

SNA Group case – Perfect documentation not necessary to claim deduction

In a judgement dated 21 March 2025, Logan J in [S.N.A Group Pty Ltd v Commissioner of Taxation \[2025\] FCA 240](#) allowed on appeal the deductibility of service fees charged between entities within a private group with common owners and controllers.

The case concerned an appeal by the taxpayer against amended income tax assessments and penalty assessments made by the Commissioner. At issue was whether service fees between related parties were deductible in circumstances where the agreements giving rise to the liabilities were informal (i.e. not formally documented). The position taken by the Commissioner was to deny deductions for the service fees charged between entities within the private group (the Coronis real estate group). The Commissioner asserted that the arrangements were not formally documented and hence were in the nature of “profit stripping” and therefore was not satisfied that the various criteria necessary for a deduction were satisfied.

Logan J did not accept the Commissioner’s submissions and instead found that the object of the service fees in question was obvious, being the payment for assets and expertise that was required to derive income and carry on a business. The judgement found that the arrangements were not a “profit strip” and that deductions should be allowable.

In particular, Logan J noted in paragraph 115 of the judgement that:

“The cases I have cited above (and those referred to in them) about inferring the existence of contracts in circumstances of great informality in business show that the informality of relationships between entities in the Coronis group are hardly unique. Perfection in documentation does not dictate eligibility to a deduction under s 8-1 of the ITAA 1997. The disparity in financial resources and a related ability to conduct taxation appeal proceedings either in this Court or in the Administrative Review Tribunal between many in small business and the Commissioner is great. Of course, the informality of inter-entity relationships within the Coronis group made for challenges in discharging an onus of proof. But great injustices can be visited upon those in small business or who have retained those habits, if the Commissioner does not bring to bear at the audit stage an understanding grounded in the realities of commerce.”

Whilst this judgement notes that perfect documentation is not necessary to claim a deduction for genuine business costs, the lack of such documentation does not help within the taxpayer’s onus of proof with respect to the commerciality of intra-group arrangements. The deductions were only allowed by Logan J on the basis of credible, candid, and honest verbal evidence from the Coronis’ group owners and controllers.

Bendel case – Interim Decision Impact Statement

As summarised in the 3 March 2025 publication of OTP Tax News & Insights, the Full Federal Court in [Commissioner of Taxation v Bendel \[2025\] FCAFC 15](#) found that unpaid present entitlements owed by a trustee to a corporate beneficiary are not “loans” for the purposes of Division 7A, displacing the Commissioner’s long-standing position in [TD 2022/11](#).

The Commissioner has now sought special leave to appeal to the High Court and also released an [interim Decision Impact Statement](#) on the Full Federal Court judgement. Key points to note from the Commissioner’s interim Decision Impact Statement include:

- The Commissioner does not intend to revise his views relating to private company entitlements to trust income set out in TD 2022/11 until the appeal process is finalised (i.e. until the special leave application is refused, or the High Court dismisses the Commissioner’s appeal).
- The ATO will not seek to finalise decisions on issuing amended assessments or private ruling applications that go directly to this issue, or objection decisions in relation past year assessments, unless a decision is required to be made.
- In addition to the application of Division 7A, the Commissioner has noted that unpaid present entitlements may have implications under other taxation laws such as s100A which relate to reimbursement agreements for trusts. In particular, if a trustee retains funds that a corporate beneficiary has been entitled to without converting that entitlement to a loan at least as commercial as the terms set out in Division 7A, the arrangement will fall outside the ‘green zone’ described in [PCG 2022/2](#).

Denying deductions for interest charges

The income tax law has been amended to deny income tax deductions for amounts of general interest charge ("GIC") and shortfall interest charge ("SIC") incurred by a taxpayer in income years commencing on or after 1 July 2025. Any GIC or SIC paid in FY25 should remain deductible.

2025 Federal Election

On 28 March 2025, the Prime Minister called the federal election to be held on 3 May 2025. As a result, Federal Parliament has been prorogued and the House of Representatives dissolved. This has also meant that all unpassed legislation before parliament has lapsed.

A summary of the key tax positions of the two major parties, announced as at the date of this publication, is summarised in the below table:

ITEM	LABOR	LIBERAL-NATIONAL COALITION
Personal Income Tax Cuts	Cuts equivalent to \$268 per year from 1 July 2026, and \$526 per year from 1 July 2027.	No income tax cuts
Fuel Excise Cuts	No fuel excise cuts	Halve the fuel excise for the next 12 months, resulting in a saving of \$14 per full fuel tank for an average car. The future position (after the 12 month period) will be reviewed at a later time.
Small Business	Small business instant asset write-off will reduce to an asset threshold of \$1,000 from 1 July 2025. Note, the income tax law was amended on 28 March 2025 to enact a \$20,000 asset threshold limit for FY25 for the instant asset write-off.	Small business instant asset write-off permanently available for assets with a cost of up to \$30,000.
Superannuation	Additional 15% tax on superannuation earnings attributable to total superannuation balances greater than \$3 million. This position was included in a Bill before Parliament but has now lapsed.	No additional tax on superannuation proposed. First-home buyers will be able to use up to \$50,000 of their superannuation to fund a home deposit.

It should be noted that the above table only summarises the tax relevant positions of the two major parties based on announcements made as at the date of this publication. As expected, neither party has a substantive tax reform agenda, heading into the federal election. The positions of both parties on non-tax matters are not considered in the above table.

Contact

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