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# Tax Technical Update – March 2025

Carlo Di Loreto

Tuesday, 18 March 2025



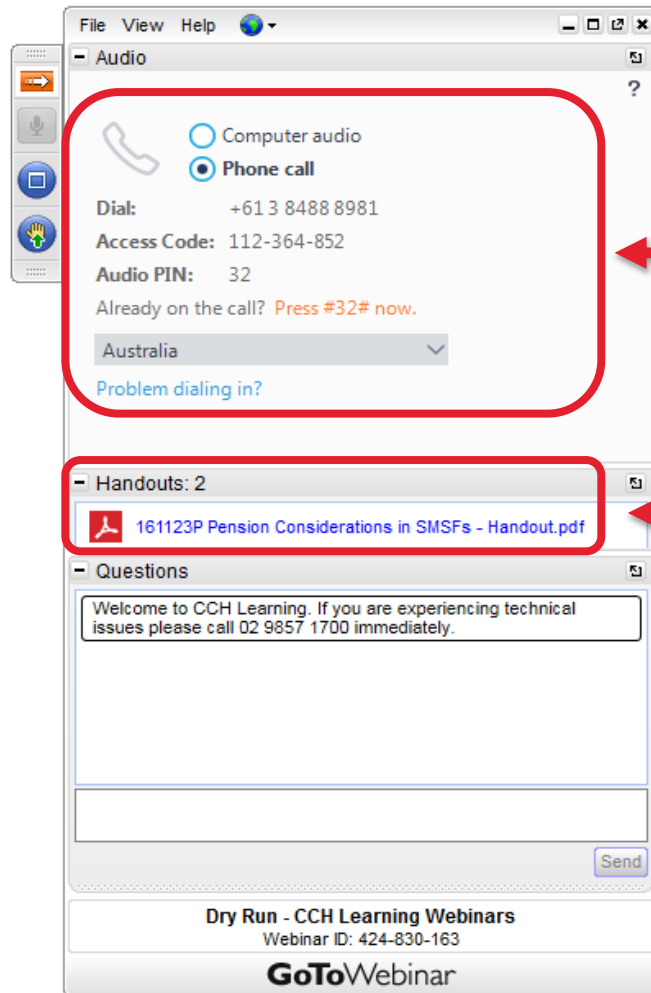
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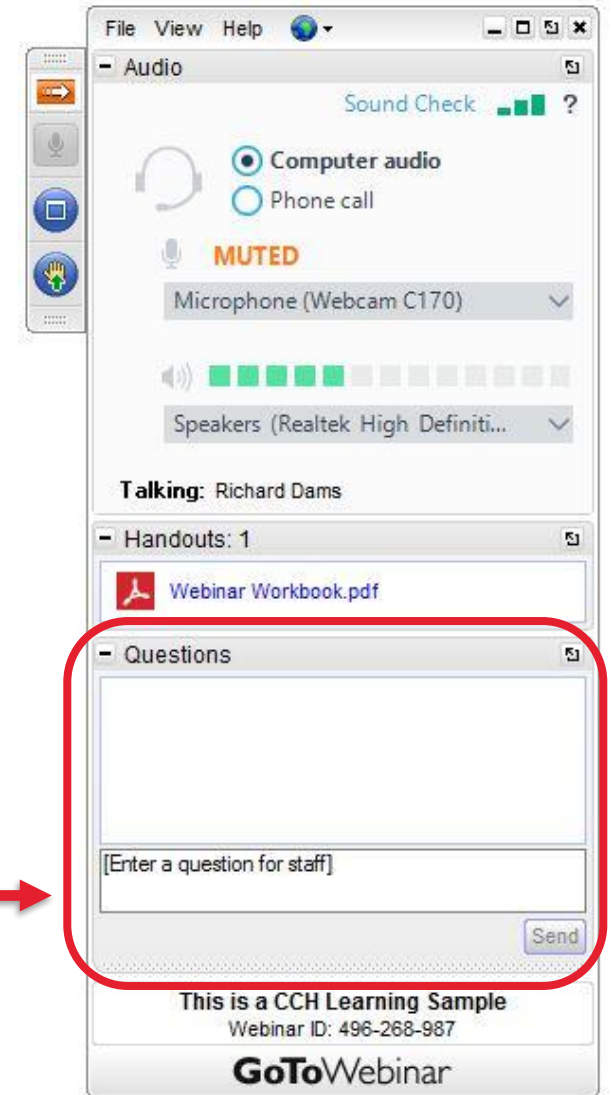


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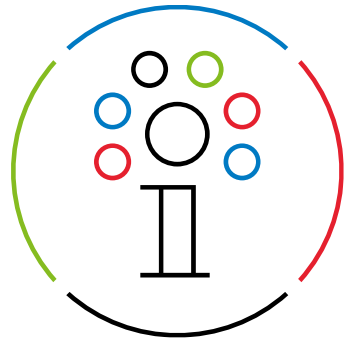
**Carlo Di Loreto**

Partner - Tax Advisory

Crowe Australasia, an affiliate of Findex

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# Today's session will cover



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## March 2025 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 – No sitting days
February – 7 House; 7 Senate	August – 7 House; 7 Senate
March* – 3 House; 3 Senate	September – 8 House; 8 Senate
April – 7 House; 7 Senate	October – 8 House; 4 Senate
May# – 11 House; 11 Senate	November – 8 House; 8 Senate
June – 7 House; 7 Senate	December – No sitting days

\* Budget Night 25 March 2025

# Federal Election to be held by 17 May 2025



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# Payday Super exposure draft

- *Superannuation Guarantee Charge Amendment Bill 2025*
- *Treasury Laws Amendment Bill 2025: SG reforms to address unpaid super*
- Implements Government policy for super guarantee (SG) contributions to be paid at the same time as an employee's salary or wages
- Must be received by super fund within a specified period – typically 7 days
- Determines whether there are any SG shortfalls – now based on salary or wages payment day
- Making employer disclosures of SG shortfalls voluntary
- Imposing late payment penalty when SG charge remains outstanding
- Updating imposition of choice loading component of SG charge
- Applies from 1 July 2026

# **ATO / Government Announcements**

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# Small Business ATO focus areas

- Areas of concern for the ATO in 2025
- *contractors omitting income*
  - with a focus on data matching to ensure all income is reported
- *quarterly to monthly BAS reporting for GST purposes*
  - to build good business habits and help improve cashflow management
- *small business boost measures*
  - covers the skills and training boost (ended in June 2024) and
  - the technology investment boost (ended in June 2023)
  - encouraging self-amendment to correct errors and omissions

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# Foreign investment framework updated guidance

- Treasury website updated on 14 March 2025 covers the following:
  - Temporary ban on foreign purchases of established dwellings announced on 16 February 2025
  - Foreign investment in new and established build to rent developments
  - Partial refunds of application fees for unsuccessful proposals in competitive bid processes
  - Tax arrangements that will attract greater scrutiny in the foreign investment assessment process



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# Temporary ban on foreign purchases – established dwellings

- Media release dated 16 February 2025
- Ban foreign investors from buying established homes for at least two years
- Crack down on foreign land banking
- Ban on foreign purchases of established dwellings applies *from 1 April 2025 to 31 March 2027*
- A review will be undertaken to determine whether it should be extended beyond this point
- Foreign investors have generally been barred from buying existing property except in limited circumstances, e.g. when they come to live here for work or study
- Ban to foreign investors, including temporary residents and foreign-owned companies

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# Temporary ban on foreign purchases – established dwellings

## Exceptions

- Investments that significantly increase housing supply
- Investments that support the availability of housing supply
- Pacific Australia Labour Mobility (PALM) scheme

## Enforcement

- ATO foreign investment compliance team will be responsible for enforcement
- Funding of \$5.7 million provided over 4 years from 2025-26

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# Temporary ban on foreign purchases – established dwellings

## Land banking

- Crack down on land banking by foreign investors to free up land to build more homes more quickly
- Foreign investors are subject to development conditions when they acquire vacant land in Australia to ensure that it is put to productive use within reasonable timeframes
- Focus on making sure these rules are complied with and identifying any investors who are acquiring vacant land, not developing it while prices rise and then selling it for a profit
- ATO and Treasury to receive \$8.9 million over four years from 2025–26
- \$1.9 million ongoing from 2029–30 to implement an audit program and enhance compliance approach to target land banking by foreign investors

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# FBT and Plug In Hybrid Electric Vehicles (PHEV)

- FBT exemption for PHEVs under s 8A of the FBTA ends on 31 March 2025
- An employer can continue to apply the exemption if:
  - that PHEV was used, or available for use, before 1 April 2025 (and that use was exempt), and
  - they have a financially binding commitment to continue providing private use of the vehicle on and after 1 April 2025.
- Employers need to keep appropriate records to support their FBT position



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# TPB Updated Guidance Cyclone Alfred

- Tax Practitioner Board (TPB) website updated 22 March 2025
- If you (or your practice) have been affected by these severe weather conditions - do not worry about your TPB matters at this time
- Contact the TPB when you are ready - will work practitioners to make appropriate arrangements regarding registration and any other TPB obligation you may have

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# Non-compliant small businesses and GST

- ATO website update on 5 March 2025
- ATO will be moving around 3,500 small businesses with a history of non-payment, late or non lodgment, or incorrect reporting from quarterly to monthly GST reporting, from 1 April 2025
- ATO will contact small businesses and their tax agents when their GST reporting cycle is changed from quarterly to monthly
- Designed to improve compliance with GST obligations
- Changes to reporting cycles will remain in place for a minimum of 12 months
- Part of the 'Getting it right' campaign

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# FBT time reminder

- ATO website update on 5 March 2025
- FBT year ending 31 March 2025
- FBT return and tax payable due by 21 May 2025
- Worthwhile advising ATO if a return is not required
- Each employee's reportable fringe benefits amount needs to be reported in the year end payment information

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# Taxable payments reporting system (TPRS) reminder

- ATO website update on 4 March 2025
- Clients may need to lodge a taxable payments annual report (TPAR) by 28 August each year if a client pays contractors for TPRS services
- ATO will apply penalties from 22 March to businesses that:
  - Have not lodged their TPAR from 2024 or previous years, and
  - have been issued 3 reminder letters about their overdue TPAR
- ATO issued more than 11,000 businesses with approximately \$18 million in penalties in 2024
- If a TPAR is not required, recommended that businesses submit a non-lodgment advice
- If a business no longer pays contractors, the same form can be used to indicate that there is no requirement to lodge the TPAR in the future



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# Not for profit (NFP) reminder

- ATO website update on 3 March 2025
- Non-charitable NFPs with an active ABN that self-assess as income tax exempt are due to lodge their 2023–24 *self-review return by 31 March 2025*
- NFPs can lodge these through their tax agent

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# ATO statement of account changes

- ATO website update on 3 March 2025
- stopped issuing automated statement of accounts (SOAs) when the only transaction on an account is a general interest charge (GIC)
- Debt correspondence with will continue to advise that GIC may accrue until the debt is paid in full, and the amount owing will include any GIC incurred up to that point
- ATO will continue to issue SOAs for other events, such as
  - when interest accrues on early payments,
  - when credits or refunds are used to offset other debts, and
  - in some cases, when a Notice of Assessment issues

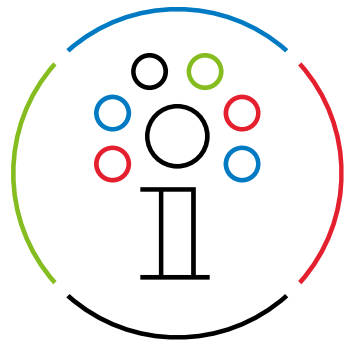
# Transfer balance cap

- ATO website update on 26 February 2025
- Indexation of the general transfer balance cap (TBC) will occur on 1 July 2025
- Transfer balance cap will increase by \$100,000 to \$2 million (from \$1.9 million)
- The defined benefit income cap will increase to \$125,000 (from \$118,750)
- Individuals starting a pension for the first time on or after 1 July 2025 will be entitled to a personal TBC of \$2 million
- Individuals can view their personal TBC in ATO online services through myGov

Financial year	General transfer balance cap amount
2023–24 and 2024–25	\$1.9m
2021–22 and 2022–23	\$1.7m
2017–18 to 2020–21	\$1.6m

# Poll Question

Which of the following is best describes Transfer Balance cap increases. It is calculated:



- a) Annually with CPI increases
- b) Bi-annually with CPI increases
- c) in \$100,000 increments of CPI increases
- d) By fixed regular increases





# Rulings

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# Amendment to life interests in property

- *Taxation ruling TR 2006/14*
- Amendment to ruling to include an exception to CGT events for granny flat arrangements
- The creation, variance or termination of an eligible granny flat arrangement is exempt from any CGT events in accordance with Division 137 of the ITAA 1997
- Is relevant for both the life tenant and remainderman
- Applies retrospectively

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# Draft PAYG withholding legislative instrument bankrupt estates

- *Draft Taxation Administration (Withholding Variation for Certain Payments Made by External Administrators and Trustees of Bankrupts' Estates) Legislative Instrument 2025*
- Varies PAYG withholding rate for external administrators and trustees of bankrupt estates
- Adjusts withholding rate from 34.5% to 32%
- Applies to payment of employee entitlements that accrued before appointment of administrator or trustee
- Applies from 1 July 2024

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# GST on NDIS supplies

- *A New Tax System (Goods and Services Tax) (GST-free Supply—National Disability Insurance Scheme Supports) Determination 2021*
- Has been extended to 30 June 2027
- Sets out the kinds of supplies provided to a participants of NDIS that are GST free
- Includes supplies such as:
  - Specialist disability accommodation
  - Household tasks
  - Assistance with and training in travel/transport arrangement, but not taxi fares
  - Interpreting and translation
  - Assistive equipment for recreation

# HELP repayment levels for 2025-26

- Gazette – C2025G00118 Federal Register of Legislation website 6 March 2025*

Repayment Income	Rate of Repayment*	Repayment Income	Rate of Repayment *
Below \$56,156	Nil	\$103,343 - \$109,643	6.0%
\$56,156 - \$64,838	1.0%	\$109,644 - \$116,116	6.5%
\$64,839 - \$68,727	2.0%	\$116,117 - \$123,082	7.0%
\$68,728 - \$72,852	2.5%	\$123,083 - \$130,467	7.5%
\$72,853 - \$77,223	3.0%	\$130,468 - \$138,295	8.0%
\$77,224 - \$81,856	3.5%	\$138,296 - \$146,594	8.5%
\$81,857 - \$86,767	4.0%	\$146,595 - \$155,389	9.0%
\$86,768 - \$91,974	4.5%	\$155,390 - \$164,712	9.5%
\$91,975 - \$97,492	5.0%	\$164,713 or more	10.0%
\$97,493 - \$103,342	5.5%		

\* The rate of repayment is applied to the repayment income.

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# Draft Ruling Division 7A anti-refinancing rule

- *Draft Taxation Determination TD 2025/D2* issued on 5 March 2025
- Considers the application of section 109R of Division 7A ITAA 1936 in determining how much of a loan has been repaid in situations where notional loans are involved
- S109R operates to disregard certain payments which might otherwise be taken into account in determining whether a loan has been repaid in whole or in part, or a minimum yearly repayment has been made
- Intended to prevent shareholders and their associates from avoiding the operation of Division 7A by repaying a loan, or making a minimum yearly repayment, with another loan from the same company
- TD 2025/D2 states that s109R can apply to disregard certain loan repayments made to a private company where the repaying entity has obtained a loan by the interposed company rules in s109T and s109W

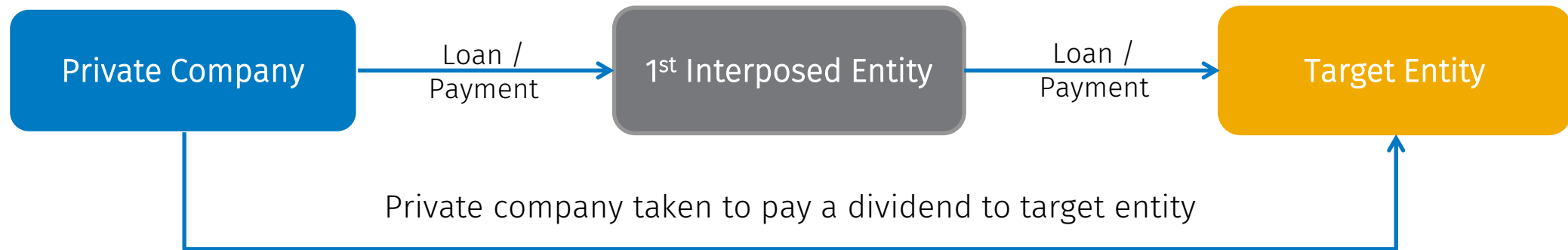
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# Draft Ruling Division 7A anti-refinancing rule

- Section 109R states payments are not taken into account where:
  - a reasonable person would conclude that
  - the entity intended to borrow, or borrowed,
  - a similar or larger amount from the private company
  - in order to make the payment
- TD 2025/D2 also states that where a private company is taken to have made a notional loan under sections 109T and 109W
  - s109R of the ITAA 1936 can apply to disregard certain repayments when determining how much (if any) of that loan has been notionally repaid

# Draft Ruling Division 7A anti-refinancing rule

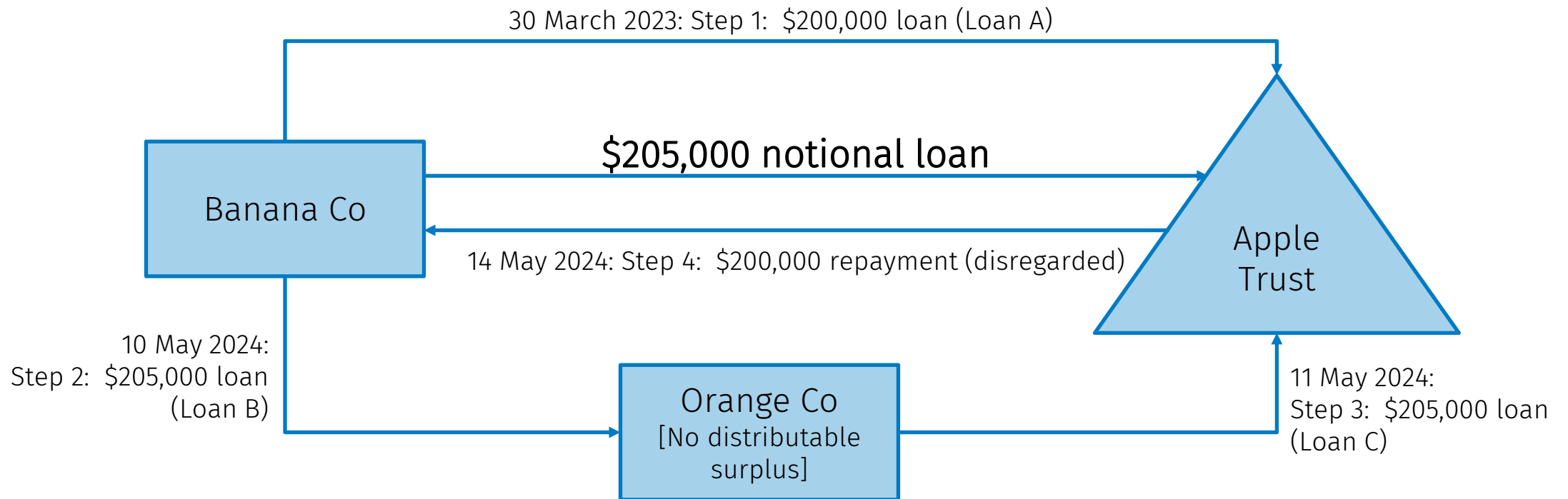
- Section 109T extends the operation of Division 7A to loans (and payments) that are made indirectly, through interposed entities
- Loans that are made from a private company, through interposed entities, to the target entity (notional loans) under certain circumstances may result in assessable dividends under section 109D because of section 109W





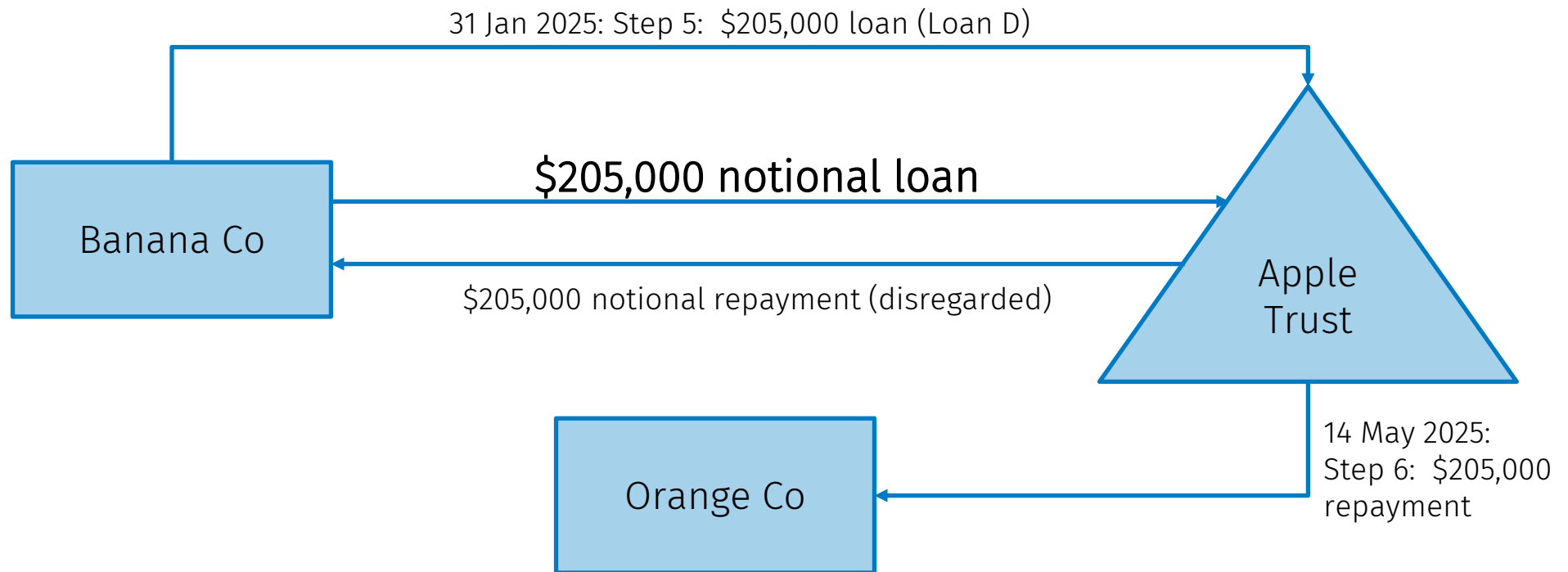
# Draft Ruling Division 7A anti-refinancing rule

- TD 2025/D2 Example 1: Notional loan from private company and repayment



# Draft Ruling Division 7A anti-refinancing rule

- TD 2025/D2 Example 2: Trust obtains loan from private company to repay loan from same company



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# Director Identification Number (DIN)

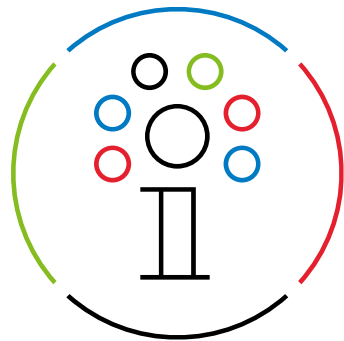
- [\*Law Administration Practice Statement PS LA 2025/1\*](#), issued on 28 February 2025
- Outlines the policy to be applied to the use of the Registrar's power to extend an eligible officer's time to apply for a DIN
- Sets out:
  - DIN obligations
  - the time by which a person must have a DIN
  - information about extensions of time to apply for a DIN
- A person:
  - must have a DIN at the time they become an eligible officer
  - needs to apply for their DIN before being appointed as a director
  - may apply for a DIN if they intend to become a director within the next 12 months

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# Director Identification Number (DIN)

- An eligible officer must apply to the Registrar for an extension
- The power to extend an eligible officer's time to apply is discretionary
- This discretion allows the Registrar to extend an eligible officer's time to apply where warranted in the circumstances
- Should apply for an extension where circumstances have prevented the eligible officer from applying for their DIN
- Application should be made before the application is lodged

# Poll Question



When must a director hold a Director identification number?

- a) 12 months before their appointment
- b) When they become a director
- c) Within 30 days of being appointed
- d) There is no time specified



# Cases

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# Bendel's case Full Federal Court decision

## Overview

- Unpaid present entitlement (UPE) from a discretionary trust to a company is NOT a loan for the purposes of Division 7A of the ITAA 1936
- A “loan” for the purpose of s 109D(3) *requires a transaction which creates an obligation to repay an amount or which in substance effects an obligation to repay*
- The creation of an obligation to *pay an amount* is not sufficient

## Facts

- Gleewin Pty Ltd is the trustee of the Steven Bendel 2005 Discretionary Trusts (2005 Trust)
- Gleewin Investments Pty Ltd and Mr Bendel are discretionary beneficiaries of the 2005 Trust
- Mr Bendel was the controller of both Gleewin and Gleewin Investment

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# Bendel's case Full Federal Court decision

## Facts (cont)

- An amount set aside for a beneficiary ceased to form part of the trust fund of the 2005 Trust
- This was to be “held by the Trustee on a separate trust” for that beneficiary absolutely with the trustee
- In the years of income ended 30 June 2014 to 30 June 2017, the resolution was in the following form (trustee resolutions):

### *Distribution of Income:*

*RESOLVED THAT, in exercise of the power of the Trust Deed and every other power enabling in that behalf, the following classes or categories of income of the Trust for the year ending 30 June 201X are hereby set aside for the benefit of the following beneficiaries, and in the following amounts and/or proportions, as set out in the table below:*



# Bendel's case Full Federal Court decision

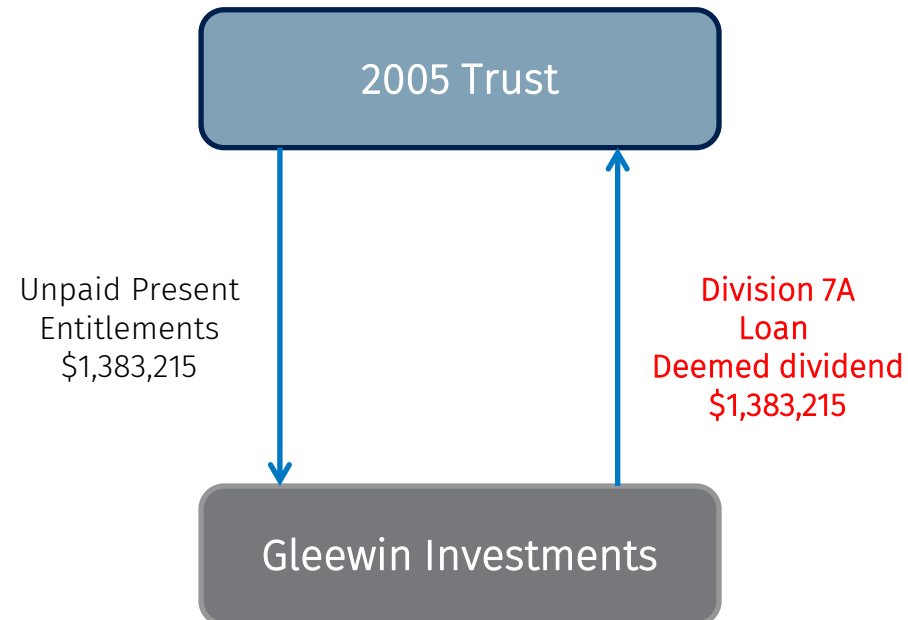
## Facts (cont)

Gleewin Pty Ltd entitlement to income of 2005 Trust	UPE AMOUNT	Division 7A deemed dividends
2013	\$181,601	Nil
2014	\$164,242	\$181,601
2015	\$807,417	\$164,242
2016	\$229,955	\$807,417
2017	Nil	\$229,955
TOTAL	\$1,383,215	\$1,383,215

# Bendel's case Full Federal Court decision

## Facts (cont)

- The following diagram illustrates the flow of UPEs and deemed dividends:



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# Bendel's case Full Federal Court decision

## Facts (cont)

- The financial statements for the 2005 Trust disclosed the following in the balance sheet:

(2) *“Beneficiaries [sic] Current Account Gleewin Investments Pty Ltd”,*

- Appeared as a standalone account in the Total Liabilities disclosed in the 2005 Trust balance sheet
- Gleewin Investments' financial statements disclosed UPE balance as a current asset in the balance sheet

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# Bendel's case Full Federal Court decision

## Analysis

- S109D(1) applies to loans
- a loan made during an income year will be treated as a payment of a dividend if the following conditions are satisfied:
  - loan made by a private company;
  - loan is not fully repaid by the "lodgment day";
  - it is not an "excluded loan"; andeither:
  - the loan is made to a shareholder or its associate; or
  - a reasonable person would conclude the loan is made because the entity has been a shareholder or associate at some time

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# Bendel's case Full Federal Court decision

## Analysis

- Definition of loan is contained in s109D(3) ITAA 1936. it states:

(3) *In this Division, **loan** includes:*

*(a) an advance of money; and*

*(b) a provision of credit or any other form of financial accommodation; and*

*(c) a payment of an amount for, on account of, on behalf of or at the request of, an entity, if there is an express or implied obligation to repay the amount; and*

*(d) a transaction (whatever its terms or form) which in substance effects a loan of money.*

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# Bendel's case Full Federal Court decision

## Commissioner's argument

- The phrase “provision of credit or any other form of financial accommodation” is a very broad term
- Captures the allowance by a corporate beneficiary of time for a trustee to pay an amount due to the beneficiary
- Also applies where there is a refraining by a beneficiary from demanding immediate payment of an amount due to that beneficiary

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# Bendel's case Full Federal Court decision

## Commissioner's argument

- The term “financial accommodation” has been held apply to:
  - bills of exchange; the provision of a guarantee; the extension of an overdraft facility;
  - an instalment sale;
  - a loan (within the ordinary meaning of that term); and
  - the provision and indemnity against a liability on maturity bills, under a bill acceptance facility.

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# Bendel's case Full Federal Court decision

## Commissioner's argument

- There was:
  - “a provision of credit or any other form of financial accommodation” by
  - the corporate beneficiary, Gleewin Investments, to
  - The trustee, Gleewin and / or
  - “a transaction (whatever its terms or form) which in substance effects a loan of money” by
  - Gleewin Investments to Gleewin, and accordingly
  - a “loan” arises within the meaning of s 109D(3)



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# Bendel's case Full Federal Court decision

## Commissioner's argument

- Gleewin Investments had a vested and indefeasible interest in the amount of net income and a right held by Gleewin Investments to call for payment of those amounts
- The trustee retained the UPEs for continued use as part of the trust funds of the 2005 Trust
- It did not pay the amounts to, or hold them on a separate trust for, Gleewin Investments
- It did this with the knowledge and approval of Gleewin Investments
- Gleewin Investments and the trustee recognised and accepted that the UPEs were owed by the trustee to Gleewin Investments
- *Evidenced by the way each entity prepared its respective financial statements*
- Also relies upon s 109D(3)(d) which includes as a loan “a transaction (whatever its terms or form) which in substance effects a loan of money

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# Bendel's case Full Federal Court decision

## Full Federal Court decision on the UPEs

- S109D(3) did not apply to include the equitable rights created when entitlements to trust income (or capital) were created but not satisfied and remained unpaid
- The balance of UPEs of Gleewin Investments to the 2005 Trust, whether on separate trust or otherwise, was not a loan to the trustee of the trust

## Other Matters

- S6-25 does not apply where a Division 7A loan is triggered because of a UPE
- S6-25 is an anti-overlap provision designed to prevent double taxation
- An entitlement to trust income and a deemed Division 7A arising as a result of a UPE *are BOTH subject to tax*
- S109RB was not applied, however this was ultimately academic and not required

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# Bendel's case Full Federal Court decision

## What is the state of play?

- This decision means the Commissioner's views in TD 2022/11 are not supported at law
- The Commissioner has the following courses of action available:
  - Can accept the decision, or
  - Can seek Special Leave to appeal to the High Court
- The Commissioner has until 19 March 2025 to apply to the High Court for Special Leave to appeal
- If the Commissioner does this, High Court may either allow or disallow this request
- If the request is disallowed, the Full Federal Court decision stands and views expressed in TD 2022/11 cannot be applied by the ATO
- If the High Court decides to grant the special leave to appeal, the Commissioner may or may not be successful

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# Bendel's case Full Federal Court decision

## What is the state of play?

- If this decision stands - *UPEs are not loans* – back to the pre-December 2009 position
- Subdiv EA can still apply
- Section 100A must always be considered – regardless of Bendel

## Next Steps

- Wait and see approach
- If the Commissioner does not seek Special Leave by tomorrow (19 March) – the matter is concluded and Bendel decision applies
- If the Commissioner does seek Special Leave – we must wait for the High Court's decision on whether it will hear the case
- Regardless, the Treasury may seek to amend Division 7A to achieve the outcomes in TD 2022/11

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# Residency

## Overview

- *Quy v FC of T [2025] ARTA 174* on 28 February 2025
- Federal Court remitted this matter back to the Administrative Review Tribunal (ART)
- Mr Quy from Dubai (and now of Thailand) found to be an Australian resident under the domicile test
- Unable to show that he had a “permanent place of abode” outside Australia in any of the relevant years

## Facts

- Mr Quy came to Australia in 1978 and obtained Australian citizenship that year
- Became a mechanical engineer and commenced working with CBI Constructions Pty Ltd in 1986

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# Residency

## Facts (cont)

- 1998 - accepted a posting to Dubai, United Arab Emirates
- Accompanied by his wife and 3 children
- Lived in Dubai until late 2009 and then they all relocated to Perth, Western Australia
- September 2015 – Mr Quy accepted another posting to Dubai
- At the time 2 of his daughters were undertaking university studies and his youngest daughter was completing high school
- Spouse temporarily joined him in Dubai in January 2016, but the 3 daughters remained in Australia
- Mr Quy continued to maintain the family home in Perth, where he stayed when in Australia

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# Residency

## Facts (cont)

- Assignment in Dubai included that its duration was expected to be 24 months
- Mr Quy held accompanied status
- The base employment salary was to be paid into his Australian bank account
- He received various benefits, such as, the provision of a vehicle and accommodation and allowances for living expenses and travel arrangements
- A month after arriving in Dubai – Mr Quy moved into an apartment in which he resided for the duration of the posting, which ended in early 2021
- He then moved to Thailand for another posting with CBI in February 2021, and had lived there since with his wife

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# Residency

## Facts (cont)

- During the income years ended 30 June 2016 to 30 June 2020 Mr Quy spent 119, 47, 29, 34 and 41 days respectively in Australia
- His wife spent 322, 183, 264, 310 and 343 days respectively in Australia
- In addition to the home in Perth, he owned 2 rental properties in Sydney, New South Wales
- He maintained a bank account in Australia, private health insurance and registration on 3 cars, a motorcycle and a box trailer (stored at the Perth property)



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# Residency

## Issues

- Mr Quy was issued with assessments on the basis that he was an Australian resident
- Was he a resident under ordinary concepts or the domicile test?
- Did not have any tax payable, but was seeking a refund of PAYG withholding of \$524,943

## Questions for the ART

- Was Mr Quy a 'resident of Australia' according to ordinary concepts
- Did Mr Quy have a permanent place of abode outside Australia

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# Residency

## ART Decision (cont)

### *‘Resides’*

- Mr Quy did not reside in Australia under the ordinary meaning of that term
- There were matters that were indicative of the taxpayer having a continuity of association with Australia eg. retaining real property, including the family home, and not taking furniture and other household items to Dubai
- The objective evidence, including the duration and nature of the taxpayer’s absences from Australia, and his employment arrangements, was consistent with his position that he did not have the intention to treat Australia as his “home” in those years

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# Residency

## ART Decision

### *Permanent place of abode*

- Mr Quay's accommodation and social arrangements in Dubai not sufficient to establish a place of abode in Dubai
- Found to be temporary or transitory
- Mr Quay maintained connections with Australia where were not consistent with his abandoning residence and making Dubai a permanent home
- ART was not satisfied that Mr Quay had a permanent place of abode outside Australia
- Distinction drawn to Harding' case where there was a strong commitment to settling in Bahrain permanently
- Mr Quay did not have such a commitment in relation to Dubai

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# Small business relief

## Overview

- [VSVS v FC of T \[2025\] ARTA 249](#) on 6 November 2024
- Inherited farmland was not held 'ready for use' in the carrying on of a beef cattle business
- Rejected the argument that a dispute with the t/p's brother prevented him from using the asset in the business

## Facts

- T/p was a third-generation primary producer and the youngest of his parents' 4 sons
- T/p and spouse ran a beef cattle business that was located on properties near Craigieburn, Victoria
- Those properties were adjacent to his parents' dairy farm on which he grew up

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# Small business relief

## Facts (cont)

- In the late 1990s - arrangement entered between family members
- Parents handed over the running of the dairy farm to 2 of the t/p's brothers (H and E) but continued to draw income from the business and live in the family home
- Following his father's death in 2007, t/p acquired legal interests in the 2 properties on which the dairy farm was operated (the Properties)
- At the time t/p was of the view that H and E would continue to operate the dairy, he could continue to access the property and the machinery, and his mother could continue to live in the family home
- E died in 2008, leaving H to run the dairy farm

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# Small business relief

## Facts (cont)

- T/p temporarily agreed to a land swap
- In lieu of him not being able to utilise his interest in the Properties due to his poor relationship with H, he agreed to an arrangement in which he was given exclusive rent-free access to another tract of land for use in his beef cattle business
- The arrangement remained workable until 2014 when his relationship with H deteriorated further

## Issue

- T/p sold the Properties in 2016 and incurred a capital gains tax (CGT) liability, which was included in his 2016 assessment
- He objected to that assessment and, when the objection was unsuccessful, sought review of the objection decision

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# Small business relief

## Issues (cont)

- T/p argued small business relief concessions in Division 152 ITAA 1997 applied to the sale
- Commissioner (C) took the view that the asset was not an 'active asset' for the purposes of the Active Asset Test (AAT) in s152-35 and s152-40 ITAA 1997
- T/p and C accepted that the assets were not 'used' in the beef cattle business at any time
- T/p argued that from 1 January 2011, he held the assets 'ready for use' in the carrying on of the beef cattle business
- Argued that hostility with his brother, H, prevented him from using the Properties
- He held the asset with the intention of using it in his business, but a contingency beyond his control prevented him from doing so
- T/p needed to establish that his interest in the Properties was held ready for use in the course of carrying on his business for half the period he held the asset, or in this case, 1,667 days

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# Small business relief

## Decision

- ART rejected the t/p's arguments
- T/p never used the Properties during the period 2007 to 2014
- T/p never held in interests in the Properties ready for use
- He permitted others to use them or use his interest to secure access to other land that he did use in his business
- T/p did not hold interests in the Properties 'ready for use in carrying on' his business for the required period of time
- ART concluded that the Properties were not an active asset and no entitlement to the small business relief CGT concessions applied



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# 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

## 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

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# 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

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# 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

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# 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

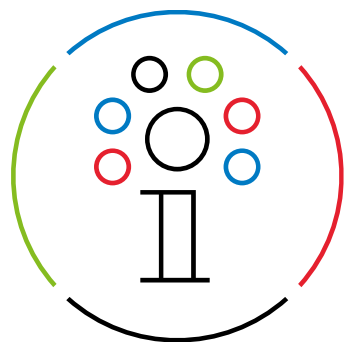
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# Genuine redundancy

## Federal Court decision

- Appeal allowed
- 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

# Key Takeaways from today's session



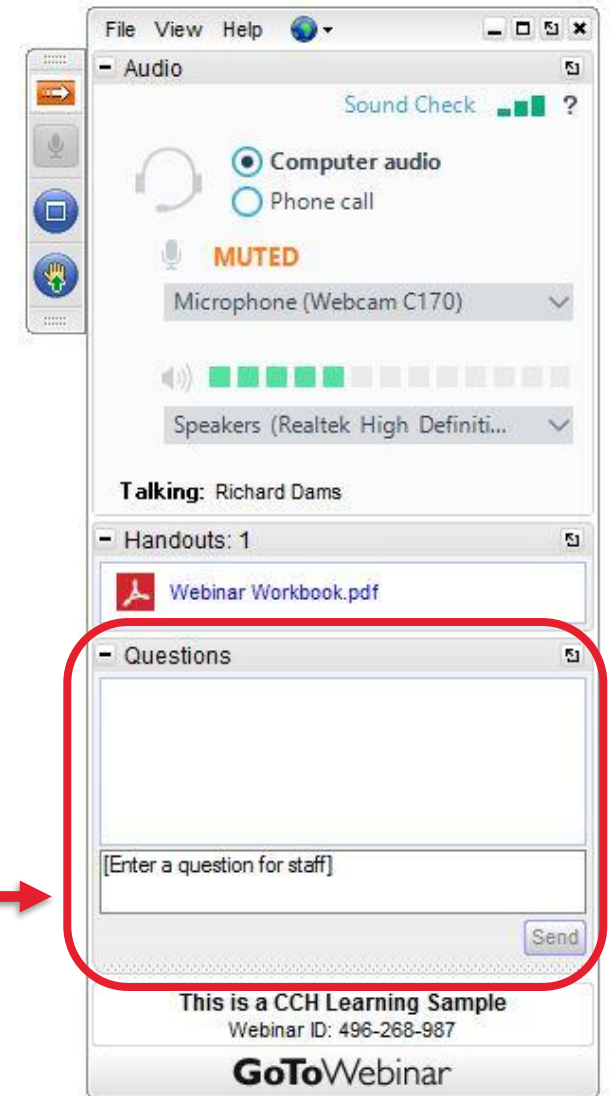
- The Bendel decision is very important – we wait on whether the ATO will seek leave to appeal by 19 March 2025
- Keep a close eye on changes in residency of individuals
- Small business relief can be complex – pay close attention to the actual usage of business assets
- The ATO is clearly looking at small businesses in their audit and review activities in 2025
- An announcement is expected soon on when the Federal Election will be

# Questions?

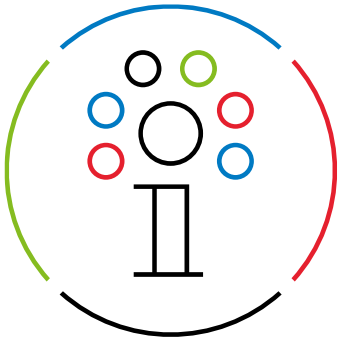


Susannah Gynther  
CCH Learning Moderator

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- March 26 – Navigating Market Valuations in SMSFs
- March 26 – FBT 2025 – Motor Vehicles including Electric Vehicles



# Questions?



You can type 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](mailto:carlo.diloreto@crowe.com.au)

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# Thank you for attending



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