



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

BETWEEN:

**COMMISSIONER OF TAXATION
OF THE COMMONWEALTH OF AUSTRALIA**
Appellant

and

STEVEN BENDEL
First Respondent

GLEEWIN INVESTMENTS PTY LTD (ACN 131 785 576)
Second Respondent

APPELLANT'S SUPPLEMENTARY OUTLINE OF ORAL SUBMISSIONS

PART I CERTIFICATION

1. This outline of oral submissions is in a form suitable for publication on the internet.

PART II PROPOSITIONS TO BE ADVANCED IN SUPPLEMENTARY ORAL ARGUMENT

No separate trusts were created

2. The Tribunal was correct to find that no separate trusts of the kind contemplated by cl 3(5) of the Trust Deed were created: **AS2 [11]**.
3. To constitute a trust, it must be clear what property is subject to the trust, but here that requisite certainty of subject matter was not present: **AS2 [12]-[19]**.
4. In relation to the respondents' assertion that one could perform a "tracing exercise" to identify the subject matter of the separate trusts (**RS2 [28], [34]**):
 - (a) the notion that one can trace to establish certainty of subject matter of an express trust is conceptually unsound;
 - (b) the hypothesised tracing exercise highlights a *lack* of certainty of subject matter;
 - (c) in any event, it is not possible to create separate trusts over "portions" of assets in the manner contemplated by the respondents.

The effect of the resolutions

5. Each resolution created an immediate and absolute equitable entitlement in Gleewin Investments to the amount set aside for it and effected an alteration to the beneficial entitlements in the property of the 2005 Trust which Gleewin continued to hold on that trust: **AS2 [20]-[24]**.
6. Each resolution and the recording of the entitlement in the trust accounts resulted in a debt owing by Gleewin to Gleewin Investments: **AS2 [25]-[30]; RS2 [47]**.

Section 109D(3) of the *Income Tax Assessment Act 1936* (Cth)

7. On the facts found, Gleewin Investments provided a form of financial accommodation to Gleewin as trustee of the 2005 Trust (s 109D(3)(b)). It acquiesced in Gleewin as trustee of the 2005 Trust retaining the ongoing use of amounts which it had the right to withdraw: **AS2 [35]-[37]**.

8. On the facts found, there was also a transaction which in substance effected a loan of money by Gleewin Investments to Gleewin as trustee of the 2005 Trust (s 109D(3)(d)): **AS2 [38]-[39]**.
9. If separate trusts were created, then the outcome is unchanged: **AS2 [41]**.

Section 6-25 of the *Income Tax Assessment Act 1997* (Cth)

10. Section 6-25 does not apply for the reasons set out in the Commissioner's written submissions: **AS [49]-[50]; AR [16]-[17]**.

Dated: 3 December 2025



Stephen Donaghue

Eugene Wheelahan

Joel Phillips