SCG AUGUST NEWSLETTER

INSIDE

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High Court Brings Greater Clarity on Trust Distributions

The High Court has recently handed down an important decision that will impact many private business groups using discretionary trusts and corporate beneficiaries.

In *Commissioner of Taxation v Bendel* [2026] HCA 18 (10 June 2026), the Court rejected the ATO's long-standing view that an unpaid distribution (also known as an unpaid present entitlement or UPE) owed by a trust to a corporate beneficiary will automatically constitute a loan for the purpose of the integrity rules in Division 7A.

The rules in Division 7A are aimed at situations where private companies provide benefits to shareholders or their associates in the form of payments, loans or forgiven debts. When these rules are triggered the tax rules apply as if the company had paid an unfranked dividend to the recipient of the benefit.

Why this matters

Many private business groups use discretionary trusts as part of their structure. It is common for a trust to distribute at least some income to a corporate beneficiary so that this income can be taxed at the corporate tax rate (currently 25% or 30%), while the cash remains within the trust to fund working capital, future investment or business growth.

Until now, the ATO's view was that these unpaid distributions would typically be treated as loans under Division 7A. This often meant businesses needed to put complying loan agreements in place, charge benchmark rates of interest and make annual repayments to avoid the risk of deemed unfranked dividends being recognised for tax purposes. For many groups, this created an additional administration burden, reduced cash flow flexibility and increased compliance costs.

The High Court has now clarified that an unpaid distribution will not necessarily amount to a Division 7A loan simply because the corporate beneficiary has not demanded payment.

While every arrangement will depend on its particular facts, the decision is likely to provide greater certainty for many business groups that have historically retained funds within their trusts.

What happens with existing loan arrangements?

The ATO has since released a Decision Impact Statement (26 June 2026), confirming that it will generally administer the law in accordance with the Court's decision, while also highlighting that other integrity provisions may still need to be considered.

One of the key things that the ATO has clarified is that where formal written loan agreements have been put in place in response to the ATO’s previous views in this area, these can’t simply be unwound just because of the High Court decision.

That is, the trust still needs to make minimum loan repayments each year until the loan period ends or the loan is completely repaid to prevent a deemed unfranked dividend from being recognised under the tax rules.

Other tax rules still matter

Although the decision represents a significant development, it should not be viewed as removing all Division 7A or tax related concerns.

The ATO has made it clear that other provisions within Division 7A can still apply in certain situations. For example, if a trustee appoints income to a corporate beneficiary and this is left unpaid, but the trustee subsequently lends money to a shareholder of the company (or an associate of a shareholder), then this can potentially still trigger a deemed unfranked dividend for tax purposes unless appropriate steps are taken.

Other integrity rules also need to be considered when trust distributions are left unpaid. For example, the rules in section 100A can potentially trigger adverse tax outcomes in situations where a trustee appoints income to a beneficiary but the real benefit of the funds is enjoyed by another party.

These provisions remain highly fact-dependent, making it important to review arrangements carefully rather than assuming the Bendel decision resolves every issue.

Looking ahead

The decision provides a timely opportunity for private groups to review their trust structures, distribution resolutions and patterns, accounting records and the way unpaid entitlements have been managed over time.

However, we also need to keep an eye on the Government's proposed trust tax reforms. The Government announced in the recent Federal Budget that it will be introducing a 30% minimum tax rate for discretionary trusts from 1 July 2028. The Government has also indicated that income distributed by discretionary trusts to corporate beneficiaries will generally be subject to double taxation because companies won't receive a credit for the tax that is paid at the trust level on its income. This is likely to significantly reshape tax planning strategies over the coming years.

A recent consultation paper released by Treasury in connection with the proposed 30% minimum tax rate also suggests that the Government might modify the tax rules to ensure that Division 7A can apply to unpaid distributions. This isn't law yet, so we will need to monitor developments because this could mean that tax planning strategies need to be revisited before we reach 1 July 2028.

Please let us know if you would like to discuss how the Bendel decision and proposed 30% minimum tax on discretionary trust income will impact on your group.

Don't Let Sharing Economy Income Catch You Off Guard This Tax Time

The sharing economy has created new opportunities for Australians to earn additional income. Whether it's driving for a ride-sharing service, renting out a holiday property, completing freelance work, hiring out equipment, or creating digital content, many people are supplementing their regular income through online platforms.

However, one aspect that can sometimes come as a surprise at tax time is that this income generally needs to be declared in your tax return. Unlike salary and wages, sharing economy income isn't always fully pre-filled in your tax return, so it's important to maintain your own records and check that tax returns are completely accurately.

The ATO continues to focus on income earned through the sharing economy and has expanded its data-matching capabilities in recent years. As a result, it is becoming increasingly likely that income reported by online platforms will be compared against returns that are lodged by taxpayers.

What counts as sharing economy income?

Sharing economy income can arise from a wide range of activities, including:

- Ride-sourcing services such as Uber or DiDi

- Short-term accommodation through platforms like Airbnb or Stayz
- Hiring out assets such as vehicles, caravans, tools, parking spaces or storage areas
- Freelance or task-based work, including deliveries, cleaning, handyman services or graphic design
- Creating digital content, streaming, selling digital products or receiving tips through online platforms.

Even if these activities are only occasional or generate relatively modest amounts of income, they may still have tax consequences. In many cases, the income will be assessable for tax purposes, regardless of whether the activity is carried on as a business, as a contractor, or simply as a way of earning extra money.

Increased reporting to the ATO

Under the Sharing Economy Reporting Regime (SERR), many electronic platform operators are required to provide transaction information directly to the ATO. This regime applies across a growing range of sharing economy activities, including ride-sharing, short-term accommodation and certain personal services.

This information may be used by the ATO to compare against the income reported in tax returns. Where discrepancies arise, the ATO may contact taxpayers to seek clarification and, in some cases, adjustments, interest or penalties could apply.

Practical tips to help stay on top of your tax

If you earn income through the sharing economy, a few simple habits can make tax time much easier.

Keep good records

While many platforms provide annual income summaries, it is generally worthwhile maintaining your own records as well. Keeping receipts and tracking expenses such as platform fees, vehicle costs, repairs, cleaning expenses or equipment purchases can help support any deductions you may be entitled to claim.

Understand what expenses may be deductible

You may be able to claim deductions for expenses that are directly related to earning your sharing economy income. This will always depend on your particular circumstances and the nature of the expenses you are incurring, so it's worth discussing your situation with us to ensure claims are appropriate and adequately supported.

Plan ahead for your tax bill

Unlike employment income, tax is often not withheld from sharing economy earnings. This can result in an unexpected tax liability when you lodge your return.

Depending on your circumstances, it may be worthwhile considering strategies such as making voluntary tax payments during the year, setting aside part of your earnings in a separate account, or, where appropriate, entering the PAYG instalment system.

Don't overlook other obligations

In some situations, GST registration may be required if your activities reach the relevant turnover thresholds. If you are involved in ride-sourcing activities then you will normally need to register for GST regardless of the income you generate.

Depending on the nature of your income, there may also be opportunities to make additional superannuation contributions, which could provide longer-term financial benefits.

Looking beyond tax time

Treating your sharing economy activities in a business-like manner can provide benefits beyond simply meeting your tax obligations. Good record-keeping and proactive tax planning may help you better understand the profitability of your activities, improve cash flow management and make it easier to access finance if the activity continues to grow.

If you've earned income through an online platform during the year, now is a good time to review your records and ensure you're well prepared before lodging your tax return. A conversation with your accountant may help identify deductions you are entitled to claim, confirm that your reporting is accurate and avoid unnecessary surprises at tax time.

The sharing economy can provide valuable opportunities to earn additional income. With some forward planning and good record-keeping, managing the tax implications should become a straightforward part of making the most of those opportunities.

For more information, visit the ATO's guidance on sharing economy income and tax or speak with us about your individual circumstances.

Navigating the 2026–27 Car Thresholds

If you're thinking about purchasing or leasing a vehicle for your business in the new financial year, it's worth understanding the updated car thresholds that apply from 1 July 2026. While these limits may seem technical, they can have a practical impact on the amount you can claim for tax depreciation deductions, the GST credits that are available, and whether luxury car tax (LCT) could apply.

Knowing how these rules work before signing a contract can help you make a more informed decision and potentially improve your overall tax and cash flow position.

The car limit – understanding the depreciation cap

For vehicles first used or leased in the 2026–27 income year, the car limit is $69,883.

This limit generally represents the maximum value that can be used when calculating tax depreciation deductions for a passenger vehicle, regardless of how much was actually paid for the car.

From a commercial perspective, this is an important consideration if you're looking at a higher-value vehicle. While purchasing a more expensive car may still make sense for operational or business reasons, the portion of the purchase price above the car limit will generally not attract depreciation deductions.

If the vehicle is used for both business and private purposes - which is common for many business owners - you would typically only be able to claim deductions for the business-use portion. Maintaining appropriate records, such as a valid logbook and odometer readings, remains an important part of supporting those claims should the ATO undertake a review or audit.

Rather than focusing solely on the purchase price, it is often worthwhile considering the overall after-tax cost of the vehicle. In many cases, a vehicle priced around the car limit may provide similar practical benefits while maximising the available tax deductions.

It's also worth confirming which depreciation rules apply to your circumstances, including whether any simplified depreciation concessions are available so that deductions can be claimed at a faster rate.

GST credits – also subject to a cap

Businesses that are registered for GST may also be entitled to claim GST credits when purchasing a business vehicle. However, where the purchase price exceeds the car limit, the GST credit is also capped.

For the 2026–27 financial year, the maximum GST credit available is $6,353 (being one-eleventh of the $69,883 car limit) for passenger vehicles.

Even if the vehicle costs considerably more, the GST credit will generally not increase beyond this amount. However, when the vehicle is sold you will normally need to pay GST on the full sale price.

For many businesses, GST credits can provide an important short-term cash flow benefit, so it is important to ensure they are claimed correctly and within the relevant time limits through your Business Activity Statement (BAS).

Luxury Car Tax thresholds increase

The Luxury Car Tax (LCT) thresholds have also increased from 1 July 2026 and are now:

- $91,661 for fuel-efficient vehicles.
- $80,809 for all other vehicles.

Where applicable, LCT is generally imposed at 33% of the value above the relevant threshold, increasing the overall purchase cost of eligible vehicles.

If you're considering a premium vehicle, these thresholds may become an important part of the purchasing decision. In particular, many fuel-efficient vehicles, including a range of hybrid and electric models, benefit from the higher threshold. Depending on the vehicle selected, this could potentially reduce the amount of LCT payable while also delivering lower running costs over the life of the vehicle.

Planning ahead can pay off

These updated thresholds apply to vehicles first used or leased from 1 July 2026, making now an ideal time to review any planned vehicle purchases.

Before making a decision, it may be worthwhile considering:

- The total after-tax cost of ownership, including depreciation deductions, GST credits and any LCT;
- Whether purchasing or leasing is likely to be more suitable for your circumstances;
- The expected business use of the vehicle and the records you'll need to maintain; and
- How the purchase fits within your broader cash flow and business plans.

Whether you're replacing a work vehicle, expanding your fleet or purchasing a new car for client-facing activities, taking these factors into account can help ensure the vehicle meets both your operational requirements and your tax objectives.

Key takeaways

A business vehicle is often a significant investment, and while tax considerations shouldn't drive the decision, they can influence the overall cost of ownership.

Before committing to a purchase, it's worth speaking with your accountant to model the likely tax outcomes based on your individual circumstances. A little planning upfront may help you maximise available tax concessions, avoid unexpected costs and ensure the purchase aligns with your broader business strategy.

For more information, refer to the ATO's Small Business Newsroom: Car thresholds from 1 July | Australian Taxation Office, or contact our team to discuss how these changes may apply to your business.

Changes to Self Managed Super Fund (SMSF) borrowing rules

To ensure passage of the negative gearing and CGT discount changes that were announced in the May 2026 Federal Budget the Government agreed to make amendments to the SMSF borrowing rules.

SMSFs are able to borrow in restricted circumstances which includes borrowing under a limited recourse borrowing arrangement (LRBA) to purchase a single acquirable asset. While there have previously been no specific legislative restrictions on the type of asset a SMSF can borrow to purchase, most commonly we see LRBAs being used to purchase property. Up until this point, this could have been any type of real property.

These amendments will mean that when SMSF trustees wish to borrow to purchase a property, it must meet the business real property (BRP) definition. This BRP definition relates to usage of the property rather than zoning or what the property was originally built for.

This change became law on 26 June 2026, but the Bill includes a 45 day transitional period which will finish on 10 August 2026. This transitional period may allow for arrangements that are currently being implemented on non-BRP assets to be allowable under the new rules where settlement occurs after 10 August 2026, provided the arrangement to purchase the property was entered into on or before 10 August 2026. We recommend that SMSF trustees who are currently implementing LRBA arrangements on non-BRP assets seek specialist SMSF legal advice to ensure their arrangements meet these transitional rules.

While this change has been referred to in the media as a ban on super funds borrowing to purchase residential property, the use of the BRP definition makes the change slightly more complex than this. As this definition relates to usage of the property, it is possible that some residentially designed properties could meet the BRP definition (for example, a medical practice that operates from a residentially designed terrace dwelling).

The BRP definition also requires that the property is wholly and exclusively used for business purposes. This could mean that some properties that may initially appear to be commercial in nature may not meet the BRP definition (for example, a mixed use residential and retail property on a single title).

We recommend that SMSF trustees entering into new LRBAs seek advice from specialist legal and financial advisers to ensure the new requirements are met.

Existing arrangements

The updated rules allow for existing LRBAs over non-BRP assets to continue. They also allow for existing arrangements to be refinanced, subject to lender availability and approval.