Tax News & Insights

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Profits from sale of investment properties taxable as income

The ART decision in *RRKC v FC of T [2026] ARTA 95* was handed down on 28 January 2026 and considered the income tax and GST treatment from the sale of three residential units by the taxpayer. The taxpayer in question was involved in various residential property development activities and held an interest in 30+ properties.

The Commissioner considered that the sale of the properties was not on capital account and that profits from the sale were ordinary income. The Commissioner also applied GST on the sale of the units. The taxpayer claimed that the properties were acquired for the purposes of deriving rental income and that properties were generally only sold for investing in more properties or where financing was required by the taxpayer for other purposes. The taxpayer therefore submitted that the three units were not sold in carrying on a business and that the sale from the isolated transaction was not undertaken with the primary intention to make a profit or gain.

The ART found that the taxpayer did carry on a business that involved acquiring properties mostly for rental purposes but that this business also included the acquisition of certain properties for the purposes of renovation, subdivision, construction and/or sale. The activities of the taxpayer were always undertaken with the intention to make a profit, whether it be from the derivation of rental income or a profit on sale after renovation, subdivision and/or construction. In reaching its decision, the ART noted and accepted the Commissioner's claims that the taxpayer had a pattern of property sales before and after the sale of the three residential units.

Accordingly, the ART found that profits from the sale of the units were ordinary income of the taxpayer and that the units were to be regarded as trading stock for income tax purposes. The taxpayer was therefore ineligible for the CGT discount on gains made from the sale of the properties. Further, the ART noted that the sale of the units was made in furtherance of the taxpayer's enterprise and hence was subject to GST.

Qld Duties Case – appeal filing deemed 'incompetent'

The Queensland Supreme Court handed down its decision in *Kim Investments GC Pty Ltd v Commissioner of State Revenue (Qld) [2026] QSC 4* on 23 January 2026. In this decision, the court held that an appeal lodged by the taxpayer against an objection decision was not competent because at the time of filing the appeal the taxpayer had not paid late payment interest that accrued on the shortfall duty amount between the assessment date and the filing of the appeal.

The court ruled that the taxpayer's submission misinterpreted the assessment made with the assessment notice issued. The express reference to late payment interest in the law clearly indicated a legislative intention that a taxpayer who wished to engage the right of appeal is required to pay the interest that accrued after the assessment was made even if the interest was not disclosed on the assessment notice. The taxpayer's submission that it was impossible for it to calculate the amount of the late payment interest that was required to be paid to satisfy the requirement in the law was rejected by the courts. As a result of the court's decision, it was confirmed that the taxpayer had not enlivened the right to appeal the Commissioner's objection decision.

'Wilful Disengagement' regarded as 'reckless'

The ART decision in *Tilli v FC of T [2026] ARTA 80* was handed down on 23 January 2026. In this decision, the ART affirmed administrative penalties imposed for recklessness on a taxpayer who made false or misleading statements to the Commissioner regarding her income. In particular, the ART found that the taxpayer's claims that she did not monitor her bank accounts and simply signed 'whatever was put in front of her' as not deserving of any reduction or remission of the penalties.

The taxpayer was the beneficiary of a family trust, which acquired property in NSW. The property was subsequently demolished and developed into three units – one was retained by the family trust as a 'holiday home', one was rented out and the third was sold. The taxpayer lodged tax returns prepared by her tax agent. As a result of an audit of the returns from the Commissioner, it was determined that the taxpayer had omitted income in her tax return comprised of rental income and other unexplained deposits and payments into the family trust's bank account. The Commissioner also imposed a shortfall penalty for 'recklessness' at a base penalty rate of 50%, with this penalty also being subject to an uplift of 20% for some income years.

The taxpayer objected to the penalties and submitted that there was no 'recklessness' and that penalties should only be imposed at a base penalty rate of 25% for failure to take 'reasonable care'. The basis of the taxpayer's submission was that she did not monitor bank accounts or make inquiries on the source or character of funds – rather, she relied on her tax agent for the same.

The Commissioner rejected the taxpayer's submission, and this was affirmed by the ART. In particular, the ART noted that the conduct of the taxpayer was not merely passive and the signing of documents of legal and financial significance without reading them or attempting to understand their contents or consequences reflected a complete abdication of personal responsibility for her taxation affairs. Therefore, the ART determined that this was not a case of carelessness or oversight, but rather wilful disengagement, which is properly characterised as recklessness. The ART noted that a lower penalty would convey a message that voluntary disengagement carried no real consequences, which was an outcome inconsistent with the purpose of the legislative regime.

Landholder Duty without beneficial ownership change

On 11 July 2024, the Victorian Civil and Administrative Tribunal ("VCAT") delivered a landmark decision in *Tao v Commissioner of State Revenue [2024] VCAT 637* relating to the imposition of landholder duty due to the acquisition of control despite there being no change in beneficial ownership. On 22 December 2025, the Victorian Supreme Court refused to grant the taxpayer leave to appeal the VCAT decision.

This case involved a unit trust with a corporate trustee, where the trust acquired real property in Victoria. Some time after acquisition, the sole director and sole shareholder of the corporate trustee was replaced, though there was no change to the ownership of the trust. Hence, there was no change to the beneficial ownership of the real property held in the trust.

The Commissioner issued a notice of assessment for *ad valorem* duty to the new sole director and shareholder of the corporate trustee under the 'change of control' provisions in the *Duties Act 2000 (Vic).* This position was thereafter affirmed by the VCAT which stated that when the taxpayer became the sole director and shareholder in the corporate trustee, he obtained "control" over the trust and that it was not necessary for the taxpayer to have also obtained a beneficial interest in the trust. Accordingly, landholder duty was assessed for the 'relevant acquisition' at 100% of the value of the landholder reduced to account for the taxpayer's pre-existing economic interest in the trust.

This case highlights the need to apply caution when changing shareholders and directors of a corporate trustee of a landholding trust. In particular, such a change may result in an acquisition of 'control' and therefore can result in a 'relevant acquisition' for Victorian stamp duty purposes despite there being no change to beneficial interests. The implications of this case are currently not expected to extend beyond Victoria as similar 'economic entitlement' and 'acquisition of control' provisions are only contained in the *Duties Act 2000 (Vic)*.

Superannuation Changes – Bill introduced

Bills have been introduced into Parliament that seek to reduce the tax concessions from 1 July 2026 by imposing an additional 15% tax on earnings based on the percentage of an individual's total superannuation balance exceeding the $3 million threshold and a further 10% tax on earnings based on the percentage of the total superannuation balance exceeding $10 million.

This will result in the overall tax rate applied to earnings of 15% for superannuation balances up to $3 million, 30% to earnings on superannuation balances between $3 million and $10 million, and 40% to earnings on any superannuation balances above $10 million. Please refer to the OTP Tax News & Insights dated 13 January 2026 for further details.

The Bills also introduce law to increase the Low Income Superannuation Tax Offset ("LISTO") from $37,000 to $45,000 from 1 July 2027, to match the top limit of the 16% marginal income tax rate on taxable income above the $18,200 tax free threshold. LISTO is a government superannuation payment that refunds the tax paid on concessional contributions to superannuation funds to eligible low-income earners.

Input Tax Credits denied for late lodgements

The Federal Court handed down its decision in *Barth Family Trust v FC of T [2025] FCA 1693* on 12 December 2025 and dismissed the taxpayer's appeal from an earlier ART decision confirming that the taxpayer was not entitled to input tax credits claimed in returns lodged more than four years after the due date.

The taxpayer carried on a business that was registered for GST and fell behind in its BAS lodgements. The returns were finally lodged but five years had passed since the date for lodgement required under the law. Following an audit, the Commissioner issued amended assessments disallowing the input tax credits on the basis that the entitlement was extinguished by the four-year limit in the law. After an objection was also disallowed, the taxpayer sought review by the ART which affirmed the Commissioner's objection decision. The taxpayer thereafter appealed the decision to the Federal Court.

The Federal Court dismissed the taxpayer's appeal noting that the Commissioner simply disallowed the input tax credit by giving effect to the language in the law which clearly states that once the time for claim has expired, the right to any input tax credit ceases. It is not the role of the ART to revive the right to claim an input tax credit once the four-year limit has passed. In making its decision, the Federal Court distinguished the case from the circumstances relevant in *Coles Supermarkets Australia v FC of T [2019] FCA 1582*; in that case the taxpayer claimed its input tax credits within the relevant four-year period. Once a credit is taken into account within the specified four-year period, there is an accrued right and there is no longer an issue in relation to the existence of the right to the claim. Rather, any subsequent assessment or objection to the claim is whether the accrued right was allowable under the law. This differs from a scenario under the case at hand, where there was neither an assessment nor objection within the prevailing four-year period.

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