

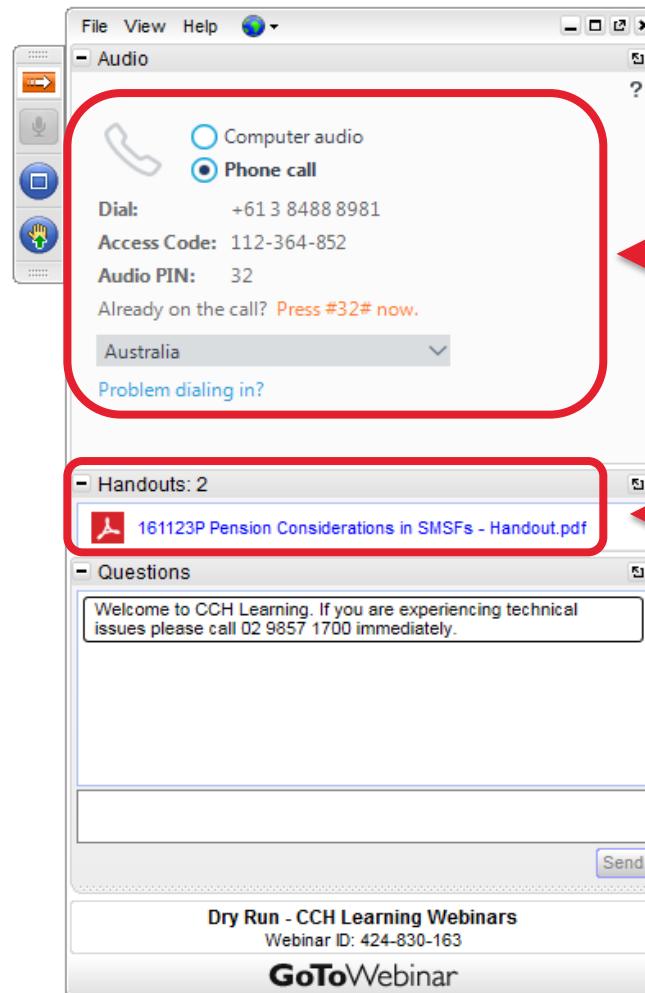
Tax Technical Update – September 2025

Carlo Di Loreto

Tuesday 23 September 2025



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- PowerPoint? In the Handouts Section
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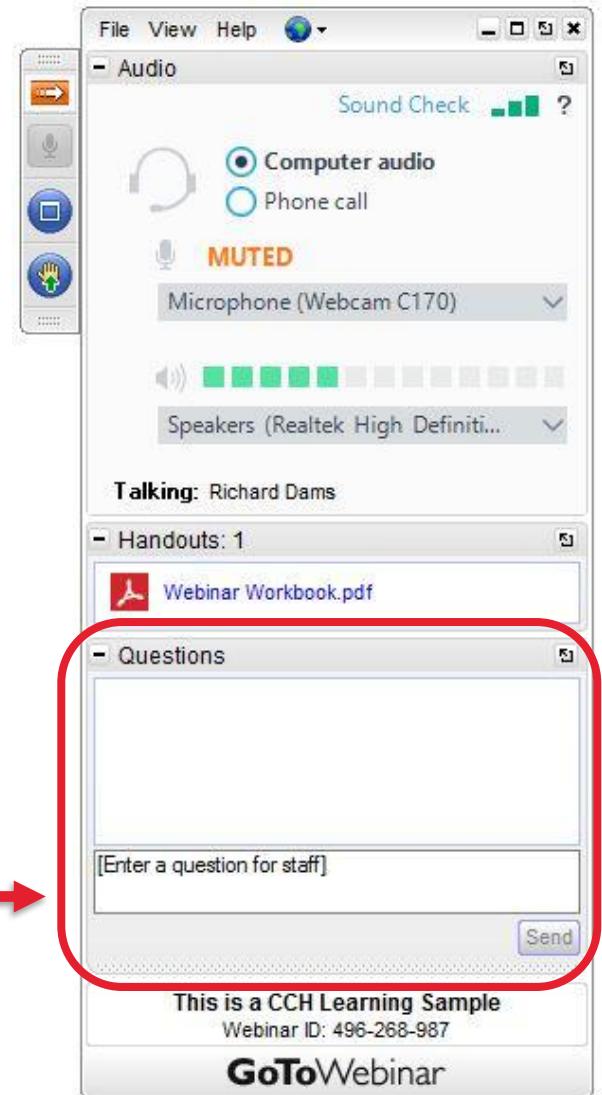


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Alison Wood
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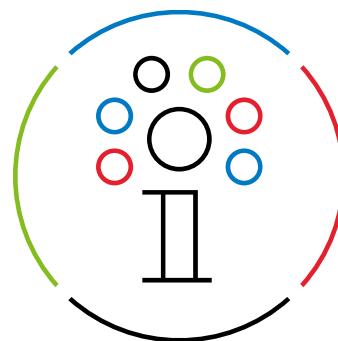
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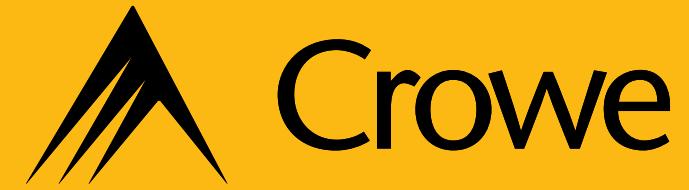
Carlo Di Loreto
Partner - Tax Advisory
Crowe Australasia, an affiliate of Findex

Today's session will cover



September Tax Update

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



Federal Parliament & Bills Update

Federal Parliament Update

Sitting Days 2025

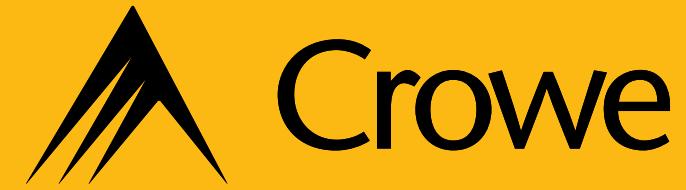
Sitting Days First Half 2025	Sitting Days Second Half 2025
• January – No sitting days	• July – 7 House; 7 Senate
• February – 7 House; 7 Senate	• August – 4 House; 4 Senate
• March – 3 House; 3 Senate	• September – 4 House; 4 Senate
• April – Nil	• October – 7 House; 4 Senate
• May – Nil	• November – 8 House; 8 Senate
• June – Nil	• December – Nil



Instant asset write off and other measures

- *Treasury Laws Amendment (Strengthening Financial Systems and Other Measures) Bill 2025*
- Introduced to the House of Representatives on 4 September 2025
- \$20,000 Instant asset write off for small business entities is extended by 12 months until 30 June 2026
- A small business entity is one with annual turnover under \$10 million
- Eligible assets must be first used or held ready for use on or before 30 June 2026
- Applies to second element of the cost of a depreciation i.e., cost additions and general small business pools
- Extends the deferral of the ‘lock out’ rule for small business that previously opted out of the simplified depreciation rules to 30 June 2026





ATO/Government Announcements

FBT and private use of vehicles

- ATO website update
- Reminder to employers who supply work vehicles to employees
- Personal use of work vehicle is a common fringe benefit and easily overlooked
- Check how vehicles are used and whether exemptions apply
- Private use examples:
 - taking the vehicle on beach or camping trips
 - school drop-offs and pick-ups (even if on the way to or from work)
 - running personal errands (like picking up groceries)
 - transporting friends or family for non-work-related purposes
 - parking the vehicle at the employee's home (even if only for security reasons)
- Exemptions may apply



FBT and private use of vehicles

Exemptions

1. it is an exempt use of an *eligible commercial vehicle*
2. the vehicle is an *eligible electric car*
3. it is a *minor benefit* –the taxable value of the benefit is less than \$300 and it would be considered unreasonable to treat it as a fringe benefit
4. the employee's duties relate to a *public hospital* (unless the amount of benefit provided to the employee exceeds the relevant threshold)
5. car provided for *compassionate travel*



FBT and private use of vehicles

Exempt Commercial Vehicles

- No FBT if *eligible vehicle* and *private use is limited*

Limited Private Use

- travel between home and work
- travel that is incidental to travel in the course of employment duties
- non-work-related use that is minor, infrequent and irregular (such as occasional use of the vehicle to remove domestic rubbish).

Eligible vehicle

- Single Cab Ute
- Panel van
- Certain modified vehicles e.g., a hearse
- Taxis



FBT and private use of vehicles

Eligible vehicle (cont)

- *4-wheel drive vehicle designed to:*
 - Carry load of 1 tonne or more, or
 - Carry more than 8 passengers, or
 - Principal purpose other than carrying passengers
- *Dual Cab Ute*
 - Designed to carry load of 1 tonne or more, or
 - Carry more than 8 passengers, or
 - Carry a load less than 1 tonne, but not designed for principal purpose of carrying passengers
- *Any other road vehicle designed to:*
 - Carry a load of 1 tonne or more, or
 - More than 8 passengers



ACNC charities at risk

- ACNC has issued public notice advising over 70 charities they have until 15 October 2025 to submit overdue Annual Information Statements
- Failure to submit two or more annual information statements may lead to registration being revoked
- The list of charities and the public notice is published on the ACNC website
- If registration is revoked deductible gift recipient status is lost



Sharing Economy reporting

- Electronic distribution platform (EDP) operators must lodge a report under the Sharing Economy Reporting Regime (SERR)
- EDPs must report on supplies made through their platform to the ATO
- Subdiv 396-B to Schedule 1 of Taxation Administration Act 1953
- EDPs must report twice a year:
 - 1 July to 31 December
 - 1 January to 30 June
- From 1 July 2023 applied to EDPs supplying:
 - Taxi service, including ride sharing
 - Short term accommodation



Sharing Economy reporting

- An EDP:
 - is a service that allows sellers to make supplies available to buyers
 - is delivered via electronic communication (such as a website, internet portal, gateway, application or online store)
 - Examples include booking accommodation or a car ride, or renting out a handbag or lawnmower
- Does not apply to:
 - Carriage services that submit electronic communications
 - Access to payment systems
 - Advertising
 - Agent for supplier
 - Channel management software



Sharing Economy reporting

- Reminder that we may have clients who operate through an EDP
- This reporting is part of the ATO's broader data-matching initiative
- Important for clients to disclose fully all income derived from these platforms
- High risk that the ATO will detect income that has been understated



Ordinary times earnings update

- ATO website update for employers regarding Ordinary Times Earnings (OTE)
- Superannuation guarantee is calculated based on OTE
- OTE is amount paid to employees for their ordinary hours worked
- OTE is used to work out the minimum superannuation guarantee contribution for employees
- ‘salary and wages’ is used to work out the super guarantee charge
- Salary and wages can be substantially greater than OTE – care needs to be taken to ensure the OTE is correctly calculated



Ordinary times earnings update

Examples of OTE

- Ordinary hours worked
- Casual loading
- Shift penalties
- Workers compensation
- Piece rates
- Flexi time
- Breach of break payments
- Time for travel or training paid within ordinary hours
- Charge rates to contractors
- Public holidays
- Many forms of paid leave



Sole traders

- ATO website update on common mistakes:
- Failure to report all income
- Overclaiming expenses
- Calculating business losses
- Incorrect claims involving non-commercial business activities against other income
- Claiming PAYG withholding refunds
- Misreporting personal services income to gain tax benefits
- Not registering for GST if in taxi or ride share industry, or when GST registration threshold reached
- Not keeping adequate and complete records



Repairs and maintenance

- ATO website update
- '*Repairs and maintenance*' expenses can be claimed for work done to remedy, or prevent defects, damage or deterioration from using the property to earn income
- Claimed in the year they were incurred

Capital expenses – not deductible

- Initial repairs e.g., fixing pre-existing damage in existence when property purchased
 - Unless they are depreciating assets or capital works
- Capital works generally 2.5% claimed over 40 years
- Improvements and renovations that are structural are capital works
- Repairs to an 'entirety' can't be claimed as repairs
- Involves replacement or reconstruction of separately identifiable capital item



Review of ATO management of GIC remission

- Tax Ombudsman website update
- Tax Ombudsman has commenced its review into the ATO's decision making in relation to the general interest charges (GIC) on tax debts
- 134 complaints received by the Ombudsman in 2025 financial year about the ATO's approach
- ATO has stated its intention to take a stricter approach to debt collection and GIC remission
- Tax Ombudsman is aware that the ATO has reduced the number of cases in which it agrees to a reduction or remission
- Submissions are open until Friday, 10 October 2025

NOTE

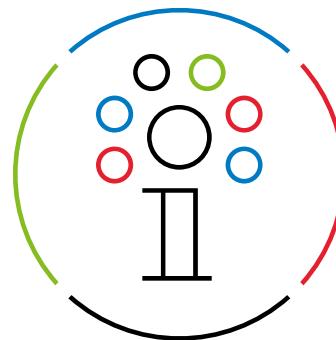
- Clients with tax debts may find it more difficult to have GIC remitted
- Important to be pro-active about outstanding tax debts – **GIC rate is approx. 11%**



Poll Question 1

What is the annual turnover threshold to qualify for the proposed extension of the Instant Asset Write off?

- a) \$2 million
- b) \$10 million
- c) \$25 million
- d) \$50 million



Family Trust Distribution Tax

- Assistant Commissioner update on ATO website
- ATO seeing an increase in FTDT issues and general lack of understanding
- Caused by inadequate record keeping and succession planning
- Lack of awareness about the compounding nature of FTDT
 - No amendment limit for FTDT – ATO can go back and amend at any time
 - Results in very large GIC and administrative penalties
 - FTDT can also be triggered in multiple years if there is no awareness of Family Trust or Interpose Elections having been made
- Common error is not understanding the composition of the family group and distributing to an outsider to the group



Family Trust Distribution Tax

- ATO has no discretion to disregard the application of the FTDT
- Unlike Division 7A, ‘mistake’ or ‘inadvertent omission’ cannot be used by the ATO to provide relief from FTDT
- Arguments that there is no ‘tax mischief’ are similarly ineffective
- ATO cannot limit their application of FTDT to the 2- year or 4-year amendment periods
- ATO is required at law to collect all payable tax liabilities owed
- ATO cannot grant more time to vary or revoke an election or allow a distribution decision to be reversed



Family Trust Distribution Tax

How to prevent FTDT

- Good governance is key
- Keep records of elections
- Check ATO Online services
- Review elections annually and revoke if necessary and within time
- If you have a FTDT – pay it as soon as possible to avoid increasing GIC
- Be aware of the ‘specified individual’ and ‘family group’
- Identify all entities that are within and outside the family group



Family Trust Distribution Tax

Remission of GIC

- FTDT is generally due and payable 21 days after the conferral or distribution
- GIC is applicable 60 days thereafter
- ATO view is that FTDT and the delay in payment is caused by the entity due to their acts or omissions
- If an electing entity has taken reasonable steps to mitigate the effects of those circumstances, up to 31 December 2026, ATO may consider it fair and reasonable to remit GIC
 - 80% remission down to 20%
 - If t/p has been proactive, self-reviewed, lodged the advice form and paid the FTDT
 - Partial remission if:
 - Voluntary disclosure made in early stages of an audit or review



Family Trust Distribution Tax

Remission of GIC (cont)

- ATO warn that it would not be fair and reasonable to remit GIC for FTDT in the following:
 - a risk review identifying FTDT risks has progressed to an audit
 - ATO have issued a FTDT notice to the electing entity
 - There is evidence of mischief, tax avoidance, fraud or evasion



Reminder: Family trusts & family trust elections

- family trust [s 272-75] - where trustee has made a family trust election (FTE)
- any distributions outside family group assessed at highest marginal rate of tax for individuals plus Medicare levy - family trust distribution tax
- can be a fixed trust or a non-fixed trust
- election must specify an individual (the ‘test individual’ [s 272-80(3)]) & must pass family control test [s 272-80(4)]



Reminder: Relevance of FTE's & IEE's

- deducting tax losses
- ability to use imputation credits
- company losses



Reminder: Family control test

- a trust cannot make an FTE unless it satisfies family control test (FCT) under s 272-87
- FCT satisfied if trust is controlled by a controlling group consisting of the following:
 - the ‘test individual’ (TI) and/or one or more members of TI's family; or
 - the above people & a financial or legal adviser to family; or
 - the trustees of one or more family trusts with same TI, or such trustees & any of the persons listed in the first point



Reminder: Family trust election - family group

- family group defined 'in relation to' a distribution by a trust [it is specific to a particular trust]
- where family trust makes distribution to someone who is not a member of the family group, **family trust distributions tax is triggered**
- definition of 'family group' contains following categories:



Reminder: Family group - the TI's family

- The family group [s 272-90] comprises:
 - the TI's family [s 272-95]
 - (a) the TI
 - (b) parent, grandparent or sibling of the TI or the TI's spouse
 - (c) nephew/niece or child of the TI or the TI's spouse
 - any lineal descendant of the above nephew/niece or child
 - the spouse of anyone in (a) – (c) above
 - spouse includes de-facto spouse

Reminder: Family group - the TI's family

Note:

- the provisions stipulate that certain people continue as family members:
 - a person does not cease to be a family member merely because of the death of another family member
 - an adopted/step/ex-nuptial child is taken to be a lineal descendant



Reminder: Family group - certain former family members

- the definition of family group contains a category of 'certain former family members' [s 272-90(2A)] including:
 - ex-spouse of TI or a member of TI's family due to marriage breakdown
 - widow/widower of TI or member of TI's family now spouse of someone else who is not a member of TI's family
 - a step-child of TI or a member of TI's family before a marriage breakdown



Reminder: Family group - family trust with same TI

- a family group category includes a ‘trust with same test individual’ [s 272-90(3A)]
- result is that the above family trusts are automatically members of each other's family group
- this means that no interposed entity elections (IEE's) required



Reminder: Family group - exclusions

- family group exclusions:
 - relatives of TI's ex-spouse (ex-spouse remains in family group)
 - uncles/aunts
 - cousins
 - great-grandparents



Reminder: Interposed entity election (IEE)

- a company, trust or partnership can make IEE [s 272-85] to be included in TI's family group in relation to a family trust
- an IEE generally relevant where members of family group plus other family trusts with same TI do not have fixed entitlements to all income & capital of entity
- if those people/entities have fixed entitlements – entity automatically part of family group & IEE not required



Reminder: Interposed entity election

- an IEE can be made for an income year later than year in which FTE made
- an IEE can not be made if entity does not pass family control test
- multiple IEE's can be made but only in relation to family trusts with same TI [revoked IEE's ignored]
- where an entity that has made an IEE makes a distribution [including dividend, partnership distribution] to someone who is not a member of the family group, family trust distribution tax triggered



Reminder: Family trust distribution tax [Sch 2F 271-5 – 271-105]

- levied at highest marginal rate of tax for individuals plus Medicare levy [currently 47%]
- applies if an entity has made an FTE or IEE
- entity makes a distribution outside family group
- if distribution made by a family trust:
 - liability to FTDT is on trustee
 - if trustee is a company, liability imposed on the directors



Reminder: Family trust election - variation & revocation

- an FTE election can be varied or revoked but only if certain conditions are satisfied
- under s 272-80(5A) - trustee of family trust can vary an FTE so that different individual becomes TI ('new TI')



Reminder: Family trust election - variation

- following conditions must be satisfied [s 272-80(5A)]:
 - new TI must have been a member of original TI's family when FTE came into force
 - any conferrals of present entitlement to, or distributions of, income or capital by family trust or entity that has made IEE during period in which FTE has been in force were made to:
 - new TI; or
 - persons who would have been members of new TI's family group at time of conferral/distribution



Reminder: Family trust election - variation

- variation can only be made once & ability to nominate new TI intended for where wrong person chosen as TI [s 272-80(5B)]
- but family trust effectively must have acted in the past as if proposed new TI had always been TI from beginning [new TI must have been alive at time FTE came into force]
- variation to nominate new TI can also be made where control of trust changes due to family law obligation arising from a marriage breakdown [conferral/distribution & once-only limitations do not apply]



Reminder: Family trust election - revocation

- trustee of a family trust can revoke an FTE [s 272-80(6)]
- the FTE can not be revoked when:
 - the family trust, or another entity, has recouped tax losses while FTE was in force & family trust/another entity had to rely on FTE to recoup the tax loss [does not include capital loss]
 - the family trust/another entity has claimed a bad debt deduction & had to rely on FTE in order to claim it
 - family trust distributed a franked distribution & FTE relied upon for beneficiary to use franking credit

Reminder: Family trust election - time limit to vary or revoke

- FTE can only be varied or revoked within specified time limit
- variation/revocation must be **for an income year that occurs before end of the 4th income year after income year specified in FTE [s 272-80(6B)]**

Example

- a trust made an FTE in its 2020/21 tax return
- the latest year in respect of which a variation/revocation can be made is 2024/25

Example

- a trust made an FTE in its 2016/17 tax return & its 2020/21 tax return has already been lodged
- a variation/revocation can not be made



Reminder: Family trust election - how to vary or revoke

- variation/revocation must be made in tax return for income year from which it is to be effective [s 272-80(7)]
- if trust not required to lodge a return - variation/revocation must:
 - be in writing & in approved form;
 - specify income year in respect of which variation/revocation is to be effective; and
 - be given to Commissioner within 2 months of end of income year, or a later day as the Commissioner allows



Reminder: Interposed entity elections - revocation

- entities that have made an IEE is one of categories within definition of family group
- an entity makes an IEE to become a member of family group of a TI in relation to an elected family trust
- IEE's can be revoked under certain circumstances
- IEE can be revoked if entity was, at commencement of election, or later became, a member of the family group [s 272-85(5A)]



Reminder: Interposed entity elections - revocation

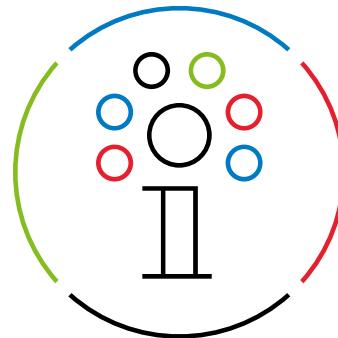
- but entity must have been, or become, a member of family group by one of two ways:
 - being wholly owned between TI, his/her family & family trusts with same TI; or
 - due to this category within the definition of family group, being another family trust with the same TI
- if a family trust revokes its FTE, an IEE made by an entity in relation to that family trust is automatically revoked at the same time [s 272-85(5B)]

Reminder: Interposed entity elections - time limit to revoke

- IEE must be revoked within 4 years after year specified in IEE [s 275-85(5C)]
- alternatively, if entity becomes member of family group in a later year - revocation can be made within 4 income years after that later date
- a revocation must be made in tax return for income year from which it is to be effective
- if return not required - revocation must be given to Commissioner in writing within 2 months of year end in approved form, specifying year effective



Poll Question 2



Who is liable to Family Trust Distribution Tax if a trust distribution is made to an entity outside the family group?

- a) The beneficiary
- b) The test individual
- c) The appointor of the trust
- d) The trustee

Employee or contractor?

- ATO website update
- ATO have outlined the penalties and charges that may apply if a t/p incorrectly treats an employee as a contractor
- PAYG Withholding penalty for failing to deduct tax from worker payments
- Super guarantee charge consisting of:
 - SGC shortfall amount
 - Nominal interest
 - Administration fee
- Part 7 SGC penalties of up to 200% of the SGC
- Sham contracting contravention of Fair Work Act 2009 - court imposed penalties for incorrectly advising an employee they are an independent contractor

Employee or contractor?

- If a business pays independent contractors under a contract that is wholly or principally for their labour:
 - It has a legal obligation to pay super contributions for them into a complying fund
 - A business cannot contract away its legal obligations to pay super even if the independent contractor agrees
- A worker may request to be engaged as independent contractor and also request conditions that only apply to employment:
 - E.g. the ability to salary sacrifice or to be paid tax-free living away from home allowances
- Access to these conditions is a clear sign that the underlying arrangement is employment, not contracting



Exiting from a professional partnership

- ATO website update
- ATO are seeing many individuals neglecting tax obligations when exiting from a partnership
- An individual professional practitioner must record in their assessable income any assessable distributions derived during an income year that are related to the net income of their partnership
- Common omissions seen by the ATO:
 - Payments from the partnership after the individual leaves – often mistaken for capital
 - Misreporting capital account adjustments
 - Overlooking obligations relating to service trusts or related entities
- These omissions often attributed to not understanding the partnership agreement



Inappropriate access to super – compassionate grounds

- ATO website update
- Early access to super on compassionate grounds is only available in limited circumstances to pay for certain expenses
- A t/p must:
 - meet all eligibility rules
 - provide the required evidence, including whether you can pay for part or all of the expense by other means
- Illegal to access super early unless a condition of release under superannuation law is met
- Access to super without meeting the rules mean serious consequences



Inappropriate access to super – compassionate grounds

Inappropriate behaviours

- fabricating or changing documents to indicate eligibility
- attempting to access super through illegal promoter schemes
- providing inaccurate information in documents, such as medical reports
- not using super on the approved expense
- creating falsified ATO approval letters to present to super funds

Eligibility conditions

- medical treatment or transport for you or your dependant
- accommodating a disability for you or your dependant
- palliative care for a terminal illness for you or your dependant
- funeral expenses for your dependant
- preventing foreclosure or forced sale of your home

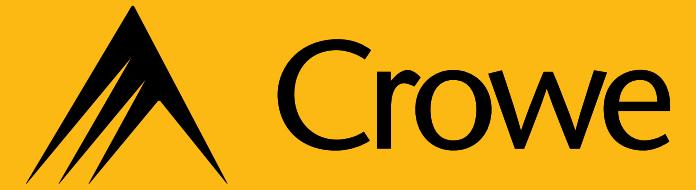


Inappropriate access to super – compassionate grounds

Medical Treatment

- Treatment must be necessary to:
 - treat a life-threatening illness or injury
 - alleviate acute or chronic pain
 - alleviate acute or chronic mental illness
- Must provide 2 medical reports with your application
- At least one of the reports must be from a specialist treating one of the above conditions
- Reports must state:
 - that the treatment is necessary to treat or alleviate one of the conditions above, and
 - that the treatment is not readily available in the public health system





Rulings

PAYG Withholding legislative instrument

- *Taxation Administration (Withholding Variation for Payment of Certain Allowances) Legislative Instrument 2025*
- reduces the amount required to be withheld by a payer under the PAYG withholding system from payments of certain allowances to nil
- Replaces the 2015 instrument
- Applies to:
 - car expenses
 - laundry expenses
 - domestic and overseas travel allowances
 - overtime meal allowances, and
 - award transport payments



PAYG Withholding legislative instrument

Conditions

- payer reasonably expects the payee will incur deductible expenses equal to or greater than the allowance
- the payment is recorded separately in accounting records



Depreciating Assets Effective Life determination

- *Income Tax Assessment (Effective Life of Depreciating Assets) Determination 2025*
- Legislative instrument specifies the effective life of certain depreciating assets as determined by the Commissioner
- Applies to depreciating assets for Division 40 of the ITAA 1997
- Depreciating asset is one that declines in value over time
- Can use Commissioner's determined effective life or self-assess effective life under s40-105



Simplified GST method for food retailers

- *A New Tax System (Goods and Services Tax) (Simplified Accounting Methods – Supermarket and Convenience Stores) Determination 2025*
- Legislative instrument allows smaller supermarkets or convenience stores to use a Simplified Accounting Method
- Designed to reduce compliance costs to comply with GST Act
- An eligible entity must be a retailer whose enterprise consists mainly of selling a range of food and other goods that are commonly sold by a supermarket or convenience store
- Retailers that mainly sell fuel, such as petrol stations, are excluded
- Less than 5% of the total consideration for the sale of goods during the tax period must be from the sale of goods that are a taxable supply
 - those goods consist of or include ingredients that are GST-free



Simplified GST method for food retailers

- *A New Tax System (Goods and Services Tax) (Simplified Accounting Methods – Supermarket and Convenience Stores) Determination 2025*
- GST turnover must not exceed \$2 million
- must also have adequate point-of-sale equipment, ie point of sale equipment that can identify and record:
 - a sale as being either a GST-free sale or a taxable sale
 - the total consideration received for all goods sold as GST-free supplies in a specified period, and
 - the total consideration received for all goods sold in a specified period
- Simplified method involves calculating input tax credits
- Broadly based on a proportion of GST free to taxable sales made by the business



Simplified GST method for food retailers

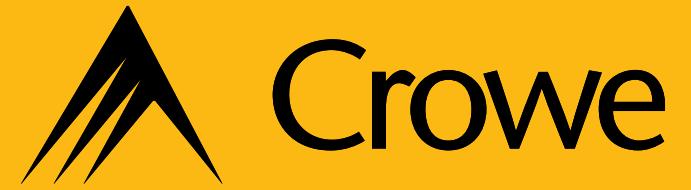
- *A New Tax System (Goods and Services Tax) (Simplified Accounting Methods – Supermarket and Convenience Stores) Determination 2025*
- GST adjustments may impact on the net amount for the tax period
- Certain modifications are made for goods:
 - not held for the purposes of sale or exchange
 - Not part of range commonly sold
 - Held in substantially greater quantities than is common
 - That are alcoholic beverages



Bitcoin not a currency

- *Addendum to Taxation Determination TD 2014/25*
- Reflects the amended definition of "foreign currency" introduced by Sch 2 to the Treasury Laws Amendment (2022 Measures No 4) Act 2023
- The addendum confirms that digital currency, including bitcoin, is excluded from the definition of "foreign currency" for the purposes of Div 775 of the ITAA 1997
- Means that Division 775 of the ITAA 1997 does not apply – foreign currency translation rules
- Bitcoin transactions give rise to the same tax consequences as other barter transactions
- If you receive Bitcoin as payment for goods and services or use Bitcoin to make purchases:
 - Must include arm's length Australian dollar value of the Bitcoin transaction in calculating assessable income
- Fluctuations in the Australian dollar value of Bitcoin may increase or decrease – whether this is ordinary income or capital gains will depend on the particular facts





Cases

Medical Expenses deduction

Overview

- *Wannberg v FC of T* [2025] ARTA 1561
- Medical expenses incurred by the t/p were denied by the Commissioner
- T/p has appealed to the Federal Court

Facts

- T/p was terminated from employment due to total and permanent disablement (TPD)
- Only income in 2024 year was TPD pension
- T/p received medical treatments directly relevant to medical grounds of his retirement
- Sought a private ruling on the deductibility of medical costs incurred.
- Commissioner ruled that the medical costs were not deductible
- Not incurred in gaining or producing the assessable income



Medical Expenses deduction

Issues

- T/p objected to the Commissioner's decision
- Argued the principles in FC of T v Anstis – which is a case a deduction was allowed for self-education expenses
- Anstis was in receipt of a Youth Allowance – the self-education was tied to the allowance
- T/p argued:
 - The TPD pension was directly and uniquely tied to his disability
 - Medical expenses were intrinsically connected to the source of income
 - He needed to incur them to manage the conditions that led to his disablement and receipt of TPD pension
 - Expenses were not private or domestic in nature



Medical Expenses deduction

Decision

- No ‘productive’ nexus between the medical expenses and the TPD pension
- Purpose of the TPD pension was to allow t/p to continue his lifestyle while being unable to work because of his medical condition
- TPD pension was for his medical condition
- Medical expenses:
 - Were incurred to better live with the medical condition
 - Were not incurred ‘in’ gaining or producing the TPD pension
 - Did not ‘produce’ medical condition nor the TPD pension
 - Were private or domestic in nature
- No deduction allowable under s8-1(2)(b) ITAA 1997



GST input tax credits and time limits

Overview

- *Trustee for Barth Family Trust v FC of T* [2025] ARTA 1558
- No entitlement to input tax credits (ITCs) claimed in returns lodged more than 4 years after the due date
- Ceased to be entitled to ITCs under s 93-5 of the GST Act

Facts

- T/p operated a swimming pool construction business and was registered for GST
- Fell behind in its BAS lodgments in 2012 and 2013
- Outstanding returns were not lodged until 2018
- The lodged returns brought to account GST on taxable supplies and claimed ITCs



GST input tax credits and time limits

Facts (cont)

- Following an audit, the Commissioner issued amended assessments disallowing the ITCs on the basis that any entitlement was extinguished by the 4-year time limit in s 93-5
- T/p's objection to the amended assessments was disallowed, and the t/p sought review
- Gave evidence that its computer had been stolen in 2011 or 2012, and that its "AUSKEY" was no longer compatible with electronic lodgment
- Attempts to obtain paper BAS forms were unsuccessful due to incorrect address details
- T/p also said it had tried to lodge returns electronically in February 2014
- It was not until March 2018 that the returns were lodged after acquiring a new computer and AUSKEY



GST input tax credits and time limits

Issues

- T/p argued that s 93-5 had no operation in the context of an objection or review
- Claimed that written communications with the Commissioner's officers showed that further time had been allowed or deferred for lodgment

Decision

- ART affirmed the Commissioner's decision
- S93-5 states that a t/p ceases to be entitled to ITCs that have not been taken into account during the period of 4 years after the time for lodgment of a return
- ART also found that the Commissioner had not allowed further time or deferred the time for lodgment
- Communications only recorded agreement to lodge returns by a certain date



Unexplained deposits appeal dismissed

Overview

- *Rusanov & Anor v FC of T* [2025] FCAFC 117
- Full Federal Court has dismissed t/p's appeal from Federal Court and AAT decisions
- Unexplained deposits and expenses in bank account statements assessed to t/ps were held to be validly assessed

Facts

- Mr and Ms R were born in Russia
- They met and married in Australia and were Australian residents for tax purposes
- They failed to lodge tax returns for several years
- Each t/p was issued with a default assessment for the income years ending 30 June 2011 to 30 June 2016



Unexplained deposits appeal dismissed

Facts (cont)

- Assessment issued under covert audits conducted by the ATO
- Those audits used a bank account analysis methodology to attribute taxable income to the t/ps based on unexplained deposits and expenses in their bank statements
- Commissioner disallowed objections to the assessments the taxpayers sought review by the AAT
- Claimed that the majority of the deposits were gifts from Ms R's father, or were loans from a friend
- AAT affirmed the objection decisions on the basis that the t/ps had not discharged their burden of proving what their actual taxable income was in the relevant years
- Did not demonstrate that the assessments were excessive
- T/ps then appealed to the Federal Court



Unexplained deposits appeal dismissed

T/p arguments to Federal Court

- T/p argued the evidence provided was consistent with ATO guidelines for documenting gifts or loans from related overseas entities
- Also argued the Commissioner did not make out their case by merely asserting that the evidence was not accepted – if authenticity was not challenged then it should be assumed
- AAT's finding was unreasonable
- AAT should have been satisfied on the evidence
- Denied procedural fairness

Unexplained deposits appeal dismissed

Decision Full Federal Court

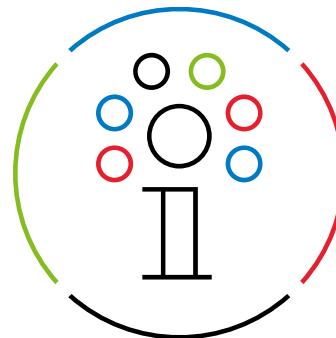
- Appeal dismissed
- No records to substantiate the nature of the payments e.g. email or texts
- Implausible that no communications of that sort existed
- AAT's findings were that it was not satisfied that the transfers were NOT remuneration - this conclusion was not unreasonable
- There was no procedural unfairness

Conclusion

- Good reminder that the onus of proof is always with the taxpayer
- Robust documentation should be obtained if a t/p seeks to assert that a deposit is a gift or loan from a related party



Key Takeaways from today's session



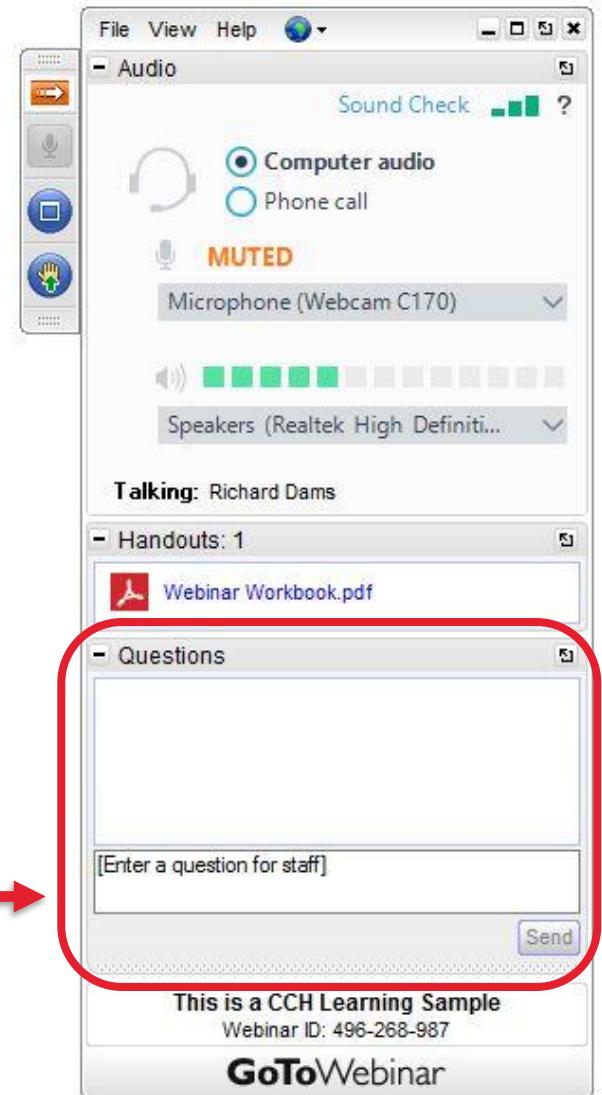
- Very view Bills have been progressed in the past month
- Family Trust Elections are now highly risky. Exercise care when determining distributions from family trusts
- Super Guarantee continues to be on the ATO radar. Encourage clients to review compliance with the SGC Act to ensure there are no shortfall
- Employee v independent contractor is an issue that is always present. Be aware of employment arrangements that are disguised as contractor arrangements

Questions?

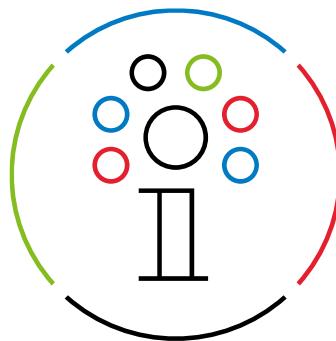


Alison Wood
CCH Learning Moderator

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Questions?



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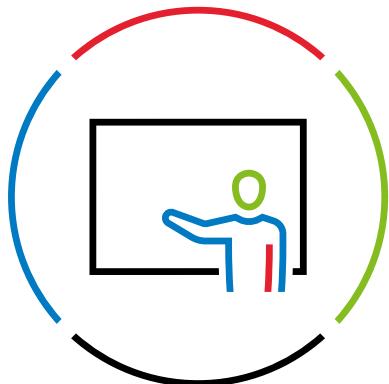
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