



PINNACLE Newsletter

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VIEW FROM THE PEAK

with Robyn Saunders

The new financial year brought with it a new world order for the accounting profession – from 01 July, we must comply with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)*.

This means whenever new or existing clients engage us to provide certain services, we need to undertake a more rigorous identification process – as well as collecting information about source of funds, financial controls and ownership.

The process is similar to what banks (and other financial institutions) have been required to do for the past 20 years or more.

While AML/CTF legislation adds some administrative burden for us and potential frustration for clients, it is mandatory for all accounting firms to comply – so we hope you'll understand when we ask for information or documents from time to time.

Discretionary Trusts: A win before the minimum trust tax debate heats up.

Many Australian businesses and investors operate through a family trust structure, which will potentially be subject to a new minimum 30% tax from 01 July 2028 if the Federal Government's trust tax reforms get the green light – but that's a whole different story.

Right now however, if your business is run through a discretionary trust, a recent High Court decision could reduce some of the compliance burden that trusts and corporate beneficiaries have faced for many years.

The case in question, known as *Commissioner of Taxation v Bendel*, was decided by the High Court of Australia on 10 June 2026 and challenges a long-held view of the Australian Tax Office (ATO).

In this edition of The Pinnacle, we take a deep dive into the case specifics, the High Court's ruling and what the decision means for anyone with a discretionary trust.

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FAMILY TRUSTS.

The case of David vs Goliath



WHAT WAS THE ISSUE?

Many family trusts distribute some of their income to a company within the family group. In many cases:

- the trust distributes income to the company.
- the company is entitled to receive that income.
- the cash remains in the trust to support business operations, fund growth, or provide working capital.

This unpaid amount is commonly called an Unpaid Present Entitlement (UPE).

For many years, the ATO generally treated these unpaid amounts as a loan from the company to the trust under the Division 7A rules.

WHAT IS DIVISION 7A?

Division 7A is designed to stop private companies from providing tax-free benefits to shareholders and their associates. The rules can apply when a private company provides:

- a loan.
- a payment.
- a forgiven debt.

If Division 7A applies, the ATO may treat the benefit as an unfranked dividend, which can create an unexpected tax bill.

Because the ATO viewed many unpaid trust distributions as loans, business groups often needed to:

- put formal loan agreements in place.
- charge interest at benchmark rates.
- make minimum annual repayments.
- keep additional records and compliance documentation.

THE HIGH COURT DECISION

The High Court rejected the ATO's long-standing position.

The Court found that an unpaid trust distribution is not automatically a Division 7A loan simply because the money has not been paid to the corporate beneficiary.

This is a significant outcome for many family groups because it provides greater certainty around the treatment of unpaid trust distributions.

In simple terms:

- an unpaid distribution does not automatically become a Division 7A loan.
- the fact that funds remain in the trust does not necessarily trigger Division 7A.
- Trusts and advisers may have more flexibility than previously thought.

However, every arrangement must still be assessed based on its specific circumstances.

WHAT IF YOU ALREADY HAVE A DIVISION 7A LOAN AGREEMENT?

This is an important point. Following the decision, the ATO released a Decision Impact Statement confirming it will generally administer the law in line with the High Court's findings.

However, the ATO has also made it clear that existing Division 7A loan agreements cannot simply be cancelled because of the Bendel decision.

If you already have a complying loan agreement in place:

- the agreement remains valid.
- minimum yearly repayments must continue.
- interest obligations still need to be met.
- the loan must be repaid or run its course under the existing agreement.

Failing to do so could still result in a deemed dividend under Division 7A.

DOES THIS MEAN DIVISION 7A NO LONGER MATTERS?

No. While the Bendel decision is significant, it does not remove all Division 7A risks.

The ATO has confirmed that other Division 7A provisions may still apply in certain situations, for example:

- A Trust distributes income to a corporate beneficiary.
- The amount remains unpaid.
- The Trust later lends money to a shareholder of that company or a related party.

In some cases, Division 7A may still be triggered. The rules remain complex and highly dependent on the facts.

DON'T FORGET ABOUT SECTION 100A

Another area that business owners should continue to monitor is Section 100A. These anti-avoidance rules can apply where:

- a Trust distribution is made to one beneficiary, but
- another person ultimately enjoys the benefit of the funds.

If Section 100A applies, significant tax consequences can result. The Bendel decision does not change these rules.

WHAT SHOULD BUSINESS OWNERS DO NOW?

The decision provides a good opportunity to review your existing trust arrangements, including:

- Trust distribution strategies.
- Corporate Beneficiary arrangements.
- existing Division 7A loan agreements.
- Trust accounting records.
- historical unpaid trust distributions.
- future tax planning strategies.

A review may identify opportunities to simplify administration while ensuring compliance with current tax rules.

LOOKING AHEAD: PROPOSED TRUST TAX CHANGES

While the Bendel decision is positive news, there could be further changes on the horizon.

The Federal Government has announced plans to introduce a 30% minimum tax rate for discretionary trusts from 01 July 2028. The Government has also indicated that distributions to corporate beneficiaries may be treated differently under the proposed reforms.

In addition, Treasury consultation papers have suggested that future legislation could potentially amend the law so that Division 7A applies more directly to unpaid trust distributions.

These proposals are not yet law, but they could significantly affect how family trust structures are used in the future.

KEY TAKEAWAYS

The Bendel decision is welcome news for many family trusts. The ruling confirms that:

- unpaid trust distributions are not automatically Division 7A loans.
- many business groups may face less complexity than previously thought.
- existing Division 7A loan agreements still need to be honoured.
- other tax provisions, including Division 7A and Section 100A, can still apply.
- proposed trust tax reforms may change the business structure and tax planning landscape from 01 July 2028.

As always, Trust structures should be reviewed regularly to ensure they remain compliant and continue to support your family's business and wealth objectives.

If you'd like to understand how the Bendel decision or the proposed Trust tax reforms may affect your family group, feel free to reach out to us at The Peak Partnership.

Discretionary trusts: The 30% minimum tax.

The "Minimum Trust Tax" of 30% that was announced as part of May's 2026 Federal Budget has certainly had plenty of attention in recent months, but we still don't have a final framework for what this proposed tax looks like.

By way of background, the 30% minimum tax is designed to address income splitting – where discretionary trusts distribute profits to beneficiaries in lower tax brackets, reducing the group's overall tax bill.

The Government sees the proposed 30% minimum tax as limiting the tax advantages of discretionary trusts and levelling the playing field. However, feedback during consultation raised genuine concerns about restructuring costs for small businesses operating through discretionary trusts.

On 03 September, the Government released exposure draft legislation to address its response – with new pathways that reduce or eliminate those restructuring costs while still achieving the policy intent.

The key points from this exposure draft include:

- confirmation of the proposed introduction of a minimum tax rate of 30% on the taxable income of discretionary trusts from 01 July 2028.
- confirmation that the following trusts will be excluded: (i) fixed trusts, (ii) special disability trusts, (iii) deceased estates, (iv) complying superannuation funds; and (v) certain testamentary trusts.
- confirmation that where a discretionary trust pays the 30% minimum tax on its taxable income, beneficiaries that receive income from the trust will obtain a tax credit for the minimum tax already paid. However, the tax credit is non-refundable, meaning that if a beneficiary's marginal tax rate is less than 30%, they will not receive a partial refund of the credit.
- an option for a discretionary trust to make an election – referred to as an Excluded Election Trust (EET) nomination – which nominates specific beneficiaries and fixes the percentages of distributions it proposes to allocate to those beneficiaries going forward. Providing the discretionary trust continues to distribute its income exactly in accordance with the election, the trust will not be subject to the 30% minimum tax.
- a significant caveat: where a trust subject to the minimum 30% tax distributes income to a company, the company will not be eligible to utilise the tax credit. This means income distributed from a discretionary trust to a company will have an effective 60% tax rate. In practice, this would discourage discretionary trusts from distributing income to corporate beneficiaries after 01 July 2028.

There is still a lot to unpack with the proposed Minimum Trust Tax legislation, but you can catch up on the latest news in our blog at peakpartnership.com.au – and we'll keep the updates coming as further details are released.



Australian Government



Tax Ombudsman sees surge in complaints: what it means for you.

..... Ruth Owen, CBE GAICD | Tax Ombudsman

The Tax Ombudsman has reported a dramatic 127% increase in complaints about the ATO this financial year (to 30 April 2026), with nearly 3,000 complaints received in the first ten months. Debt collection, penalties, and tax debt interest charges have dominated the issues raised.

Tax Ombudsman Ruth Owen has linked the sharp rise directly to the ATO's intensified focus on recovering outstanding debts amid tighter economic conditions. Many SME owners and individuals are feeling the pressure from cash flow challenges, rising costs, and stricter ATO enforcement.

WHY COMPLAINTS ARE RISING

Debt collection accounted for around 23% of complaints, followed by payment-related issues (16%) and penalties plus interest (15%). Common concerns include:

- refund offsets against debts.
- Director Penalty Notices.
- challenges in setting up or maintaining payment plans.
- the rapid accumulation of General Interest Charge (GIC) on overdue amounts.

This surge reflects real-world pressures: businesses navigating post-pandemic recovery, higher interest rates, and increased ATO activity to close the tax gap. For many clients, these issues create significant stress and can distract from core operations.

PRACTICAL WINS: RELIEF IS POSSIBLE

The good news? The Ombudsman's office is proving effective as an independent escalation point. Around 31% of complaints relating to penalties and interest resulted in some form of debt reduction or remission.

This highlights that persistence and proper representation can sometimes deliver favourable outcomes when initial ATO decisions feel overly harsh or inconsistent.

IMPORTANT DEVELOPMENTS ON GIC REMISSION

A key theme in the complaints data is the GIC – the daily interest applied to unpaid tax debts. In March 2026, the Tax Ombudsman released a major review titled *In the Interest of Fairness*, which examined the ATO's handling of GIC remission requests.

The review identified inconsistent decision-making, unclear guidance, and communication gaps that left many taxpayers confused about their options. It made several recommendations, including clearer upfront interest-free payment plans for compliant taxpayers.

The ATO's response has been positive. It accepted all recommendations and has already begun implementing improvements, such as:

- enhanced website guidance with practical examples.
- new, more user-friendly remission application forms.
- a \$2,500 cap on phone approvals with a dedicated review team for larger requests to improve consistency.
- better support frameworks for vulnerable taxpayers.

These changes should hopefully make the process fairer and more predictable going forward, but sometimes best intentions don't translate into practical reality so we will have to wait and see how this plays out.

WHAT THIS MEANS FOR YOU

- 1. ACT EARLY ON TAX DEBTS:** Don't wait for the ATO to contact you. If you're facing cash flow pressure, engage proactively before penalties and GIC escalate. Early action often leads to better terms.
- 2. KEEP DETAILED RECORDS:** Strong supporting documentation is crucial when seeking remission of penalties or interest. Demonstrate why the delay occurred (e.g. unexpected revenue drop, illness, or system issues) and what steps you've taken to rectify it.



IMPROVING THE FAIRNESS AND INTEGRITY OF AUSTRALIAN TAX AND SUPERANNUATION ADMINISTRATION.



1. USE PROFESSIONAL

REPRESENTATION: Tax agents can liaise directly with the ATO on your behalf, prepare strong submissions, and escalate to the Tax Ombudsman where appropriate. This often leads to faster and more commercially-practical outcomes than dealing with the matter alone.

While the ATO must collect revenue fairly, the Ombudsman plays a vital role in ensuring processes remain reasonable and transparent.

With economic headwinds continuing, understanding your rights and options has never been more important.

If you're concerned about a tax debt, penalty notice, or GIC charge, you should contact your Peak Accounting Manager as soon as possible. Early intervention and action can significantly reduce costs and protect your business or personal finances.

For more information, visit the Tax Ombudsman's Complaints Snapshots and Reports at www.taxombudsman.gov.au/complaints-snapshots/

Paid parental leave super contributions have started.

Welcoming a new child is a huge milestone, but taking time out of the workforce can also mean a pause in super contributions. From July 2026, that gap started to narrow for eligible parents who received government-funded Parental Leave Pay (PLP) for a child born or adopted from 01 July 2025.

The Paid Parental Leave Superannuation Contribution (PPLSC) is a government-funded super payment for eligible parents who receive PLP and is intended to help reduce the long-term superannuation gap that can arise when a person takes time out of the workforce to care for a child.

Under the scheme, the ATO pays the contribution into your super fund as a lump sum after the end of the financial year in which you received PLP. There's no need to make a separate application to receive the PPLSC.



The first PPLSC recipients will be individuals who received government-funded PLP in 2025-2026 for children born or adopted from 01 July 2025.

Calculation and payment of PPLSCs by the ATO will begin from the start of the 2026-2027 financial year. For PLP received in 2026-2027, the related PPLSC will generally be paid after the end of that financial year.

The PPLSC is calculated by applying the Superannuation Guarantee rate of 12% to the PLP paid to you, and also includes a nominal interest component designed to compensate for the time between the original PLP being paid and the later ATO payment of the PPLSC.

The contribution is taxed at 15% in the super fund and counts towards your concessional contributions cap.

If you also make salary sacrifice or personal deductible contributions, the PPLSC may need to be considered in your contribution planning for the year the lump sum is received.

In most cases, the ATO will pay the contribution to the fund that currently receives your super contributions. To help avoid delays, check that:

- your personal details are up to date with the ATO, Services Australia and your super fund; and
- your name and address match across your ATO, Services Australia and super fund records.

If PLP was shared, each person receives a contribution based on their share of the PLP taken. This makes it especially important that all details are up to date.

Personal Services Income: The ATO is cracking down.

The Australian Tax Office (ATO) is sharpening its focus on how taxpayers who generate income from personal services deal with that income for tax purposes. In a recent Spotlight bulletin, the ATO's Small Business Assistant Commissioner Tony Poulakis highlighted the release of Practical Compliance Guideline PCG 2025/5 on this very topic.



This Practical Compliance Guideline clarifies the ATO's approach to the "alienation" of personal services income (PSI) – essentially, arrangements which involve routing income earned through your personal skills and efforts via a company or trust, rather than receiving it directly.

WHY THE ATO IS INTERESTED IN PSI

Many business owners operate through a company or trust, rather than earning income personally. In many cases, this is entirely legitimate and provides commercial benefits such as asset protection, flexibility and succession planning.

However, where income is generated primarily from the efforts, skills or reputation of one individual, the ATO is concerned about arrangements that divert income away from that individual in order to reduce tax.

Even where a business is able to pass certain tests to be classified as a Personal Services Business (PSB) under the tax rules and falls outside the strict Personal Services Income attribution rules, the ATO has made it clear that general anti-avoidance provisions in Part IVA can apply if the arrangement is primarily tax-driven.

If Part IVA applies, then this can lead to higher tax liabilities as well as significant penalties and interest charges.

WHAT DOES THE ATO CONSIDER LOW RISK?

The ATO's guidance focuses heavily on whether the individual generating the income receives an appropriate share of the profits.

Generally, an arrangement is more likely to be considered low risk where:

- the individual who performs the work receives most of the economic benefit through salary, wages, bonuses, director fees or trust distributions.
- profits retained in a company are kept for genuine and short-term business reasons.
- family members or associates are only paid reasonable amounts for genuine work performed.

For example, retaining profits in a company to fund the purchase of new equipment in the short-term could be viewed favourably if there is evidence supporting those plans and the company actually follows through with these plans.

WHAT WILL ATTRACT ATO ATTENTION?

The ATO has specifically identified a number of higher-risk behaviours, including:

- splitting income with family members who have made little or no contribution to earning that income.
- retaining substantial profits in a company without a genuine short-term commercial purpose.
- directing profits generated from someone's personal services to entities or beneficiaries primarily because they are taxed at lower rates or because they have tax losses.

The ATO's expectations in this area are very strict. The greater the mismatch between who performed the work and who is ultimately taxed on the profits from that work, the greater the likelihood of ATO scrutiny.

A LIMITED OPPORTUNITY TO REVIEW EXISTING ARRANGEMENTS

The ATO has provided a transition period for taxpayers who genuinely review and adjust their arrangements.

Businesses that take genuine steps to move from higher-risk arrangements to lower-risk arrangements by 30 June 2027 are unlikely to face Part IVA action in relation to those arrangements if they are reviewed by the ATO.

This is not an amnesty, but it is an opportunity for business owners to proactively assess their position and make changes where necessary.

WHAT SHOULD PSI BUSINESS OWNERS DO?

If your business's revenue is mostly generated from personal services, now is an ideal time to review how profits are being distributed within your structure. Questions worth considering include:

- are retained profits supported by documented short-term commercial reasons?
- are payments to family members commercially justifiable?
- would your arrangements withstand ATO scrutiny if reviewed?

If you operate through a company or trust and derive income largely from your personal skills or efforts, it is important to review existing arrangements in light of the ATO's updated guidance. A proactive review today may prevent costly issues tomorrow.

Fixing rejected Payday Super contributions from 01:07:26.

Under the new Payday Super rules, which came into effect on 01 July 2026, Super Guarantee (SG) contributions must reach your employees' funds within seven business days of each payday. With this much tighter window, knowing how to spot and fix a rejected contribution quickly is essential to avoid penalties.

The key change is speed. If a super fund rejects your contribution through SuperStream, it will generally need to allocate or return the payment within three business days. A rejection doesn't by itself satisfy the seven-business-day receipt requirement; you need to resolve issues and resubmit in time for the fund to receive the contribution by the original due date, unless an extended timeframe applies.

Most rejections come down to data quality. The Australian Tax Office (ATO) and SuperStream identify incorrect fund details, Unique Superannuation Identifiers (USIs), member numbers or Tax File Numbers (TFNs) as frequent culprits. Where SuperStream is used (as is generally required for employer contributions), your clearing house or digital service provider should now be providing clearer error messaging under the SuperStream v3 upgrade.

If a contribution bounces back, you should:

- check the error message from your clearing house or digital service provider straight away;
- review and correct employee data such as TFNs, names and fund details;
- use a Member Verification Request (MVR) to confirm fund details before resubmitting;
- resubmit the contribution within the original seven business day window; and
- if the stapled fund rejects the payment, follow ATO choice-of-fund rules and pay to an eligible alternative fund.



Extended 20-business-day timeframes apply in some specific circumstances, such as where you're changing the fund you contribute to for an employee.

If the seven business day window closes before the contribution lands, the Super Guarantee Charge (SGC) begins to apply. The SGC now includes the shortfall, daily compounding notional earnings, and an administrative uplift amount of up to 60% (subject to reductions for voluntary disclosure).

The good news is the SGC is tax-deductible from 01 July 2026 (although penalty and ATO general interest charges on unpaid amounts remain non-deductible).

You should still pay the late contribution directly to the employee's super fund before the ATO issues an assessment, as this can reduce (but not eliminate) the SGC.

The ATO has signalled a risk-based, facilitative approach during 2026-2027 for employers making genuine efforts to comply. Occasional late payments arising from rejected funds or incorrect details, where promptly fixed, are likely to be treated as low risk under this approach. Deliberate or serious non-compliance, however, will attract firmer action from the ATO.

If your business has been struggling with employee super contributions with the introduction of Payday Super, just reach out to one of our Accounting Advisers – we're all fully across the new processes and requirements.

Has your business outgrown its structure?

When you first started your business, choosing a structure was likely one of the earliest decisions you made. Whether you operate as a sole trader, partnership, company or trust, that choice affects your tax obligations, reporting requirements, administration and in some cases your personal liability.

What worked well when the business was smaller may not necessarily be the best fit today and into the future.



Many businesses evolve over time. Revenue grows, employees are hired, family members become involved, new products or services are introduced, and record-keeping become more complex. These changes are often positive signs of growth, but they can also be a prompt to review whether your current structure still suits the way you operate.

While tax is an important aspect, it's only part of the picture. Legal obligations, business control, admin requirements and risk management all deserve attention when reviewing a business structure.

If your business has changed significantly since you first set it up, now may be a good time to review your current arrangements. In many cases, the existing structure will remain appropriate, but a review can help identify whether there are issues worth exploring further.

FRAMED | GREG BENNETT

We're delighted to introduce Greg Bennett as our new Financial & Risk Insurance Adviser at The Peak Partnership. Greg joined us in early June – and with nine years of experience in financial planning and risk insurance – we think he's the perfect fit for our Wealth Design adviser team.

Greg brings a thoughtful, client-focused approach and a strong commitment to providing clear financial advice, practical guidance and personalised support. He also has a strong technical background and a thorough understanding of the reporting and client service standards that are so important in our profession.

While it's only been three months, Greg has already connected with many of his clients – quickly and effortlessly adapting to our systems and processes, as well as 'The Peak Way' – resulting in a smooth and seamless transition.

Greg's genuine focus on building long-term client relationships based on trust, understanding and care makes him a welcome addition to The Peak family.

Outside the office, Greg enjoys supporting his beloved Arsenal Football Club, working on his golf game and spending time with his wife and recently-born son.

We're sure you'll find Greg approachable, capable and committed to providing the high standard of advice and service you expect from The Peak Partnership.



Are your financial goals still realistic?

LIFE RARELY STANDS STILL! Career changes, growing families, property decisions and shifting personal priorities can quietly reshape what matters most to you financially.

A goal that felt urgent five years ago may now be less relevant, while something that barely registered back then may have moved to the top of the list.

That's why a periodic check-in is always worthwhile.

Even if you decide your goals don't need to change, revisiting them means a chance to confirm whether your current financial arrangements are still working in the right direction.

It can help to group your goals by thinking about what you want to achieve, how much money you'll need and how long you have to get there. Consider:

- short-term goals, such as building an emergency fund or saving for a holiday;
- medium-term goals, such as paying down debt or renovating; and
- long-term goals, such as building wealth for retirement.

- Your investments should reflect three things working together: your goals, your investment timeframe (how long before you need the money) and your risk tolerance (how comfortable you are with ups and downs in value).
- All three can shift. Someone with fewer financial obligations may accept more short-term volatility than someone closely approaching a property purchase or retirement. Health changes, job changes and family responsibilities can also affect how much risk feels appropriate at any given time.
- Retirement planning benefits from the same kind of review. The lifestyle you pictured years ago, whether that involved travel, downsizing, helping family or working part-time, may look different today.
- Thinking through the kind of life you want after work, what it might cost and where the income will come from helps keep your retirement plan connected to reality. Remember, a review doesn't always have to mean big changes. Often it simply confirms you're on track, or highlights small adjustments that could be worth making now rather than later.
- You don't need to make spreadsheets or major decisions to start. Taking a few minutes to compare where you are now with where you want to be is often the most useful step.
- If you think you need a little more help (i.e. advice, clarity and direction) to get your financial plans into better shape, just reach out to Greg Bennett – our new Financial Adviser – for a chat. You can contact Greg at gregb@peakpartnership.com.au or phone 07 3360 9898.

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Learn more at www.peakpartnership.com.au

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