YOUR KNOWLEDGE

The past few months have brought some important developments that could have real consequences for business owners, trustees, and investors. From a recent Tribunal case that highlights why timing and evidence are crucial when it comes to trust distributions (and more broadly), to the practical impact of new rules which make ATO interest charges non-deductible, there's a lot to unpack.

We also explore the Federal Government's review of supermarket unit pricing — a move that could reshape the way suppliers and retailers approach packaging, pricing, and compliance. And finally, we cover the ATO's latest warnings on accessing your super early, a reminder that shortcuts today can create long-term financial pain tomorrow.

INSIDE

Trust Resolutions – Why Timing and Evidence Matter

A recent decision of the Administrative Review Tribunal (*Goldenville Family Trust v Commissioner of Taxation* [2025]) highlights the importance of documentation and evidence when it comes to tax planning and the consequences of not getting this right.

The case involved a family trust which generated significant amounts of income. For the 2015, 2016 and 2017 income years, the trustee attempted to distribute most of the income to a non-resident beneficiary. As the trustee believed the income was classified as interest (this was challenged successfully by the ATO), the trustee assumed that the income would be subject to a final Australian tax at 10%, under the non-resident withholding rules. This was clearly more favourable than having the income taxed in the hands of Australian resident beneficiaries at higher marginal rates.

However, the ATO argued that the distribution resolutions were invalid and the Tribunal agreed. Why? The main reason was a lack of evidence to prove that the distribution decisions were made before the end of the relevant financial years.

While there were some documents that were purportedly dated and signed “30 June”, the Tribunal wasn’t convinced that the decisions were actually made before year-end and it was more likely that these documents were prepared on a retrospective basis. The evidence suggested the decisions were probably made many months after year-end, once the accountant had finalised the financial statements.

The outcome was that default beneficiaries (all Australian residents) were taxed on the income at higher rates.

Timing of trust resolution decisions is critical

For a trust distribution to be effective for tax purposes, trustees must reach a decision on how income will be allocated by 30 June each year (or sometimes earlier, depending on the trust deed). It might be OK to prepare the formal paperwork later, but those documents must reflect a genuine decision made before year-end.

For example, let’s say a trust has a corporate trustee with multiple directors. The directors meet at a particular location on 29 June and make formal decisions about how the income of the trust will be appointed to beneficiaries for that year. Someone keeps handwritten notes of the meeting and the decisions that are made. On 5 July the minutes are typed up and signed. The ATO indicates that this will normally be acceptable, but subject to any specific requirements in the trust deed.

If the ATO believes the decision was made after 30 June (or documents were backdated), the resolution can be declared invalid. In that case, you might find that one or more default beneficiaries are taxed on the taxable income of the trust or the trustee is taxed at penalty rates. This could be an unexpected and costly tax outcome and could also lead to other problems in terms of who is really entitled to the cash.

Broader lessons – it’s not just about trust distributions

The timing issue is not confined just to trust distribution situations. Other areas of the tax system also turn on when a decision or agreement is actually made, not just when it is eventually recorded.

For example, if a private company makes a loan to a shareholder in a given year, that loan must be repaid in full or placed under a complying Division 7A loan agreement by the earlier of the due date or lodgement date of the company’s tax return for the year of the loan. If not, a deemed unfranked dividend can be triggered for tax purposes.

If a complying loan agreement is put in place then minimum annual repayments normally need to be made to avoid deemed dividends being recognised for tax purposes

A common way to deal with loan repayments is by using a set-off arrangement involving dividends that have been declared by the company. However, in order for the set-off arrangement to be valid there are a number of steps that need to be followed before the relevant deadline. The ATO will typically want to see evidence which proves:

- When the dividend was declared; and
- When the parties agreed to set-off the dividend against the loan balance.

If there isn’t sufficient evidence to prove that these steps were taken by the relevant deadline then you might find that there is a taxable unfranked deemed dividend that needs to be recognised by the borrower in their tax return.

Documenting decisions before year-end

The key lesson from cases like *Goldenville* is that documentation shouldn't be an afterthought — lack of contemporaneous documentation can fundamentally change the tax outcome. What normally matters most is when the relevant decision is actually made, not when the paperwork is drafted.

In practice, this often means:

- Check relevant deadlines and what needs to occur before that deadline.
- If a decision needs to be made before the deadline, ensure that a formal process is followed to do this. For example, determine whether certain individuals need to hold a meeting or whether a circular resolution could be used.
- Produce contemporaneous evidence of the fact that the decision has been made. You might consider sending a brief email to your accountant or lawyer explaining the decision that has been made before the relevant deadline , basically providing a time-stamped record of the decision.
- Finalise paperwork: formal minutes of meetings can sometimes be prepared after year-end, but they must accurately reflect the earlier decision.

Thinking carefully about timing — and building a habit of producing clear evidence of decisions as they are made — is often the difference between a tax planning strategy working as intended and an expensive dispute with the ATO.

ATO Interest Charges Are No Longer Deductible – What You Can Do

Leaving debts outstanding with the ATO is now more expensive for many taxpayers.

As we explained in the July edition of our newsletter, general interest charge (GIC) and shortfall interest charge (SIC) imposed by the ATO is no longer tax-deductible from 1 July 2025. This applies regardless of whether the underlying tax debt relates to past or future income years.

With GIC currently at 11.17%, this is now one of the most expensive forms of finance in the market — and unlike in the past, you won't get a deduction to offset the cost. For many taxpayers, this makes relying on an ATO payment plan a costly strategy.

Refinancing ATO debt

Businesses can sometimes refinance tax debts with a bank or other lender. Unlike GIC and SIC amounts, interest on these loans might be deductible for tax purposes, provided the borrowing is connected to business activities.

While tax debts will sometimes relate to income tax or CGT liabilities, remember that interest could also be deductible where money is borrowed to pay other tax debts relating to a business, such as:

- GST
- PAYG instalments
- PAYG withholding for employees
- FBT

However, before taking any action to refinance ATO debt it is important to carefully consider whether you will be able to deduct the interest expenses or not.

Individuals

If you are an individual with a tax debt, the treatment of interest expenses incurred on a loan used to pay that tax debt really depends on the extent to which the tax debt arose from a business activity:

- **Sole traders:** If you are genuinely carrying on a business, interest on borrowings used to pay tax debts from that business is generally deductible.
- **Employees or investors:** If your tax debt relates to salary, wages, rental income, dividends, or other investment income, the interest is not deductible. Refinancing may still reduce overall interest costs depending on the interest rate on the new loan, but it won't generate a tax deduction.

Example: Sam is a sole trader who runs a café. He borrows $30,000 to pay his tax debt, which arose entirely from his café profits. The interest should be fully deductible.

However, if Sam also earns salary or wages from a part-time job and some of his tax debt relates to the employment income, only a portion of the interest on the loan used to pay the tax debt would be deductible. If $20,000 of the tax debt relates to his business and $10,000 relates to employment activities, then only 2/3rds of the interest expenses would be deductible.

Companies and trusts

If a company or trust borrows to pay its own tax debts (income tax, GST, PAYG withholding, FBT), the interest will usually be deductible if it can be traced back to a debt that arose from carrying on a business.

However, if a director or beneficiary borrows money personally to cover those debts, the interest would not normally be deductible to them.

Partnerships

The position is more complex when it comes to partnership arrangements. If the borrowing is at the partnership level and it relates to a tax debt that arose from a business carried on by the partnership then the interest should normally be deductible. For example, this could include interest on money borrowed to pay business tax obligations such as GST or PAYG withholding amounts.

However, the ATO takes the view that if an individual who is a partner in a partnership borrows money personally to pay a tax debt relating to their share of the profits of the partnership, the interest isn't deductible. The ATO treats this as a personal expense, even if the partnership is carrying on a business activity.

Practical takeaway

Leaving debts outstanding with the ATO is now more expensive than ever because GIC and SIC are no longer deductible.

Refinancing the tax debt with an external lender might provide you with a tax deduction and might also enable you to access lower interest rates.

The key is to distinguish between tax debts that relate to a business activity and other tax debts. For mixed situations, you may need to apportion the deduction.

If you're unsure how this applies to you, talk to us before arranging finance. With the right strategy, you can manage tax debts more effectively and avoid costly surprises.

Government Review of Supermarket Unit Pricing: What It Could Mean for Your Business

The Federal Government recently wrapped up a consultation process on supermarket unit pricing. While the topic might sound like a purely consumer issue, it could have very real commercial impacts for businesses supplying into the grocery sector.

On 1 September 2025, Treasury opened consultation on strengthening the Retail Grocery Industry (Unit Pricing) Code of Conduct. Submissions closed just a few weeks later on 19 September 2025, marking the end of a very short opportunity for stakeholders to have their say.

A Quick Recap

Unit pricing is what allows shoppers to compare costs per standard measure (e.g. $/100g or $/litre) across different pack sizes and brands. Since 2009, large supermarkets have been required to display this information to help customers spot value. While compliance has been relatively low-cost and penalties limited, the Government's review signals that much tighter rules could be on the way.

Why Now?

The ACCC's recent supermarket inquiry highlighted that while unit pricing helps, there are still gaps. The big concern is shrinkflation—when pack sizes quietly reduce while prices remain the same or higher. With cost-of-living pressures dominating headlines, the Government is looking at clearer, fairer pricing to rebuild consumer trust.

What Might Change?

Proposals considered in the consultation paper include:

- **Shrinkflation alerts** – supermarkets may need to flag when a product becomes smaller without a matching price cut.
- **Clearer displays** – larger, more prominent unit prices both in-store and online.
- **Wider coverage** – expanding the rules beyond major supermarkets to smaller retailers and online sellers.
- **Standardised measures** – eliminating confusing "per roll" vs "per sheet" comparisons.
- **Civil penalties** – introducing fines for non-compliance.

The Commercial Impact

For suppliers, packaging decisions could come under closer scrutiny. For retailers, costs might arise from updating shelf labels, software, or e-commerce systems. But there are also opportunities: businesses that embrace transparency could build loyalty and stand out in a competitive market.

What You Should Do

Now that the consultation period has closed, Treasury will consider submissions and the Government is expected to announce its response later this year.

Businesses in food, grocery, and household goods should stay alert—the final shape of the rules could affect pricing, packaging, and compliance obligations across the sector.

At ERY, we can help you model potential compliance costs, assess financial impacts, and prepare for upcoming regulatory change. Reach out to discuss how this review might affect your business.

Accessing superannuation funds for medical treatment or financial hardship

Superannuation is one of the largest assets for many Australians and offers significant tax advantages, however, strict rules apply to when it can be accessed. While super is most commonly accessed at retirement, death or disability, there are limited situations where earlier access may be possible.

Early access is generally available in two situations:

- **Financial hardship** – where you are receiving a qualifying Centrelink/DVA payment for a minimum period and cannot meet immediate living expenses.
- **Compassionate grounds** – Funding for certain specific scenarios which include preventing a mortgage foreclosure or meeting medical expenses for a life-threatening injury or illness or to alleviate severe chronic pain.

Compassionate grounds access requires an application to be made to the ATO which needs to be accompanied by relevant medical certificates or mortgage information. If approved the ATO will provide instructions to the individual's superannuation fund to release an amount to cover the expense. We have included some ATO links with more detailed information on compassionate grounds and financial hardship below.

When accessing superannuation under compassionate grounds you would usually collect the relevant supporting documentation and personally make the application for approval using your MyGov account. It has come to the ATO's attention that there may be medical and dental providers exploiting this access and assisting super fund members to access amounts for cosmetic reasons (you may have even seen advertisements pop up on your social media showing people with a new sparkling smile – and a lower super balance).

The ATO's concerns are discussed in Separating fact from fiction on accessing your super early.

Superannuation fund members and SMSF trustees should be aware that there can be substantial penalties applied when super is accessed outside of the legislated conditions of release. You should never provide another party with access to your MyGov login or allow a third party to make applications on your behalf. Penalties may also apply for making false declarations.

Should you have any questions or concerns relating to proposed access to your superannuation please reach out to us.

Related links

Accessing superannuation under compassionate grounds

Accessing superannuation due to financial hardship