



**INFORMATION
EXCHANGE**
Step Up to Advice

AUSTRALIAN TAX ADVISER

2310 : JUNE 2023

The IFX Legal Tax Team

IN THIS ISSUE

SECTION 1 – PROFESSIONAL DEVELOPMENTS	1
IS ‘ENTERPRISE’ THE SAME AS ‘BUSINESS’?.....	1
¶10.1 Federal Court case	1
¶10.2 Federal Court decision	2
¶10.3 Consequences of the Federal Court decision.....	3
SECTION 2 – PROFESSIONAL CURRENCY	4
BILLS AND LEGISLATION.....	4
¶10.4 Small Business Energy Incentive	4
¶10.5 Cents per km rate for 2023-24	4
¶10.6 Work test modification	4
¶10.7 Draft instrument to codify ATO’s general remission power	5
¶10.8 ATO and ASIC to share information with NDIS Fraud Taskforce	6
CASES AND DECISIONS	6
¶10.9 Money paid into court not to be repaid	6
¶10.10 Exploration company not entitled to the R&D tax offset	7
¶10.11 Claim for input tax credits rejected	8
¶10.12 Super benefits paid in breach of operating standards	11
¶10.13 Taxpayer fails to show amended assessments were excessive.....	13
¶10.14 Part IV A Applied to ‘Washing Machine’ arrangements	15
RULINGS AND GUIDELINES	16
¶10.15 Prime Minister’s announcements	16
¶10.16 ATO data-matching for ride sourcing data	17
¶10.17 Transfer Pricing in the ATO’s sights	17
¶10.18 Tax gap of individuals not in business	19
¶10.19 Second phase consultation into <i>Measuring What Matters</i>	20

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IN THIS ISSUE

¶10.20	Anti-money laundering regime extended to lawyers and accountants	21
¶10.21	ATO website updates.....	21
STATE TAXES.....		23
¶10.22	New South Wales.....	23
¶10.23	Victoria.....	23
¶10.24	Queensland.....	23
SECTION 3 – QUESTIONS AND ANSWERS		24
¶10.25	FBT contribution accounting.....	24
¶10.26	Small business concessions.....	25
¶10.27	Apportionment between input taxed and taxable supply	25
¶10.28	Auditor registration and client practice.....	26
¶10.29	Sheds and buildings constructed on pre-CGT land	27
¶10.30	Overseas income.....	27
¶10.31	Main residence absence rule and partial CGT exemption	28

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SECTION 1 – PROFESSIONAL DEVELOPMENTS

Is ‘Enterprise’ the same as ‘Business’?

The term ‘enterprise’ is deliberately¹ 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

¹ 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.