

Editorial Note

Welcome to the latest edition of the *Pilot Directions* newsletter.

Happy New Year and I hope the year started off on a positive note for you. We are now starting to see inflation reducing to levels acceptable to the Reserve Bank which will

hopefully flow through to an easing of the excessive cost increases we have had to endure over the last two or so years. This should hopefully lead to some interest rate decreases in the second half of the year.

In this edition we delve into the latest ATO guidance on the use of digital currencies and GST which has caught our attention of late. Many of us are also watching the appeal by the ATO against a recent case that could have ramifications for Division 7A and trusts.

Our 'News & Insights' page provides the latest news and updates on a number of

topics that we trust you will find useful and interesting.

We hope you enjoy this edition.

Brian McDonald
BRIAN MCDONALD



Digital currencies and GST

You're running a GST registered enterprise and it's that time again to prepare your business activity statement (BAS). But what happens if your business accepts digital currencies (e.g. cryptocurrency) as payment?

If your business makes a taxable supply (sale) where digital currency is received as payment, you must record and pay the GST amount on your BAS in Australian dollars.

The tax invoice must meet the normal requirements and include either the GST payable in Australian dollars, or sufficient information to work out this amount. This could include the price/value expressed in Australian dollars, or the conversion rate used to work out the GST payable.

Unfortunately, it is not currently possible to pay a GST debt (or any other tax debt for that matter) using digital currency. Therefore, you will either need to convert 1/11th of the digital currency (the GST

component) into Australian dollars, or pay the GST amount using funds from other sources.

The buying and selling of digital currencies is classified as an input-taxed financial supply. This means that GST does not apply to these transactions (e.g. using an exchange). Although, you should be aware that income tax and Capital Gains Tax consequences may apply.

What if I'm the one paying using digital currency?

The same rules apply here. If you are registered for GST, you can claim input tax credits on purchases made using digital currency (subject to the usual requirements in the GST law being satisfied).

Any GST credits claimed in your BAS must also be converted into Australian dollars.

How do I convert amounts paid in digital currency?

To work out the Australian dollar amount, you must use the rate on the conversion date that applies. The exchange rate can come

from a reputable digital currency exchange/website or can be agreed upon between the supplier and recipient. If the exchange rate is in a foreign currency, this must be converted to Australian dollars.

If you are registered for GST on a non-cash (accruals) basis, the conversion date is the earlier of the day you receive any payment, or the invoice date. If you are registered on a cash basis, you may choose either of these dates (but you may only claim the GST credit in the period the amount is paid).

Contact Pilot

If you need assistance determining the taxation treatment of digital currencies, contact your **Pilot advisor** on **(07) 3023 1300**.





Are changes coming to Division 7A?

For roughly 13 years, the Australian Taxation Office (ATO) has acted on the basis that unpaid trust distributions to corporate beneficiaries are considered “financial accommodation” provided to the trust, and therefore are subject to taxation under Division 7A of the *Income Tax Assessment Act 1936*. A recent decision in the Administrative Appeals Tribunal (AAT) in *Bendel v FCT [2023] AATA 3074 (Bendel)* has turned this interpretation on its head.

The potential impacts of this decision are far-reaching. This decision has implications for every business and investment group in Australia with trusts and companies in their structure chart.

Whilst many Tax practitioners have been getting very excited about the decision in *Bendel*, the ATO has appealed the decision and is unlikely to back away from this fight any time soon. Practitioners and their clients would be well advised to follow the progress of the appeal very closely.

Unpaid present entitlements and loans under Division 7A

Broadly, Division 7A was introduced to stop private companies from making tax-free advances to related parties. The legislation works to treat such advances or loans as unfranked dividends from the company, unless the loans are documented and repaid over set timeframes with appropriate interest charges (currently 8.27%).

In 2009, the ATO released a tax ruling which clearly brought unpaid trust distributions to private companies

into the Division 7A net (from 2010 onwards). The ruling, and its successors, maintained the Commissioner’s view that unpaid trust distributions are “financial accommodation” provided by companies to trusts, and therefore are loans for the purposes of the Division 7A legislation, bringing them into the tax net.

Whilst tax rulings aren’t the law, the Commissioner issues rulings to provide the public with guidance as to how he will apply the legislation and case law. Taxpayers can elect not to follow such guidance; however, the Commissioner can penalise this behaviour.

Putting an unpaid trust distribution on complying loan terms isn’t a tax-free solution, and broadly has the following implications:

- i. The company pays tax on the original trust distribution;
- ii. The shareholder must make minimum interest and principal repayments each year for 7 years. If the loan was used for private purposes, the interest won’t be deductible. These repayments will have to be funded by after-tax income; and
- iii. The company pays tax on the interest income earned on the loan as the term progressed.

As interest rates rise, so too does the Division 7A benchmark interest rate, making Division 7A loan management a more costly tax burden.

So, what did the AAT say?

The Tribunal member in *Bendel* concluded that an unpaid trust distribution to a company, in and of itself, is not a loan and Division 7A should not apply to such an

arrangement. This reasoning is consistent with what many tax practitioners have been saying for some time, albeit whilst living within the bounds of the tax ruling’s edicts.

What does this mean for private groups?

In short, nothing yet as this case has a lot further to play out. The ATO have appealed the AAT’s decision. The next stop will be the Federal Court, and if things continue to go against the Commissioner, we wouldn’t be surprised to see him continue to appeal to the High Court.

The ATO’s recent interim Decision Impact Statement makes it clear that they are going to continue to hold onto their interpretation until the appeal has run its course. As outlined above, this could take some time.

The Commissioner noted in his interim Decision Impact Statement that other sections of the legislation may also apply to unpaid trust distributions, such as section 100A of the *Income Tax Assessment Act 1936*.

Regardless of the outcomes of *Bendel*, there is always the possibility that the Government could circumvent the process and amend the legislation to specifically include unpaid present entitlements made by trusts to private companies as loans for Division 7A purposes. After all, the Treasury won’t appreciate a hit to its cash flow!

In summary, we are watching this space for further updates to continue to provide guidance to clients.

Contact Pilot

If you have any questions regarding your trust and taxation matters, contact **Murray Howlett** or your **Pilot advisor** on **(07) 3023 1300**.

News and Insights



Client News

Pilot Partners' client Sunshine Hydro has been announced as the winner of the Queensland 2024 Telstra Best of Business Awards for promoting Sustainability. Their mission is to promote global sustainable principles, anchored in the company's commitment to deep decarbonisation and biodiversity protection. This Award is timely as it comes when Sunshine Hydro is inviting the broader community to join them on their sustainability journey via the Birchal crowdfunding platform.



Employee v contractor scrutiny

The Australian Taxation Office (ATO) has outlined its framework for differentiating between an employee and a contractor and says businesses will need written agreements that detail roles and how tasks are performed to avoid the risk of a superannuation or PAYG audit. This latest guidance aligns the ATO's approach with recent High Court employment law rulings departing from the previously utilised analysis of the conduct or behaviour of the parties when determining worker classification.



Privacy Act and small businesses

Key reforms have been announced that apply to small businesses that earn less than \$3 million a year. Such businesses are currently exempt from the Privacy Act, but the government has agreed in principle to remove this exemption, meaning small businesses will be obliged to secure any consumer information they may hold and to notify individuals of any breach that occurs. The change is expected to impact around 2.3 million small businesses in Australia. The government will perform an impact analysis review and provide a small business support package, as well as establish a transition period before the changes come into effect. The changes to the Privacy Act are expected to be legislated in 2024.



Random audit activity

Recently we have been hearing murmurings of the ATO randomly auditing businesses to scrutinise their compliance with employment-related taxes. Now may be a good time to check there are no skeletons in your business closet, and ensure you have good governance measures in place to comply with all relevant employment-related obligations, including PAYG withholding, FBT, payroll tax and superannuation. Addressing any issues as soon as possible will save time and costs down the track, and being proactive before the regulators find any skeletons can help lessen the potentially significant impact of penalties and interest charges arising from an audit.

Welcome to the Team

Pilot welcomes the following new team members.

Dan Hastings joined Pilot as director in Corporate Advisory. Dan joins the firm with a wealth of knowledge and experience in the professional accounting and commercial sectors.

Oscar Beattie joined as an Undergraduate Accountant in the Taxation Advisory team. Oscar is currently studying a Bachelor of Advanced Business, majoring in Accounting and Finance at the University of Queensland.

Sophie Sorensen joined as an Undergraduate Accountant in the Forensics and Restructuring team. Sophie is currently studying a Bachelor of Commerce and Law at the University of Queensland.

Portia Rush joined as an Administration Assistant in the Business Advisory team.

Izabela Ramos joined as Receptionist and Administration Assistant in the Finance and Administration team.

Congratulations

Congratulations to our newly promoted Associate Directors, **Tom Howard** and **Linda Yang**. Both Tom and Linda have been managers at Pilot for a number of years and have recently been appointed into their new roles. We thank them for their hard work and commitment to Pilot and look forward to them enjoying the challenge their new positions bring.

We would also like to congratulate **Sheree Phillips** and **Jeremy Scott**, who have been promoted from Accountant to Manager this quarter, and **Joanne Inglis** who has been promoted from Accountant to Supervisor. Well done to Sheree, Jeremy and Joanne on their achievements, we wish them all the best in their new roles.



Jeremy, Joanne, Sheree, Linda and Tom

Happy Pilot anniversary wishes go to **Ramona McGregor** and **Linda Yang** for 10 years with Pilot, and to **Miyoko Pace** and **Sarah Schubert** for 5 years with Pilot. We thank them for their time with Pilot and their contributions to the firm, and look forward to their continued career journey with us.

Congratulations to **Grace McLay** on her engagement to her partner Lewis. We wish them all the best.



Grace & Lewis

SOCIALS & EVENTS

Christmas parties



Christmas pod decorations



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