \$62,488
- Employment termination payment (ETP) cap amount for life benefit termination payments and death benefit termination payments – \$260,000
- Base limit of the tax-free part of genuine redundancy and early retirement scheme payments is \$13,100 and for each complete year of service is \$6,552.
- Concessional contributions cap – \$30,000
- Non-concessional contributions cap – \$120,000
- Div 293 tax income threshold – \$250,000





Rulings

2025–26 FBT rates for private use of vehicles

- *Taxation Determination TD 2025/1*
- Provides that 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 for the fringe benefits tax (FBT) year commencing on 1 April 2025:

| Engine capacity | Rate per kilometre |
|-----------------|--------------------|
| 0–2500cc | 69c |
| Over 2500cc | 80c |
| Motorcycles | 20c |



FBT reasonable food and drink amounts

- *Taxation Determination TD 2025/2*
- 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 2025
- 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



FBT reasonable food and drink amounts

- *Taxation Determination TD 2025/2*
- If an employer wants to reduce the taxable value of an employee's LAFHA fringe benefit by the exempt food component, the expenses must be either:
 - equal to or less than the amount that the Commissioner considers reasonable under s 31G(1)(b), or
 - substantiated in accordance with s 31G(2)
- If the total of an employee's food or drink expenses exceeds the amount that the Commissioner considers reasonable, the substantiation provisions under s 31G will apply
- TD 2025/2 contains tables for reasonable food and drink amounts:
 - in Australia (Table 1)
 - Overseas (Tables 2-4)

FBT reasonable food and drink amounts

| Table 1: Amounts of reasonable food and drink – within Australia | Per week \$ |
|--|-------------|
| One adult | 341 |
| 2 adults | 512 |
| 3 adults | 683 |
| One adult and one child | 427 |
| 2 adults and one child | 598 |
| 2 adults and 2 children | 684 |
| 2 adults and 3 children | 770 |
| 3 adults and one child | 769 |
| 3 adults and 2 children | 855 |
| 4 adults | 854 |



Working from home running expenses

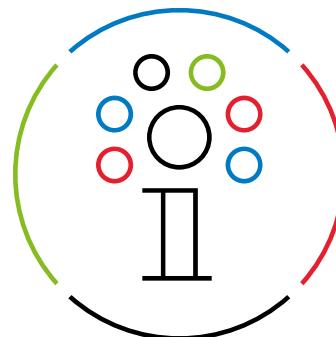
- *Practical Compliance Guideline PCG 2023/1*
- The fixed rate for work from home running expenses has increased to 70 cents per hour from 1 July 2024 (up from 67 cents)
- T/ps can choose to use this rate to claim additional running expenses they incur when they work from home instead of claiming actual expenses
- Used to calculate the total of the t/p's deductible expenses for energy, internet, mobile and home phone usage, and stationery and computer consumables for an income year
- The inclusions and eligibility criteria have not changed

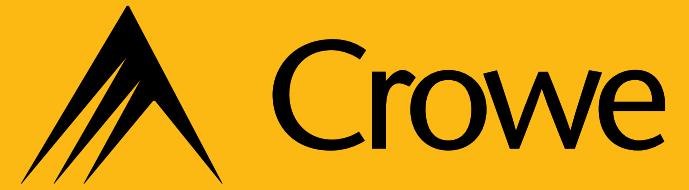


Poll Question

Where a foreign person purchases residential property in Australia, they must register within:

- a) 14 days
- b) 28 days
- c) 30 days
- d) 60 days





Cases

Bendel appeal to High Court

- FC of T v Bendel & Anor 2025 [2025] FCAFC 15 Full Federal Court decision was covered in March tax update and also our Division 7A Advanced webinar
- Commissioner has sought special leave to appeal to the High Court
- ATO has also released an interim decision statement
- The full court unanimously dismissed the Commissioner's appeal from the AAT decision
- The Commissioner's construction of s 109D of ITAA 1936 could not be accepted – ATO view is that a UPE is a 'loan' as it is the *provision of financial accommodation* [s109D(3)]
- Full court held that s109D(3) encapsulated a concept of repayment - it required an obligation to repay not just an obligation to pay
- The full court's decision is contrary to the ATO view provided in Taxation Determination TD 2022/11



Bendel interim decision impact statement

- ATO does not intend to revise its views relating to private company entitlements to trust income as set out in TD 2022/11 until the appeal process is finalised
- This is until the special leave application is refused, or the High Court dismisses the Commissioner's appeal
- The ATO will continue to administer the law in accordance with TD 2022/11
 - applies to UPEs arising on or after 1 July 2022 - where the private company beneficiary does not demand payment
- ATO will NOT seek to finalise decisions on issuing amended assessments or private ruling applications that go directly to this issue
- Will not finalise objection decisions in relation to objections to past-year assessments unless a decision is required to be made

Liang appeal to High Court

- T/ps have applied for special leave to the High Court from the Full Federal Court decision in FC of T v Liang & Anor [2025] FCAFC 4
- T/ps failed to show that large bank deposits were not income
- Full Federal Court decision was covered in recent tax update



Employee v contractor

Overview

- Commissioner's appeal to the Federal Court has been dismissed
- *FC of T v Hatfield Plumbing Pty Ltd ATF Peter Hatfield Trust [2025] FCA 182*
- A licensed plumber was not an employee within the extended definition of the term in s 12(3) of the Superannuation Guarantee (Administration) Act 1992 (SGAA)

Facts

- The Peter Hatfield Trust (T/p) operated a plumbing business in Queensland
- Engaged Chris Hargreaves (CH) as an employee and paid superannuation on his behalf from July 1996 to December 1996



Employee v contractor

Facts (cont)

- CH was a licensed plumber who had registered for GST in July 2000 and held an ABN since 2010
- CH resumed working for the T/p as a maintenance plumber under a verbal agreement in 2010
- Submitted invoices to the respondent based on hours worked
- Paid GST and submitted business activity statements
- Owned his own work vehicle and plumbing tools (which he claimed as expenses)
- Worked independently and unsupervised, and
- Was paid well above the award rate
- Before and during the relevant periods CH operated his own business, which was advertised on his vehicle, at Tradelink stores and online



Employee v contractor

Facts (cont)

- February 2021 - CH complained to the ATO that T/p had not paid superannuation on his behalf from 2010 to 2020
- Commissioner determined that the relationship between the parties was that of employer and employee for the purposes of s 12(3) of the SGAA
- Issued notices of assessment of superannuation guarantee charge (SGC) to T/p for the quarterly periods 1 January 2010 to 30 September 2020
- Total amount of SGC owing by the T/p (including interest thereon) was \$123,522
- T/p objected to the assessments and, when its objection was disallowed, sought review by the AAT



Employee v contractor

Arguments

- T/p argued the contract between the parties was not wholly or principally for CH's labour
- The relationship was one of contractor and sub-contractor
- CH was engaged for his skilled labour as a qualified and licensed plumber and for the use of his plumbing tools
- CH had total control over when he would work and how the work was to be carried out
- Each time CH was engaged it was to achieve a result
- Commissioner maintained that the contract between the parties was for CH's labour and not to achieve a result
- Emphasised that he was remunerated predominantly for his labour at an hourly rate and was required to perform the work personally



Employee v contractor

Decision

- Contracts between CH and T/p were NOT wholly or principally for labour
- Contracts were for the provision of plumbing services to complete specified plumbing jobs
- CH was not an employee for the purposes of s12(3) of the SGAA
- Full Federal Court agreed with the AAT's initial analysis
- AAT considered many factors that weighed in favour of finding CH was an independent contractor
- CH was engaged to produce a result
- Payment was based on each job completed and was not being paid 'by the hour'
- Hourly rate was only an effective measure by which to charge for a job



Employee v contractor

Decision (cont)

- CH could refuse a job
- CH was totally in control of the amount of work accepted
- CH NOT directed at how to complete the task – he was not supervised
- CH was operating his own business – performed work for others independently of the T/p



Employee v contractor

Decision (cont)

- Commissioner argued that the common law test of an employee was incorrectly applied to the question of whether CH was an employee under s12(3) of the SGAA
- S12(3) SGAA extends the meaning of ‘employee’ to situations where a person works under a contract that is wholly or principally for the labour of the person
- TR 2023/4 (para 93 to 114) and SGC 96/2 discuss s12(3)
- Federal Court disagreed – the common law principles are relevant in determining whether CH was providing labour

Note

- In TR 2023/4 the ATO acknowledge that a contract is not wholly or principally for labour where the individual has a right to delegate, it is to produce a result, or it is for providing benefits other than the labour of the worker



Appeal Genuine redundancy

Overview

- *Baya Casal v DFC of T [2025] FCA 87* on 18 February 2025
- A payment to an employee of a school on the termination of her employment that was brought about by the restructuring of her department should be taxed as a genuine redundancy payment
- Payment was not an employment termination payment
- The t/p had been offered employment in a similar position at the school but with reduced hours
- **Commissioner has appealed decision to the Full Federal Court**

Facts

- T/p employed by the school as an Early Learning Centre (ELC) assistant
- Under a planned restructure of the school's ELC, the t/p received advice from the school that she would be eligible to move to a new role as a redeployment or that she could take a redundancy



Appeal Genuine redundancy

Facts (cont)

- T/p employed by the school as an Early Learning Centre (ELC) assistant
- Under a planned restructure of the school's ELC, the t/p received advice from the school that she would be eligible to move to a new role as a redeployment or that she could take a redundancy
- T/p chose not to accept any of the new roles on offer
- Involved a reduction of total weekly hours from 34.56 to either 28.5 or 21.5 hours as well as changed working days
- Her position was terminated
- She received a payment of 13 weeks' pay (ie \$15,327) from the school on termination of employment



Appeal Genuine redundancy

Issues

- School treated the payment as an employment termination payment (ETP)
- T/p applied for a private ruling as to whether her payment should be treated as a genuine redundancy payment
- Redundancy would be non-assessable non-exempt income and hence tax-free
- Commissioner ruled that the payment was an ETP and then disallowed her objection to that ruling
- In reviewing a private ruling, a court cannot draw inferences of fact to supplement ruled facts
- Commissioner argued that a material reduction in the t/p's remuneration was not a fact set out in the scheme as defined in the private ruling or objection decision
- Therefore, the material reduction in remuneration was not a fact that could be considered by the court



Appeal Genuine redundancy

Issues (cont)

- Commissioner argued that if the employer still had a job that it wished the employee to perform then there may not be a genuine redundancy
- Especially if the duties of that job were not too dissimilar from the existing ones
- The skills and duties required for the new roles were like the skills and duties of the taxpayer's existing role
- T/p could have performed one of these roles but chose not to do so
- Argued the t/p's payment was not a genuine redundancy payment because her position was not genuinely redundant



Appeal Genuine redundancy

Federal Court decision

- There was a material reduction in both the hours of work and remuneration if the t/p had accepted one of the roles on offer
- Did not accept the Commissioner's argument that if the employee was performing the same tasks, for fewer hours and less pay, the position was the same
- Concept of 'duties' and 'responsibilities' were wide enough to encompass days and hours of work
- The reduction of hours meant that in this case, the t/p's position had become genuinely redundant

Note

- ATO has appealed the decision of the Federal Court



Substantiating meal expenses

Overview

- *Shaw v FC of T 2025 ATC [2025] ARTA 224*
- Long-haul truck driver allowed a deduction for meal expenses
- Sufficient link between expenditure on bank statements and t/p's work
- Exceptions to substantiation rules in ss 900-50 & 900-200 ITAA 1997 applied
- Note that the Commissioner has appealed this decision

Facts

- T/p employed as a long-haul truck driver in Western Australia
- Drove long distances (e.g. Pilbara and across the Nullarbor)
- Was away from home for considerable periods each year
- Was paid a travel allowance by his employer



Substantiating meal expenses

Facts (cont)

- Was generally away from home for 6 days of the week, during which time he slept in his truck
- He drove through remote parts of Australia, where food outlets (and healthy options) were often limited or non-existent
- Supplies purchased on his routes were often paid for in cash due to a lack of banking facilities
- He had a freezer and hot plate in his truck for food preparation, and his practice was to conduct a “big shop” on the Sunday or Monday to ensure his truck was fully stocked before he went on the road each Monday
- His partner sometimes acquired additional food for him (either as part of the big shop or during the week when the taxpayer was away) and he would transfer funds to reimburse her for such



Substantiating meal expenses

Facts (cont)

- T/p claimed a deduction for meal expenses in the 2021 year of \$32,782.50
- Was calculated by multiplying the number of days he was away from home (310) by the maximum reasonable daily allowance (being \$105.75) under Taxation Determination TD 2020/5
- After conducting an audit, the Commissioner reduced the taxpayer's claim to zero and issued an amended assessment accordingly
- T/p's subsequent objection to that assessment was allowed in part, with deductions for meal expenses of \$5,890 allowed based on a review of his logbook, fatigue diary and bank statements
- This was an average of \$19 per day multiplied by 310



Substantiating meal expenses

Arguments

- T/p argued he spent more than the maximum reasonable daily allowance but claimed less than what he spent because of advice given to him by his tax agent
- He was advised that, if he claimed less, he did not need to keep records to substantiate his expenses
- Commissioner accepted that food and drink expenses incurred by the taxpayer while away from home on a work journey would be deductible
- However, considered that the bulk of the deductions claimed were excluded by s 8-1(2)(b) of ITAA 1997 as an outgoing of a private or domestic nature
- Commissioner noted that the t/p's bank statements demonstrated regular expenditure in Perth beyond Mondays or Sundays
- Criticised the t/p for not being able to itemise what was purchased where



Substantiating meal expenses

Issues

- Did the t/p incur the meal expenses in gaining or producing his assessable income under s 8-1 ITAA 1997
- Was the t/p required to substantiate his expenses or was he entitled to rely on an exception from substantiation under s 900-50 ITAA 1997
- s 900-50 provided that substantiation was not required for travel allowance expenses *"if the Commissioner considers reasonable the total of the losses or outgoings you claim for travel covered by the allowance"*
- S 900-200 provided that a right to deduct an outgoing is not affected by a failure to follow the rules in Div 900 where the t/p had a reasonable expectation that they would not need to do so to claim the deduction
- TR 95/18 stated at para 202 that, if a travel allowance was received, expenses must be incurred and if the claim was no more than the reasonable amount no substantiation was required



Substantiating meal expenses

Decision

- Objection allowed in full – but the Commissioner has appealed this decision
- Commissioner's allowance of \$19 per day for the taxpayer's meals while on the road was *an absurdly inadequate amount*
- *Sensible tax administration should be more realistic*
- T/p was *not required to substantiate all expenses*, where total expenditure exceeded the maximum reasonable daily allowance
- It was perfectly acceptable to claim up to the limit of the claim to avoid the paperwork
- Also reasonable for the Commissioner to assess whether expenditure had been incurred
- Commissioner needed to act sensibly and consider the substantiation provided
- It was a balancing exercise that the Commissioner did not get right in this instance

Subdivision of farmland

Overview

- *Morton v FC of T 2025 [2025] FCA 336*
- Sale of 10-acre farm that was developed and subdivided into 48 residential lots and 2 commercial lots
- The proceeds from the sales of those lots were capital receipts derived on the realisation of a pre-CGT asset

Facts

- T/p was a retired farmer who had owned a 10-acre parcel of land
- Land was acquired by t/p from his father in 1980
- Surrounding blocks were transferred to t/p's family trust
- Continued to farm the land



Subdivision of farmland

Facts (cont)

- Land was rezoned in 2010 to residential land
- Resulted in increased rates and land tax – impacted on profitability of farming business
- T/p entered into development agreements with a property developer
- Agreement stated that the owner wished to maximise the sale proceeds from the land and developer would undertake the development works
- Developer granted power of attorney to do anything requisite or expedient for the development
- Development divided into 31 stages – the land in question was stage 15
- 48 residential lots and 2 commercial lots



Subdivision of farmland

Arguments

- Proceeds from the sales of the allotments were capital receipts derived from the realisation of a pre-CGT asset
- The development constituted no more than an enterprising means of achieving the best price when realising the capital asset
- Commissioner argued that the development constituted a business and the land was trading stock
- Sale proceeds were income according to ordinary concepts
- Alternatively, the amounts were assessable as statutory income being profit from carrying out a profit-making undertaking or scheme



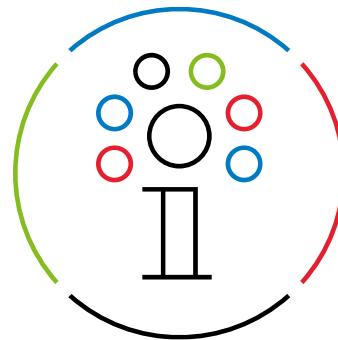
Subdivision of farmland

Decision

- No part of the proceeds of the sale of the land was assessable income in the t/p's hands
- T/p did not pursue a course of conduct calculated to achieve the maximum available proceeds at any cost
- Land was not able to be used as security for finance
- T/p obtained a fixed percentage of the sale proceeds of subdivided lots
- The scale of the subdivision and sale of the property was a product of the size and nature of the land as an asset
- Acreage or number of lots alone did not indicate the t/p was engaged in a business of land subdivision or development
- T/p's activities not marked by repetition – the activities of the developer did not colour the nature of the t/p's activities



Key Takeaways from today's session



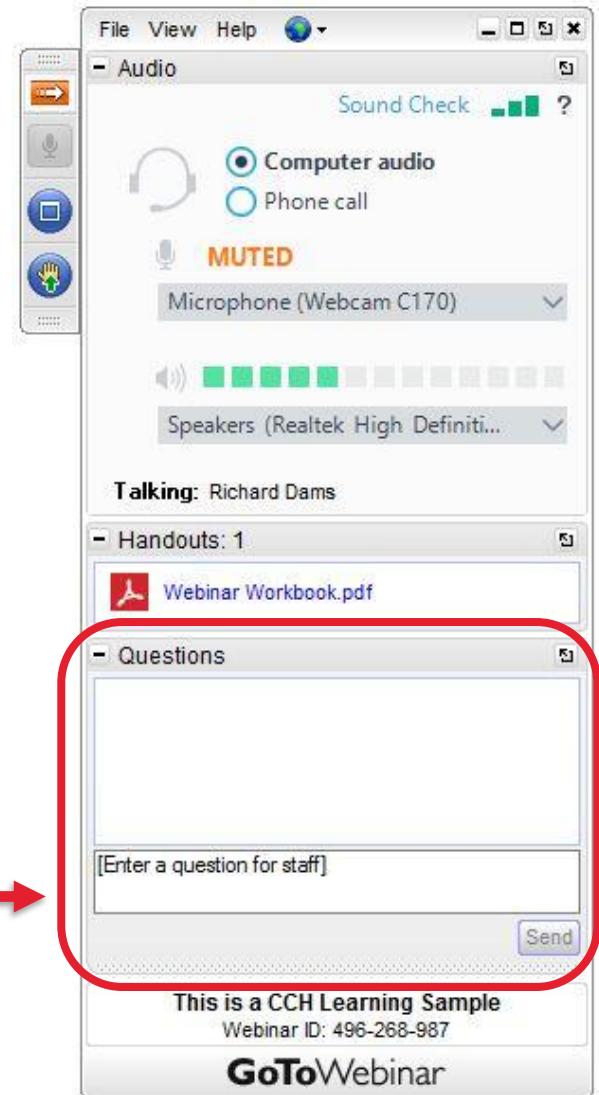
- Federal Budget was uninspiring, and the election is a major distraction to the real issues at hand
- Capital v revenue continues to be problematic, especially in property transactions
- With a new tax year approaching, be aware of the updated thresholds and rates that apply
- Division 7A remains a major concern – we need to wait for the results of the Bendel appeal process to reach its natural conclusion
- It is sometimes easy to overlook the basics – be careful with substantiation of expenses such as meals and work-related expenses

Questions?

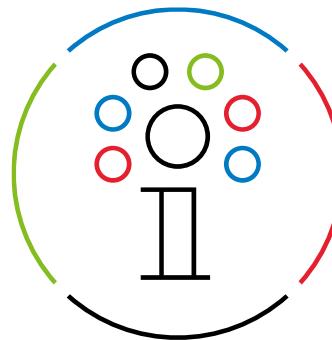


Alison Wood
CCH Learning Moderator

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- 1 May – AASB S2 Pillar 2 – Strategy
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- 7 May – NALI/NALE – How to handle Non-Arms-Length Income and Expenses



Questions?



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

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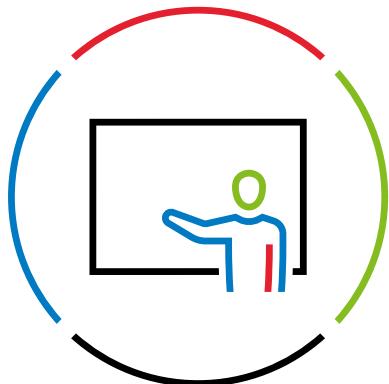
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