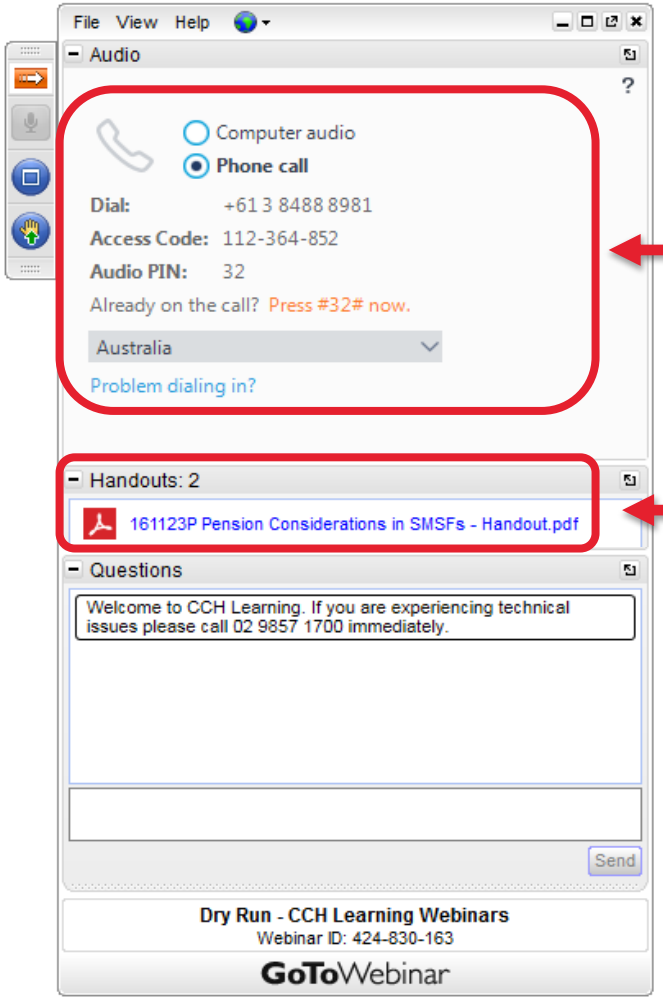
# Income Tax Case Update

Bruce Collins

Thursday 7 March 2024

Wolters Kluwer

# How to Participate Today

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# Questions?

Susannah Gynther
Moderator

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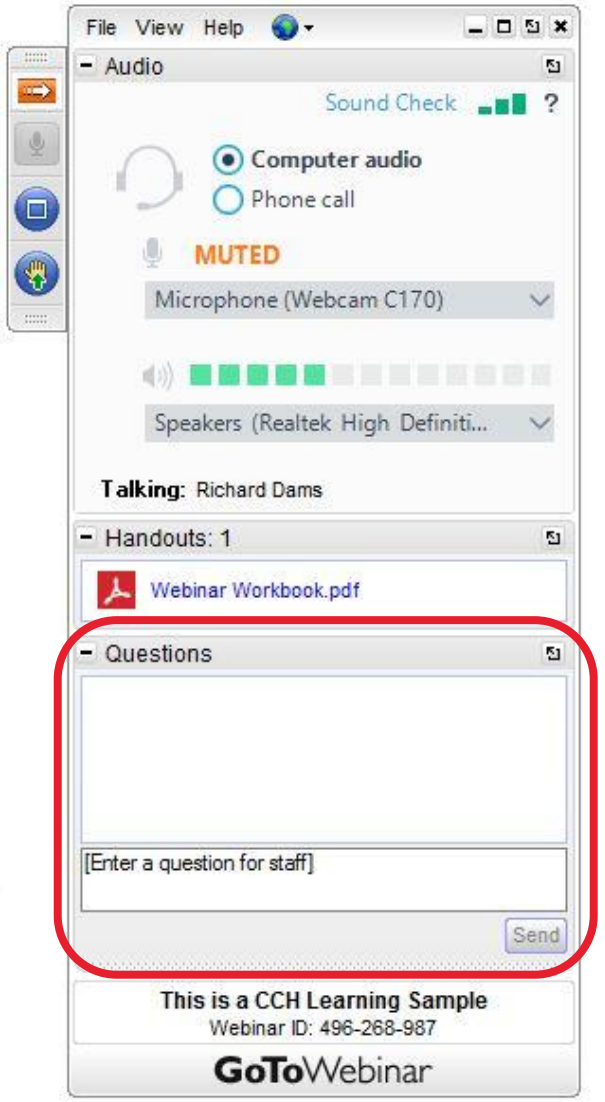

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# Your Presenter

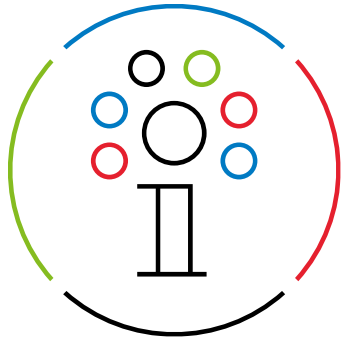
**Bruce Collins is the founder and principal solicitor at Tax Controversy Partners**, currently helping clients to resolve all types of tax issues with the ATO and SROs. Before moving into private practice in 2017, Bruce worked for over 35 years in the Tax Office, a third of this time as a Senior Executive in what is now Client Engagement Group, covering most ATO functions. Bruce was the leader of the Technical & Case Leadership area in Aggressive Tax Planning and then Private Wealth for several years prior to leaving the ATO, as well as having previously been the strategic and technical leader for many of the ATO's compliance programs and ATO's law clarification programs and a member of the ATO Test Case Litigation Panel in several roles. In those roles, Bruce was heavily involved in leading a number of ATO tax litigation programs, mostly targeting income tax risks and issues.

**Bruce Collins**

Founder and Principal Solicitor

Tax Controversy Partners

# Today's session will cover

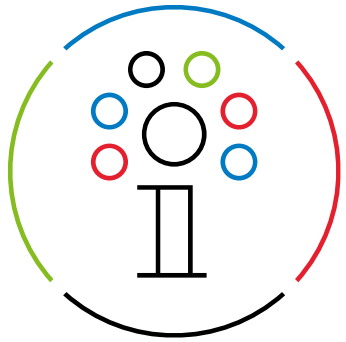


A variety of income tax cases that occurred over the last year (March 2023 to March 2024), including:

- *Hedges v Commissioner of Taxation* [2023] FCAFC 105
- *DiStefano and Commissioner of Taxation* [2023] AATA 1697
- *Stark v Commissioner of Taxation* [2023] FCA 1523
- *Meakins and Commissioner of Taxation* [2023] AATA 3852
- *B&F Investments Pty Ltd as trustee for the Illuka Park Trust v Commissioner of Taxation* [2023] FCAFC 89
- *Bendel and Commissioner of Taxation* [2023] AATA 3074
- *PepsiCo Inc & Anor v Commissioner of Taxation* [2023] FCA 1490
- *PQBZ and Commissioner of Taxation* [2023] AATA 2984
- *DQTB & Anor and Commissioner of Taxation* [2023] AATA 515
- *Commissioner of Taxation v Rawson Finances Pty Ltd* [2023] FCA 617
- *Active Sports Management Pty Ltd v Industry Innovation and Science Australia* [2023] AATA 4078
- *McEwan v Office of the Australian Information Commissioner & Anor* [2023] FCAFC 137

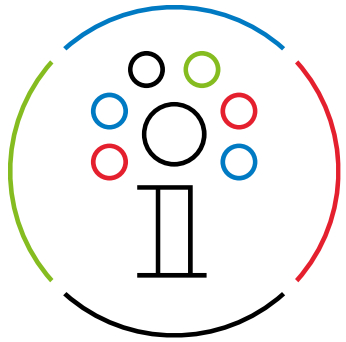
# Who are you?

a) Accountant or tax agent
b) Lawyer
c) Financial planner
d) Student
e) Other



# Who are you?

a) In private practice
b) In public practice
c) Other



# *Richmond and Commissioner of Taxation* [2023] AATA 1915

***Catchwords:*** Whether income tax assessment was excessive or otherwise incorrect – deduction claimed under s8-1 – whether expenditure is capital or revenue – failure to discharge onus of proof

*Facts:*

- Richmond owned 10% of a WA Mining Lease ML 52/597 (Tenement). Other 90% owners by Thundelarra Ltd
- In 2014, Thundelarra and Richmond entered into a JV agreement (Thundelarra JV)
- In 2016, Thunderlarra JV entered into a conditional farm-in agreement with Sandfire Resources Ltd – and Sandfire would acquire 75% interest in Thundelarra JV
- The JV agreement required a first right of purchase to the JV members. The terms were:
  - Taxpayer must pay $1,500,000 (plus GST)
  - Confidential information would be available to Richmond
  - Within 18 months, Richmond must incur a minimum of $1,500,000 on Exploration Expenditure on the Tenement
  - Where mining expenditure met, Richmond has the option to define at least 30,000 tonnes of copper
- In 2017, Richmond accepted and paid the $1,500,000 (plus GST)

# *Richmond and Commissioner of Taxation* [2023] AATA 1915

***Catchwords:*** Whether income tax assessment was excessive or otherwise incorrect – deduction claimed under s8-1 – whether expenditure is capital or revenue – failure to discharge onus of proof

*Issues:*

- Whether the assessment was excessive or otherwise incorrect and, if so, what it should have been
- Whether expenditure was allowable pursuant to s8-1 or Division 40 of *ITAA97*

*Arguments:*

- Taxpayer argued the 2017 payment of $1,578,890 is deductible per s8-1 or alternatively under Div 40
- Taxpayer argued that Div 40 allows for deductions relating to expenditure on exploration or prospecting in certain circumstances, and for decline in value of depreciating asset
- Taxpayer argued that rights held were ”a bundle of contractual rights” – not a single CGT asset
- Commissioner argued that taxpayer was not entitled to a deduction – based on revenue/capital distinction

# *Richmond and Commissioner of Taxation* [2023] AATA 1915

***Catchwords:*** Whether income tax assessment was excessive or otherwise incorrect – deduction claimed under s8-1 – whether expenditure is capital or revenue – failure to discharge onus of proof

*Decision:*

- Tribunal found Richmond failed to establish an entitlement to a deduction and failed to discharge the onus of proof
- Objection decision affirmed

*Reasoning:*

- Tribunal reasoned that the facts that Richmond acquired some right to access, and entitlement to information, did not change the fundamental character of the payment
- Tribunal agreed with Commissioner's argument that the purchase agreement mischaracterised the transaction
- Tribunal also did not accept the characterisation of the payment being for acquisition of information

*Key Takeaway:*

- Reiterates the perennial capital/revenue distinction analysis, and provides guidance re taxpayer's onus of proving that an assessment was 'excessive or otherwise incorrect'

# *Hedges v Commissioner of Taxation* [2023] FCAFC 105

*Facts:*

- Hodges was a solicitor as a member of a partnership. Deed of Requirement required that upon retirement, Hodges would receive any credit in the capital and current accounts, a proportionate share of goodwill and a proportionate share of WIP
- For 2009FY, Commissioner issued default assessments which included partnership distribution of $299,596, capital gain from disposal of goodwill of $182,629 (before discount), payment for WIP of $131,265

*Issues:*

- Whether, based on the Deed of Retirement and Partnership Deed, Hodges was entitled to receive capital proceeds for the disposal of his interest in goodwill

*Decision:*

- Court dismissed the appeal with costs

***Catchwords:*** Whether retired partners is entitled to receive capital proceeds from disposal of interest in goodwill of partnership – whether there was a capital gain

*Special leave to the High Court was denied.*

# *Hedges v Commissioner of Taxation* [2023] FCAFC 105

*Arguments:*

- Hodges argued the Retirement Deed was the source of the Hodge's right to retirement money
- Hodges argued the Partnership Deed resulted in nil payable to him, and therefore no capital gain arising on entry into the Retirement Deed

*Reasoning:*

- Court remarket "unlike the position at general law, the capital gains provisions are drafted on the basis that each partner has an interest in each partnership asset" – at [19]
- Court rejected Hodges' contention regarding the calculated net sum as a matter of the construction of the deeds – at [34]

*Key Takeaway:*

- **Prudent reminder of the legislative history, complexity of partnerships, calculation of taxable income, and proper construction of Partnership agreements.**

***Catchwords:*** Whether retired partners is entitled to receive capital proceeds from disposal of interest in goodwill of partnership – whether there was a capital gain

*Special leave to the High Court was denied*

# *DiStefano and Commissioner of Taxation* [2023] AATA 1697

***Catchwords:*** Relevant income producing activity – Loss or outgoing – Tax deductions – Rental property that had become uninhabitable – Whether nexus lost due to temporary cessation of income-producing activity

*Facts:*

- DiStefano was an experience businessman, with a long history of investing in rental properties
- Purchased house in 2006 near Port Stephens (funds from bank mortgage)
- House only expected to return income a few weeks each year
- Long-term tenant moved in in 2010-2013
- DiStefano continued to make interest payments, and meet land tax, council rates and insurance costs
- Tenant reported extensive defects, report commissioner stated structural damage, serious safety hazards, moisture ingress, etc. Property deemed uninhabitable.
- DiStefano's father suffered a stroke in 2012 and later moved in with his father – resulting in a delay finalising repairs on the property.
- However, during this time, he continued to make other real-estate purchases.

# *DiStefano and Commissioner of Taxation* [2023] AATA 1697

***Catchwords:*** Relevant income producing activity – Loss or outgoing – Tax deductions – Rental property that had become uninhabitable – Whether nexus lost due to temporary cessation of income-producing activity

*Issues:*

- Whether the losses and outgoing incurred by the taxpayer (holding costs) had lost their connection with the earning of assessable income – and whether they remained deductible under s8-1?

*Arguments:*

- DiStefano stated in expenses were related to the rental property, consistent with TR 2004/4 *Income Tax: deductions for interest incurred prior to the commencement of, or following the cessation of, relevant income earning activities*
- ATO stated the property had remained vacant since 2012, and 'enough was enough'.

*Decision:*

- Tribunal set aside Commissioner's objection decision – thus allowing deductions for interest and other outgoings for DiStefano

# *DiStefano and Commissioner of Taxation* [2023] AATA 1697

*Catchwords:* Relevant income producing activity – Loss or outgoing – Tax deductions – Rental property that had become uninhabitable – Whether nexus lost due to temporary cessation of income-producing activity

*Reasoning:*

- Tribunal was focused on the first limb of s8-1, noting that all parties agreed that there was no assessable income
- "Real issue is whether the holding costs of the property … have lost their connection with earning of assessable… income" - at [21]
- Tribunal focused on DiStefano's "commitment" – slow progress didn't suggest his commitment was abandoned

*Key Takeaways:*

- Slow progress towards realizing the project does not necessarily suggest a 'want of commitment' (and, thus, it follows the next between the outgoings and the production of assessable income remain)
- One must remain vigilant – as the Tribunal said "we accept the delay in execution of the project could become untenable at some point…" – at [36]

# *Sladden and Commissioner of Taxation* [2023] AATA 3815

*Facts:*

- In April 1999, Dr Sladden entered into two linked policies of insurance with National Mutual – life protection plan and professional income protection plan
- In Feb 2013, Dr Sladden was diagnosed with breast cancer
- In March 2013, Dr Sladden made a claim for income protection benefit. While receiving benefits, Dr Sladden was not required to pay premiums.
- In late 2013, Dr Sladden was diagnosed with Sjorgren's syndrome. Dr Sladden continued to receive payments
- In 2017, National Mutual insurance business was transferred to AMP. In 2019, Dr Sladded appointed a representative to negotiate commuting her income protection benefit
- AMP offered $1,000,000, and Dr Sladden understood that income protection amounts would be taxable, on the basis the amounts would not be characterised as personal-injury amounts.

*Catchwords:* Lumpsum paid in settlement of claim – characterisation of payment made by insurer – ordinary or statutory income

# *Sladden and Commissioner of Taxation* [2023] AATA 3815

*Issues:*

- Whether the $1,000,000 (settlement sum) received by Dr Sladden, in September 2019 pursuant to the Deed of Release between herself and two insurer (AMP and National Mutual) is assessable as income, and whether that is ordinary income (s6-5) or statutory income (s15-30)?
- (Only arises if the first issues is successful) Whether Dr Sladden is liable to an assessment pursuant to s102-5 on a net capital gain relating to the settlement sum and, if so, is that a discounted capital gain per s102-5.

*Arguments:*

- Dr Sladden argued the settlement sum was not ordinary income – as the payment was an undissected lump sum compromising capital and income – and therefore would be all capital account and no part of it assessable
- Further, argued that the Deed was not a sham and payment was determined by the terms of the Deed

***Catchwords:*** Lumpsum paid in settlement of claim – characterisation of payment made by insurer – ordinary or statutory income

*Decision:*

- Affirmed the objection decision

*Reasoning:*

- Tribunal stated that there was no dispute that the monthly income protection benefits were assessable, and the lump sum was just replacing the monthly income – and that didn't change the character
- Tribunal rejected that the terms of the deed determined the character
- Tribunal held that the "reality was that the applicant and AMP negotiated and resolved to commute the applicant's entitlements in consideration of payment of the settlement sum"

*Key Takeaways:*

- Seek taxation advice early – as characterisation is "king" in determining the capital/revenue distinction. Later drafting on substantively different claims may not help enough to deliver the desired tax outcomes

# *Sladden and Commissioner of Taxation* [2023] AATA 3815

***Catchwords:*** Lumpsum paid in settlement of claim – characterisation of payment made by insurer – ordinary or statutory income

# *Bains and Commissioner of Taxation* [2023] AATA 2477

***Catchwords:*** Whether payment is income according to ordinary concepts – Where taxpayer received payment from Fairness Fund established by Victorian Government in connection with changes to the regulation of the taxi industry

*Facts:*

- Bains and his wife purchased 1st taxi license for $280,000 in 2001, 2nd for $385,000 in 2006, and 3rd for $180,000 in 2010
- Purchases were funded by ANZ bank loans
- Business was impacted by changes to the tax industry – including ride-share facilities
- Vic Gov provided relief to help those impacted by the reforms
- In Sep 2016, Bains received $62,500 form the Hardship Fund. A year later, he received 3 Transition Assistance Payments totalling $183,750
- In March 2018, he received $250,000 from the Fairness Fund
- Commissioner assessed the $250,000 payment as assessable income, and when Bains objected the Commissioner disallowed the objection

*Issue:*

- Whether the payment was assessable according to ordinary concepts under s6-5?

# *Bains and Commissioner of Taxation* [2023] AATA 2477

***Catchwords:*** Whether payment is income according to ordinary concepts – Where taxpayer received payment from Fairness Fund established by Victorian Government in connection with changes to the regulation of the taxi industry

*Arguments:*

- Bains argued that the payment was no assessable as it was made in recognition of financial hardship – as a result of destruction of value of his tax license
- Commissioner argued that the payment was received in the ordinary course of the taxi business

*Decision:*

- Tribunal set aside objection decision

*Reasoning:*

- Tribunal distinguished the fact pattern from that in *Berghofer and Commissioner of Taxation* where the Qld Gov provided a grant (to reimburse business expenditure)
- Tribunal considered the reasoning for the payment – to make up for 'unfairness' due to negative impacts of policy reform

*Key Takeaway:*

- **Tribunal recognised that "not all payments received by a person in business are income"**

# *Stark v Commissioner of Taxation* [2023] FCA 1523

*Facts:*

- Stark accepted a role at age 55 in Oct 2000 with Company A
- Stark was offered another role by Company B. He accepted the offer with Company B, withdrew acceptance from Company A
- Stark's employment was terminated in Dec 2001
- Stark began legal proceedings, and reached a settlement of $555,500, Deed was executed in Mar 2009
- Settlement was broken up into two amounts - $50,000 for general damages and $505,500 for lost earnings
- Stark was unable to secure further employment
- Stark asked the Commissioner whether the $505,500 would be taxable in a private ruling. The Commissioner found in favour of the amounts being treated as an ETP
- On objection, Commissioner determined the amount was ordinary income [Shows risks of objecting to partially favourable decisions]

*Catchwords:* ETP following termination – Payment for settlement of litigation – Whether payment received in settlement of claim for deceptive conduct and wrongful dismissal is an ETP – Whether payment is because of a genuine redundancy – Whether payment is capital – Whether payment is for personal injury

# *Stark v Commissioner of Taxation* [2023] FCA 1523

*Issues:*

- Whether payment would be excluded from CGT per s118-37(1)(a)(i)?

*Arguments:*

- In the AAT, Stark argued that the payment was capital, as it was a payment in compensation for destroying his future earning capacity, and not for the loss of earning
- In the AAT, Stark further argued that the payment was excluded from CGT under s118-37(1)(a)(i) because the payment was in compensation for "wrong or injury" suffered while working
- On appeal, Stark argued that the AAT incorrectly did not consider the CGT exclusion in s118-37(1)(a)(i), and that the payment was a genuine redundancy payment

*Decision*

- Appeal was dismissed with costs [Again, shows risks of appealing to Federal Court, in potential liability for costs.]

*Catchwords:* ETP following termination – Payment for settlement of litigation – Whether payment received in settlement of claim for deceptive conduct and wrongful dismissal is an ETP – Whether payment is because of a genuine redundancy – Whether payment is capital – Whether payment is for personal injury

*Reasoning:*

- Stark was self-represented, and of the four grounds, three were invalid, however the Courts the grounds and still found that the grounds failed
- The evidence found that Stark was terminated due to a disagreement with management – not as a result of a genuine redundancy
- There was also no admission of liability, acknowledge or finding of injury, so there to be any scope of considering s118-37(1)(a)(i)

*Key Takeaways:*

- **Structuring a payment under a Deed does not guarantee that you can structure the characterisation of the payment- rather get advice early on the expected tax outcomes of any type of agreement**

# *Stark v Commissioner of Taxation* [2023] FCA 1523

*Catchwords:* ETP following termination – Payment for settlement of litigation – Whether payment received in settlement of claim for deceptive conduct and wrongful dismissal is an ETP – Whether payment is because of a genuine redundancy – Whether payment is capital – Whether payment is for personal injury

# *Meakins and Commissioner of Taxation* [2023] AATA 3852

***Catchwords:*** Deducibility of holding expenses for undeveloped land – Whether costs were incurred in course of producing assessable income or carrying on of business – Intention and Commitment

*Facts:*

- Meakins was the sole directors and shareholder of Intaglio Pty Ltd, which was a trustee company for the AMF Trust
- Meakins was the sole guardian and specified beneficiary of the AMF Trust
- In Jul 2006, Intaglio (as trustee) purchased vacant land for $1,300,500, through an interest-only business loan
- Land was purchased with existing plans for a house
- Initial loan was paid out in 2012, with further financing of $1,010,000 from the bank
- From 2007 to 2017 the property was not rented out
- In 2018, received $7,000 in rental income for storage and access
- In 2019, Itaglio invoiced a company controlled by Meakins' husband $53,240 for use of the property for car parking from 1 Jul 2009 to 31 Oct 2016

# *Meakins and Commissioner of Taxation* [2023] AATA 3852

***Catchwords:*** Deducibility of holding expenses for undeveloped land – Whether costs were incurred in course of producing assessable income or carrying on of business – Intention and Commitment

*Issues:*

- Whether holdings expenses were deductible for the relevant periods?
- Were admin penalties applied correctly and should they be remitted in part of full?

*Arguments:*

- Meakins argued at time of purchase and since, she had always intended to development on the property, to derive assessable income. Delays in development included issues from adjoining land, trying to acquire further land, etc
- Commissioner argues that taxpayers could not expect rental income when development had not commenced and had made no efforts to progress developments (eg. engaging professionals, architects, submitting plans for approval). Argued there was a total lack of activity

*Decision:*

- Objection decision affirmed

# *Meakins and Commissioner of Taxation* [2023] AATA 3852

***Catchwords:*** Deducibility of holding expenses for undeveloped land – Whether costs were incurred in course of producing assessable income or carrying on of business – Intention and Commitment

*Reasoning:*

- Tribunal distinguished fact pattern from that in *Steele v Deputy Commissioner of Taxation* [1999] HCA 7 – specifically that over the 17-year period, Meakins had made no effort to progress the development beyond the architectural drawings that came with the property
- Lack of *substantial* action is inconsistent with an intention of developing to produce assessable income – rather seems more likely the property was being held on capital account
- Importantly, the Tribunal noted that Meakins failed to discharge the onus of proof or establish that the penalties were excessive

*Key Takeaways:*

- Understanding nexus is important – for an expense to be deductible there needs to be nexus to an income producing activity. Further, intention is not enough – there needs to be action towards that intention as well
- Nexus arguments can run both ways – arguing revenue to try to claim deductions may not always work, neither will arguing capital when making a profit

# *Mitri and Commissioner of Taxation* [2023] AATA 3762

*Facts:*

- Property development family (Sam Mondous), where daughter (sole director/shareholder) of a company (Frontlink) realised gains on subdivision and sale of over $42 million in 2011 and 2013 FYs
- Also had gains from other property sales during this period
- Tax return lodged on the basis of capital account and utitlised the 50% CGT reduction (CGT Small Business Concession) and rollover for remaining 50%
- Frontlink also sold other properties between 2009 to 2014 for profit on capital account in its capacity as trustee for the NMFT (trust for three daughters)

*Issues:*

- Whether profits on the sale of properties by Frontlink were on revenue or capital account?
- If capital, whether Frontlink qualifies for the CGT concessions?

***Catchwords:*** Where gains on sale of real property were capital – Burden of Proof

# *Mitri & Anor and Commissioner of Taxation* [2023] AATA 3762

*Arguments:*

- Frontlink and the other taxpayers argued that the NMFT trust was established for the daughters to protect all wealth from going to the son, and that the properties purchases were always intended to be operated as farms. There was no intention to sell at a profit
- Further argued that NMFT and Frontlink did not act in accordance with Sam, and therefore Sam's other assets (in other Mondous family entities) should not be aggregated for calculation purposes
- Commissioner arguies that transactions were on revenue account as they were trading stock, sales income was ordinary income per s6-5 and the *Myer Emporium* principle

*Decision:*

- Objection decision affirmed (other than matters conceded by Commissioner), and further submission required on penalties and SIC

***Catchwords:*** Where gains on sale of real property were capital – Burden of Proof

*Reasoning:*

- Tribunal had questions about why Sam's evidence was relevant if he wasn't involved in Frontlink – however noted it was mostly unhelpful. Evidence was also provided to show that the properties were never viable for profitable farming
- Sam had provided evidence that he was unaware of zoning changes – but Tribunal found that unlikely considering his extensive history in development
- Entering into a sophisticated option agreement was not something an unsophisticated taxpayer would do – more likely shows business-like actions

*Key Takeaways:*

- Evidence is important – especially contemporaneous evidence to show intention and action at the time of entering into a transaction. Where intention changes, this too needs to be documented and tax consequences considered at the time
- Highlights risks of oral evidence at hearing not being sufficiently convincing to satisfy onus of proving assessment excessive

# *Mitri and Commissioner of Taxation* [2023] AATA 3762

*Catchwords:* Where gains on sale of real property were capital – Burden of Proof

# *Bechtel Australia Pty Ltd v Commissioner of Taxation* [2023] FCA 676

*Catchwords:* Deductibility of travel expenses for FIFO employees – Where "otherwise deductible" test is satisfied

*Facts:*

- A member of the Bechtel group of companies carried on business in Australia in relation to large-scale construction projects
- Received contract for liquefied natural gas project in QLD in 2010
- Project required a large number of employees to be flown in to complete the work as there weren't enough people with the required skills in the area
- FIFO employees travelled to site from their home airports, and return flights were paid for by the company
- The employees had to organise their own travel from their home to the airport
- Employees also received a "project allowance" for the inconvenience of working in a remote location – this was not for travel

# *Bechtel Australia Pty Ltd v Commissioner of Taxation* [2023] FCA 676

***Catchwords:*** Deductibility of travel expenses for FIFO employees – Where "otherwise deductible" test is satisfied

*Issue:*

- Whether the travel deductions would have been allowed to the individual FIFO employees under s8-1 if they had incurred the travel themselves?

*Arguments:*

- Company argued the facts were similar to those in *John Holland Group Pty Ltd v Commissioner of Taxation* [2015] FCAFC 82 – employees were commencing work when they arrived at their home airport and only ended shift when they returned to their home airport
- Commissioner argued that the *John Holland* case was different as the employees weren't travelling during their work hours

*Decision:*

- Appeal was dismissed with costs

# *Bechtel Australia Pty Ltd v Commissioner of Taxation* [2023] FCA 676

*Catchwords:* Deductibility of travel expenses for FIFO employees – Where "otherwise deductible" test is satisfied

*Reasoning:*

- Court identified that the facts were different to that in *John Holland* – the employees only began their 'shift' once they started work at the site, not when they arrived at the airport
- Further, the employees were not travelling between two employment locations – rather it was home and their current work location
- The travel was not incurred when the employees were producing income – it was the required travel so they could conduct their income instead

*Key Takeaway:*

- The interactions between the FBT and Income Tax Legislation can be tricky – when employees are sent on long-term contracts the deductibility of expenses can change
- Be clear about the allowances being offered and what they are for – the characterisation for the employee will often determine the deductibility/FBT status for the employer

*Facts:*

- This case involved a corporate beneficiary of a Discretionary Trust inserted into the ownership structure of a private company with substantial retained earnings
- After that insertion, there was a ($10M) share buy-back, which triggered the distribution of those retained earnings

*Issues:*

- This is the Full Federal Court appeal from the BBlood case (Thawley J in the Federal Court), which was one of the major recent decisions on s.100A, also involving the potential application of the dividend-stripping rules and Part IVA
- There were two concurrent appeals here:
  - One by the corporate beneficiary, AND
  - The other by the corporate trustee of the Discretionary Trust

# *B&F Investments Pty Ltd as trustee for the Illuka Park Trust v Commissioner of Taxation* [2023] FCAFC 89

***Catchwords:*** Section 100A - Trust Reimbursement Agreements - Dividend Stripping - Anti-Avoidance Rules - Pt IVA

*Arguments:*

- The taxpayer argued that
  - the resulting tax from the deemed dividend distributed to the corporate beneficiary would be shielded by the relevant franking credits attaching to the dividend flow,
  - the DT Trustee would not be liable, as the the statutory income had been distributed to that corporate beneficiary,
  - The arrangement was NOT covered by section 100A, was NOT a dividend stripping operation and was NOT a scheme to which Part IVA would otherwise apply
- The Commissioner primarily argued that section 100A applied to the distribution, as the cash benefit of the income flow was not directed to the corporate beneficiary
- In the alternative, the Commissioner also argued that the arrangement would not be effective, as it would constitute a 'dividend stripping operation' per section 207-155 ITAA97
- In the further alternative, the Commissioner argued that part IVA would otherwise apply to deny the relevant tax benefit/s

# *B&F Investments Pty Ltd as trustee for the Illuka Park Trust v Commissioner of Taxation* [2023] FCAFC 89

*Catchwords:* Section 100A - Trust Reimbursement Agreements - Dividend Stripping - Anti-Avoidance Rules - Pt IVA

*Decision:*

- The taxpayers effectively lost on section 100A for the corporate trustee of the Discretionary Trust,
- The corporate beneficiary succeeded in their concurrent appeal that the dividend stripping operation provisions.

*Reasoning:*

- Section 100A properly operated to capture the arrangement as a 'reimbursement agreement' which cancelled the distribution to the corporate beneficiary and instead taxed the corporate trustee of the Discretionary Trust
- As a result of section 100A applying to the distribution, there was therefore nothing left upon which the dividend stripping rules could apply (under s.207-155)

*Key Takeaways:*

- **This decision is supportive of the Commissioner's s.100A strategy, so represents a warning to taxpayers to exercise caution with establishing or implementing such arrangements**

# *B&F Investments Pty Ltd as trustee for the Illuka Park Trust v Commissioner of Taxation* [2023] FCAFC 89

***Catchwords:*** Section 100A - Trust Reimbursement Agreements - Dividend Stripping - Anti-Avoidance Rules - Pt IVA

# *Bendel and Commissioner of Taxation* [2023] AATA 3074

***Catchwords:*** Unpaid present entitlement – Deemed dividends – Whether UPE to income or capital of the trust estate is a loan

*Facts:*

- Pretty typical Unpaid Present Entitlement (UPE) case, where a Discretionary Trust had declared a distribution to [two] private companies, but which subsequently remained unpaid for several years (2015 and 2017 for 1st company and 2013 to 2017 for the 2nd company)
- The Bendel Group carried on business as tax agents/accountants and also undertook commercial property developments

*Issues:*

- Main issues were whether the companies were providing 'financial accommodation' to the Discretionary Trust, triggering application of Div 7A to the UPE/s, whether:
  - the UPEs represented 'loans' under s109D(3), making them deemed dividends under s109D(1)
  - Those dividends were paid out of the companies profits under s.109Z and thus would be included as s.95 net income of the trust estate for the Discretionary Trust, AND
  - The beneficiaries of the Discretionary Trust were therefore assessable on the proportion of those deemed dividends

# *Bendel and Commissioner of Taxation* [2023] AATA 3074

*Catchwords:* Unpaid present entitlement – Deemed dividends – Whether UPE to income or capital of the trust estate is a loan

*Arguments:*

- The Commissioner strongly argued that a UPE was a form of 'financial accommodation' and that all the other tax consequences flowed from that finding
- The taxpayers conversely argued to the contrary, plus an interesting textual argument on the operation of section 6-25 (the non-overlap rule for not taxing income twice under different provisions)
- The taxpayers also sought exercise of the s.109RB discretion (if Div 7A would otherwise apply)
- The taxpayers further sought a lesser finding on the shortfall penalties (preferably NIL) and/or the exercise of the s298-20 discretion to remit any remaining shortfall penalties otherwise applicable

# *Bendel and Commissioner of Taxation* [2023] AATA 3074

*Catchwords:* Unpaid present entitlement – Deemed dividends – Whether UPE to income or capital of the trust estate is a loan

*Decision:*

- Objection decision therefore set aside (except for smaller non-UPE issues which were remitted to Commissioner, along with the shortfall penalties on those other non-UPE transactions [noting tax agent taxpayer])

*Reasoning:*

- The definition of 'loan' under s.109D did NOT reach so far as to cover UPEs as creations of equity
- Due to the exclusion of the UPE amounts, not necessary to consider s.6-25 application

*Key Takeaways:*

- The Tribunal took a position that many practitioners had been advocating since the start of the ATO UPE strategy
- The case is on appeal, so we are hopefully likely to get greater clarity on these matters soon
- Until we get that clarity, both advisors/taxpayers and the Commissioner should be careful with such UPE matters

# *PepsiCo Inc & Anor v Commissioner of Taxation* [2023] FCA 1490

*Facts:*

- PepsiCo, Stokely van-Camp (SVC owning Gatorade brand/formulae)) and Schweppes entered into Exclusive Bottling Agreements (or Appointments), effectively agreeing to only permit Schweppes to produce the other parties' products in Australia via use of information and Intellectual Property owned by the other parties.

*Issues:*

- The questions that arose as a result were whether the payments under the EBAs were subject to:
  - Royalty Withholding Tax (as generating royalties, given that the EBAs were said to be 'royalty-free') under section 128 ITAA36 and/or the US DTA
  - Diverted Profits Tax under that part of Part IVA

*Catchwords:* International Tax - Royalty Withholding Tax - Diverted Profits Tax - Double Tax Agreements - Part IVA

# *PepsiCo Inc & Anor v Commissioner of Taxation* [2023] FCA 1490

*Arguments:*

- For RWT, Commissioner argued that:
  - the payments made under the EBAs were consideration of the use of the IP under s.128B/s.6(1) and/or Art 12 of the US DTA
  - the relevant parts of those payments were income derived by PepsiCo or SVC for the purposes of s.128B(2B0(a) and beneficially entitled under Art 12 of the US DTA

  Taxpayers argued to the contrary, on basis that the EBAs solely covered the provision of concentrate, not the provision of IP, know-how, etc that would trigger RWT
- For DPT, Commissioner argued that the taxpayers had:
  - obtained a tax benefit under the scheme under section 177J(1)(a)
  - done so for the principal purpose of enabling the relevant taxpayers (or others) of obtaining such a tax benefit,
  - On the basis that the 'royalty-free' intention of the EBAs evidenced the purpose of NOT paying such RWT

  Taxpayers argued that the counter-factuals were unreasonable and departed from the substance and commerciality of the schemes

*Catchwords:* International Tax - Royalty Withholding Tax - Diverted Profits Tax - Double Tax Agreements - Part IVA

*Case is on appeal to the Full Federal Court*

*Decision:*

- RWT applied
- DPT would otherwise have applied (obiter)

*Reasoning:*

- RWT would apply because the EBAs 'to some extent' covered IP and know-how that would trigger RWT
- DPT would have applied (if RWT didn't already apply) as the first counter-factual proposed by Commissioner was accepted [direct RWT-inclusive contract)

*Key Takeaways:*

- This case illustrates the problems that taxpayers have in trying to structure contracts to expressly exclude tax liabilities by definitionally means, especially in the face of inclusive wording like for RWT or in DTAs. In other words, you can't just state that something is of a particular character – the economic substance and analysis of the bundle of legal rights involved can still trigger tax liabilities.

# *PepsiCo Inc & Anor v Commissioner of Taxation* [2023] FCA 1490

***Catchwords:*** International Tax - Royalty Withholding Tax - Diverted Profits Tax - Double Tax Agreements - Part IVA

*Case is on appeal to the Full Federal Court*

# *Buzadzic v Commissioner of Taxation* [2023] FCA 954

***Catchwords:*** Default assessments – Unreported income – Burden of proof

*Facts:*

- Mr and Mrs Buzadzic had several business interest and investmetns over 16 companies and 3 trusts
- Taxpayers' returns were amended following audit - increasing the taxpayer taxable income based on, unexplained bank deposits, unverified loan amounts, CGT event, Div 7A deemed dividends
- Tribunal upheld Commissioner's amended assessments and finding of fraud and evasion
- Appeal grounds included: 1 and 2) wrong test for burden of proof, 3) Tribunal misconstrued/misapplied s6-5, 4) Tribunal failed to exclude deposits, credit entries and other amounts, 5, 6 and 7) Tribunal misconstrued/misapplied item 5 of s170(1) of *ITAA36*, 8, 9, 10, 11 and 12) Tribunal misconstrued/misapplied penalty provisions, 13) failed to consider grounds of objection and submissions, 14 and 15) unreasonable finding of fact, 16) failed to afford Mr B procedural fairness

# *Buzadzic v Commissioner of Taxation* [2023] FCA 954

***Catchwords:*** Default assessments – Unreported income – Burden of proof

*Issues:*

- Whether grounds of appeal are questions of law?
- Whether taxpayer had discharged onus of proof?
- Whether the AAT had made an error in applying the relevant principles?

*Decision:*

- Appeal dismissed

*Reasoning:*

- Mr B's submissions were very inconsistent with the legislation and accepted principles – especially around the standard of proof. Mr B had little to no evidence to support his contentions

*Key Takeaway:*

- Documentation is "king" – as well as staying on top of your tax affairs.
- Highlights onus of providing assessment excessive, especially the requirement to show substitute taxable income, not just challenge the ATO process

# *Mandalinic v Stone (Liquidator)* [2023] FCAFC 146

*Facts:*

- Director of RIC Admin Pty Ltd received a director penalty notice for PAYG withholding
- Company took no steps to contest or pay the liability, and the company was wound up following further collection activity by the Commissioner
- Commissioner began proceedings against the individual director for the debt, as well as claims for insolvent trading

*Issues:*

- Can a director of company in a DPN matter, file an affidavit for the purposes of s268-40?
- Can a director if a company in liquidation file an affidavit for the purposes of s268-40?

*Decision:*

- Appeal dismissed

***Catchwords:*** Director penalties – whether director can file an affidavit in director penalty proceedings – whether director of a company in liquidation can file an affidavit

# *Mandalinic v Stone (Liquidator)* [2023] FCAFC 146

*Catchwords:* Directors penalties – whether director can file an affidavit in director penalty proceedings – whether director of a company in liquidation can file an affidavit

*Decision:*

- Appeal dismissed

*Arguments:*

- Director argued that the reference to "you" in s268-40(1) extended to a director regardless of the circumstance of the company
- Liquidator argued that where s198G *Corps Act* prohibited the previous director from acting, then that director would also be prohibited under s268-40 and 268-90
- Commissioner argued the director was prohibited as it concerned the company's liabilities. Further, where the company was in liquidation, the legislation did not allow the director to separate themselves from the company to addressed the personal parallel liability under Div 269

# *Mandalinic v Stone (Liquidator)* [2023] FCAFC 146

*Reasoning:*

- "You" only refers to the entity that was named in the relevant collection activity – in this instance it was the company. The legislation does not provide for the director to make a statement (either in affidavit of statutory declaration form)

*Key takeaways:*

- With collection activity at its peak following COVID, directors (and their advisors) need to understand the available steps once a DPN is received.
- Don't wait until the 21- or 60-day period (for a defence) has expired to act – get advice ASAP
- Understand the difference between a lockdown and non-lockdown DPN – liquidation won't help in a lockdown DPN situation, and the director will lose access to documents and information to defend any remaining DPN
- Remember the need to object to assessments BEFORE the company goes into liquidation, as directors lose control AFTER an administrator or liquidator is appointed

*Catchwords:* Director's penalties – whether director can file an affidavit in director penalty proceedings – whether director of a company in liquidation can file an affidavit

# *TKYY and Commissioner of Taxation* [2023] AATA 2497

***Catchwords:*** Casino junket business – Borrowed funds for use in business - Business never existed but rather was a Ponzi scheme – Whether interest on loans can be deducted

*Facts:*

- Taxpayer is a lawyer and CA by trade, and was a partner of an accounting firm. In 2005 he left accounting to work in his agribusiness conducted by his family trust
- He and K, his girlfriend at the time became involved in the 'casino junket' business. Taxpayer provided the funding for which K was the registered 'junket operator'
- Taxpayer provided $780,000 initially from his own funds and loans funds from friends and family. Interest was paid up to 30% on the loaned funds.
- Income of the junket operation was split 50% between the taxpayer and K. K provided documentation in 2008 to indicate the business was successful
- In April 2008, the taxpayer realised he had been scammed – there was no business
- Interest and principal remained mostly unpaid

# *TKYY and Commissioner of Taxation* [2023] AATA 2497

***Catchwords:*** Casino junket business – Borrowed funds for use in business - Business never existed but rather was a Ponzi scheme – Whether interest on loans can be deducted

*Issues:*

- Whether the interest is deductible for the taxpayer?
- Whether the penalty should be remitted in part or in full?

*Arguments:*

- Commissioner argued that the the taxpayer failed to include income in respect of work he conducted for the family trust, and that the interest did not relate to a business the taxpayer was conducting
- Taxpayer argued that the interest was not in relation to a business, it was always understood that K ran the business. Rather money he had borrowed to invest, and expected to generate a return on his investments

*Decision:*

- Objection decision was affirmed

# *TKYY and Commissioner of Taxation* [2023] AATA 2497

*Catchwords:* Casino junket business – Borrowed funds for use in business - Business never existed but rather was a Ponzi scheme – Whether interest on loans can be deducted

*Reasoning:*

- Tribunal considered whether the interest expenses were incurred as part of an ongoing activity that was producing assessable income – the witness' evidence indicated that at least some of the money was used for personal use, and the other money borrowed on the basis of other uses, not just the casino junket business
- In considering the penalties, the Tribunal spent time focusing on the taxpayer's professional background as a lawyer and accountant – the Tribunal made several negative remarks about the taxpayer's actions and indicated that he would have known what he was doing in not including the income

*Key takeaways:*

- Tax lawyers and accountants are held to a higher standard because of their specialised knowledge when it comes to their personal tax affairs – tax practitioners, in particular, need to be concerned about referrals to the TPB

# *PQBZ and Commissioner of Taxation* [2023] AATA 2984

*Facts:*

- Taxpayer was born in Malaysia, but a citizen of PNG at the relevant time
- Arrived in Australian in 1997 on a student visa, and married an Australian citizen in 2000
- In 2004, he began working in his family business in PNG, but his family and then three children remained in Australia
- He returned to see them regularly. Over 2013 to 2016 he spent 126, 161, 190 and 206 days in Australia respectively
- He always stayed in the family-owned house while in Australia
- He also owned multiple vehicles and properties, and maintained PHI in Australia. He was also the sole director and/or shareholder of 10 companies

*Issues:*

- Whether the taxpayer was tax resident of Australia?
- Whether the taxable income, penalties and interest are correct?

***Catchwords:*** Residency – Asset betterment calculation – Burden of proof

*Arguments:*

- Taxpayer argued that because of his cultural background, he was expected to take over the family business, and manage his parents' financial affairs. Over the year, his father deposited over $3m into his bank account, which were mostly gifts. Taxpayer argued that he used some of the money to buy his family home and other assets
- In addition, taxpayer received loans from friends (he had no documentation, and interest was not charged) and from the sale of cars
- Further, the taxpayer maintained that his usual and permanent home was in PNG, as he maintained an apartment and had connections to the community (through his business and family connections)

*Decision:*

- Objection decision was set aside

# *PQBZ and Commissioner of Taxation* [2023] AATA 2984

***Catchwords:*** Residency – Asset betterment calculation – Burden of proof

*Reasoning:*

- Tribunal found that the taxpayer was a resident of Australia under the ordinary concepts test
- However, Tribunal commented that the Commissioner had not contradicted any of the evidence provided by the taxpayers and witnesses
- Tribunal accepted that the taxpayer provided an alternative taxable income to the Commissioners and did show that the assessments were excessive

*Key Takeaways:*

- In some circumstances, where contemporaneous documentation is not available, tracing transactions is key to show what the taxable income should be (compared to the Commissioner's figures)
- When disputing the Commissioner's figures, the taxpayer MUST provide alternative taxable income figures

# *PQBZ and Commissioner of Taxation* [2023] AATA 2984

***Catchwords:*** Residency – Asset betterment calculation – Burden of proof

# *DQTB & Anor and Commissioner of Taxation* [2023] AATA 515

***Catchwords:*** *Deductions – Whether agistment activities constituted carrying on a business – Whether legal expenses relating to claim against former employer are deductible*

*Facts:*

- In 2017, the taxpayers purchased a large property in Tasmania which they intended to live on and conduct a grazing business
- For the business they set up a company
- 1st taxpayer had qualifications in vet science, with a focus on sheet reproduction (however was not a licensed vet)
- $120,000 was spent on constructing the addition fencing, dams, water tanks and laneways required for the business to start
- Company paid $20,000 to the taxpayer as an agistment fee
- Each taxpayer included $10,000 agistment income in their tax return. Each also claimed significant deductions
- 1st taxpayer also claimed legal expenses in relation to a dispute with her former employer

*Issues:*

- Whether the taxpayers were carrying on a business?

# *DQTB & Anor and Commissioner of Taxation* [2023] AATA 515

***Catchwords:*** *Deductions – Whether agistment activities constituted carrying on a business – Whether legal expenses relating to claim against former employer are deductible*

*Arguments:*

- Commissioner argued that it was a hobby rather than a business, and that there wasn't enough evidence to show that the $20,000 agistment fee was appropriate for both making the land available to the company and providing animal husbandry and veterinary care services
- Commissioner argued that the deduction should be limited to the agistment fee
- Commissioner did not dispute the legal fee deductions, however argued that there was not enough evidence to support apportionment

*Decision:*

- In relation to the 1st taxpayer, the decision was set aside - allowing legal expenses, and proportionately remitting the penalties
- In relation to the 2nd taxpayer, the decision was affirmed

# *DQTB & Anor and Commissioner of Taxation* [2023] AATA 515

***Catchwords:*** *Deductions – Whether agistment activities constituted carrying on a business – Whether legal expenses relating to claim against former employer are deductible*

*Reasoning:*

- Tribunal commented that an annual fee of $20,000 was not commercial rates, however there was also discussion that the 1st taxpayer was not *licensed* as a vet – therefore was unable to provide vet services. An external local vet was used for those services. As a result, it was untrue that the taxpayer were providing both husbandry and vet care services
- Lack of evidence impacted the taxpayers' arguments in relation to the profit-making purpose of both the company and the taxpayers' activities
- Tribunal did reject the Commissioner's argument about the lack of evidence for the legal expense apportionment

*Key Takeaways:*

- Understanding the difference between a hobby and carrying on a business is important, especially where the services are being provided to a related company
- As always, documentation is "king"

# *Commissioner of Taxation v Rawson Finances Pty Ltd* [2023] FCA 617

*Facts:*

- Facts based on *Rawson Finances Pty Ltd v Commissioner of Taxation* [2013] FCAFC 26
- Company was incorporated in 1997 by Binetter parents. In 1998, son, Andrew was appointed as director and secretary
- Sole business was borrowing and lending money
- Commissioner's issued amended assessments (after audit) disallowing interest deduction, and included assessable income from money received from the bank (as loans)
- Taxpayers argued in AAT that it was the family set up to provide loans obtained from Israeli banks (who did not require security and were satisfied with personal guarantees)
- Commissioner appealed the Federal Court, on grounds that the loans were not evidenced
- The Full Court restated the AAT decision, saying the evidence that was available was enough for the Tribunal to decide the funds were received from loans

*Catchwords:* Set aside judgement on the basis of fraud – Assessments based on loans from Israeli bank and should be characterised as income – Normal 'business practices' to obtain loans on the basis of personal guarantees only

# *Commissioner of Taxation v Rawson Finances Pty Ltd* [2023] FCA 617

*Facts:*

- Project Wickenby resulted in a number audits of Binetter family entities. The project focused on whether the entities were retuning profits earned overseas to Australia disguised as 'loans'
- There was substantial additional evidence obtained by the Commissioner
- Commissioner obtained leave from the Federal Court to use evidence from a previous legal proceeding and additional evidence from the project in a further appeal

*Issues:*

- Whether loans were secured from secret cash deposits and back-to-back loans, and whether false/misleading evidence about this was provided to the AAT by the taxpayers and witnesses?
- Whether the taxpayers knowingly failed to disclose documents and information?

***Catchwords:*** Set aside judgement on the basis of fraud – Assessments based on loans from Israeli bank and should be characterised as income – Normal 'business practices' to obtain loans on the basis of personal guarantees only

# *Commissioner of Taxation v Rawson Finances Pty Ltd* [2023] FCA 617

*Arguments:*

- Commissioner argued that the additional evidence showed that there were code named used by the family, and that witnesses had provided false evidence in the previous proceedings, and that the taxpayers had failed to meet the notices for compulsive information and document gathering during the other proceedings
- The taxpayer argued that the Commissioner hadn't proved that the taxpayers or other witnesses had provided false evidence or perjured themselves, and that failing to disclose evidence was not evidence of fraud, and finally argued that the new evidence supported that the loans were genuine

*Decision:*

- Orders were made by the Federal Court to set aside the Full Federal Court decision on the basis it was procured by fraud

***Catchwords:*** Set aside judgement on the basis of fraud – Assessments based on loans from Israeli bank and should be characterised as income – Normal 'business practices' to obtain loans on the basis of personal guarantees only

# *Commissioner of Taxation v Rawson Finances Pty Ltd* [2023] FCA 617

*Reasoning:*

- The Court found that the new evidence clearly showed that the previous decisions in favour of the taxpayers were obtained fraudulently, and that evidence regarding the 'loans' now made it clear that evidence was key to the outcome in the previous decisions
- The additional evidence confirmed that it was NOT common practice for the Israeli banks to provide loans without cash deposits – which was contrary to the taxpayers' arguments throughout the whole history of proceedings
- Court found that there was clear attempts from the taxpayers' legal representatives to deliberately mislead the Commissioner
- Court stated that the new evidence opened the stage for the Commission to raise further arguments regarding 'sham'

*Key Takeaways:*

- **Entities are required to respond truthfully in communications with the Commissioner – especially to 353-10/15 Notices**
- **Sham and fraud often run concurrently as arguments in such cases**

***Catchwords:*** Set aside judgement on the basis of fraud – Assessments based on loans from Israeli bank and should be characterised as income – Normal 'business practices' to obtain loans on the basis of personal guarantees only

# *Active Sports Management Pty Ltd v Industry Innovation and Science Australia* [2023] AATA 4078

***Catchwords:*** R&D Tax Incentive – Whether activities undertaken are eligible activities

*Facts:*

- Active Sports carried on a business which included importing and selling sports apparel, footwear and accessories
- Applied for R&DTI for 2016 and 2017FYs
- Claimed activities related to the development of a customized basketball shoes – personalised to requirements and style of famous player, Matthew Dellvedova (US NBA)
- In May 2019, Industry Innovation determined the claimed activities did not meet the eligible activities definition

*Issues:*

- Was the taxpayer entitled to the R&D tax incentive in relation to its "R&D activities"?
- Are the claimed activities "core or supporting R&D activities"?

*Decision:*

- Tribunal found that none of the Claimed activities were core R&D activities. Instead, they consisted of a modification of a previously known athletic shoe design.

# *Active Sports Management Pty Ltd v Industry Innovation and Science Australia* [2023] AATA 4078

*Catchwords:* R&D Tax Incentive – Whether activities undertaken are eligible activities

*Reasoning:*

- Tribunal noted that contemporaneous written evidence of the systematic progression of work would be highly persuasive
- Tribunal determined that the statutory test looks at the outcome of the experimental activities in question
- Tribunal considered the lack of evidence – there was no evidence that the outcome of any of the asserted hypothesis was uncertain or unknown

*Key Takeaways:*

- Useful reminder that in the spectre of the R&D regime, an absence of proper contemporaneous documentation evidencing the systematic progression of work undertaken in relation to claimed activities may be fatal to claim
- Moreover, one must do more than simply 'develop' a product or thing – it must closely marry up to Division 355 definitions and meaning, and that this alignment can be *evidenced*

# *McEwan v Office of the Australian Information Commissioner & Anor* [2023] FCAFC 137

*Facts:*

- McEwan was subject to a R&D investigation by the ATO
- ATO disclosed information to the Brisbane Angel Nominees Pty Ltd – a company unrelated to the R&D claimant
- As a result of the information obtained, the Brisbane Angel Nominees made a complaint against McEwan for fraud, and McEwan was charged
- McEwan complained to the Australian Information Commissioner, who found that the ATO had not breached Privacy Principle 6
- Federal court dismissed matter, on the basis that a restrictive view should not be taken over the [permissive] words in s355-50(1)(b)

*Issue:*

- Whether the Court had misconstrued s355-50, and wrong on the finding that the disclosure was for the purpose of law enforcement?

***Catchwords:*** Disclosure of protected information – Whether s355-50 permitted disclosure of protection information by a taxation officer in the course of an investigation of federal offences

# *McEwan v Office of the Australian Information Commissioner & Anor* [2023] FCAFC 137

*Arguments:*

- McEwan argued that s355-50 allowed a taxation officer to make a disclosure about her affairs to another taxation officer – but not to another person
- McEwan further argued that the purposes of disclosure should only be for "collection and recovery of income tax and other liabilities"

*Decision:*

- Appeal dismissed with costs against applicant/appellant

*Reasoning:*

- The reference to "entity" in the legislation was only a reference to the disclosing entity – not to the entity receiving the information. Further the disclosure was made while the tax officer was performing their duty – while preparing witness statements in relation to federal offences
- No authorities existed to support McEwan's contention that the duties should be restricted as she argued

***Catchwords:*** Disclosure of protected information – Whether s355-50 permitted disclosure of protection information by a taxation officer in the course of an investigation of federal offences

# Questions?

Susannah Gynther
Moderator

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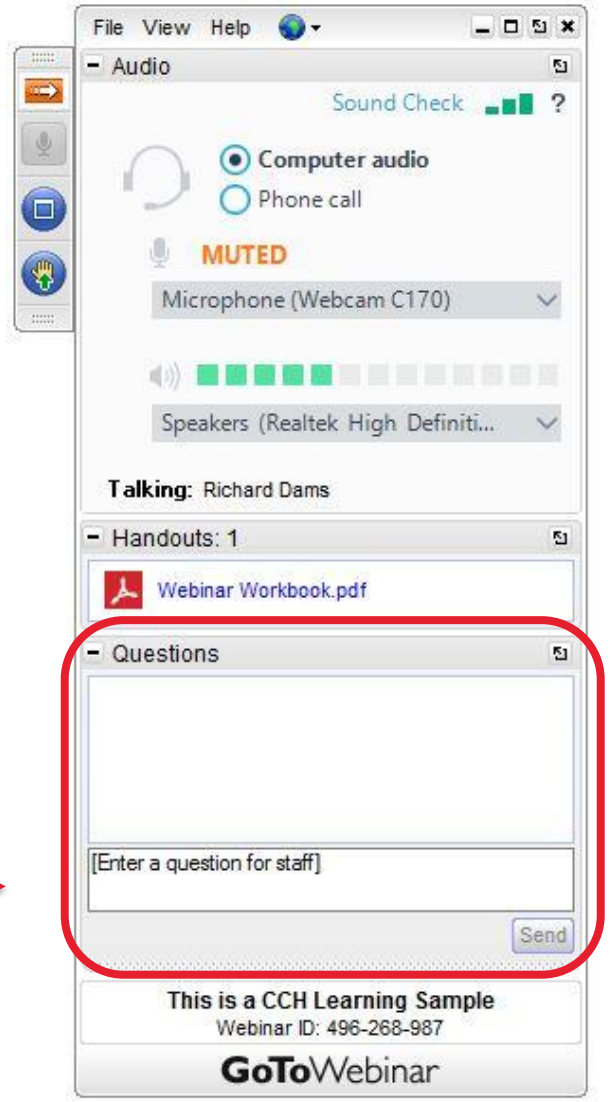

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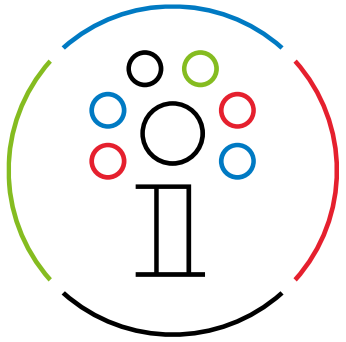

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- 19 March – Turbo-Boost Performance through High-Quality Feedback

# Questions?


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