

## IN THIS ISSUE

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## SECTION 1 – PROFESSIONAL DEVELOPMENTS

### Is ‘Enterprise’ the same as ‘Business’?

The term ‘enterprise’ is deliberately<sup>1</sup> widely defined in s 9-20 of the GST Act to include an activity (or series of activities) done:

- in the ‘form’ of a business
- in the ‘form’ of an adventure or concern in the nature of trade
- on a regular or continuous basis, in the ‘form’ of a lease, licence or other grant of an interest in property
- by the trustee of a charitable fund
- by any administrator of a complying super fund
- by a charity
- by the Commonwealth, a State or a Territory, or by a body corporate, or corporation sole
- by a trustee of a charitable fund.

Leaving aside the confusion surrounding the use of the phrase ‘in the form of’ as it pertains to the definition, s 9-20(2) lists activities that would not amount to the carrying on of an enterprise. Specifically, the term enterprise will not include anything done by an individual or a partnership, **without a reasonable expectation of profit or gain**; [my emphasis].

#### ¶10.1 Federal Court case

The requirement that an entity have a reasonable expectation of profit is a recent addition to the definition, and is largely based on a similar requirement outlined in Taxation Ruling [TR 97/11](#) paragraphs 47 to 54. To the team’s knowledge, this amendment has not previously been judicially interpreted, but in a recent [Federal Court decision](#) the meaning of the phrase ‘without a reasonable expectation of profit or gain’ was considered in relation to whether the trustee of a family trust was carrying on an enterprise for the purpose of claiming input tax credits on its acquisitions.

The company was the trustee of the William Lewski Family Trust (the ‘Trust’). William Lewski (‘WL’) controlled the company and was a director for most of the relevant period. He was also the ‘Specified Beneficiary’ of the Trust. The ‘General Beneficiaries’ were defined by reference to their relationship with WL and included WL’s wife (RL) and their sons (AL, JL and ML).

During the 2015, 2016 and 2017 calendar years, the taxpayer provided consultancy, advisory and accounting services to the L family. He also provided consultancy services in respect of retirement villages, residential aged

<sup>1</sup> This was originally designed to include as many activities as possible within the definition, but has resulted in some activities being classed as ‘enterprises’ that would be better classified as hobbies.