Practitioner HUB

NEWSLETTER

APRIL

2025

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Insights, Cases & Compliance Trends for Practitioners

This month's update brings a sharp mix of **court decisions, draft rulings, legislative instruments, and ATO guidance** — each shaping how we apply the law in practice. From **Division 7A complexities and CGT rollover limits** to **FBT record-keeping reform** and the **ATO's shifting compliance focus**, the April 2025 developments carry direct consequences for client advice and firm workflows.

This curated blog series breaks each topic down with clarity and technical rigour — designed by practitioners, for practitioners. Whether you're advising on business restructures, managing SMSFs, reviewing employee classifications, or navigating small business concessions, this edition connects **legal detail with practical action**.

Read more to:

- Stay current with rulings and Tribunal outcomes
- Proactively guide clients through compliance risk zones
- Identify planning opportunities across CGT, FBT, super, and GST

Division 7A and the *Bendel* Blow: Where the ATO Stands Now

We've been keeping an eye on the Division 7A debate for years, and April's tax update served a firm reminder that this is far from settled. The Full Federal Court has now **unanimously ruled against the ATO** in *Commissioner of Taxation v Bendel*, concluding that an **unpaid present entitlement (UPE)** to a corporate beneficiary **is not a Division 7A loan**. It's a big deal — but the story isn't over yet.

So, what happened?

In *Bendel*, the issue was whether a trust distribution owed (but not paid) to a corporate beneficiary should be treated as a loan under Division 7A, triggering a deemed dividend unless managed under a complying loan agreement.
The ATO said yes, citing their view in **TD 2022/11**. The courts — both at first instance and on appeal — said no.
The reasoning? A UPE, without actual cash or loan transactions, **doesn't fall within the statutory meaning of a "loan" under s 109D ITAA 1936**.

Why this matters for practitioners

We've all had clients where trusts distribute income to corporate beneficiaries to cap tax at 25%, but leave the cash in the trust. Under the ATO's view, that move created a Division 7A issue — unless you documented a loan agreement and stuck to minimum yearly repayments.
The courts have now said that's wrong in law — which gives some breathing room.
But here's the catch: **the ATO isn't backing down.** They've filed for **special leave to appeal to the High Court**, and in the meantime, they're doubling down on their own position. Their **Decision Impact Statement** confirms:

- They won't finalise assessments or rulings involving this issue until the appeal is resolved (unless forced to act),
- If they must act, they'll continue applying their view in TD 2022/11,
- They may still pursue **section 100A** where Division 7A fails — especially if funds are retained without a commercial explanation.

So we're in a holding pattern, but one that still carries risk.

Where does that leave us?

From a technical perspective, the courts have spoken — but until the High Court refuses (or hears and dismisses) the appeal, the **ATO's administrative stance holds sway**. That puts us in an awkward spot as advisers.

If your clients have UPEs sitting in trusts, and no Division 7A loan agreements in place, you have three choices:

1. **Do nothing** and rely on *Bendel* — risky, because the ATO may still challenge based on TD 2022/11.
2. **Document the UPE as a complying loan**, even though the courts say it's not necessary — conservative, but reduces audit exposure.
3. **Convert UPEs into actual payments or commercial loan arrangements**, especially where the trust retains funds for working capital.

Final thoughts

This case highlights the ongoing tension between **administrative interpretation and judicial authority**. The *Bendel* decision gives practitioners solid ground to stand on, but the ATO isn't conceding just yet.
Until there's finality — and assuming you don't want clients caught in the crossfire — it's worth reviewing UPE positions now, not later.
We'll see how the High Court responds to the leave application, but for now, caution remains the safest policy.

Division 7A, Notional Loans and the ATO's Latest Draft: TD 2025/D2

Let's be honest — Division 7A has never been light reading. And just when we start to feel comfortable navigating the usual repayment options, **TD 2025/D2** lands in our inbox, reminding us that the waters run deeper than we thought.

This new draft determination focuses on **section 109R** — the anti-avoidance rule that disregards repayments made to private companies when those repayments are, in effect, recycled through new loans. But what really caught my attention is how the ATO is extending that logic to **notional loans** under the **interposed entity rules (sections 109T and 109W)**.

So, what's this draft really saying?

At its core, the ATO is saying:

1. If a **notional loan** arises (because an entity interposes itself between a company and a shareholder or associate), and
2. The repayment of that loan is **funded by a new loan** — even indirectly from the company itself,

…then **section 109R can kick in**, and the repayment will be ignored.

In plain terms: if you're repaying a Division 7A loan with money that came from a roundabout loan back from the company, **that repayment doesn't count**. The deemed dividend risk remains.

This applies even to **notional loans**, where the cash might not have actually moved — just been **deemed** to have done so under the interposed entity provisions.

Why is this important?

For many private groups, we already tread carefully around the Division 7A minefield — documenting loans, managing minimum yearly repayments, and juggling inter-entity transactions. But this draft signals that **you can't just pay off one Division 7A loan and then redraw in a slightly different way** — not even when it's a notional transaction.

The ATO's position here is aggressive: **they're treating notional loans as real for the purpose of repayments, but denying you the benefit when it comes to avoiding deemed dividends**. That's a pretty one-sided view — and yes, they've acknowledged there are alternative interpretations, but the Commissioner isn't buying them.

How this will impact in practice

This will impact groups that rely on **loan clean-up strategies** — especially those with circular cash movements or back-to-back lending through interposed entities. It may also change how we approach **year-end trust distributions**, particularly where private companies sit in the group and are used for cash flow recycling.

If this draft is finalised in its current form, I'd expect the ATO to be more aggressive in reviewing Division 7A repayment patterns — even where everything has been structured "on paper" to comply.

Also worth noting: when finalised, the determination will apply **both prospectively and retrospectively** — so this isn't just about new arrangements going forward.

What to Do Now

Here's how many practitioners are likely to respond in practice:

- **Reassessing Division 7A repayment arrangements** across private groups with layered or circular lending.
- **Reviewing notional loans under sections 109T and 109W**, particularly to understand how repayments have been funded and whether they may be disregarded under section 109R.
- **Approaching internal refinancing or interposed structures with caution**, given the ATO's stated position and increased focus.
- **Advising clients that certain repayments may be ineffective**, especially where funding appears to be recycled, and encouraging clearer, cash-based repayment strategies where possible.

Division 7A is already a complex area, and TD 2025/D2 increases the stakes. The determination reflects the ATO's ongoing shift toward assessing the **substance** of loan arrangements, not just their legal form. Where repayments resemble circular funding or lack genuine economic effect, the risk of a deemed dividend remains high.

Submissions on the draft are open until **17 April 2025**, but in the meantime, it's wise to stress-test existing structures and address any exposure points before administrative action follows.

CGT Rollover and Division 615: The AusNet Case Closes a Loophole

One of the more technical updates this month involved capital gains tax (CGT) rollover relief under **Division 615** — specifically, whether a restructure that already qualifies for rollover can also trigger a **cost base step-up via tax consolidation**.

This issue came to a head in *AusNet Services Ltd v Commissioner of Taxation [2025] FCAFC 21*, where the Full Federal Court delivered a clear message: **you can't have both**.

What's the issue?

The case involved a corporate restructure implemented through a **share-for-share scheme of arrangement**, where shareholders in multiple entities exchanged their interests for shares in a new head company — a common strategy when forming a tax consolidated group.

Under Division 615 of the ITAA 1997, such arrangements can qualify for **automatic CGT rollover relief**, provided certain tests are met — including that the restructure is for the purpose of reorganising a company's "affairs."

The taxpayer argued that even though the Division 615 rollover applied, they should still be entitled to **restate (or "step up") the tax cost base of the assets** of the acquired subsidiaries when they joined the consolidated group.

What did the Court say?

The Full Federal Court sided with the Commissioner. It confirmed that:

- Division 615 rollover applies **automatically** where its conditions are met — including where the restructure is for the purpose of reorganising a company's "affairs."
- Because rollover applies, the **pre-existing cost bases must be preserved**.
- There's **no scope to reallocate acquisition cost to underlying assets** via the tax consolidation provisions.

Put simply: **if rollover applies, then the group takes the old cost base** — no uplift allowed.

Why this matters

This decision reinforces a boundary that some corporate groups had tried to stretch — using **consolidation entry rules** to create a fresh cost base for assets immediately after a Division 615 restructure.

For practitioners, the implications are clear:

- **No double benefit**: A restructure that qualifies for Division 615 rollover **cannot also trigger asset revaluation** under the tax consolidation rules.
- **Automatic rollover is binding**: Even if the taxpayer does not intend to apply rollover relief, **it applies by law** where the conditions are met.
- **CGT forecasting must be conservative**: Any future asset sales by the consolidated group will use **historical cost bases**, not uplifted values.

Implications for group restructures

This decision narrows the options for **group restructures involving share-for-share exchanges**, especially where a consolidation is planned post-restructure.
Key takeaways for practitioners:

- If a restructure qualifies for **Division 615 rollover**, expect **existing cost bases to carry through**. No uplift will be available via consolidation.
- CGT outcomes should be **modelled with rollover limitations in mind**, particularly if future asset sales or capital gains are likely.
- In some cases, there may be merit in exploring **alternative structures** (e.g. direct asset acquisitions or partial share sales) that do not engage Division 615 — though commercial and legal implications must be weighed.
- It's critical to assess the **automatic operation of Division 615** — clients may not realise that rollover applies even without an election.

Technical observations

While the decision closes off a potentially generous outcome, it brings clarity. Division 615 rollovers serve a specific policy function — to facilitate restructures without immediate tax cost. But they do not create an opportunity to arbitrage tax cost bases through consolidation timing.

In practice, any restructuring strategy aiming to optimise CGT and group tax outcomes will need to evaluate **whether Division 615 is desirable or avoidable**, and if avoidable, whether an alternative transaction structure (such as a direct asset sale) provides a better long-term tax profile.

The *AusNet* decision tightens the landscape for advisers involved in corporate restructuring, and signals the Court's ongoing support for the integrity of rollover provisions as a **deferral tool, not a reset mechanism**.

Not Every Broken Deal is a Deduction – Division 230 in *Tabcorp*

When a major contract ends and nothing comes out of it, it's natural to ask: can a tax deduction soften the blow?

That's exactly what was at stake in *Tabcorp Maxgaming Holdings Ltd v Commissioner of Taxation [2025] FCA 115*. The taxpayer argued that the end of a gaming licence created a deductible financial arrangement under Division 230. The Federal Court disagreed — and in doing so, reminded us that **Division 230 doesn't stretch to every commercial disappointment**.

Where the argument came from

Tabcorp's position was that it held a **"contingent right to a terminal payment"** — a contractual fallback, supposedly activated when its gaming licence ended. The company claimed this amounted to a **Division 230 financial arrangement**: one that involved the provision of financial benefits, and therefore, eligible for a deduction when it collapsed.

But the arrangement wasn't as firm as it looked. The right was conditional, and in the post-reform landscape of the gaming industry, the necessary preconditions simply no longer existed. No payout, no enforceable right, no deal.

The Court's view: no arrangement, no deduction

The Court took a close look at the structure and came to a blunt conclusion: there was **no financial arrangement within the meaning of Division 230**.
Why?

- **No mutual financial benefit**: Division 230 requires a give-and-take of value — a financial benefit now, for one later. That wasn't happening here.
- **No real contingency**: By the time the licence expired, there was no viable pathway for the payment to materialise.
- **Even if there had been** a qualifying arrangement, **section 230-460(8)** — which limits deductions on certain contingent obligations — would have blocked the loss anyway.

This was more than just a technical denial. It was a reset on how far taxpayers can stretch the Division 230 net.

The real lesson: commercial risk ≠ tax loss

One of the biggest traps in Division 230 is assuming that a **contract with financial consequences automatically becomes a financial arrangement**. This case shows that's not the case.

There are plenty of commercial arrangements that have financial outcomes — but that's not enough. Division 230 has very specific design features: **there needs to be an exchange of defined financial obligations**, not just hopes, expectations, or hypothetical payments.

Takeaways for advisory firms and corporates

For those advising large corporates or structuring long-term agreements, this case is a reminder to:

- **Reassess assumptions** about what qualifies under Division 230.
- Avoid trying to **force-fit failed commercial deals** into the financial arrangement regime.
- Pay close attention to **substance and enforceability** — not just the presence of a contract.
- Expect the ATO to scrutinise any deductions under Division 230 that relate to contingent rights or failed outcomes.

This case might not have involved a typical financial instrument — but that's precisely why it matters. The boundaries of Division 230 are now clearer.

Final thoughts

Tabcorp is a reality check. Just because a business deal goes sideways doesn't mean it qualifies as a tax-deductible financial arrangement. The line between commercial risk and tax deductibility is sharper than many might expect — and courts are enforcing it.

When dealing with Division 230, always come back to first principles: **is there a real, enforceable exchange of financial benefits?** If the answer is no, the deduction probably isn't there either.

Parking, FBT, and the ATO's Problem with Shopping Centres

In what might be one of the most relatable FBT issues for suburban and regional employers, the Federal Court has handed down its decision in *Toowoomba Regional Council v Commissioner of Taxation [2025] FCA 161*. The question? **Is a shopping centre car park a "commercial parking station" for fringe benefits tax purposes?**

The answer — no, it isn't. And yes, the ATO is appealing.

The backstory

Many employers are aware that providing free or subsidised parking to employees can attract **FBT under the car parking benefit provisions**. But the rules only apply where a commercial parking station exists **within a 1 km radius** that charges more than the statutory daily threshold.

The ATO has long argued that **shopping centre car parks count** — even if they offer three free hours and only charge a few dollars after that.
In *Toowoomba*, the regional council disagreed, and the Court sided with them.

What the Court said

The Federal Court looked closely at the definition of a **"commercial parking station"** under the FBT Assessment Act, and ruled that:

- The car park in question **wasn't operated with a view to profit**, but rather as a convenience for customers of nearby shops.
- The parking structure didn't meet the standard commercial profile — it had **free hours, low fees, and wasn't competing** with other parking providers.
- The purpose of the car park was **to support retail activity**, not to run a separate commercial car park business.

As such, it didn't meet the FBT definition, and therefore, **no FBT was payable** on the council's staff parking arrangements.

Why this matters

This decision cuts across the ATO's long-held position, particularly outlined in **TR 2021/2**, where it treated many shopping centre and mixed-use car parks as "commercial" for FBT purposes.

If the judgment stands, it could:

- **Exempt thousands of small and medium employers** — especially in regional areas — from car parking FBT obligations.
- Create **uncertainty for businesses relying on ATO rulings** that now contradict the Court's view.
- Trigger a rethink of parking benefit assessments going forward, especially where the "comparator" parking facility is part of a retail complex.

Where things stand now

The ATO has confirmed it will **appeal the decision**, so there's no change to the law just yet. TR 2021/2 remains active, and assessments will likely continue to apply the ATO's current interpretation — at least until the appeal is heard.

But in practice, firms should be:

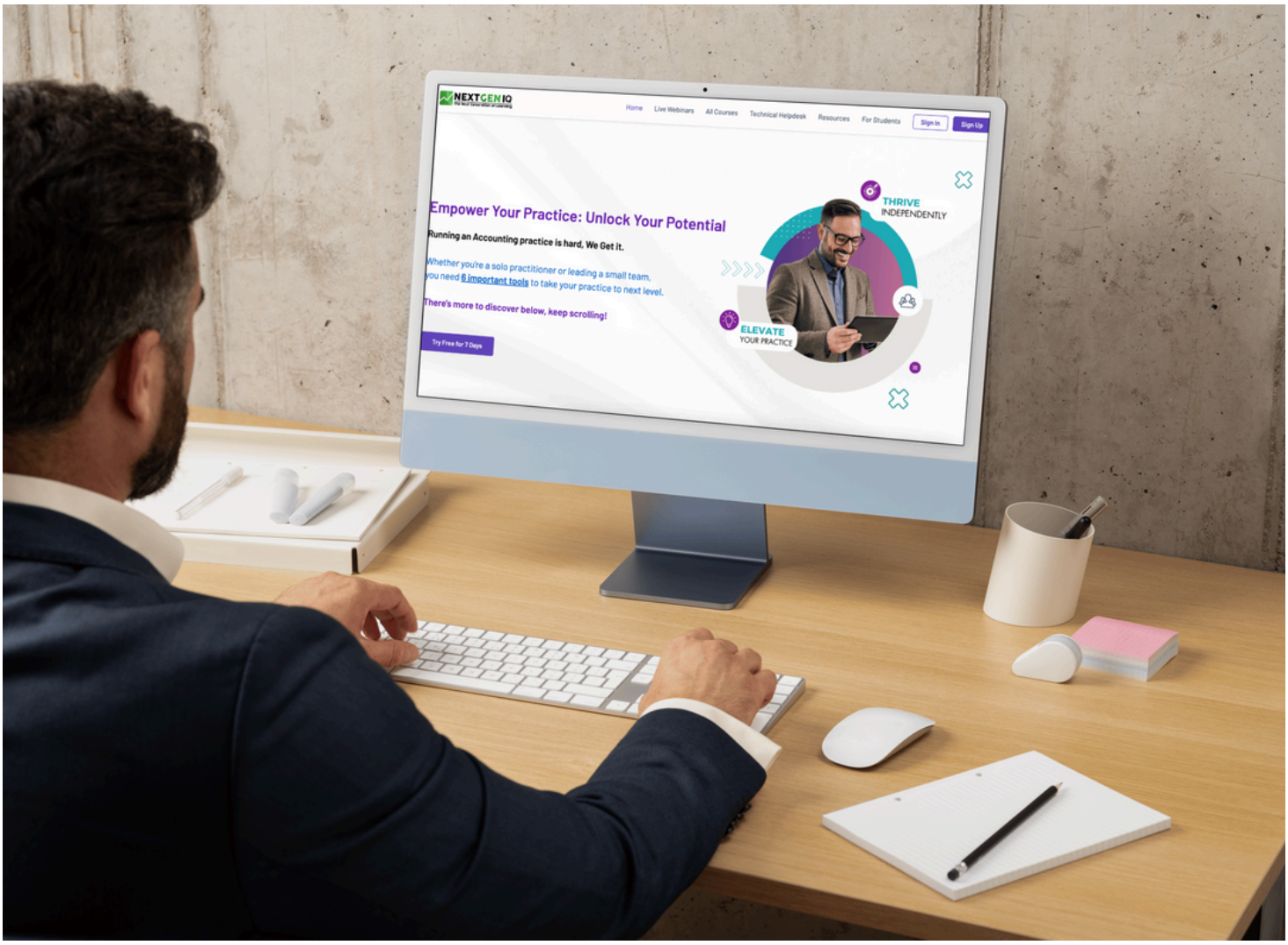
- **Reviewing current FBT positions** for clients who provide employee parking near shopping centres.
- Flagging the risk or opportunity of **reduced FBT exposure** if the appeal fails.
- **Documenting how nearby parking is used and priced**, especially where fees are low, capped, or structured around shopping hours.

Practical reminder

Remember: **small business entity employers (turnover < $50m)** remain exempt from car parking FBT altogether, regardless of location — a fact often overlooked.

In Conclusion

Toowoomba is more than a parking spat — it's a serious test of how the FBT rules apply in the real world, where car parks serve mixed purposes and commercial intent is not always clear-cut.
Until the appeal is resolved, practitioners should stay alert — and make sure clients aren't overpaying FBT on parking benefits that might not legally exist.



Employee or Contractor? Hatfield Case Puts SG Back in the Spotlight

The Federal Court has weighed in once again on the meaning of "employee" for superannuation guarantee (SG) purposes — and it's clear the line between employee and contractor isn't just legal, it's functional.

In *Commissioner of Taxation v Hatfield Plumbing Pty Ltd (Trustee) [2025] FCA 182*, the ATO challenged a decision that a plumber was not entitled to SG. The plumber worked under a contracting arrangement, was paid hourly, and did the work personally. Sounds like an SG liability, right?
Not quite.

What the AAT decided — and why the ATO disagreed

Initially, the AAT had found **no SG liability**. Even though the contractor was paid hourly and performed the work personally, the Tribunal determined that the contract was **"for a result"**, not for labour — meaning it didn't fall under section 12(3) of the SGAA.

The ATO didn't accept this and appealed, arguing that the hourly payment and personal performance were key indicators of a labour-based engagement.

What the Federal Court said

The Court ultimately agreed with the AAT and dismissed the Commissioner's appeal. Key takeaways from the judgment:

- The engagement was found to be **for a specific result**, not just for the provision of labour — even though payment was calculated hourly.
- The method of payment (e.g. hourly rate) was considered a **neutral factor**, not determinative of the relationship.
- The Court confirmed that the overall character of the contract is what matters — not any single indicator.

This decision affirms the principle that **context, contract, and control all matter**, and reinforces the idea that not all personal services trigger SG.

What this means in practice

This ruling highlights how **complex and fact-specific** contractor arrangements can be. For practitioners advising on SG obligations:

- **Hourly rates and personal performance don't automatically mean SG applies**.
- The critical question is: **what is the contract really for** — the labour itself, or the delivery of a result?
- Businesses must consider the **overall structure and purpose** of the engagement, including autonomy, control, and the nature of the work delivered.

But hold on — the ATO's not done

The Commissioner has **lodged an appeal** against this decision, meaning the High Court may get involved. So once again, we're in a holding pattern — with a court decision favouring contractors, and an ATO determined to hold the line.

For now, firms should:

- Review contractor arrangements that sit in the grey zone — especially where personal services are involved but the agreement is project- or outcome-based.
- Ensure that contracts **clearly define deliverables and expected results**, not just hours worked.
- Warn clients that **SG compliance reviews are likely to continue**, regardless of the current court outcome.

Final thoughts

Hatfield reopens the SG definition debate and reminds practitioners that **employment status isn't just about labels — it's about substance**. With another appeal pending, the uncertainty continues — but for now, businesses have another case in their corner when defending well-structured contractor engagements.

Smarter FBT Record Keeping – ATO Gives Employers Some Breathing Room

FBT season just got a little more manageable.

As of **1 April 2024** (i.e. for the **2025 FBT year**), the ATO has introduced **new flexibility** around how employers can meet their documentation obligations — especially for benefits like travel, meals, and car-related claims.

In short: **you can now use business records instead of traditional employee declarations**, in certain cases.

What's changing?

Historically, the FBT regime has required **formal declarations** from employees — travel diaries, logbooks, no-private-use statements, and the like — to reduce FBT liability or support exemption claims.

From the 2025 FBT year, employers can now rely on **existing corporate records** (e.g. payroll systems, booking tools, vehicle logs, accounting records) **as an alternative**, provided the records meet certain standards.

This shift is backed by **legislative instruments issued by the ATO**, which outline the benefits eligible for alternative record-keeping and what counts as an acceptable record.

Why it matters

This is a practical win for employers and advisers alike. The ATO has recognised that:

- Many businesses already maintain **robust systems** that contain relevant information.
- Traditional declarations **create duplication and administrative overhead**, often without improving compliance.
- FBT compliance is more achievable when the system **meets businesses where they are**.

This change could significantly **reduce the paperwork burden** for eligible benefits, and give tax agents more latitude in advising clients with modern record-keeping systems.

What practitioners need to do now

The new rules don't mean "no records" — they mean **alternative records**, and the bar is still high.

Advisers should:

- **Identify which clients provide fringe benefits** eligible for alternative record keeping (e.g. travel-related, car benefits, relocation expenses).
- **Review current internal systems** to determine whether existing business records meet the new standards.
- **Educate clients** on what constitutes "adequate" business records — vague spreadsheets or incomplete logs won't cut it.
- Consider integrating **FBT compliance reviews** into broader year-end checklists or payroll health checks.

Also note: employers **don't have to use the alternative method**. The choice remains — continue using traditional declarations, or adopt the business record pathway.

Where to find the rules

The ATO has issued **legislative instruments and explanatory statements** setting out the framework. These cover:

- The **types of benefits eligible**
- What constitutes a "business record"
- What information must be retained
- How long records must be kept

All of this is accessible via the ATO's FBT 2025 update hub.

Looking Ahead: Compliance Made Simpler, Not Optional

This is a meaningful compliance reform — not just a technical tweak. For employers running modern systems, the ability to rely on **existing data sources** to support FBT reporting will save time, reduce risk, and cut through some of the red tape.

The key is knowing **when alternative records are enough**, and ensuring that documentation still aligns with the intent of the FBT law.

ATO Pushes Non-Compliant Small Businesses to Monthly GST Reporting

Starting **1 April 2025**, around **3,500 small businesses** will be moved from quarterly to **monthly GST reporting** — not by choice, but by directive.

This latest compliance measure from the ATO is part of its **"Getting it Right" campaign**, and it's aimed squarely at businesses with a track record of **non-payment, late lodgement, or poor reporting accuracy**.

What's changing?

The ATO will begin notifying selected small businesses (and their tax agents) that their GST reporting cycle is being **forcibly changed** from quarterly to monthly.
The new cycle will apply for **a minimum of 12 months**, with the intention of:

- Increasing visibility over business activity
- Improving cash flow transparency
- Ensuring more timely correction of reporting errors or omissions

There will be a **review process** available, but only for businesses that believe the change has been made in error or that can demonstrate a genuine improvement in compliance behaviour.

Why the ATO is doing this

The ATO has long flagged that a subset of small businesses consistently fall short on BAS obligations — either by **failing to lodge on time, misreporting, or underpaying**. For these cases, quarterly reporting gives too much leeway and too little oversight.
By shifting non-compliant businesses to monthly reporting, the ATO:

- Gets more **real-time data** on business income and GST liabilities
- Can identify issues **sooner**, reducing the scale of errors or evasion
- Applies **behavioural pressure** to improve overall compliance

It's not a new power — the ATO has always been able to adjust reporting cycles — but this marks a **coordinated enforcement approach**.

What tax practitioners should do

If representing small business clients with patchy BAS histories, now is the time to:

- **Identify clients at risk** — late lodgers, repeat errors, frequent ATO reminders.
- **Proactively address compliance issues** — before a forced cycle change takes effect.
- **Communicate the implications** — monthly reporting means tighter cash flow management, more frequent reconciliations, and increased admin.
- **Set up automation or reminders** in BAS software tools to help clients keep pace.

Also important: consider whether a **GST refund cycle** may be affected. Monthly refunds may be faster — but **monthly scrutiny is also more likely**.

Not all small businesses are affected

To clarify: this change **only applies to a targeted group** based on compliance history. Most small businesses will remain on quarterly reporting by default.

However, the message is clear — **good compliance gets flexibility; poor compliance gets closer monitoring**.

Final word

This move fits within the ATO's broader push for **data-driven, behaviour-based regulation**. It's not about penalising small business — it's about making non-compliance too inconvenient to continue.

For advisers, the best approach is to help clients avoid the forced monthly cycle by **getting ahead of lodgement, payment, and accuracy issues now**.

Working Abroad, Still Tax Resident – Quy Case Reinforces Domicile Trap

In *Quy and Commissioner of Taxation [2025] ARTA 174*, the Administrative Review Tribunal (ART) reaffirmed a key point that regularly trips up expats and mobile professionals:

"Just because you live and work overseas doesn't mean you've stopped being a tax resident of Australia".

This case serves as a sharp reminder that **the domicile test can capture taxpayers who maintain personal and family connections in Australia**, even when their employment takes them offshore.

The facts in brief

The taxpayer, an Australian citizen, had accepted an internal transfer with his employer and moved to Dubai. While overseas, the taxpayer's employer covered most of his living costs, including accommodation.

Importantly:

- His **wife and children remained in the family home** in Perth.
- His **intention to return** to Australia was clear, though not tied to a specific date.
- He argued that he was **not a resident** under either the ordinary concepts test or the statutory domicile test.

The Tribunal disagreed.

What the Tribunal decided

The ART accepted that:

- The taxpayer **was not a resident under the ordinary concepts test**, given his physical absence and day-to-day life in Dubai.

However:

- Because his **domicile remained in Australia**, the test under **section 6(1)(b) ITAA 1936** applied.
- The key question became: **Did he have a permanent place of abode outside Australia?**

The answer was **no**.

Despite his extended work period in Dubai, the accommodation was employer-provided and **not permanent in character**. Combined with the fact that his family and home remained in Australia, the Tribunal found that **his real and enduring ties remained here**.

Result: **He was an Australian tax resident** for the relevant years.

Why this matters

This case is a textbook example of how the **domicile test can trap well-meaning taxpayers** who assume that being offshore means being non-resident.

For practitioners advising mobile professionals, FIFO workers, or employees on secondments, this case reinforces that:

- **Maintaining a home and family in Australia** weighs heavily toward residency.
- Employer-paid accommodation overseas may not qualify as a "permanent place of abode."
- **Intentions to return**, even without a firm timeline, weaken arguments for non-residency.

Practical steps for advisers

If working with clients who are:

- **Living overseas but still have family or property in Australia**, or
- On temporary work placements with housing support,

…then it's essential to:

- **Review residency status annually** — particularly before tax return lodgement.
- Check whether the overseas accommodation is **self-funded, long-term, and independent**.
- Document the **nature of the overseas role**, any return intentions, and whether ties to Australia have been genuinely severed.

Taxpayers can be blindsided by the fact that **you don't need to be physically present to be tax resident** — the law looks at your roots, not just your location.

Looking ahead

This decision adds to the growing list of cases that challenge assumptions around residency and reinforces the need for detailed, evidence-based analysis.
Where family, property, or social ties remain in Australia, the **domicile test will often override the expat narrative** — and leave clients facing unexpected tax obligations.

Same Job, Fewer Hours? Not So Fast — Redundancy Confirmed in Baya Casal

In *Baya Casal v Deputy Commissioner of Taxation [2025] FCA 87*, the Federal Court confirmed that a taxpayer was **entitled to treat her termination payment as a genuine redundancy**, despite the employer offering an "alternative" role.

The twist? The alternative role had the **same duties**, but with **reduced hours, changed days, and lower pay**. The Court found that wasn't equivalent — and the taxpayer's original role was, in fact, redundant.

What happened?

The taxpayer worked as an early learning assistant at a school. After a restructure, her employer:

- Offered her a **new role** with different working days, fewer hours, and reduced income
- Stated that her original position was being dissolved
- Gave her the option of either **redeployment or redundancy**

She declined the redeployment and took the redundancy. The Commissioner challenged the treatment, arguing that because the duties were largely the same, the position wasn't truly redundant.

The Court's view

The Federal Court rejected the Commissioner's reasoning.

Key findings included:

- **Redundancy is not limited to job titles or duties** — it also involves **conditions of employment**, including days, hours, and remuneration.
- A change that results in **substantially altered working terms** can mean that the new role is **not equivalent** to the old one.
- A position involving reduced hours and different working patterns **was not an "appropriate alternative"**.

Therefore, the termination payment met the definition of a **genuine redundancy** under **section 83-175 of the ITAA 1997**, and the associated tax concessions applied.

Why this matters

For HR, payroll, and tax advisers, this case clarifies that:

- Redundancy doesn't require the job to disappear entirely — it requires a **material change in the role offered or retained**.
- Employers cannot avoid redundancy treatment simply by **renaming or reshaping a role** with less favourable terms.
- Employees who reject inferior offers may still qualify for **concessional tax treatment on termination payments**.

Practical guidance for employers and advisers

When managing restructures and terminations:

- Ensure that **any alternative roles offered are genuinely equivalent** — same duties, same hours, same remuneration.
- If the role changes in a way that materially affects the employee's work pattern or income, be prepared for a **redundancy classification**.
- Document the rationale for the restructure, the nature of alternative roles, and the employee's response.
- Consider **seeking a private ruling** in grey-area cases where the tax treatment of the payment is significant.

Key takeaway

This decision highlights the importance of viewing employment roles **holistically**. Tasks and duties are just one piece — the **structure, stability, and conditions of the role** are just as critical when assessing whether a genuine redundancy has occurred.

When in doubt, always ask: **Would a reasonable person view this as a continuation of the same job — or the end of one and the offer of another?**

ESIC Schemes and Part IVA – ATO Flags Anti-Avoidance Risk

The ATO has sharpened its stance on **Early Stage Innovation Company (ESIC)** investments, confirming that some schemes marketed under the ESIC framework may **breach Part IVA** — the general anti-avoidance rule in the tax law.

This came through in **TD 2025/D1**, a draft determination released in response to concerns raised in **Taxpayer Alert TA 2024/1**. Together, these documents send a clear message: **if a scheme is designed primarily to generate tax offsets and capital gains exemptions, it's in the ATO's sights.**

What's the issue?

The ESIC regime was introduced to encourage investment in high-risk, early-stage startups by offering:

- A **20% non-refundable tax offset** on qualifying investments
- A **CGT exemption** for shares held for between 12 months and 10 years

But in recent years, the ATO has seen a rise in **structured schemes** designed to meet the technical requirements of ESIC status — while failing to reflect real innovation or genuine commercial risk.

In other words: **artificial eligibility**, tax-driven arrangements, and engineered structures that tick the boxes without doing the work.

What TD 2025/D1 says

The draft determination outlines the Commissioner's view that **Part IVA may apply** where an ESIC structure has the **dominant purpose of obtaining a tax benefit**.

Key points:

- The determination looks at **arrangements similar to those in TA 2024/1**, which involve contrived investor entry, exaggerated innovation metrics, and circular ownership.
- Where the dominant purpose is to access the ESIC tax concessions, and not to raise genuine risk capital or drive innovation, **Part IVA will be considered**.
- The usual factors in **s 177D(2) ITAA 1936** will be weighed — including how the scheme was structured, marketed, and implemented.

The draft ruling will apply **retrospectively and prospectively** once finalised.

Why this matters for advisers and early-stage investors

The message is clear: **compliance with the letter of the ESIC rules isn't enough**. If the underlying arrangement lacks commercial substance or has been built primarily to deliver tax advantages, it's likely to trigger ATO scrutiny.
This has practical consequences for:

- **Advisers involved in structuring or certifying ESIC eligibility**
- **Investors seeking offsets and CGT exemptions**
- **Founders and early-stage companies** working with capital-raising platforms

What to do now

For practitioners advising startups or investors:

- Revisit **existing ESIC schemes or investors** to determine if any features are likely to be seen as contrived or tax-driven
- Where ESIC eligibility is claimed, ensure there is **robust documentation of genuine innovation and commercial activity**
- Watch for **non-arm's length transactions**, investor churn, or arrangements where the startup's activities are immaterial or recycled
- Consider advising clients of the **Part IVA exposure** where there's no real innovation risk or economic purpose beyond tax benefits

It's also worth noting that the Commissioner does **not need to prove intent** — only that a **reasonable conclusion** can be drawn about the dominant purpose.

Final observation

The ESIC regime was built to support innovation, not optimisation. **TD 2025/D1 is a warning shot**, and one that will likely reshape how aggressive ESIC strategies are marketed and structured.
Advisers working in the startup and VC space should treat this as an opportunity to review past activity and help clients avoid ATO scrutiny before it becomes retrospective action.

Transfer Balance Cap Rises to $1.98M – What It Means for SMSF Strategy

From **1 July 2025**, the **general transfer balance cap (TBC)** will increase from **$1.9 million to $1.98 million**, thanks to indexation. It's a modest $80,000 rise, but for clients approaching pension phase, that extra space can make a meaningful difference.

The cap governs **how much superannuation can be moved into the tax-free retirement phase** — and once it's used, there's no going back. That's why every indexation increment counts.

A quick refresher – what is the TBC?

The **transfer balance cap** is the maximum amount a person can transfer into a retirement phase income stream (like an account-based pension) without triggering tax consequences.

Any excess must remain in accumulation phase, where earnings are taxed at 15%.

There's also a **personal transfer balance cap**, which is tied to how much of the general cap a person has already used. Since 1 July 2021, the personal cap has become **proportionally indexed**, so each increase affects individuals differently.

Who gets the full increase?

Only those who **haven't yet started a retirement phase pension** (i.e. with a TBC of $0) will benefit from the **full $80,000 increase** to $1.98 million.

For everyone else, the increase is **proportional** — meaning their cap will rise by a fraction based on how much of it they've already used.

Example:

- A client who previously used 50% of the $1.9M cap would see their personal TBC increase by 50% of the $80,000 indexation = $40,000.
- So their new personal cap from 1 July 2025 would be $1.94M.

Once a person hits their cap, **indexation no longer applies to them** — their personal TBC is locked.

Why it matters

This update is more than a technical tweak — it impacts a range of strategic decisions:

- **Timing of pension commencements**: If a client is close to retirement phase, delaying until after 1 July 2025 could unlock more tax-free pension room.
- **Re-contribution and reversionary pension planning**: Higher TBCs give more flexibility when managing partner pensions and death benefit planning.
- **Estate equalisation**: The increase can support strategies where super balances are being rebalanced between spouses for future pension eligibility.
- **Non-concessional contributions**: Eligibility to make NCCs is tied to TBC thresholds — so the higher cap may open the door for new contributions where the previous $1.9M cap cut them off.

What practitioners should do now

- **Identify clients nearing pension phase** who haven't yet triggered their TBC — they may benefit from deferring commencement until 1 July.
- **Model proportional indexation** for clients who've already used part of their cap — the change may allow additional pension phase contributions.
- **Check NCC strategies** — the higher threshold could allow catch-up contributions in FY26, especially under the bring-forward rules.
- **Review reversionary and estate plans**, especially where a surviving spouse's ability to retain pensions depends on cap space.

Final word

The TBC is one of those technical thresholds that can either limit or unlock strategic opportunities in retirement planning. With the **cap rising to $1.98M**, there's now more room to manoeuvre — but only for those who act early and understand the interaction between timing, personal caps, and contribution rules.

CGT Active Asset Test Failed – No Concession for Passive Landholding

In a blow to small business owners banking on CGT concessions, the AAT has ruled in *The Trustee for the Whitby Trust v Commissioner of Taxation [2025] AATA 788* that a **property held for passive purposes** did **not meet the Active Asset Test** under the **small business CGT concessions**.

This decision offers a critical reminder that **partial or incidental business use is not enough** — particularly where the dominant purpose is investment or passive income.

The facts in brief

The asset in question was a **block of land** held by a trust. Over a multi-year period:

- The land was used **intermittently to store equipment** for the taxpayer's business
- No structural improvements were made
- The land was **otherwise vacant** and not actively used to generate business revenue

When the property was sold, the trust attempted to apply the **CGT 15-year exemption** and **small business 50% reduction**, relying on the argument that the land was an **active asset** used in the course of business.

What the AAT found

The Tribunal was not convinced.

Key findings included:

- The land's **primary use was passive** — there was no evidence of consistent, substantial business activity on the site.
- Storage of business items was **irregular and insufficient** to characterise the land as an asset "actively used in the course of carrying on a business."
- The taxpayer's **subjective intent** to use the land for future business expansion was not relevant — it's the **actual use** that counts.

As a result, the land **failed the Active Asset Test**, meaning the trust was **ineligible for the small business CGT concessions**.

Why this matters

This case cuts to the heart of a common misconception — that **occasional business use or long-term intention** is enough to meet the Active Asset Test.

In reality, the test under **section 152-40 ITAA 1997** requires:

- **Use "in the course of carrying on a business"**
- Use that is **substantial, continuous, and connected** to the business activity — not merely ancillary or incidental

If that standard isn't met, **none of the small business CGT concessions apply** — not the 15-year exemption, not the 50% active asset reduction, and not the retirement exemption.

Practical implications

Firms assisting clients with CGT planning should:

- **Review property holdings carefully** — particularly land, vacant lots, or mixed-use premises
- Ensure that business use is **ongoing, deliberate, and well-documented**
- Watch out for **assets that are passively held "just in case"** or for vague future expansion plans
- Maintain clear records of how and when business use occurs — including photos, logs, invoices, and location-specific records

Also be aware: **storage use** alone is unlikely to qualify unless the property is an integral and necessary part of the business operation.

Final observation

The small business CGT concessions are generous, but they come with tightly policed eligibility criteria. The **Active Asset Test is a gatekeeper**, and this case shows just how strictly that gate is guarded.

If the property isn't being used **now** — and in a meaningful way — for the active conduct of a business, **the tax concessions are off the table**.

ATO's 2025 Focus Areas for Small Businesses – What's Under the Microscope

Each year, the ATO signals where its compliance teams will be focusing — and for **small businesses in 2025**, the message is clear: **don't cut corners on reporting, tax timing, or record keeping**.

The April update outlined several key areas where small business tax behaviour will be reviewed more closely. And while these are perennial pressure points, the ATO is now combining **real-time data analytics** with traditional audit activity to close the gap between declared and actual behaviour.

Key compliance focus areas for FY25

According to the ATO, the major areas under review are:

1. Under-reporting income

Businesses that:

- Have mismatches between **BAS income and tax return totals**
- Omit **cash or digital payments** (e.g. PayPal, Square, Stripe)
- Fail to declare income picked up via **bank feeds, third-party data, or STP**

The ATO will be matching **bank data, POS data, and merchant facility statements** against lodgements. Income suppression — whether deliberate or careless — is firmly in focus.

2. Over-claiming deductions

Particular scrutiny will apply to:

- **Non-business use of business assets**
- **Private expense deductions** disguised as business (e.g. travel, vehicles, home office)
- **Excessive stock write-offs or bad debt claims**
-

Expect follow-ups where deduction patterns don't align with industry norms or turnover levels.

4. Lodgement and payment timeliness

Failure to lodge on time and persistent late payments (even when extensions are granted) may trigger more than just penalties — they may lead to a **forced switch to monthly lodgement cycles** or increased audit risk.
This is especially relevant in light of the ATO's recent move to **shift non-compliant small businesses to monthly GST reporting.**

What practitioners should do now

This is a prime opportunity to:

- **Audit internal processes or software settings** to ensure GST coding and expense classification are accurate
- **Run proactive reconciliations** between BAS, tax returns, and accounting data
- Flag clients with **repeated lodgement delays or cash reporting anomalies**
- Educate clients on **deduction eligibility**, particularly where lifestyle and business costs overlap

Also consider whether **accounting file access** (e.g. Xero, MYOB, QuickBooks) is up to date — the ATO increasingly uses practitioner data sources to conduct desk audits without formal notice.

Final thought

The ATO's focus on small business compliance is getting sharper — not broader. These are targeted interventions, powered by matching technology and behaviour profiling. For firms and their clients, it's no longer enough to be "mostly compliant."

2025 will reward systems, consistency, and transparency — and penalise shortcuts.

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