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Tax & Management Tools For Small Business

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Tax News and Updates September 2025

By [Vincent Licciardi](#), Partner, HWL Ebsworth Lawyers

No.	Article	Link
1.	<p>Trust distribution minutes</p> <p>In the recent case of <i>The Trustee for Goldenville Family Trust A/C Xiangming Huang v Commissioner of Taxation</i>, two beneficiaries of a property development family trust were unsuccessful in claiming millions of dollars in interest income distributions were subject to lower withholding tax rates.</p> <p>The Deputy President of the Administrative Review Tribunal (ART), found that:</p> <ul style="list-style-type: none">• the trust distribution minutes were prepared after year-end;• there was no evidence of director meetings to formalise the distributions; and• as a result, the resolutions were deemed invalid. <p>This case highlights critical issues for advisors. A written resolution alone is not enough. It must be supported by clear evidence of when the decision was made. If a resolution</p>	<p><u>The Trustee for Goldenville Family Trust A/C Xiangming Huang and Commissioner of Taxation (Taxation) [2025] ARTA 1355 (13 August 2025)</u></p>

	appears inconsistent with surrounding facts, it also risks being ruled invalid.	
2.	<p>Tax Practitioners Board promoting the importance of registered BAS agents</p> <p>The Tax Practitioners Board (TPB) has launched a new advertising campaign, 'Find a BAS agent you can trust', to highlight the importance of using registered BAS agents.</p> <p>The campaign warns businesses about the risks of engaging unregistered BAS preparers, who lack the necessary qualifications and act illegally if they lodge statements with the Australian Taxation Office (ATO). Using unregistered providers can expose businesses to errors, penalties, and potential legal consequences.</p>	<p><u>Promoting the importance of registered BAS agents Tax Practitioners Board</u></p>
3.	<p>ATO releases guidance on denying deductions for ATO interest</p> <p>A recent change in the law means that from 1 July 2025, general interest charge (GIC) and shortfall interest charge (SIC) will no longer be tax deductible. Any interest incurred before this date remains deductible.</p> <p>The ATO has released a fact sheet, "Denying deductions for ATO interest", to explain when GIC and SIC are considered "incurred". This occurs when there is an existing liability to pay. For instance, following an amended income tax assessment, the due date for payment is 21 days after the notice is issued, with GIC accruing after that deadline. For running balance account (RBA) deficit debts, GIC is incurred daily. The fact sheet includes multiple examples covering situations such as amended assessments, late lodgment, and RBA deficits.</p> <p>Importantly, the legislative change does not affect the Commissioner's power to remit interest. The ATO's remission policy also remains unchanged, and taxpayers can still apply for remissions where appropriate. Whether remitted interest is assessable depends on whether a deduction was previously available, remitted charges will only be assessable if the original interest was deductible.</p>	<p><u>Denying deductions for ATO interest Legal database</u></p>
4.	<p>High Court appeal dismissed: PepsiCo not subject to royalty withholding tax or diverted profits tax</p> <p>By a 4:3 majority, the High Court dismissed the Commissioner's appeals, ruling that there was no embedded royalty subject to Australian royalty withholding tax (RWT) and that the diverted profits tax (DPT) provisions in Part IVA of the <i>Income Tax Assessment Act 1936</i> did not apply.</p>	<p><u>Commissioner of Taxation v PepsiCo Inc; Commissioner of Taxation v Stokely-Van Camp Inc; Commissioner of Taxation v PepsiCo Inc; Commissioner of</u></p>

	<p>The case involved two US companies in the PepsiCo Group, which had exclusive bottling agreements with SAPL, an Australian company. PBS, an Australian subsidiary, supplied SAPL with flavour concentrates needed to produce beverages. The agreements included rights for SAPL to use the taxpayers' intellectual property, but no royalties were payable, and no payments were made directly to the US entities.</p> <p>The High Court, by majority (Gordon, Edelman, Steward, and Gleeson JJ), dismissed the Commissioner's appeals, holding that neither royalty withholding tax nor diverted profits tax (DPT) applied. The minority (Gageler CJ, Jagot and Beech-Jones JJ) took the view that SAPL had paid a royalty under the bottling agreement, but since neither taxpayer derived income from that payment, withholding tax was not applicable. However, the minority considered that DPT would apply as an alternative.</p>	<u>Taxation v PepsiCo Inc; Commissioner of Taxation v Stokely-Van Camp Inc; Commissioner of Taxation v Stokely-Van Camp Inc [2025] HCA 30 (13 August 2025)</u>
5.	<p>Decision impact statement on Landcom updated</p> <p>The ATO has updated the decision impact statement on <i>Commissioner of Taxation v Landcom</i> [2022] FCA 510. This case considered whether a state-owned corporation, which was not subject to GST, could challenge the Commissioner's response to its private ruling request on the calculation of notional GST, and whether it could appeal the Commissioner's objection decision to the Federal Court. It also addressed how the margin scheme applied to land supplied under multiple freehold interests.</p> <p>The Court found that government entities are entitled to seek private rulings on their notional GST obligations and determined that the margin scheme must be applied separately to each individual interest supplied. The decision impact statement has since been updated to reflect past tense wording and to outline actions taken and proposed.</p>	<u>Commissioner of Taxation v Landcom (Published 27 August 2025) Legal database</u>
6.	<p>ATO issues decision impact statement on MWB Accountants: Recovery of funds banked into tax agent's personal account</p> <p>The ATO has issued a decision impact statement relating to <i>Deputy Commissioner of Taxation v MWB Accountants Pty Ltd</i> [2019] VCC 1516. This case dealt with whether the Commissioner could reclaim funds that the ATO had mistakenly paid into a tax agent's personal bank account. The payments arose after the agent, without the taxpayer's knowledge, lodged activity statements and claimed credits to which the taxpayer was not entitled.</p>	<u>Deputy Commissioner of Taxation v MWB Accountants Pty Ltd [2019] VCC 1516 (Published 20 August 2025) Legal database</u>

	<p>The Court ruled that the Commissioner could not recover the money from the tax agent under section 8AAZN of the <i>Taxation Administration Act 1953</i>. Section 8AAZN only allowed the Commissioner to recover the funds from the taxpayer who was the ‘recipient’ of the administrative overpayment because they were 'the taxpayer the Commissioner intended to pay as a result of its entitlement under a taxation law'.</p> <p>As a result of the decision, PS LA 2008/11 <i>Suspected fraud by a third party or tax practitioner</i> was withdrawn on 12 December 2024 as it is no longer current.</p>	
7.	<p>Developer’s valuation of property sold under margin scheme rejected</p> <p>A property developer was unsuccessful in challenging the Commissioner’s calculation of GST liabilities for large-scale developments under the margin scheme.</p> <p><i>Facts</i></p> <p>The developer acquired land from the ACT Suburban Land Agency (SLA) in 2015 and 2017, providing both cash and development services as consideration. In return, it received short-term leases, later converted to 99-year leases for sale to residential buyers.</p> <p>Applying the margin scheme, the developer valued its non-monetary consideration (the development services) using land valuations based on expected sale prices of the 99-year leases, less the cash paid to SLA. It then issued tax invoices to SLA, including \$16.3 million in GST, which SLA paid between September 2017 and November 2018.</p> <p><i>Decision</i></p> <p>The ART upheld the Commissioner’s position, ruling that the developer had not proven the amended assessments were excessive. It found the \$16.3 million paid by SLA counted as consideration under the margin scheme. The Tribunal also ruled that a private ruling obtained by the developer did not compel the Commissioner to accept its valuation, and that the methodology used, valuing land by reference to future 99-year lease sales, had an “air of unreality”.</p>	<p>ZKSM and Commissioner of Taxation (Taxation) [2025] ARTA 1298 (11 August 2025)</p>
8.	<p>TPB unveils its Corporate Plan 2025-26</p> <p>In its 2025–26 plan, the Tax Practitioners Board (TPB) has outlined four main areas of focus aimed at strengthening the tax profession.</p>	<p>TPB Corporate Plan 2025–26 Tax Practitioners Board</p>

The TPB's priority will be to safeguard the integrity of the profession through a fair, proportionate, and data-driven compliance program, while continuing to support both practitioners and the public. Enhanced data analytics will play a central role, with compliance efforts directed at unregistered preparers, tax scheme promoters, and cases of professional misconduct. These priorities are guided by more than 14,000 complaints and referrals received last year, along with intelligence from the ATO and other agencies. To encourage transparency and voluntary compliance, the TPB will also publish its compliance priorities.

The plan further highlights broader risks, including regulatory gaps, data governance, cyber security, and technology challenges, and sets out the TPB's overarching strategy for addressing them.

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