



## HIGH COURT OF AUSTRALIA

### NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 03 Dec 2025 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

#### Details of Filing

File Number: M47/2025  
File Title: Commissioner of Taxation of the Commonwealth of Australia  
Registry: Melbourne  
Document filed: Appellant's Supplementary Outline of Oral Submissions  
Filing party: Appellant  
Date filed: 03 Dec 2025

#### Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

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]**.

-2-

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**