



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
SYDNEY REGISTRY

BETWEEN: **Appeal S157/2025**

Commissioner of Taxation
Appellant

and

Gordon Stanley Merchant
First Respondent

GSM Pty Ltd ACN 074 508 124
Second Appellant

BETWEEN: **Appeal S158/2025**

Gordon Stanley Merchant
First Appellant

GSM Pty Ltd ACN 074 508 124
Second Appellant

and

Commissioner of Taxation
Respondent

JOINT CHRONOLOGY

Part I: This chronology is in a form suitable for publication on the internet.

Part II:

Date	Event	Reference
11/08/2000	Billabong Limited (BBG) is listed on the ASX. Immediately after BBG is listed, the Merchant Group owns approximately 23% of the issued capital in BBG.	Primary Judgment ¹ (PJ) [1], [43] (Core Appeal Book

¹ *Merchant v Commissioner of Taxation* [2024] FCA 498.

Date	Event	Reference
		(CAB) 1 pp 11, 20)
--/09/2004	The Merchant Family Trust (MFT) and GSM Pty Ltd ACN 074 508 124 (GSM) acquire further BBG shares, giving Merchant Group approximately 25% of issued capital.	PJ [44] (CAB 1 p 20)
30/06/2005	Merchant Group holds approximately 21% of the issued capital in BBG.	PJ [44] (CAB 1 p 20)
01/03/2006	MFT sells 13.403m BBG shares for about \$200,000,000, leaving Merchant Group with approximately 15% of the issued capital in BBG.	PJ [47] (CAB 1 p 21)
31/03/2005	MFT acquires 14% of the issued capital in Plantic Technologies Ltd (Plantic) and Mr Merchant is appointed a director of Plantic.	PJ [45] (CAB 1 p 20)
30/06/2006	The Gordon Merchant Superannuation Fund (GMSF) is established.	PJ [49] (CAB 1 p 21)
2007	The BBG share price is generally on a downward trend from around 2007. From around 2007 to late 2012, the BBG share price drops steadily from a peak of around \$18 to under \$1.	PJ [50] (CAB 1 p 21) (Appeal Book (AB) ² CB ref. CB480) Affidavit of Gordon Stanley Merchant ³ (Merchant) [79]
01/07/2009	GMSF commences account-based superannuation income stream for payment of a pension to Mr Gordon Stanley Merchant (Merchant) (then aged 66).	PJ [54] (CAB 1 p 22)
--/11/2010	MFT acquires all of the remaining shares in Plantic for around A\$10,300,000, giving a total cost base for MFT's Plantic shares (at that time) of \$24,159,245.35.	PJ [56] (CAB 1 p 23) Merchant [72], [84]-[85]
--/05/2011	Plantic commences discussions with Multivac about non-exclusive distribution agreement in the United States.	PJ [61] (CAB 1 p 23) Merchant [100]-[103], [123]
--/07/2011	Braskem expresses an interest in establishing a relationship with Plantic regarding a joint venture in Brazil.	PJ [61] (CAB 1 p 23)

² Appeal Book filed in NSD746/2024 on 31 October 2024.

³ Sworn 11 July 2022.

Date	Event	Reference
		Merchant [101]- [103], [123] AB (CB Ref. CB498)
--/09/2011	Plantic commences negotiations with Multivac about non-exclusive distribution agreement in the United States.	Merchant [102] AB (CB Ref. CB498)
--/10/2011	MFT opens NAB margin loan with limit of \$15,000,000.	Merchant [136] AB (CB Ref. CB631)
14/12/2011	Braskem expresses interest in the options of licensing Plantic's technology, a joint venture in Brazil or equity participation in Plantic.	Merchant [103] AB (CB Ref. CB498)
23/12/2011	<p>Luke McGrath (McGrath) emails Merchant. States:</p> <p><i>With the BBG share price as it is I was thinking that you might like to consider transferring some of [MFT's] BBG shares to your Super Fund?</i></p> <p><i>This would give you extra money for [MFT] and is allowable under the share trading window up till next Friday...</i></p> <p><i>I would need to check with Colette as to how many you could actually do depending on the cash available but that is the idea.</i></p> <p><i>There would be no capital gains tax payable by [MFT] and it is a simple and easy way to get cash out of your Super Fund</i></p> <p><i>And if the BBG share price increases over the next couple of years and you wanted to sell some there would be no capital gains tax payable in the Super Fund. '</i></p>	<p>PJ [62] (CAB 1 p 24)</p> <p>AB (CB Ref. CB69)</p>
28/12/2011	<p>Merchant emails McGrath stating: (Emphasis added)</p> <p><i>Luke just thinking about putting this into Super, how do I access the money in my Super, isn't there all sorts of restrictions on funds once it goes into my Super?</i></p>	<p>PJ [63] (CAB 1 p 24)</p> <p>AB (CB Ref. CB69)</p>
28/12/2011	<p>McGrath emails Merchant stating: (Emphasis added)</p> <p><i>Colette came back when I sent the email and thought the idea of transferring the shares was OK and Ian Burgess your Partner at Ernst and Young thought it was OK as well</i></p> <p><i>You would only be transferring the shares from [MFT] to your Super Fund so you are not actually disposing or</i></p>	<p>PJ [64] (CAB 1 p 24)</p> <p>AB (CB Ref. CB69)</p>

Date	Event	Reference
	<p><i>buying any more shares just changing the ownership of part of the shares that you own</i></p> <p><i>Allan McDonald did the same thing back in March this year - see attached</i></p> <p><i>On the Super side the Super Fund is also just buying the shares at market value and therefore is just paying for the shares at that price so the Super Fund ends up with assets that it owns for the cash paid so there are no issues around realising money from the Fund to do that.</i></p>	
28/12/2011	<p>McGrath emails Colette Paull (Paull) stating: (Emphasis added)</p> <p><i>Gordon has asked if you can ring Ted to see if he is OK with the idea of transferring the shares from GM No 2 to Gordon's Super Fund</i></p> <p><i>The number to be transferred depends on the amount of cash in the Super Fund but needs to allow for cash liquidity in the Super Fund so I would suggest keeping a minimum of \$4 M cash in the Fund.</i></p> <p><i>So if there was say \$16M in the Fund then I would suggest only using \$12M for share purchases</i></p> <p><i>So if the share price is say \$1.85 then transferring 6.5 Million shares at that price would be \$12.025M from the Fund but the number of shares transferred would need to go down or up to ensure that \$4M cash is held in the Fund.</i></p>	<p>PJ [65] (CAB 1 p 24-25)</p> <p>AB (CB Ref. CB70)</p>
13/01/2012	<p>Sue Lyons (Lyons) emails Crowley (Minter Ellison) stating:</p> <p><i>Colette mentioned that she had discussed with you the possibility of having some of the BBG shares owned in the Merchant Family Trust transferred to Gordon's superannuation fund. This was not done in the last trading window, but Colette mentioned that it is possible that it will happen in the next window. Therefore, we would like to get the paperwork drafted now, so that it is ready to go later - all we have [sic] to insert the correct numbers and dates.</i></p> <p><i>I did a draft in Dec, which I now attach for your review...</i></p>	<p>PJ [68] (CAB 1 p 25)</p> <p>AB (CB Ref. CB74)</p>
17/02/2012	<p>BBG announced a number of dealings following a strategic capital structure review, including sale of assets, a cost cutting program and a reduced dividend and fully underwritten dividend reinvestment plan.</p>	<p>PJ [70]-[71] (CAB 1 p 26)</p> <p>Merchant [125]</p> <p>AB (CB Ref. CB79)</p>
20/02/2012	<p>BBG announces receipt of proposal from TPG Capital to acquire all BBG shares for \$3 per share under a scheme of arrangement.</p>	<p>PJ [72] (CAB 1 p 26)</p>

Date	Event	Reference
		AB (CB Ref. CB80)
28/02/2012	<p>BBG publishes announcement to ASX stating:</p> <p><i>The Board and its advisers have now had further discussions with TPG to give TPG the opportunity to increase its non-binding indicative price of \$3.00 per share to better reflect the value of the company. In those discussions, TPG was also made aware of the attached letter, received by the company after market close yesterday, from the lawyers of Billabong's Non-Executive Director and major shareholder, Gordon Merchant, and Non-Executive Director Colette Paull, advising that Mr Merchant and Ms Paull 'do not support Billabong taking any steps to assist or facilitate a proposal by TPG Capital, including allowing TPG Capital to commence due diligence on Billabong, even if the price TPG Capital offered was \$4.00 per share' which Mr Merchant and Ms Paull 'consider would still represent a discount on the true value of Billabong shares'.</i></p> <p>The announcement attaches a letter from Merchant and Paull's solicitor to the company secretary of BBG stating: (Emphasis added)</p> <p><i>Our clients have now instructed us to convey to you that they:</i></p> <ol style="list-style-type: none"> <i>do not support the TPG Proposal, and would not accept it in relation to their own shareholdings in Billabong, as they regard the offer price of \$3.00 per share as vastly undervaluing the value of Billabong and its shares; and</i> <i>do not support Billabong taking any steps to assist or facilitate a proposal by TPG Capital, including allowing TPG Capital to commence due diligence on Billabong, even if the price TPG Capital offered was \$4.00 per share (which our clients consider would still represent a discount on the true value of Billabong shares).</i> 	<p>PJ [73] (CAB 1 p 26)</p> <p>AB (CB Ref. CB82)</p>
29/02/2012	GMSF acquires 2,523,600 BBG shares for \$7,890,000 on-market (approximately \$3.13 per share).	<p>PJ [74] (CAB 1 p 26)</p> <p>Merchant [119]</p> <p>AB (CB Ref. CB537)</p>
15/03/2012	GMSF adopts investment strategy (2012 ISD). The strategy is to invest in assets including '0 – 40% in Shares in Listed Companies'.	<p>PJ [80]-[81] (CAB 1 pp 28-30)</p> <p>AB (CB Ref. CB84)</p>

Date	Event	Reference
19/04/2012	MFT receives last BBG dividend of approx. \$1,065,000.	PJ [272] (CAB 1 p 78) AB (CB Ref. CB836 p 9)
--/06/2012	Merchant becomes aware that BBG is going to announce a non-renounceable entitlement offer.	PJ [86] (CAB 1 p 31)
19/06/2012	<p>Paull emails Merchant about increasing limit of margin loan to \$25,000,000 in the context of BBG soon announcing a non-renounceable entitlement offer.</p> <p>Merchant emails in reply stating:</p> <p><i>How much is it for? Not sure I'll need it but it would be nice to have there in reserve. I was figuring to put in 22mil which should leave at around 13+% which I think is just enough to retain control. I'll have [to] check this.</i></p> <p><i>So with the 15mil and the 11mil that Luke is getting I should have 26 all up. I wanted to leave some for you to use. But I don't want to give up control.</i></p>	<p>PJ [87] (CAB 1 p 31)</p> <p>AB (CB Ref. CB91)</p>
21/06/2012	<p>BBG announces non-renounceable entitlement offer. In this announcement, BBG also stated:</p> <p><i>The Board does not expect to pay dividends in respect of 2H12 and 1H13.</i></p>	<p>PJ [89] (CAB 1 p 31)</p> <p>AB (CB Ref. CB101)</p>
25/06/2012	NAB margin loan limited increased to \$25,000,000.	AB (CB Ref. CB631 p 19 and 21, CB91)
25/06/2012	MFT draws \$23,000,000 from NAB margin loan into WPC23-2183.	<p>PJ [89] (CAB 1 p 31)</p> <p>AB (MFI-9, MFI-10, CB Ref. CB631, CB836 p 11)</p>
27/06/2012	MFT acquires 29,411,765 BBG shares in non-renounceable entitlement offer for \$30,000,000.	<p>PJ [89] (CAB 1 p 31)</p> <p>Merchant [135]</p>
20/07/2012	<p>McGrath emails Ian Burgess (Burgess) stating: (Emphasis added)</p> <p><i>Gordon just rang about getting some of the cash out of the Super Fund when the redemption of the MSSits money comes through at the end of September / beginning of October</i></p> <p><i>It should be around US\$7.4m or so and I was wondering if it was possible for Gordon to retire from a</i></p>	<p>PJ [91] (CAB 1 p 32)</p> <p>AB (CB Ref. CB106)</p>

Date	Event	Reference
	<p><i>position at that point and turn the Fund into pension phase and withdraw a lump sum?</i></p> <p><i>The idea would be to pay down part of the margin loan with NAB with the proceeds</i></p> <p><i>Could you please advise your thoughts?</i></p>	
20/07/2012	<p>Burgess replies to McGrath stating: (Emphasis added)</p> <p><i>Luke, there are no restrictions on Gordon accessing the funds in the super given he is over age 65. He could take it either as a tax free lump sum or tax free pension – I think we did start him on a pension so that would probably be the form) – another option which might be preferable and which I have discussed with Sue is to have the fund acquire some of the BBG shares from MFT (fund is able to acquire these as listed shares) – in this way the ‘value’ stays protected in the concessional tax super environment. I will give you a call to discuss a little later.</i></p>	<p>PJ [93] (CAB 1 p 32)</p> <p>AB (CB Ref. CB106)</p>
24/07/2012	TPG Capital announces proposal to acquire all of BBG’s shares for \$1.45 per share.	PJ [96] (CAB 1 p 33)
--/07/2012	Winpak Ltd (Winpak) and Bemis Company (Bemis) express interest in possibility of equity participation in Plantic.	<p>PJ [95] (CAB 1 p 32)</p> <p>Merchant [146]</p>
02/08/2012	NAB margin loan is paid down by \$6,000,000 payment from Merchant Daughters Trust.	AB (MFI-9, MFI-10, CB ref. CB631 p 17, CB Ref. CB192 p 211)
03/08/2012	NAB margin loan is paid down by \$6,000,000 from MFT.	AB (MFI-9, MFI-10, CB Ref. CB631 p 17, CB Ref. CB192, p 2)
--/08/2012	Kuraray Co Ltd (Kuraray) expresses interest in potential cooperation with Plantic.	<p>PJ [95] (CAB 1 p 32)</p> <p>Merchant [146]</p>
--/10/2012	Merchant becomes aware that a consortium was looking to announce a further offer to acquire BBG shares.	<p>PJ [96] (CAB 1 p 33)</p> <p>Merchant [159]</p>
14/10/2012	<p>Merchant emails Paull stating:</p> <p><i>Do you know if I’m able to buy BBG shares using funds in my super fund?</i></p>	<p>PJ [97] (CAB 1 p 33)</p> <p>AB (CB ref. CB115)</p>

Date	Event	Reference
14/10/2012	<p>Paull replies stating:</p> <p><i>Yes, you can, and you have around \$2 mil that you could use, we have to keep some in there.</i></p> <p><i>The \$15 mil won't be in the account until early November.</i></p> <p><i>Our trading window looks like it will be open until December, so that might still be o.k. but you wouldn't want to use it all for BBG shares as it wouldn't leave you any if things go pear shaped.</i></p>	<p>PJ [97] (CAB 1 p 33)</p> <p>AB (CB Ref. CB115)</p>
15/10/2012	<p>Merchant replies stating:</p> <p><i>I was thinking of spending around 4mil which at present share price of .80 cents would buy 1% of Billabong...</i></p>	<p>PJ [99] (CAB 1 p 33)</p> <p>AB (CB Ref. CB115)</p>
15/10/2012	<p>Paull replies stating:</p> <p><i>...We should be able to come up with the \$4 mil o.k.</i></p>	<p>PJ [99] (CAB 1 p 33)</p> <p>AB (CB Ref. CB115)</p>
16/10/2012 or 19/10/2012	MFT draws \$3,000,000 from NAB margin loan.	AB (MFI-9, MFI-10, CB Ref. CB631 p 15, CB Ref. CB192, p 4)
18/10/2012 and 9/10/2012	MFT acquires 900,058 BBG shares for a total of \$753,895.21, funded by a \$3,000,000 draw down on the NAB Margin Loan (the balance of which was used to fund Plantic and pay MFT's other expenses).	<p>PJ [101] (CAB 1 p 33)</p> <p>Merchant [161]</p> <p>AB (MFI-9, MFI-10, CB Ref. CBR192 p 4)</p>
05/11/2012	GMSF receives \$6,201,885.26 by way of proceeds from the sale of an investment referred to as MSSF.	<p>PJ [102] CAB 1 p 34)</p> <p>AB (CB Ref. CB590)</p>
05/12/2012	MFT (also) receives \$6,201,885.26 by way of proceeds from the sale of an investment referred to as MSSF.	AB (MFI-9, MFI- 10, CB Ref. CB192 p 4)
16/11/2012	MFT pays \$4,000,000 to reduce NAB margin loan.	AB (MFI-9, MFI- 10, CB Ref. CB631 p 15, CB Ref. CB192 p 12)

Date	Event	Reference
--/01/2013	By this time, discussions between Bemis and Plantic turn to potential exclusive technology license agreements.	PJ [95] (CAB 1 p 32) Merchant [145]
--/02/2013	By this time Kuraray had indicated it may be interested in acquiring Plantic.	PJ [103] (CAB 1 p 34) Merchant [168] AB (CB Ref. CB128)
19/03/2013	Kuraray signs 'Letter of Intent' expressing interest in 'possible cooperation and alliance between Kuraray and Plantic such as 100% acquisition of or partial capital contribution in Plantic, joint venture, licensing arrangement and so on'.	PJ [103] (CAB 1 p 34) AB (CB Ref. CB136) Merchant [170]-[176]
17/04/2013	Emails between Brendan Morris (Morris) and Merchant regarding with update on negotiations between Plantic and Kuraray, Braskem and Winpak. Kuraray had indicated it might consider buying Plantic at \$60,000,000 - \$100,000,000.	PJ [104] (CAB 1 p 34) AB (CB Ref. CB139)
19/04/2013	Kuraray indicates it does not have approval to make an offer for a 100% acquisition of Plantic, but remains interested in Plantic's business and opportunities to cooperate.	PJ [104] (CAB 1 p 34) AB (CB Ref. CB140)
28/05/2013	MFT receives capital distributions of \$6,840,186 from Arowana private equity investment.	AB (MFI-9, MFI- 10, CB Ref. CB192 p 10, 30)
--/05/2013	Negotiations between Plantic and Multivac are put on hold whilst negotiations with Winpak, Bemis, Braskem and Kuraray progressed.	PJ [105] (CAB 1 p 34) Merchant [177]
--/06/2013	Plantic and Braskem had discussed the rough terms of a proposed licensing agreement.	PJ [105] (CAB 1 p 34) Merchant [178] AB (CB Ref. CB143)
--/06/2013	Kuraray discussed a license agreement for Japan and South Korea.	PJ [108] (CAB 1 p 35) Merchant [179]

Date	Event	Reference
		AB (CB Ref. CB497)
30/06/2013	<p>The GMSF financial statements for the year ended 30 June 2013 record that:</p> <p>(a) an income stream based pension of \$470,500 was paid to Mr Merchant, leaving a total benefit balance of \$10,116,862;</p> <p>(b) the GMSF investments comprised: BBG shares recorded at a value of \$378,540; a “Flaik (SSIWDI Pty LTD) loan” of \$547,341; the Yamba factory valued at \$1,154,202 and cash of \$8,187,967:</p> <p>The cash balance of \$8,147,463 included the proceeds of disposal of the MSSF investment.</p>	<p>PJ [106]- [107] (CAB 1 p 34)</p> <p>AB (CB Ref. CB149 p 8, CB149 p 4, CB149 p 4; CB590)</p>
30/06/2013	The BBG balance sheet for the year ending 30 June 2013 record that BBG retained losses of \$512,570,000.	AB (CB Ref. CB529)
16/08/2013	MFT receives AUD \$2,562,730 from sale of first Hawaiian property (58-131 Napooala Place, Hawaii).	AB (MFI-9, MFI- 10, CB Ref. CB192 p 52, CB826 p 42)
--/09/2013	Plantic was close to finalising a license agreement with Winpak that would include an upfront license fee, expected to be \$1,500,000.	<p>PJ [109] (CAB 1 p 35)</p> <p>Merchant [182]</p>
19/09/2013	BBG entered into agreements with Centerbridge/Oaktree, which provided for a renounceable rights issue being made available to BBG shareholders, which would dilute Merchant’s shareholding in BBG.	<p>PJ [114]- [115] (CAB 1 pp 35-36)</p> <p>Merchant [189]- [191]</p> <p>AB (CB Ref. CB155)</p>
--/11/2013	Plantic board resolved not to pursue relationship with Winpak or Bemis and to re-engage with Multivac.	<p>PJ [110] (CAB 1 p 35)</p> <p>Merchant [185]</p> <p>AB (CB Ref. CB164)</p>
--/11/2013	<p>By November 2013, Sealed Air had expressed interest in potentially acquiring Plantic.</p> <p>Merchant was told that Sealed Air’s representative had indicated that “if Plantic went down the path of signing individual distribution and manufacturing agreements especially in North America that Sealed Air would not be interested in talking to Plantic.” (see below)</p>	<p>PJ [111] (CAB 1 p 35)</p> <p>Merchant [186]</p> <p>AB (CB Ref. CB163)</p>

Date	Event	Reference
04/11/2013	<p>Morris emails Merchant with update on discussions with Multivac. Also stated:</p> <p><i>In summary [Sealed Air's representative] said to Brendan that if Plantic went down the path of signing individual distribution and Manufacturing agreements especially in North America that Sealed Air would not be interested in talking to Plantic.</i></p> <p><i>However they were very interested in talking to Plantic about a potential acquisition or "global alliance" and would definitely like to start a dialogue.</i></p> <p><i>As we discussed it has all been kept low key and on a "you have approached us basis so what is Sealed Air thinking" approach so that we are on the front foot and just responding to their approach and interest.</i></p> <p><i>But they are obviously definitely interested which is a very good situation.</i></p> <p><i>Plus should you want to explore this avenue in more detail, advising Kuraray that Sealed Air, who are Kuraray's largest global customer, are looking at Plantic which could mean a significant reduction of purchases by their biggest global customer in the future, means that a competitive purchase situation could occur in the future.</i></p>	<p>PJ [111] (CAB 1 p 35)</p> <p>AB (CB Ref. CB163)</p>
05/11/2013	<p>Merchant emails McGrath (cc Morris and Paull) stating: (Emphasis added)</p> <p><i>I do not want us to get sidetracked again by another we might want to buy the company scenario. If someone wants to buy us especially an opposing brand they need to make us an unconditional offer and until then it's business as usual.</i> Cayovac can see the potential of the technology and would know what it's worth to them. They don't need to see a cash flow (that was just plain bullshit we went through for Kuraray) they'll just want the technology.</p> <p><i>Now lets get on with negotiating a North American distribution agreement with Multivac with the possibility of including Europe.</i></p>	<p>PJ [112] (CAB 1 p 35)</p> <p>AB (CB Ref. CB163)</p>
05/11/2013	<p>McGrath replies to Merchant stating:</p> <p><i>Yes absolutely the total main focus is continuing the path of negotiating with Multivac to finalise the agreement and implementing the changeover with Coles etc.</i></p> <p><i>Brendan said he may go over to the USA to finalise discussions with Multivac next week as the contracts have been agreed to already and just need confirmation on the main points</i></p>	<p>AB (CB Ref. CB163)</p>

Date	Event	Reference
	<i>Just wanted to keep you informed on the other discussions as well.</i>	
25/11/2013	<p>Lyons emails Paull attaching calculations and stating: (Emphasis added)</p> <ol style="list-style-type: none"> <i>1. Approx. cash in the bank now is \$8,059,826.79 – this excludes super and Foundation and Rocky group.</i> <i>2. Perhaps you could buy some of the BBG shares in the super fund? This would mean that there was more \$ to access for the purchase. Might not work – depends on the terms of the purchase available.</i> <i>3. Cash balance stays in the black until Nov next year – balance then approx. \$1.2M only.</i> <i>4. Plantic commitments up to Dec 2013 only. Assumed no cash required by them after that date.</i> <i>5. The interest on the NAB loan is listed right at the bottom of the sheet – this is not included in the cashflow as the interest is just capitalised to the loan at the moment. The NAB loan is currently at around \$10.911M and this continues to increase with interest charged.</i> <i>6. I have assumed approx. \$500K per month for drawings for Gordon. While this amount might differ from month to month, the annual total is based on the last 2 years drawings.</i> <i>7. I have included estimated costs for the following based on 2013 figures but have just projected them at an equal amount per month:</i> <ol style="list-style-type: none"> <i>a. Helicopter costs</i> <i>b. Angourie property costs</i> <i>c. Neil's fee</i> <i>d. Administration costs of all entities</i> <i>e. Motor vehicle costs</i> <i>8. The income in the form of dividends has been included based on 2013 amounts and I have included them with the timing the same as for 2013.</i> <i>9. I have not included any interest income on the foreign bank accounts.</i> <i>10. I have not included any income or capital calls on the property trust investments (like MREEF and SREEF etc), as these are unknown to me. Not sure if Luke would know any other info.</i> 	<p>PJ [116] (CAB 1 pp 36-37)</p> <p>AB (CB Ref. CB165)</p>

Date	Event	Reference
26/11/2013	<p>Paull forwards Lyons' email to Merchant, stating: (Emphasis added)</p> <p><i>Here is the cash flow that Sue has sent to me, i thought i would send it onto you so we were all on The [sic] same page. ...</i></p> <p><i>If we need around \$10 mil for BBG shares we could use some of the super fund money if we are allowed To [sic] do it that way, we have \$8 mil in cash available which we can give to you as you are retired and buy Them that way. Or we can draw down again on the NAB and because its BBG shares again we wont have to Pay [sic] interest if you would prefer to do it that way.</i></p> <p><i>This is just a couple of suggestions we can do other things as well.</i></p>	<p>PJ [117] (CAB 1 p 37)</p> <p>AB (CB Ref. CB165)</p>
26/11/2013	<p>Merchant replies to Paull stating: (Emphasis added)</p> <p><i>It would be fantastic if we could use the Super fund to purchase the shares? Can you please find out if this is possible? I know it's a possible tax deduction if we draw the 10 million from the National Bank overdraft but I'm worried about our ability to service that much debt. I'd try and use the Super Fund money as much as we possibly can. Given there is a real chance I'll have a huge tax bill when I sell Plantic or hopefully my shares in Billabong in few years time what does Sue think is the best way to raise the funds is given our current situation. I think Sue's answer would be dependent on how much Plantic and deliver over the next twelve months. Best have Daryl give us a cash flow for the next twelve months regardless. I still think you [sic] Super Fund is the best way to go if we can do it.</i></p>	<p>PJ [118] (CAB 1 p 37)</p> <p>AB (CB Ref. CB165)</p>
--/12/2013	<p>Plantic and Kuraray enter into distribution agreement for Japan and South Korea</p> <p>By this time, Plantic team were growing frustrated with Braskem's delays, but Braskem was asking for more time. Plantic and Sealed Air had signed a confidentiality agreement to facilitate discussions.</p>	<p>PJ [108], [113] (CAB 1 p 35)</p> <p>Merchant [179],</p> <p>AB (CB Ref. CB497)</p>
06/02/2014	The Centerbridge/Oaktree equity placement occurred.	PJ [119] (CAB 1 p 37)
14/02/2014	<p>McGrath emails Burgess stating: (Emphasis added)</p> <p><i>It would be preferable if the full entitlement across all of Gordon's entities could be taken up by the Super Fund as it has cash available</i></p>	<p>PJ [121] (CAB 1 p 38)</p> <p>AB (CB Ref. CB176)</p>

Date	Event	Reference
	<p><i>Colette is checking with BBG on whether the various entities entitlements – GM No 2, GSM etc. – can be transferred or issued in the Super Fund's name and therefore all the entitlements can be taken up there</i></p> <p><i>I just wanted to check that there would be no adverse tax outcomes for the other entities if that happens? The offer this time is renounceable and I am therefore presuming transferable but the offer is being done at 28 cents and the present trading price for BBG shares is about 70 cents.</i></p>	
14/02/2014	<p>McGrath emails Paull stating:</p> <p><i>The questions that we need answered for Gordon at this stage are 1) can his entitlements under the Institutional / Retail offer for the various entities – GM No2, GSM etc. – be transferred or assigned or preferably issued originally to the Super Fund? – do you want me to double check with Burge that there is no adverse tax consequence of this happening once we find out if it is possible?? 2) will he be provided with exactly the same number of entitlements under the Institutional offer as he would be under the Retail offer?</i></p>	<p>PJ [119] (CAB 1 p 37), AB (CB Ref. CB175)</p>
14/02/2014	<p>Burgess emails McGrath stating: (Emphasis added)</p> <p><i>thanks Luke - has any documentation come out about this yet? if renounceable and given the disparity between the offer price and trading price will investors get any form of payment where they renounce? I guess what i am saying is that there could be some issues for the fund if it is able to get more of the low cost shares because of a 'non-arm's length arrangement' with the other entities of Gordon's. understand the preference to do it all via super fund because that is where the cash is ...</i></p>	<p>PJ [122] (CAB 1 p 38) AB (CB Ref. CB176)</p>
14/02/2014	<p>McGrath emails Paull stating: (Emphasis added)</p> <p><i>FYI – Ian asked the same thing as me below re the documentation</i></p> <p><i>So I rang him and we had a talk about different options and one option that is also available is that if there are problems with issuing the share entitlements to the Super Fund or transferring them, or any potential tax situations – which there could also potentially be – that an option would be for the Super Fund to buy some of the bank shares from GM No 2 thus transferring cash to No 2 allowing it to be able to take up its rights.</i></p> <p><i>Burge said that there are enough losses in No 2 so that there should not be any tax payable on a gain by selling the shares down the track</i></p>	<p>PJ [123] (CAB 1 p 38) AB (CB Ref. CB176)</p>

Date	Event	Reference
	<i>So in summary there are a number of options available that there should be enough flexibility to allow it to happen in the most, or a combination of the most, advantageous ways for Gordon.</i>	
18/02/2014	McGrath emails Paull estimating that the effect of the rights being issued was that the Merchant Group's 15.6% stake in BBG would go down to 9.75% if all the group's rights were taken up.	PJ [125] (CAB 1 p 39) AB (CB Ref. CB180)
21/02/2014	Burgess emails Ms Simone Mouritz and Ms Megan Kachel of EY referring to various tax issues which might arise if the GMSF purchased BBG shares using the entitlement of other entities and stating that he had discussed the issues with Mr McGrath and that the "end result is that each entity will take up its own entitlement".	PJ [126] (CAB 1 p 39) AB (CB Ref. CB186)
26/02/2014	BBG issues prospectus for entitlement offer.	PJ [127] (CAB 1 p 39) AB (CB Ref. CB189)
13/03/2014	MFT draws \$7,000,000 from NAB margin loan into WPC 23-2183 to take up its entitlement to BBG shares in the Oaktree placement.	AB (MFI-9, MFI- 10, CB Ref. CB631 p 5, CB192 p 48)
13/03/2014	MFT pays \$6,910,358 to BBG for shares in the Oaktree placement.	AB (MFI-9, MFI- 10, CB Ref. CB631 p 48, CB486)
18/03/2014	Plantic and Multivac enter into exclusive distribution agreement appointing Multivac as exclusive distributor of particular Plantic products in United States, with Introductory Period expiring 30 September 2014.	PJ [131] (CAB 1 p 40) AB (CB Ref. CB197)
31/03/2014	Merchant Group entities acquire BBG shares in entitlement offer in the Oaktree placement giving Merchant Group approximately 10% of voting power in BBG – MFT acquires 24,679,850 BBG shares for \$6,910,357 (paid for as above on 13/03/14); GSM acquires 850,873 BBG shares for approximately \$238,244; and GMSF acquires 946,350 BBG shares for approximately \$264,977.	PJ [128]- [129] (CAB 1 p 39) Merchant [199], [202]
16/04/2014	Plantic Board meeting. Morris reported that Braskem had indicated it would be ready to sign an agreement in the week commencing 5 May 2014, which would involve Braskem paying, within 14 days of signing, USD \$4,000,000 and the first instalment of a USD \$1,500,000 engineering fee. Paull and Merchant said he	PJ [132] (CAB 1 p 40) AB (CB Ref. CB495)

Date	Event	Reference
	<p>'should not be surprised that there might be a further delay when they went to Brazil'.</p> <p>The board discussed 'Plan B' in the event that the Braskem deal did not eventuate. Plan B involved an arrangement with Kuraray or National Starch.</p> <p>Morris also reported that Kuraray had indicated it wished to proceed with the Japan and South Korea distribution agreement and would pay a license fee instalment of \$600,000 by 30 April 2014.</p>	
--/05/2014	Merchant was frustrated with the fact that Plantic continued to require funding from him and considered that Plantic should have been self-funding by this time.	<p>PJ [133] (CAB 1 p 41)</p> <p>Merchant [207]</p> <p>AB (CB Ref. CB207)</p>
--/05/2014	McGrath approached EY (Burgess) to provide taxation advice in relation to an appropriate structure for the sale of Plantic.	PJ [134] (CAB 1 p 41)
05/05/2014	Burgess emails Morris and others with an attachment indicating consideration had been given to an asset sale and a share sale.	<p>PJ [134] (CAB 1 p 41)</p> <p>AB (CB Ref. CB573)</p>
14/05/2014	Merchant and Morris exchange emails about Braskem. Merchant asks if Morris and McGrath had been able to pin Braskem to a definite time frame for moving forward. Morris replied that a representative of Braskem advised that the final sign off meeting was booked for 16 May 2014 and that the CEO and executive team would need a week to get the signatures.	<p>PJ [135] (CAB 1 p 41)</p> <p>AB (CB Ref. CB205)</p>
28/05/2014	Morris emails Merchant with funding projections for Plantic to the end of CY14. The 'best/worse case' contemplated involved Merchant providing \$4,400,000 in funding from June 2014 to December 2014.	<p>PJ [136] (CAB 1 p 41)</p> <p>AB (CB Ref. CB211)</p>
29/05/2014	Merchant emails Morris (copying McGrath and others). Asks McGrath whether he had progressed in obtaining a bank overdraft for Plantic and queried why the application for the overdraft only sought \$2,500,000 when more was required. Also requested a cash flow forecast for the first half of 2015.	AB (CB Ref. CB213)
29/05/2014	McGrath replies to Merchant explaining that the \$2,500,000 overdraft application was based on the budget and forecast that was in place, but that Morris and Daryl Hoy (Hoy) would discuss a higher figure with the bank.	AB (CB Ref. CB213)
29/05/2014	Hoy emails Merchant with funding projections for Plantic for the first half of CY15. The forecast was for 'base case' funding of \$900,000 and a 'target case' funding of \$300,000.	PJ [136] (CAB 1 p 41)

Date	Event	Reference
		AB (CB Ref. CB213)
29/05/2014	MFT draws \$3,000,000 from NAB margin loan into WPC 23-2183 replenishing the balance of that account from \$34,902.91 to \$3,034,902.91.	PJ [300] (CAB 1 p 84) AB (CB Ref. MFI-9, MFI-10, CB Ref. CB631 p 3, CB192 p 50)
--/06/2014	Merchant sold industrial land in Hawaii to “free up cash to fund Plantic.”	PJ [137] (CAB 1 p 41) Merchant [213]
16/06/2014	Hoy emails Paull noting that Plantic applied for a \$4,000,000 working capital facility with NAB but that a response was not expected before 23 June 2014. He also noted that the Braskem license fee was still subject to approval and would not be received until late July or August 2014. He stated that Plantic’s cash requirements were \$500,000 on 23 June 2014 and \$600,000 on 14 July 2014. Paull forwarded the email to Cooper asking her to make the payments, stating: <i>They are trying to get funding, but, don’t count on it.</i> <i>Gordon has sold another block of land in Hawaii, his, industrial block, and is fully aware that his money is going into Plantic.</i> <i>He hates it but, is now willing to sell it, but, he won’t make much on it, that is if he’s lucky enough to get what he wants.</i>	PJ [138] (CAB 1 pp 41-42) AB (CB Ref. CB221, CB587)
19/06/2014	MFT receives AUD \$2,004,660 (USD \$1,873,000) from sale of second Hawaiian property (94-1108 Ka Uka Boulevard).	PJ [302], [137] (CAB 1 pp 41, 84-85) AB (MFI-9, MFI- 10, CB Ref. CB192 p 52, CB826 p 22)
28/06/2014	Morris sends email to McGrath providing an overview of a meeting with Sealed Air. It reports that Sealed Air was aiming to obtain approval to send a non-binding offer by 24 July 2014. States that Sealed Air had a ‘target gate of the end of September to close’. States that he (Morris) felt that Sealed Air were committed, and he had given the idea that they should move quickly ‘before someone else gets in’.	PJ [141] (CAB 1 p 42) AB (CB Ref. CB226)

Date	Event	Reference
30/06/2014	<p>The GMSF Financial Statements for 30 June 2014 record that:</p> <ul style="list-style-type: none"> • Mr Merchant's total benefit balance was \$10,464,744 – see: Member's Statement at CB592 at page 9. • the GMSF investments comprised: a parcel of BBG shares recorded at a value of \$1,734,975; the "Flaik loan" at \$347,342 (reduced from \$547,341); the Yamba factory at \$690,000 (reduced from \$1,154,202); and • cash at bank was \$7,855,587. 	<p>PJ [140] (CAB 1 p 42)</p> <p>AB (CB Ref. CB592)</p>
08/07/2014	<p>Plantic board meeting. Morris gives presentation on potential sale to Sealed Air. Refers to valuation range involving an upfront payment of US \$55,000,000 to \$70,000,000 and a 3% royalty for 5 years estimated at US \$7,600,000.</p> <p>The board minutes note that: (Emphasis added)</p> <p><i>- It was agreed that Plantic would run the current strategic project opportunities in parallel i.e. evaluate option 1 - proceed with Braskem and also Multivac USA or option 2 - evaluate a deal with Sealed Air pending agreement being reached with Sealed Air on price;</i></p> <p><i>- It was noted that 30 September 2014 was a critical deadline, as Plantic could terminate the Multivac USA contract on or before this date, after this date the Multivac USA distribution agreement becomes an exclusive 4 year deal and this would limit access to the USA market. Also it was important to make a decision by 30 Sep as customer momentum was building both in Australia and overseas;</i></p> <p>...</p> <p><i>- [Mr Morris] noted that Sealed Air currently has proposed a valuation range of US\$62M-US\$78M;</i></p> <p><i>- [Mr Merchant] indicated that this was not sufficient;</i></p> <p><i>- [Mr McGrath] suggested that [Mr Merchant] consider if Sealed Air agreed to an upfront floor price that was between US\$80M-US\$110M that Plantic should allow Sealed Air to commence DD, given that Plantic is confident that it could demonstrate the value of its technology and that a royalty stream could be negotiated that would push the valuation range even higher, as outlined in the papers;</i></p> <p><i>- [Mr Merchant] agreed to this and it was agreed that [Mr Morris] should make contact with Sealed Air, advising of the Boards decision;</i></p> <p><i>- [Mr Morris] undertook to update when he had made contact with Sealed Air.</i></p>	<p>PJ [142]- [143] (CAB 1 pp 42-43)</p> <p>AB (CB Ref. CB230, CB495)</p>

Date	Event	Reference
09/07/2014	McGrath and Burgess discuss structuring a potential sale. Burgess advised that he thought a share sale would be the best option, although it would be necessary to determine how to deal with the Plantic Loans.	PJ [144] (CAB 1 p 43) AB (CB Ref. CB261)
12/07/2014	<p>Sealed Air emails Morris with offer to increase the up-front purchase price to US \$70,000,000 and increase the royalty payment to 3.5% for five years. The email states: (Emphasis added).</p> <p><i>After our discussions over the past few days, I have had a chance to review the situation with Jerome and our Board of Directors. We are prepared to increase our up-front purchase price to \$70 million and increase our royalty payment to 3.5% based on new incremental sales generated from this technology for a period of five years. By our internal model, this would add another \$13.2 million which brings the total purchase price to \$83.2 million. This royalty stream assumes zero for the potential business at Tetra Pak. We understand that initial testing has been positive and therefore the royalty payment has the potential to significantly increase by the extent to which we are successful with the Tetra Pak development. It is easy to envision the royalty stream taking the value north of \$90 million as this project adds revenue, thus sharing in the risk and getting a higher valuation. I hope this shows we positively responded to your feedback and are willing to move forward.</i></p> <p><i>This proposal is made in good faith after much discussion and analysis involving the highest level of our corporate management team. The proposed purchase price in combination with the capacity investment required to capitalize on the technology represents a very significant commitment and cash outlay for our company. It is fair to say that we are very close to our walk away point and cannot envision significant increases from here. So the question is, do we have the basis for a deal or should we consider cancelling our travel plans for the initial due diligence plant visits?</i></p>	PJ [145] (CAB 1 pp 43-44) AB (CB Ref. CB233)
12/07/2014	McGrath forwards Sealed Air's email to Merchant and recommends he permit Sealed Air to commence due diligence if they provide a non-binding, indicative offer letter.	PJ [146] (CAB 1 p 44) AB (CB Ref. CB233)
13/07/2014	McGrath emails Burgess stating that Merchant had agreed to move to the next phase of the sale to Sealed Air and obtain the conditional letter offer 'so we need to sort out our end with regard to structure of purchase etc. asap.'	PJ [147] (CAB 1 p 44) AB (CB Ref. CB233)

Date	Event	Reference
17/07/2014	MFT receives AUD \$2,518,410 (USD \$2,347,000) from sale of third Hawaiian property (58-139 Napooala Place).	AB (MFI-9, MFI- 10, CB Ref. CB192 p 86, CB826 p 20) See also PJ [137], [302] (CAB 1 pp 41, 84-85)
20/07/2014	Merchant emails McGrath asking if Sealed Air were 'still keen to purchase Plantic?' He proposed various adjustments to his share portfolio 'to increase the dividend return which has been my primary focus'. After setting out some suggestions, he went on to state: <i>The question here is then once we sell something what do we do with funds. How much of the overdraft facility have we drawn down on at present and I assume the interest on it is fully tax deductible?</i>	PJ [148] (CAB 1 p 44) AB (CB Ref. CB235)
20/07/2014	McGrath emails Merchant stating that Sealed Air were still 'very keen' and had booked their flights to do their technical due diligence. A letter of offer was extended on 25 July. He reported that the drawn down amount on the overdraft (margin loan) was \$21,355,189 and that the interest on it was tax deductible.	PJ [148]- [149] (CAB 1 pp 44-45) AB (CB Ref. CB235)
20/07/2014	Merchant replies to McGrath stating: (Emphasis added) <i>Yikes I didn't realize our draw down was that much "ouch". Well the first thing I'd do with any assets from selling shares is to bring that down as much as possible. Great that Sealed Air are still there.</i>	PJ [149] (CAB 1 p 45) AB (CB Ref. CB235)
20/07/2014	McGrath replies to Merchant stating: (Emphasis added) <i>Yes that was my original thought. The margin facility is just about to be transferred across from NAB to CBA so once that happens and the shares come across with it I will organise to gradually lessen the exposure to Macquarie and sell off the AMP shares and SYD and keep an eye on the price of the QBE shares</i> <i>Sealed Air are still really keen but we have to keep a bit of a distance in the way that we approach them so as to try and maximise the price for you when it comes to crunch time in about late August. Their letter of offer will come in with a US\$70 million cash payment plus a royalty.</i> <i>Obviously we will try to get them to move upwards on the upfront cash payment but most importantly is to also negotiate around the royalty payment</i> ...	AB (CB Ref. CB235)

Date	Event	Reference
	<i>Anyway long way to go till then with all the technical due diligence initially and then the financial due diligence will start maybe second week in August. A big amount of paperwork to get through.</i>	
21/07/2014	McGrath emails Merchant reporting that Sealed Air had decided to do an executive committee resolution by email approving moving to a formal letter of offer.	PJ [150] (CAB 1 p 45) AB (CB Ref. CB236)
21/07/2014	Merchant replies to McGrath stating 'if we were to sell Plantic what would the tax implications be for me?'	PJ [150] (CAB 1 p 45) AB (CB Ref. CB236)
21/07/2014	<p>McGrath replies to Merchant stating:</p> <p><i>EY have modelled it and the way to go would be a share purchase by Sealed Air of Plantic shares and not an asset purchase.</i></p> <p><i>By doing that and by transferring some of your high cost base BBG shares - remember some of the BBG shares have a \$7 cost base from one of the capital raisings and other ones have a \$2 cost base etc. - from GM No 2 to your Super Fund you will get a good "loss" on paper so they reckon there will be zero tax payable on a lump sum payment which is very good.</i></p> <p><i>We have tried to cover off on all contingencies over the last few months as them making an offer looked more likely and continue to dot the I's and cross the T's to try and make sure that we have everything covered. Obviously we won't have 100% of everything covered, but big things like potential tax implications to you and other similar things we have done multiple analysis.</i></p> <p><i>I was even with EY last Friday morning so we could model the 3 major ways that Sealed Air could acquire Plantic and the tax implications for them so that we could answer their queries when they do come up in due diligence</i></p> <p><i>So we are all trying our best to cover off on stuff!</i></p>	<p>PJ [150] (CAB 1 p 45)</p> <p>AB (CB Ref. CB236)</p>
21/07/2014	<p>Merchant replies to McGrath stating:</p> <p><i>Next time you're with someone from EY you might ask them why they never told me about the IRS calculation on time in the US. But I'll forgive them if I don't have to pay any tax on the sale of Plantic. I would have thought with the amount of money put in to Plantic being equal to the sale and without ever showing a profit I shouldn't have to pay tax?</i></p>	<p>PJ [151] (CAB 1 p 45)</p> <p>AB (CB Ref. CB236)</p>

Date	Event	Reference
21/07/2014	<p>McGrath replies to Merchant stating:</p> <p><i>PS The other bit that the ATO takes into account that I didn't mention in the previous email is that they also take into account the value of the royalty stream as a lump sum that gets added to the actual lump sum even though you haven't received anything yet. Typically all one sided to the ATO</i></p> <p><i>But with the royalty stream we have also done modelling around all the risks etc. which diminishes the lump sum value of the royalty stream dramatically.</i></p>	<p>PJ [152] (CAB 1 p 45)</p> <p>AB (CB Ref. CB236)</p>
24/07/2014	<p>Sealed Air sends letter of intent offering to acquire Plantic for USD\$70,000,000 plus 3.5% of net revenues for five years. It contemplated 'an asset or stock sale, as mutually agreed by the parties'. The price was said to be 'based upon the understanding that ... the Company will be cash free and debt free'. It provided an exclusive negotiation period up to 15 September 2014. It made clear that it did not give rise to a contract.</p>	<p>PJ [153] (CAB 1 pp 45-46)</p> <p>AB (CB Ref. CB245)</p>
26/07/2014	<p>McGrath emailed Merchant with an 'Indicative Transaction Timetable' contemplating a closing on 15 September 2014.</p>	<p>PJ [154]-[155] (CAB 1 p 46)</p> <p>AB (CB Ref. CB244)</p>
05/08/2014	<p>Morris emails the Plantic board with an update on discussions with Sealed Air. He identified a 'major issue' raised by Sealed Air the previous week about the sale price for Plantic's products in Europe being too high, which had delayed access to the data room. After a discussion, the Sealed Air team indicated they wanted to proceed with access to the data room.</p> <p>Morris also stated: (Emphasis added)</p> <p><i>In a predictable twist, the Braskem board has now fully approved the Plantic project and I am getting calls nearly every day from Braskem saying when can we meet to finalise the contracts and sign. I am stalling and will keep them going until we have final closure either way with Sealed Air.</i></p>	<p>PJ [156] (CAB 1 pp 46-47)</p> <p>AB (CB Ref. CB251)</p>
11/08/2014	<p>Burgess emails McGrath, relevantly stating:</p> <p><i>On a related matter, further to our discussions regarding the best way to deal with the loans from Gordon's entities to Plantic – we are thinking that it is going to be best to make it a requirement under the SPA that all loans from associated entities are waived or forgiven. That is, essentially the vendor pays the full 'business value' to MFT and MFT/related entities agree to write off any amounts owing by Plantic. Will give you a call to discuss further.</i></p>	<p>PJ [158] (CAB 1 p 47)</p> <p>AB (CB Ref. CB252)</p>

Date	Event	Reference
15/08/2014	<p>Pace (Minter Ellison) emails Burgess asking whether the loans to Plantic were documented. Burgess responds:</p> <p><i>Joe – the loans are mainly from GSM Pty Ltd and Tirinui Pty Ltd to Plantic – loan agreements were prepared at the time and I understand were put to the board but when I chased it down a couple of weeks ago it seems they may never have been signed – this is being followed up with Colette and I will find out the status later today and come back to you. I am not sure whether it impacts the way we respond to the query but from a sale structuring perspective we are thinking the optimum approach will be [to] have a requirement under the SPA that all of Gordon’s entities waive any amounts owing to them i.e. MFT gets paid full acquisition price on basis all loans owed by Plantic are forgiven. Was planning on discussing this on the call Tuesday am re SPA (has this time been set yet?) but could have a discussion today if that is preferable</i></p> <p>...</p>	<p>PJ [159] (CAB 1 p 47)</p> <p>AB (CB Ref. CB253)</p>
19/08/2014	<p>Sealed Air’s solicitors send Minter Ellison the initial working draft of the share purchase agreement. Amongst other things, it contemplates that MFT would deliver, at completion, evidence that related party debts had been ‘repaid or discharged in full.’</p>	<p>PJ [160] (CAB 1 p 47)</p> <p>AB (CB Ref. CB259)</p>
21/08/2014	<p>Burgess emails Lyons (copied to Paull and McGrath) stating: (Emphasis added)</p> <p><i>Hi Sue, we have been working with the Plantic team on the possible sale and have now prepared some calculations of the tax impact for Gordon on a sale of business vs sale of shares using two possible sale consideration amounts (attached). We would appreciate your review of the following aspects of the calculations in particular:</i></p> <ul style="list-style-type: none"> <i>- The share sale assumes that all loans from Gordon’s entities to Plantic will be forgiven (i.e the purchaser will acquire the company unencumbered other than trade payables). The calculations assume the loans total \$46.3m - is this still a reasonably accurate figure?</i> <i>- The share sale assumes that Gordon’s super fund will acquire as many BBG shares from MFT in the current year as is reasonably possible - the calculations assume there is \$6m of cash in the fund available to acquire the shares - is this still a reasonable assumption?</i> <i>- At the current share price this assumes approximately 10.3m BBG shares could be sold to the fund. We have identified the highest cost base shares as having a total cost base of around \$57.4m (MFT</i> 	<p>PJ [161] (CAB 1 pp 47-48)</p> <p>AB (CB Ref. CB260)</p>

Date	Event	Reference
	<p><i>Capital Loss tabs in attached workbook) - can you please review this to see whether it agrees with your understanding (please give Meagan a call if any questions).</i></p> <p><i>The share sale is showing as the better option basically because the debt forgiveness on the loans reduces top up tax payable by Gordon on getting cash out of GSM P/L and increases the capital gain to MFT by the same amount, which because of the capital losses is a 'deferred tax cost' (i.e. increase tax on future capital gains) rather than current tax cost. The benefit of this deferral depends on how long til MFT/ Angourie makes other taxable capital gains - while the higher end sale consideration (\$100m assuming value of \$25m on the earnout) uses all the current losses, we understand there is likely to be a further significant capital loss once one of the European private equity investments is liquidated such that this deferral should be significant.</i></p> <p><i>Because of the above there are perhaps some slightly increased risks around a share sale given the debt forgiveness issues (e.g. commercial debt forgiveness rules, deemed dividend rules, direct and indirect value shifting rules) and sale of BBG shares which crystallise capital losses ('wash' sale issues). However, on balance we think these are manageable particularly given a forgiveness of related party debt is a common aspect of a share sale transaction and there are real commercial consequences of the super fund acquiring the shares (i.e. it is fully exposed to future share price movements/dividend policy). We propose to provide a letter of advice to you outlining the issues and our conclusions in this regard.</i></p>	
21/08/2014	<p>McGrath replies to Burgess stating: (Emphasis added)</p> <p><i>Another thing to take into account is that BBG reports its full year results on the 28th of this month and the Directors dealing window opens on the 2nd of September so I would think either way that it would be beneficial to transfer the BBG shares soon after the window opens if Gordon agrees.</i></p>	<p>PJ [162] (CAB 1 p 48)</p> <p>AB (CB Ref. CB260)</p>
21/08/2014	<p>Burgess emails with draft tax calculations showing a business sale with total tax paid ranging between \$14,500,000 and \$15,171,000 with capital losses utilised ranging between \$5,300,000 and \$30,300,000; and a share sale with total tax paid ranging between nil and \$3,500,000 with capital losses utilised ranging between \$50,800,000 and \$61,456,000.</p>	<p>PJ [164], and [169]-[170] (CAB 1 pp 49-50)</p> <p>AB (CB Ref. CB262, CB263, CB264 and CB265)</p>

Date	Event	Reference
21/08/2014	<p>Burgess emails McGrath regarding a complaint McGrath had made about Burgess not considering the tax consequences of the potential transaction for Sealed Air (which Sealed Air raised on 19 August 2014), stating:</p> <p><i>I appreciate you sharing with me your concerns and while I understand I am unlikely to change your position on the matter I did want to set my thoughts out after reflecting on it a bit further ...</i></p> <p><i>I value my relationship with both you and Colette and am obviously concerned about the impact your concerns will have on that ...</i></p> <p><i>Cheers ian</i></p> <p><i>- In mid May Brendan was trying to get a deal together and to get the price up to something acceptable by getting SA to either value the Aust tax losses or to reduce the tax rate in their model on the basis they would not pay tax in the US because either they already in significant tax losses or they would get deductions for IP – at that point he and I had a call with the SA people including the US tax manager to address those 2 issues – my recollection is the US tax guy said they would get a deduction for the IP on the basis the US tax rules allow for a tax consolidation push down in the same way the Australian rules do – however they said that was their entitlement and didn't think they had to factor it into the tax rate in the model i.e. they weren't interested in exploring the issue further so neither did we.</i></p> <p><i>- I then got the email from you on 9 July saying Gordon had agreed to start a proper sale price with a minimum amount on the table - I do recall our conversation on 9 July, when I was in the Sydney office briefly while on holidays, where we discussed the structuring issues for the txn – I said I thought a share sale was likely to be best for Gordon and we would need to think through issues around how to deal with the loans as there was 3 broad ways of dealing with them – while I don't recall the specifics I accept I may well have said as a general proposition that there should be no difference for a purchaser between an asset purchase and share sale because of the tax consolidation rules which allow you to push down the PP to underlying assets. I don't think in the context that was wrong or that it was reasonable at that point to consider in detail all the possible outcomes for the purchaser based on what they may want to do with the assets in the future.</i></p> <p><i>- On 13 July you told me via email that Gordon had given the go ahead and we need to sort out our end regarding the structure – I took that to mean (reasonably I think) that we needed to pin down what</i></p>	<p>PJ [171] (CAB 1 pp 50-51)</p> <p>AB (CB Ref. CB261)</p>

Date	Event	Reference
	<p><i>was best sale structure for Gordon including dealing with the loan issue. At that point until Tuesday 19 August we were doing a lot of work to determine the optimum position for Gordon (in particular around the possible loan forgiveness as this is what gives Gordon the big benefit from a share sale) as well as pulling together Tax DD materials and responses to questions, issues around employee option plans etc.</i></p> <p><i>- Given the above, we had not, I think quite reasonably, undertaken any further consideration of the purchaser's position if they were to implement at their choice a restructure post acquisition. So yes, when the issue was flagged by SA for the first time on the 19 August call I wasn't in a position to determine whether it was a valid concern but instead immediately considered the issue with our R&D/tax consol experts and identified a number of ways around it which I raised on our 20 August call – the first of those being whether it could be argued that the IP being paid for was generated post July 11. Because of the urgency of getting the deal done I also started some calculations to determine a more precise tax differential of the two options in case it comes down to a negotiation with SA. So while we knew a share sale was best for Gordon because of the ability to realise capital losses on BBG shares, we hadn't at that stage calculated the exact amount which we proceeded to do.</i></p>	
23/08/2014	<p>Burgess emails Morris, McGrath and Paull with update on call with Deloitte (Sealed Air's advisors), referring to discussion about Deloitte's concern about R&D issues that would arise if the transaction were structured as a share sale, stating: (Emphasis added)</p> <p><i>We also explained to Julian why an asset sale gives us a substantial (circa \$15m) extra tax cost – I think he now understands there is quite clearly an issue for us versus a potential risk for them. We agreed post call with Julian to try and organise a call with everyone on Monday after Claire has spoken to the Deloitte Sydney person so she can give an update on where that got to.</i></p>	<p>PJ [172] (CAB 1 p 52)</p> <p>AB (CB Ref. CB267)</p>
27/08/2014	<p>Burgess emails MinterEllison regarding Sealed Air's draft share purchase agreement, stating: (Emphasis added)</p> <p><i>As discussed, have listed below a couple of the 'easy' tax changes for you to make to the SPA before circulating the next draft to the group ...</i></p> <p><i>3. A key aspect of the transaction that delivers a favourable outcome to Gordon is that the amounts owed by Plantic to his related entities are waived/forgiven – it would be good to make this</i></p>	<p>PJ [173] (CAB 1 pp 51-52)</p> <p>AB (CB Ref. CB612)</p>

Date	Event	Reference
	<i>clearer in Clause 5.2(c) – the clause as currently drafted covers all amounts owing to/from and therefore talks about ‘repaid in full or discharged’ - therefore I think we need to insert a separate sub paragraph to specifically deal with the waiver (and then will need to draft the appropriate deeds of release which we will need to provide to them by completion).</i>	
28/08/2014	<p>Burgess emails Deloitte stating:</p> <p><i>Julian, I refer to our call earlier this week on this issue. You raised the prospect of proceeding with a share sale but with the Vendor providing an indemnity in the SPA for any tax payable by SA on transfer of IP offshore if SA couldn't get a favourable PBR from the ATO post completion. This was discussed with the Vendor's representatives following that call and as predicted was not considered to be an acceptable way forward. We also looked into the timing for a priority PBR process pre completion but it seems clear that this could not be achieved within the proposed timeframe for the deal. Can you please advise whether there has been any update in thinking on this issue from your side? ...</i></p>	<p>PJ [174] (CAB 1 p 52)</p> <p>AB (CB Ref. CB611)</p>
28/08/2014	<p>Burgess emails McGrath and Paull stating:</p> <p><i>I think we are all on the same page that a share sale gives the best outcome for Gordon and we should push for that. However, at some stage I would like to take you through some options we have considered to manage the tax cost to Gordon if you had to do an asset sale – that is, if you are deep in negotiation next week trying to get the transaction across the line and it appears that an asset sale might be the only way to get that done, that you have an understanding of what the fall back positions might be for Gordon to help make the judgement on price etc.</i></p>	<p>PJ [175] (CAB 1 p 52)</p> <p>AB (CB Ref. CB269)</p>
29/08/2014	<p>Conference call between Sealed Air and Plantic representatives where Sealed Air raised certain issues arising in their due diligence (contents of which are reported in email from Morris below).</p>	<p>PJ [176] (CAB 1 p 52)</p> <p>AB (CB Ref. CB279)</p>
02/09/2014	<p>Morris emails McGrath, Burgess and others with a note of the matters discussed during the conference call on 29 August 2014. Relevantly, some of those matters and the ‘Plantic Action’ include: (Emphasis added)</p> <p><i>1. Patent coverage over Plantic products</i></p> <ul style="list-style-type: none"> <i>• Coverage and strength/weakness of Plantic patents</i> <i>• Exclusivity of Ingredion contract limited to one product; presence of</i> 	<p>AB (CB Ref. CB278, CB279)</p>

Date	Event	Reference
	<p><i>alternate sources of high amylose corn starch</i></p> <p><i>Plantic Action:</i></p> <ul style="list-style-type: none"> • Conference call arranged for Thursday morning to discuss patent concerns • The HP 1 patent isn't granted in the US yet, but is in the final stages and this will assist. • <i>Patents plus know how plus Ingredion contract the matrix of protection, but we need to satisfy them that our patents are sound.</i> • Sealed Air noted that their external patent counsel report is due on 8 September <p>2. Transaction structure - stock deal vs. asset deal</p> <ul style="list-style-type: none"> • Stock deal will cost Sealed Air more than \$15 million • Asset deal will cost Gordon Merchant \$15 million <p><i>Plantic Action:</i></p> <ul style="list-style-type: none"> • Discussed time value of money issue for SA rather than whole amount. SA are modelling the impact • Conference all Wednesday morning to update on this issue <p>3. Cost Structure / Machinability of Plantic's Products</p> <p><i>Current due diligence has resulted in following concerns:</i></p> <ul style="list-style-type: none"> • Lack of clear cost advantage of Plantic's Products in the European semi-rigid market • Inability of customers to drop-in products into current production processes • Lack of proven production process to make products of < 200 microns <p><i>Plantic Action:</i></p> <ul style="list-style-type: none"> • Provided additional thin gauge material to run at their test facility and satisfy themselves on the process ability etc. • Kraus Maffei to guarantee the extrusion process down to 120 micron finished gauge. 	

Date	Event	Reference
	<p><i>Nick M is chasing that update process guarantee</i></p> <p>..</p> <p><i>7. Commercial and legal due diligence</i></p> <ul style="list-style-type: none"> <i>• Discuss status of due diligence including but not limited to need to know what is in the "black box" and when Sealed Air will be given access.</i> <p><i>Plantic Action:</i></p> <ul style="list-style-type: none"> <i>• Sealed Air's 11 checklists have been closed out subject to black box disclosure.</i> <i>• As at 29 August, 142 questions have been logged through the data room – 5 remain to be answered.</i> <i>• Sealed Air have requested:</i> <ul style="list-style-type: none"> <i>• copies of the employee share option plan – this has now been disclosed.</i> <i>• a copy of the black box data room index – this has been provided.</i> <i>• Timing for disclosure of black box material – supplier information, board minutes, Linpac supply agreement etc. to be discussed.</i> <p><i>8. Timetable & process going forward</i></p> <ul style="list-style-type: none"> <i>• Timing for process to be discussed.</i> <i>• Exclusivity Period expires on 15 September.</i> <p><i>Plantic Action:</i></p> <ul style="list-style-type: none"> <i>• Plantic to provide mark-up of SPA to Sealed Air – provided on 5 September. [Note – we have been informed that Sealed Air will likely return an issues list on the SPA on 3 September]</i> <i>• Timing for Sealed Air's head of M&A visit to Australia to be confirmed, discussed w/c 8 Sept.</i> <i>• No discussion on extension of exclusivity period.</i> 	
02/09/2014	MFT receives approval to refinance its margin loan from NAB to CBA with a new credit limit of \$35,000,000.	PJ [177], [303] (CAB 1 pp 52, 85)
03/09/2014	<p>Burgess emails McGrath and Paull stating: (Emphasis added)</p> <p><i>Further to my earlier note below, attached is a paper which outlines the options to manage the tax costs for Gordon if Plantic did an asset sale rather than a share sale. The paper confirms that a share sale is the</i></p>	<p>PJ [178]-[184] (CAB 1 pp 52-55)</p> <p>AB (CB Ref. CB269 and CB270)</p>

Date	Event	Reference
	<p><i>easiest and most tax effective option for Gordon. However, I think it also shows that if the ‘cost’ of getting Sealed Air to accept a share sale is much more than \$2m-\$3m, then it might be better to agree to an asset sale and aim for an increase in the sale price to compensate Gordon for his increased costs. For example, if SA come back and say they want a reduction in sale price of \$5m to compensate for the extra tax costs they think they will incur on a share purchase (even if that is part of an overall increase in sale price over the current 70mUSD because of other factors such as quality of product etc) then it would appear to be better to accept an asset sale and ask for a \$5m increase in the price to compensate for Gordon’s extra tax cost (i.e. an improvement in price of \$10m for an upfront tax cost to Gordon of \$2m as per the best options in attached slides).</i></p> <p>Email attaches a document called ‘Project Maize - Summary of Sale Options and Tax Outcomes’, considering the tax outcomes of six scenarios (one share sale and five asset sales) for disposing of Plantic. The document described the share sale scenario as the ‘Best outcome and least complex option’.</p> <p>The document also states it was based on the following assumptions:</p> <ul style="list-style-type: none"> • <i>Regardless of the form that the deal takes, consideration for the disposal will be an upfront payment of AU\$75M, plus deferred consideration contingent on the quantum of future sales of product by Sealed Air.</i> • <i>We have assumed that AU\$25M will be received from the earn out right. We have also assumed that this is the market value of the rights at the date of sale. However, it may be that a much lower value of the earn out can be supported at sale date because of the contingent nature of the right. Where this would make an impact on the option under consideration we have highlighted this (in particular, the ‘Business Sale 5’ scenario).</i> • <i>The value of the loans to Plantic from GSM Pty Ltd (GSM) and Tironui Pty Ltd (Tironui) at the time of the transaction is \$50M.</i> • <i>The Merchant Family Trust’s (MFT) cost base in Plantic is \$24M.</i> • <i>The issued capital in Plantic is \$76M.</i> • <i>As at 30 June 2014, Plantic has group losses of \$20M and transferred losses of \$58M with an available fraction of 0.840.</i> 	

Date	Event	Reference
	<ul style="list-style-type: none"> • MFT has \$10M capital losses at 30 June 2013. MFT will sell Billabong International Limited (BBG) shares to the Gordon Merchant Superannuation Fund (GMSF) during the 2015 year and realise further capital losses of \$60M. 	
03/09/2014	Merchant emails Tracey Wood of BBG stating ‘as of Monday 2nd of September I have transferred 10,344,828 BBG shares from [MFT] to [GMSF].’	PJ [185] (CAB 1 p 55) AB (CB Ref. CB282)
04/09/2014	Merchant and Paull sign standard transfer form effecting a transfer by MFT of 10,344,828 BBG shares to GMSF for \$5,844,827.82 with a ‘date of transfer’ of 2 September 2014.	PJ [186] (CAB 1 p 55) AB (CB Ref. CB284)
05/09/2014	MFT received cash of \$5,844,827.82 from GMSF for BBG shares.	PJ [186] (CAB 1 p 55) AB (CB Ref. CB689 p3)
08/09/2014	CBA margin loan is drawn by \$21,528,701.62 to refinance NAB margin loan.	AB (MFI-9, MFI- 10, CB Ref. CB400 p2, CB631 p1)
--/09/2014	<p>Negotiations with Sealed Air break down. The key reasons set out in the September 2014 board pack emailed on 12 October 2014 are:</p> <p><i>Sealed Air was not prepared to pay \$70m and 3.5% royalty for 5 years based on what they perceived was risk associated with the following issues</i></p> <ul style="list-style-type: none"> • IP evaluation and status of patents granted in the US and Europe • CAPEX and manufacturing costs associated with new in-line coating line, yet to be built • European market and lack of commercial thinner gauge material • Tax <p><i>Plantic met with the management of Sealed Air and discussed the key issues. The thin gauge film produced by Plantic in September was presented and a short successful run conducted on their lab line. Currently Sealed Air has proposed \$35m up front and 3.5% for 10 years, and higher royalty on any resin sales to Tetra Pack should that project be successful.</i></p>	Merchant [256] AB (CB Ref. CB294, CB295)

Date	Event	Reference
19/09/2014	<p>Morris had a call with a representative of Sealed Air and emailed McGrath and others reporting on the key issues that impacted negatively stating:</p> <p><i>He said that there was 7 or 8 key issues that impacted negatively and given Gordon had put the \$70m line in the sand and how the tax position should be treated they didn't want to insult us and the easiest way was to say No being respectful of the issues with Multivac and Brazil.</i></p> <p><i>He said the key issues were:</i></p> <ol style="list-style-type: none"> <i>1. Europe semi rigid market, pricing and volumes are expected to be low based on APET and the market. This takes out 3 lines, but the US market the prices are higher than assumed so that helps but restricts the volume a bit to the high barrier opportunity</i> <i>2. 110-200 micron is a key market but at the low end of the gauge range for Plantic and considered a technology risk</i> <i>3. Plantic has a high density so that makes the weight per m2 higher than PE so the cost per m2 is higher reducing the margins if the selling prices are fixed</i> <i>4. IP position is considered weak but were prepared to work around that with Ingredion contract etc. but concerned about take or pay given we have aged stock of starch etc.</i> 5. Tax issue will provide risk the NPV of the best case is still negative \$7m worse case \$15m <p><i>I asked if they still wanted the technology and he said yes. They see Plantic as a key growth opportunity based on value not price.</i></p> <p><i>I said that I have gone out on a limb with Gordon about how Plantic would be best in the hands of a larger player, I told him about M&S (which is already 2 days more shelf life than they are getting) and the Darfresh opportunity to take out Bemis with a unique material. I said if we could structure a deal to minimise the risk elements would he be interested in discussing that. I said</i></p> <p><i>I feel we have spent so much time and money we should try to explore options, and he agreed.</i></p> <p><i>I suggested we could meet face to face and discuss. He said he would talk with Jerome and send me an email later today.</i></p> <p><i>I was encouraged by his attitude : they still want the technology in their portfolio but we need to help them</i></p>	<p>PJ [197] (CAB 1 p 58)</p> <p>AB (CB Ref. CB287)</p>

Date	Event	Reference
	<i>eliminate risk and I think we need to be with them to work through the issues.</i>	
25/09/2014	The introduction period expiry date under the Multivac exclusive distribution agreement is extended to 31 December 2014 with the effect that Plantic had more time to negotiate a sale before having to decide whether to continue the Multivac distribution agreement.	PJ [198] (CAB 1 p 58) Merchant written opening submissions filed in the first instance proceedings, [158]
18/09/2014 to 30/09/2014	MFT sells shares in Macquarie shares and Sydney Airport shares for approx. \$14,000,000. The funds are used to pay down CBA margin loan balance to \$7,806,621.	PJ [196] (CAB 1 p 58) AB (MFI-9, MFI-10, CB Ref. CB400 p 2)
03/10/2014	Sealed Air make a revised offer for Plantic for an upfront payment of USD\$35,000,000 with a royalty payment after.	Merchant [258]
15/10/2014	Morris emails McGrath, Merchant and Paull stating: <i>I have just spoken to Kenzo [of Kuraray], he has spoken to the head of M&A and they are going to recommend to the board that the start due diligence to acquire Plantic. He said he would come back to us in the a couple of day with confirmation. He said if they didn't get approval then they would discuss the licence for the resin but he said Kuraray's preference was to buy Plantic 100%. He also said he would keep the Braskem and Multivac agreements on foot and he asked what stage the Braskem agreement was at.</i>	PJ [199] (CAB 1 p 58) AB (CB Ref. CB297)
15/10/2014	Merchant responds to Morris stating: <i>Brendan there could be a number different options that could help with Kuraray's original concerns when they last looked at acquiring Plantic. I think one of their concerns was owning and running an Australian business. So what we could do is to offer to run Plantic until the end of 2015 to maintain supply until Braskem are up and running. Or maybe Kuraray just employ you to do that and become the Australian distributor. I just think we should keep an open mind as to how this might work best for everyone involved.</i>	AB (CB Ref. CB297)
15/10/2014	At a Plantic board meeting Merchant tells Morris to communicate with Sealed Air that their USD\$35,000,000 offer (above) was not sufficient and seek a higher offer that included a larger upfront payment and milestone payments.	Merchant [260] AB (CB Ref. CB496)

Date	Event	Reference
16/10/2014	<p>Morris replies to Merchant (email above) stating: (Emphasis added)</p> <p><i>Yes I think that makes sense too they seem interested but will need CEO sign off. I think them distributing our material in Japan and they also bought DuPonts PVOH business so they are our raw material supplier too gives them more comfort.</i></p> <p><i>Hopefully they will progress and this gives us some competition at least.</i></p>	AB (CB Ref. CB297)
09/11/2014	<p>Morris emails Burgess stating:</p> <p><i>We have reengaged with Sealed Air with a revised deal. They would preferred to do an asset sale to avoid this tax issue. Could you please let me know what it would look like for Gordon for both an asset sale and a share sale.</i></p> <p><i>Sale of Plantic Australia: US\$17m</i></p> <p><i>Plantic Australia working capital adjustment US\$2m Technology fee US\$20m</i></p> <p><i>Technology milestone payment US\$3m in 2016</i></p> <p><i>Earnout/Royalty: 3.5% on sales year 2017-2026 (estimated US\$50m)</i></p> <p><i>Resin products sold:</i></p> <p><i>Milestone payment US\$5m estimated 2017 3% royalty 10 years from first sale</i></p> <p><i>I will give you a call tomorrow to discuss. Clearly Sealed Air wont to do an asset sale and now that the numbers are different will the impact for Gordon still be the same, and I guess the follow of money might allow to do some structuring for example, can the royalty flow to an different GM entity etc.</i></p>	<p>PJ [200] (CAB 1 p 58)</p> <p>AB (CB Ref. CB634)</p>
10/11/2014	<p>Burgess emails Morris and Hoy a document called ‘Summary of tax on sale alternatives’ comparing three scenarios (one share sale and two asset sale) each with three different total sale prices. The three scenarios were ‘Share sale – related party loans forgiven’, ‘Asset sale 1 – repayment of loans and dividends paid’, and ‘Asset sale 2 – Plantic lends sale proceeds to MFT’.</p>	<p>PJ [201] (CAB 1 p 58)</p> <p>AB (CB Ref. CB634)</p>
10/11/2014	<p>EY employee emails updated version of those calculations to Morris and Hoy differentiating between ‘Current Tax Cost’ and ‘Future Tax Cost’. Depending on the sale price, the total tax costs were between: \$6,321,000 and \$16,121,000 for the share sale; and \$9,480,000 and \$22,511,000 for each of the asset sale scenarios.</p>	<p>PJ [202] (CAB 1 pp 58-59)</p> <p>AB (CB Ref. CB634)</p>

Date	Event	Reference
11/11/2014	<p>Burgess emails Morris attaching a document called asset sale v share sale tax cost summary stating: (Emphasis added)</p> <p><i>Further to our discussion about this yesterday evening, a point I wanted to make but not sure if I did adequately was that if we have to do an asset sale, we are going to want to value the 'earnout/royalty' at an amount equal to our best estimate of the extra proceeds we are likely to receive over the 10 year period. Assuming this is a relatively high amount (e.g. somewhere between the \$20m and \$40m earnout values used in the attached calculation), it will mean the higher up front tax cost on the summary (\$3m-\$4.5m) is the one that needs to be factored into a decision on whether to accept an asset sale v share sale. This approach is needed to reduce the risk of higher taxes in future which would arise under the asset sale approach if subsequent earnout payments received exceed the value adopted up front.</i></p> <p><i>The reason higher taxes are likely to be payable in the future if earnout payments received exceed the upfront value adoption is that the ability to use the balance of Plantic's tax losses will reduce over time. This is because the interest free loans from GSM to Plantic (approx. \$49m) will likely have to remain on foot post the transaction and the 'interest free' benefit will continue to erode the 'available fraction' applicable to the</i></p> <p><i>bundle of 'transferred losses' (approx. \$58m of the \$78m current losses) in subsequent years.</i></p> <p><i>To help illustrate this point, we have added to the attached summary another table with an estimate of the taxes payable for each of the 3 'earnout valuation scenarios' used in the original calculations (i.e. nil, \$20m, \$40m) if the future royalty/earnout payments are \$0, \$1m, \$2m, \$3m, \$4m or \$5m a year for the 10 years (i.e. actual payments of between \$0 and \$50m). What this shows for example, is that if \$30m was received in total over the 10 years and an upfront value of \$20m was adopted there would be an extra \$1.9m tax to pay, whereas if a nil value was adopted up front for the 'earnout' there would be \$8.9m to pay in future (so the extra tax paid upfront between those 2 scenarios of \$1.5m 'saves' \$7m longer term). If the value adopted up front exceeds the amount of royalty payments actually received over the 10 year period, a capital loss equal to the difference is likely to arise to Plantic – however this is not likely to be particularly valuable in the circumstances.</i></p>	<p>PJ [203] (CAB 1 p 59)</p> <p>AB (CB Ref. CB634)</p>

Date	Event	Reference
13/11/2014	<p>Morris emails Merchant, Paull and McGrath stating:</p> <p><i>Sealed Air : Increased their offer slightly guaranteeing an additional</i></p> <p><i>\$5m by way of milestone payment on the first Plantic sheet line they build in the USA and a working capital adjustment.</i></p> <p><i>Kuraray has told me verbally that the Group President has approved a bid of \$65m plus a 5% royalty year for years 4-10, subject to Due Diligence. I do not have an offer in writing yet, they had said I would have it today but an executive is away and we will not get the formal letter until next Thursday. I have asked for an email confirmation. They have appointed the team leader and are putting together the DD team. We will put the confidentiality agreement in place over the next few days and we expect DD to start following their formal letter.</i></p> <p><i>Braskem : Braskem was told on Tuesday night that we would be delaying signing the project as an offer had been received and it was being considered. Manoel advised me following meetings with the Polymer President and M&A that Braskem may be interested in acquiring Plantic too. He did flag that timing would be an issue. We have given them guidance today of >\$70m plus a royalty, so this might rule them out, but let's see what happens. They are very keen for the project to continue and have talked about a potential minority investment in Plantic but I told them today that this would not be of interest. Manoel tentatively booked a video conference for Tuesday morning our time with Luke and I. I don't believe they will be a participant in the process given the price and timing.</i></p> <p><i>Our plan is to run both Sealed Air and Kuraray in parallel.</i></p> <p><i>A comparison of the two options is below, I have assumed the sheet sales will be lower under Kuraray than Sealed Air given it will most likely be Plantic/Multivac/Kuraray selling.</i></p>	<p>PJ [204], [205] (CAB 1 pp 59-60)</p> <p>AB (CB Ref. CB307)</p>
23/11/2014	<p>Sealed Air representative emails Morris 'a summary analysis of the tax impact of potential stock versus asset deal structures showing an 'Asset Purchase' as having a positive tax cash flow with a present value of \$5,205,700, a 'Stock Purchase – Move IP to US & UK' as having a negative tax cash flow with a present value of \$3,194,000 and 'Stock Purchase – Leave IP in AUS' as having a negative tax cash flow with a present value of \$10,873,000.</p>	<p>PJ [206] (CAB 1 p 60)</p> <p>AB (CB Ref. CB635)</p>

Date	Event	Reference
24/11/2014	<p>Morris emails Burgess stating: (Emphasis added)</p> <p><i>Luke has asked that you put a paper together for him and Colette to discuss. Luke and Colette are together tomorrow afternoon so that may wish [sic] to have a call with you then. I am going to suggest to Seal Air that they apply for ruling and delay the sale process to give Kuraray more time, and it is also likely they will wont [sic] the same clearance potentially.</i></p> <p><i>A copy of questions from me:</i></p> <ul style="list-style-type: none"> <i>• if Kuraray or Sealed Air refuse to do the debt forgiveness wont their be the same level of top up tax?</i> <i>• With the debt forgiveness is there a cash tax benefit in the GM entity forgiving the loan should that be considered too?</i> <p><i>Can you include the tax position also with Kuraray. The comparisons of the proposals (with our best estimate of the royalty stream) is below...</i></p>	<p>PJ [207] (CAB 1 p 60-61)</p> <p>AB (CB Ref. CB741 p 100)</p>
25/11/2014	<p>Burgess emails Morris a document called ‘Project Maize – Tax Discussion Paper [Draft] – Share Sale versus Asset Sale’, the stated purpose was ‘to summarise the different tax costs associated with a share sale versus an asset sale and to provide a broad outline of the issues for both the vendor (i.e. the Merchant Group) and for the purchaser under each option’.</p> <p>The summary section states (Emphasis added):</p> <p><i>The tax costs to the Merchant group have been estimated having regard to the immediate tax costs on sale plus the future tax costs of accessing the sale proceeds from current structures and the future tax cost of using capital losses now which would otherwise be available to offset future capital gains.</i></p> <p><i>An asset sale results in higher upfront tax costs and higher overall tax costs for the Merchant group as compared to a share sale transaction which incorporates a ‘forgiveness’ by the Merchant group entities of loans made to Plantic. The additional tax cost ranges from \$3.2m (nil earn out payments) to \$6.4m (earn out rights valued at \$40m) - see table on following page. Higher tax costs arise under an asset sale where the actual earnout payments exceed the value adopted up front. For this reason, the upfront value adopted should be as high as can be supported. If the purchaser did not agree to a debt forgiveness as part of a share sale (i.e. instead paid less for the shares and injected further capital into Plantic to enable it to repay the loans), the tax costs associated with a share sale would be much higher.</i></p>	<p>PJ [208], [209] (CAB 1 pp 61-63)</p> <p>AB (CB Ref. CB636)</p>

Date	Event	Reference
	<p><i>The purchaser has advised that a share sale transaction would result in a \$8.4M tax cost for them. This is the tax cost associated with transferring the IP post acquisition of the shares from Plantic to an offshore company based on their interpretation of the Research & Development (R&D) tax clawback provisions. As a result, we understand the purchaser will reduce their offer by \$8.4M if required to do a share purchase rather than asset purchase transaction.</i></p> <p><i>We believe there are good grounds to support the position that there should be no tax cost to the purchaser as a result of transferring the IP offshore. The key issues are whether:</i></p> <p style="padding-left: 40px;"><i>The valuable IP being sold is the patents (and rights under pending patent applications) arising from R&D activities conducted post 1 July 2011 (a question of fact); and Whether the 'CGT asset rules' apply to the transfer of this IP rather than the broader 'R&D results rules' (a question of legislative interpretation).</i></p> <p><i>Given this, the optimum way forward would be for a private binding ruling (PBR) to be sought from the ATO as to its views on these matters. Should a favourable ruling be received, the purchaser should be prepared to move forward with a share sale at the same price (to be confirmed) which would result in a tax saving to the Merchant Group of between \$3.2m to \$6.4m. If unfavourable, it would be better to proceed with an asset sale and manage the tax costs to the best extent possible.</i></p> <p><i>Based on our understanding of the facts we consider that there is a better than 50% chance of obtaining a favourable ruling. However, the outcome will ultimately depend on the ATO's interpretation of the facts and the relevant tax law. Generally, the ATO will respond to a ruling request within 2 – 3 months, however delays are expected if the submission is made immediately prior to the Christmas period. We expect that the costs to prepare and lodge the ruling request, having</i></p> <p style="padding-left: 40px;"><i>regard to the need to obtain agreement from the purchaser as to the facts presented and arguments put forward, to be in the range of \$30k to \$40k (excluding GST).</i></p> <p>The 'Summary of Current and Future Tax Costs' calculates the difference in the total tax costs of the share sale option and asset option as \$3,159,000 on a AUD\$50,000,000 purchase price, \$4,560,000 on a AUD\$70,000,000 purchase price and \$6,190,000 on a AUD\$90,000,000 purchase price.</p>	

Date	Event	Reference
	<p>The 'Key Issues – Vendor' were:</p> <p><i>Share sale and debt forgiveness:</i></p> <p><i>As shown on the previous page, this option provides the most efficient tax outcome for the Merchant Group (i.e. \$4.5M tax saving where earnout valued at \$20m upfront).</i></p> <p><i>The tax position is heavily dependent on the transaction being structured with a forgiveness by GSM/Tironui of amounts they are owed by Plantic. In this case, 100% of the sale proceeds will be capital proceeds for MFT disposing of the shares. Therefore, there is no up-front tax to pay on the disposal of shares in Plantic due to the level of capital losses in MFT.</i></p> <p><i>Essentially, by forgiving the debts, there is a reduction in retained profits of approximately \$50M in GSM/Tironui which reduces the future top-up tax (27.1% based on current tax rates) that would otherwise be payable on these retained profits when paid out as a dividend.</i></p> <p><i>The debt forgiveness does increase the capital gain made by MFT by the \$50m (with no capital loss to the parties forgiving the debts). While this gain is able to be offset by current capital losses, this does create a future tax cost assuming MFT expects to</i></p> <p><i>derive capital gains in future. However this cost is less than the cost of paying a dividend from GSM/Tironui because of the different tax rate on dividends (27.1%) versus discount capital gains (24.5%).</i></p> <p><i>Another advantage of a share sale transaction is there should be no tax impact if the value of earnout assessed up-front differs to actual receipts on the basis that it is all on capital account (i.e. any further gains would be offset by MFT's capital losses, and a loss would be capital loss).</i></p> <p><i>Asset sale:</i></p> <p><i>There will be an up-front tax liability under this scenario as Plantic cannot utilise all of its losses to offset the gain on sale of assets. This is due to the injections of value into Plantic via interest-free loans and trust distributions from the Merchant Group (i.e. the losses are subject to an 'available fraction').</i></p> <p><i>Plantic will also have to repay the loans to GSM/Tironui at some stage. Therefore, a</i></p>	

Date	Event	Reference
	<p><i>franked dividend will need to be declared in order to access the cash, which will be subject top-up tax [sic]. This top-up tax liability may be deferred by on-lending the funds from Plantic to MFT in the interim, rather than repaying GSM/Tironui immediately – this is possible because Plantic should not have a ‘distributable surplus’ for Division 7A deemed dividend purposes. So while this option does not eliminate the future top up tax, we think it should be possible to defer the top up tax for a similar period to that outlined above (i.e. the period until sufficient future capital gains are made to otherwise use the capital.</i></p> <p><i>There will be further tax implications under this scenario where the value of the earnout assessed up-front differs to the actual receipts (refer to second table on the page above). Where the value assessed upfront is greater than actual receipts, Plantic will derive a capital loss. However where it is higher, there will be an additional tax cost. This is because the available fraction of the remaining tax losses will be significantly eroded by the fact the interest free loans from GSM and Tironui will need to remain on foot. For this reason, it will be important to value the earnout based on your realistic expectation of the income to be received.</i></p> <p><i>As an example, if the value assigned to the earnout right initially was \$nil, an Plantic actually received \$20M, then the extra tax cost would be \$5.9M. Whereas, if the earnout right was valued at \$20M up-front, the extra tax cost is only approximately \$1.5M.</i></p>	
25/11/2014	<p>Burgess emails Morris stating that someone from EY had spoken to the ATO and that, if a ruling request was lodged within the next two weeks, there was a reasonable prospect of getting a result by the end of January. The private ruling was anticipated to address whether the ‘R&D results rules’ apply and whether IP is from R&D activities after 1 July 2011 (referred to in under the ‘Key Issues – Purchaser’)</p>	<p>PJ [210] (CAB 1 p 63)</p> <p>AB (CB Ref. CB636 p 10, CB637)</p>
26/11/2014	<p>Burgess emails Morris summarising the reasons for the higher tax cost for the Merchant Group if the transaction is an asset sale, and the process of obtaining a private ruling on the R&D issues. Email states: (Emphasis added)</p> <p><i>Vendor Tax Issues</i></p> <p><i>An asset sale results in higher upfront tax costs and higher overall tax costs for the Merchant group as</i></p>	<p>PJ [211] (CAB 1 pp 63-64)</p> <p>AB (CB Ref. CB637)</p>

Date	Event	Reference
	<p><i>compared to a share sale transaction which incorporates a 'forgiveness' by the Merchant group entities of loans made to Plantic. The overall additional tax cost of an asset sale is estimated to be in the range of \$3.2m (nil earn out payments) to \$6.4m (earn out rights of \$40m).</i></p> <p><i>These overall higher tax costs arise due to a number of factors. First, the shareholder of Plantic has a significant amount of capital losses available to it. Therefore, on the basis the full purchase price is paid for sale of those shares (i.e. loans made by other Merchant entities to Plantic are waived or forgiven as part of the transaction), no upfront tax costs arise for the Merchant group on a share sale and the sale proceeds are fully accessible to the Merchant group without further tax cost. This transaction does use more of the Group's capital losses and hence there is a future tax cost in terms of capital gains that may be made by the Group in future that would otherwise have been able to be offset against the additional capital losses used from this transaction. However, there is a significant deferral of this tax cost.</i></p> <p><i>Under an asset sale arrangement, there would be tax payable up front by Plantic because it is not able to apply all of its tax losses (\$78m) to the gain on sale of IP. The reason for this is that many of the losses were transferred into the tax consolidated group and have an 'available fraction' of around 60% due to the interest free loans provided to the Plantic Tax Consolidated group (i.e. losses can only be applied to 60% of the taxable income). The up front tax cost is estimated to range from \$1.4m to \$4.7m (depending on value of the earnout). In addition, under an asset sale the sale proceeds are not as accessible to the Merchant group. That is, there is a top up tax payable when the loan funding provided to Plantic is repaid and the cash accessed by way of franked dividend paid by the lending companies. There are some avenues available to the Merchant group to defer the 'top up' tax cost, however it will ultimately need to be paid. Finally, the top up tax on a franked dividend (currently 27.1% if the dividend amount) is higher than the future tax costs of discount capital gains (24.5%). That is, the deferred tax cost of the top up tax under an asset sale is slightly higher than the deferred tax cost on future capital gains under the share sale.</i></p> <p><i>ATO Ruling Process</i></p> <p><i>It is proposed that a private ruling be sought from the ATO to confirm the tax treatment if the Sealed Air Australian tax consolidated group were to purchase</i></p>	

Date	Event	Reference
	<i>the shares in Plantic and to then transfer the Plantic IP offshore...</i>	
26/11/2014	Morris forwards Burgess' email to Sealed Air stating: Further to our discussions this morning, detailed below is a summary of the share sale v asset sale and proposed ruling process. Can you confirm that Sealed Air is willing to support the private ruling and will proceed to negotiation a share sale agreement, as previously circulated and we commenced negotiations on.	PJ [212] (CAB 1 p 64) AB (CB Ref. CB637 p2)
11/12/2014	The introduction period expiry date under the Multivac exclusive distribution agreement is extended to 31 March 2015 with the effect that Plantic had more time to negotiate a sale before having to decide whether to continue the Multivac distribution agreement	PJ [213] (CAB 1 p 64) AB (CB Ref. CB644)
27/01/2015	MFT receives AUD\$3,413,200 into USD bank account from sale of helicopter.	AB (MFI-9, MFI- 10, CB Ref. CB192 p 87, CB826 p 8, CB440 .6687 lines 22-30)
26/01/2015	Morris emails Merchant, Paull, McGrath and Hoy stating: <i>Kuraray : The board approved the acquisition of Plantic and the M&A team was in contact last night to say we will receive their offer on Friday and they will be out next week Tuesday through Thursday to discuss/negotiate and finalise. They indicate there was discussion around the price and earn out, flagging potential price negotiation. I reminded them of the competitive nature. I spoke to my contact late last night and his feedback was that the M&A team will of course want to negotiate, but he felt the view of Plantic was positive.</i> <i>Sealed Air: I spoke with the M&A team on Wednesday morning, they are still progressing and ok to continue finalising the tax ruling so this will give us the time we need with Kuraray.</i> <i>Braskem: They advised we will get their proposal in 10 days, but they are facing a lot of issues with the Petrobras scandal etc.</i>	PJ [215] (CAB 1 pp 64-65) AB (CB Ref. CB346)
--/02/2015	BBG trading window available from towards the end of February 2015 to 30 June 2015.	PJ [377] (CAB 1 p 101) AB (CB Ref. CB482)

Date	Event	Reference
18/03/2015	Burgess emails Morris, MinterEllison and others a draft letter regarding the income tax implications for Plantic, of the proposed forgiveness of loans owing from Plantic to GSM, Tironui Pty Ltd (Tironui) and Angourie Trust (Angourie).	PJ [216] (CAB 1 p 65) AB (CB Ref. CB664)
19/03/2015	MinterEllison forwards draft letter to McGrath and McGrath forwards to Lyons stating: <i>Attached is the letter EY have prepared around the debt forgiveness strategy that will be supplied to Kuraray.</i> <i>Kuraray need to understand why the loans are being repaid etc. as they are actually buying the shares of the company not the assets and need to be comfortable that performing the loan forgiveness will not result in any potential liability when they own the company.</i> <i>Just wanted you to be aware of this and have a copy so that you were OK with the content.</i>	PJ [217] (CAB 1 p 65) AB (CB Ref. CB664)
19/03/2015	Burgess emails Morris the final debt forgiveness letter considering the application of the commercial debt forgiveness rules, the impact of the debt forgiveness on the available fraction of Plantic's transferred losses, and share capital tainting.	PJ [218] (CAB 1 p 65) AB (CB Ref. CB741 p168)
19/03/2015	Morris emails Merchant, Paull, McGrath and others with an update on contract negotiations with Kuraray stating: <i>We have just completed a long day with the Kuraray team. They have brought 5 people from Japan including GM of Legal and head of M&A.</i> <i>The confirmed the timetable signing mid next week and settlement 1st or 2nd April.</i> <i>The are some key issues still being debated these are:</i> <ul style="list-style-type: none"> <i>Tax issue for debt forgiveness was a major issue this morning but hopefully the work Luke and Ian are doing with SFG consulting on the valuation should resolve this issue.</i> <i>The definition of working capital is being challenged we have set the target as the 12 month average from July 13-June 14, this will give a \$3.5m adjustment, they want it to be 31 Dec which will provide no adjustment, and possibly a payment but we explained the rational of long stock lead time and we feel this is a bit of a try on.</i> <i>They wanted a personal guarantee from Gordon but now suggesting a letter of comfort but nothing has been agreed and Joe pushed back really hard, once they see the MFT</i> 	PJ [219] (CAB 1 p 65) AB (CB Ref. CB357)

Date	Event	Reference
	<p><i>accounts I think this will help and Joe will contact Colette to discuss. We can probably agree a correctly worded letter of comfort. Joe has in mind a negative pledge might be an option but it depends on the wording for the letter of comfort.</i></p> <ul style="list-style-type: none"> <i>Kuraray have also rejected the requirement to provide an LC but have offered to have all hearing in Australia. Again Joe has rejected this</i> <i>They have current suggest using reasonable endeavours to make the future CAPEX investment and this has been rejected we have asked for Good Faith, I guess we will land somewhere in the middle. Good faith is a higher legal standard than reasonable endeavours.</i> <p><i>The other 30 odd issue were resolved.</i></p> <p><i>We have been promised a redraft from them by 9am tomorrow and then we will meet again starting at 10am.</i></p>	
20/03/2015	<p>SFG Consulting letter assessing the market value of the loans owing from Plantic to GSM, Tironui and Angourie. Relevantly, the letter stated:</p> <p><i>Based on our understanding of the nature of the loans, we believe that the loans can be characterized as being “at call” and have a value at the time of the proposed forgiveness equal to the face value of the loan.</i></p> <p><i>That is, we agree with the characterization of the EY letter that:</i></p> <p><i>It is clear that at the time of the forgiveness, the debtor has the capacity to repay the debts. That is, an arm’s length purchaser will have entered an agreement to acquire the shares in the company (conditional on the debts being forgiven) for an amount that values the net assets of the company at an amount far in excess of the face value of the loans. Even the upfront cash consideration payable for the shares (approx. A\$58m) is greater than the face value of the loans.</i></p> <p><i>Based on this information and our understanding we are of the opinion that the market value of the loans at the time of the proposed forgiveness is equal to the face value of the loan amounts.</i></p>	<p>PJ [220] (CAB 1 pp 65-66)</p> <p>AB (CB Ref. CB666)</p>
20/03/2015	<p>Morris emails Merchant, Paull, McGrath and others stating that the earlier outstanding issues had been resolved</p>	<p>PJ [221] (CAB 1 p 66)</p>

Date	Event	Reference
	(explaining how they had been resolved), and signing and settlement dates had been planned.	AB (CB Ref. CB357)
31/03/2015	<p>Plantic share sale agreement signed. The cost base for MFT's Plantic shares was \$26,982,961.</p> <p>Clause 4.1 of the SSA identified the purchase price for the shares as having three components:</p> <ul style="list-style-type: none"> • The first component consisted of the "Initial Purchase Price", subject to a working capital adjustment under cl 4.2. The "Initial Purchase Price" was defined as USD\$45,000,000 "plus the Target Cash Amount". The "Target Cash Amount" was defined as the cash balance of the Group as notified by the Vendor two business days prior to the completion date. • The second component of the purchase price consisted of the "Milestone Amounts". • The third component of the purchase price consisted of the "Earn-Out Amounts". <p>Clause 2.1 provided that completion of the sale must not occur until all conditions were fulfilled or waived. Condition 3 required the vendor to procure the forgiveness of the Plantic Loans. Condition 5 required the vendor to certify, in the form set out in Schedule 12, that the "Warranties" were true and accurate as at completion. Schedule 12 contained a "Warranty Certificate" which confirmed that each of the "Warranties" was true and accurate. Schedule 4 to the SSA was entitled "Warranties". Warranty 11 in Schedule 4 was about "Tax". These included (CB370 at page 88):</p> <p style="padding-left: 40px;">11.10 The Vendor is not aware as at the date of this agreement and as at Completion that a Group Company has a share capital account that is tainted under Division 197 of the 1997 Tax Act or former section 160ARDM of the 1936 Tax Act by the transfer of an amount to the share capital account from any of its other accounts, including as a result of the release or forgiveness of debt in Condition 3 of clause 2.1.</p> <p style="padding-left: 40px;">...</p> <p style="padding-left: 40px;">11.20 No debt (including any debt forgiven or released pursuant to condition 3 of clause 2.1) owed by a Group Company has been, or has been agreed to be, released, waived, forgiven or otherwise extinguished by a person which would result in a net forgiven amount in accordance with Division 245 of Schedule 2C of the 1936 Tax Act or Division 245 of the 1997 Tax Act.</p>	<p>PJ [222]-[223] (CAB 1 pp 66-67)</p> <p>AB (CB Ref. CB370, CB714 p 17, CB429)</p>
02/04/2015	Deed of forgiveness between GSM, Tironui, Angourie and Plantic signed.	PJ [227] (CAB 1 p 68)

Date	Event	Reference
	<p>It provided that, with effect “from the Effective Time” each of GSM, Tironui and Angourie irrevocably and unconditionally forgives and releases Plantic from all liability under or in respect of the total amount owing (including any outstanding principal and accrued interest) by Plantic to each of those entities.</p> <p>The “Effective Time” was defined to mean immediately prior to Completion. “Completion” was defined to mean “completion of the sale and purchase of all of the shares in Plantic pursuant to a share sale agreement dated on or around the date of this deed between [the MFT and Kuraray].</p>	AB (CB Ref. CB340)
02/04/2015	Completion of the Plantic share sale occurs.	PJ [228] (CAB 1 p 68)
02/04/2015	MFT receives USD\$45,558,827.30 on settlement.	PJ [229] (CAB 1 p 68)
17/04/2015	MFT draws down \$10,000,000 on the margin loan and purchases BBG shares.	PJ [230] (CAB 1 p 68)
27/04/2015	Burgess emails Lyons a preliminary draft of letter of advice regarding the income taxation implications of the transactions with Kuraray.	<p>PJ [231] (CAB 1 p 68)</p> <p>AB (CB Ref. CB673, CB674)</p>
30/04/2015	<p>Merchant Group meeting during which cash flow issues in GMSF were discussed, including:</p> <ul style="list-style-type: none"> <i>i. Minimum Account Based Income Stream payments for FY15 is \$523,240</i> <i>ii. Consider whether Gordon should make a contribution to the fund in FY15 in order to fund his pension or, should he stop taking pension for the time being (depending on cash needs of the fund)</i> <ul style="list-style-type: none"> <i>a. Concessional contributions cap for FY15 is \$35,000 (note that once Gordon turns 75 only concessional contributions can be employer contributions)</i> <i>b. Non-concessional contribution cap for FY15 is \$180,000 (note that once Gordon turns 75 cannot make further non-concessional contributions - consider cash requirements of the fund since acquiring \$6 million worth of BBG shares from MFT)</i> <i>c. Concessional contributions will be taxed at 30% where an individual's adjusted taxable income is greater than \$300,000 (may impact Gordon)</i> 	<p>PJ [232] (CAB 1 p 68)</p> <p>AB (CB Ref. CB675)</p>

Date	Event	Reference
	<p>The minutes record the decision was made to make a non-concessional contribution, cash flow permitting, and cease the pension from 1 July 2015 to commute the pension payable from 1 July 2015. They state:</p> <p><i>Sue advised the minimum pension has been withdrawn for 2015</i></p> <p><i>We considered commuting the pension from 1 July 2015 to preserve cash reserves in the Superannuation Fund and advised of the tax implications and agreed to cease from 1 July 2015 as there is minimal tax saving due to lower income in Fund</i></p> <p><i>Discussed making a non-concessional contribution of \$180k before 30 June 2015 to provide additional cash flow to the Fund and agreed it would be made cash flow permitting</i></p> <p><i>Discussed below market rent for factories, Colette confirmed the tenants are very good and long term and as there is not much demand in the area they only increase rent by CPI each year. As the tenants are unrelated parties there should be no issues from an SMSF perspective.</i></p>	
25/06/2015	MFT receives working capital adjustment payment for Plantic share sale of USD\$407,115.	PJ [233] (CAB 1 p 68)
25/06/2015	GMSF commutes account-based income stream and rolls account balance into accumulation mode with effect from 1 July 2015.	<p>PJ [234] (CAB 1 pp 68-69)</p> <p>AB (CB Ref. CB716 pp285-286)</p>
25/06/2015	<p>Trustee of MFT makes resolution in respect of trust income for the year ended 30 June 2015 stating:</p> <p><i>Pursuant to Clause 4 of the Deed, the Trustee can appropriate the "net income" of the trust fund in favour of one or more beneficiaries. The term "net income" is not defined and must be determined by the Trustee having regard to ordinary concepts of income and capital. However, pursuant to clause 8(o) of the Deed the Trustee has the power to determine whether any increase or decrease in the value of any property or holdings of property, or any receipts or payment from, for or in connection with any real or personal property, shall be treated as and credited or debited to capital or to income. Pursuant to this clause, the Trustee RESOLVED that for the year ended 30 June 2015</i></p> <ul style="list-style-type: none"> <i>Net income shall include realised foreign exchange gains and losses; and</i> 	<p>Reasons for decision of the Full Court of the Federal Court of Australia (FCJ) [387] (CAB 8 p 304)</p> <p>AB (CB Ref. CB396)</p>

Date	Event	Reference
	<ul style="list-style-type: none"> <i>The following components of trust distributions received are to be treated as capital:</i> <ul style="list-style-type: none"> <i>tax deferred components (e.g. return of capital);</i> <i>capital gains components (e.g. underlying capital profits); and</i> <i>all gains and losses on disposals of assets are to be treated as capital.</i> <p>IT WAS RESOLVED that the Trust Income for the year ended 30 June 2015 (if any) be appropriated and set aside for the beneficiaries as follows: GSM Pty Ltd, 100%.</p>	
30/06/2015	Merchant makes a non-concessional contribution of \$180,000 to the GMSF in the year ended 30 June 2015.	PJ [235] (CAB 1 p 69) AB (CB Ref. CB675)
--/09/2015	In September 2015, the MFT acquires 4,200,000 shares in BBG for approximately \$2,590,000 (58.9 cents per share).	PJ [237] (CAB 1 p 69)
17/11/2015	Ms Reeves of EY sends an email to Ms Lyons in relation to the finalisation of the audit for the GMSF. Ms Reeves states that “the investment strategy for the superannuation fund needs to be updated for the current allocation of investments”. Ms Reeves provides an investment strategy template and resolution for the trustee to complete. Ms Reeves provides an investment summary report.	PJ [238] (CAB 1 p 69) AB (CB Ref. CB700)
19/11/2015	Trustee of GMSF records a new investment strategy for GMSF (2015 ISD).	PJ [239] (CAB 1 p 69) AB (CB Ref. CB701)
20/07/2020	<p>The Commissioner of Taxation made determinations to cancel identified tax benefits from two schemes:</p> <p>(1) the BBG Share Sale Scheme. The Commissioner made a determination under s 177F in reliance upon s 177D of the 1936 Act (s 177D Determination). The Commissioner determined that the BBG Share Sale Scheme was entered into or carried out for the dominant purpose of enabling the MFT to obtain a tax benefit, being the capital loss incurred by it on the BBG Share Sale (BBG Capital Loss), which at the time of making the determination, the Commissioner had calculated as \$56.5 million. The Commissioner cancelled that benefit by determining under s 177F(1)(c) that the whole of the capital loss was not incurred by the MFT, with the effect of increasing the taxable income of the MFT. An amended assessment giving effect to the determination</p>	Reasons for decision of the FCJ [84] (CAB 8 pp 225-226)

Date	Event	Reference
	<p>was issued to GSM Pty Ltd as the beneficiary presently entitled to the income of the MFT.</p> <p>(2) the Debt Forgiveness Schemes. The Commissioner made determinations under s 177F in reliance upon s 177E of the 1936 Act. The Commissioner determined the debt forgiveness by each of the related company lenders, GSM and Tironui Pty Ltd, to be schemes having substantially the effect of schemes by way of or in the nature of dividend stripping under s 177E. The Commissioner determined pursuant to s 177F(1)(a) that the entirety of the forgiven amounts be included in the assessable income of Mr Merchant, the sole shareholder of each of GSM and Tironui, for the 2015 year.</p>	
24/07/2020	The Commissioner of Taxation issued GSM a notice of amended assessment for the 2015 income year, increasing the tax payable by \$12,877,000.90.	PJ [12] (CAB 1 pp 13-14) AB (CB Ref. CB695)
27/07/2020	<p>The Commissioner of Taxation issued:</p> <ul style="list-style-type: none"> a) to the Trustee of the MFT, a notice of assessment of scheme shortfall penalty of \$6,438,500.45 in relation to the 2015 income year; b) to Merchant, a notice of amended assessment for the 2015 income year, increasing tax payable by \$24,681,480.83; c) to Merchant, a notice of assessment of scheme shortfall penalty of \$6,664,857.50 in relation to the 2015 income year. 	PJ [12] (CAB 1 pp 13-14) AB (CB Ref. CB696, CB788 and CB833e)
22/09/2020	Merchant, the MFT and GSM lodge a joint objection to each of the assessments.	PJ [16] (CAB 1 pp 14-15) AB (CB Ref. CB790)
27/07/2021	The Commissioner of Taxation in separate decisions disallowed, in full, the 22 September joint objection.	PJ [16] (CAB 1 pp 14-15) AB (CB Ref. CB797 and CB798)
03/09/2021	GSM and Merchant commence appeals in the Federal Court of Australia against the objection decisions relating to the assessments (NSD 907/2021 and NSD 908/2021).	FCJ [85] (CAB 8 pp 225-226)
15, 18 – 20, 25/03/2024	The trial of the proceedings is heard before Thawley J.	CAB 1

Date	Event	Reference
14/05/2024	The primary judge delivers judgment in <i>Merchant v Commissioner of Taxation</i> [2024] FCA 498.	CAB 1
29/05/2024	Final orders in NSD907/2021 (in relation to the 177E issue), NSD908/2021 (in relation to the 177D issue, except as to costs) and NSD1161/2021 (in relation to the TOFA issue) made.	CAB 2 CAB 4
18/06/2024	The primary judge delivers judgment in relation to costs associated with NSD908/2021 (in relation to the 177D issue), with reasons in <i>GSM Pty Ltd v Commissioner of Taxation</i> [2024] FCA 653.	CAB 5 CAB 6
11/06/2024	GSM and Merchant commence proceedings in the Full Court of the Federal Court (Full Court) appealing against the decision of Thawley J.	CAB 7 FCJ [90] (CAB 8 p 229)
06/11/2024 - 07/11/2024	The appeal is heard in the Full Court before Logan, McElwaine and Hespe JJ. Merchant parties amended notice of appeal filed.	CAB 8 CAB 7
22/04/2025	The Full Court delivers judgment in <i>Merchant v Commissioner of Taxation</i> [2025] FCAFC 56.	CAB 8
18/06/2025	The Full Court delivers judgment in relation to costs in <i>Merchant v Commissioner of Taxation</i> (Costs) [2025] FCAFC 81 and final orders.	CAB 9 CAB10
09/10/2025	The High Court of Australia (High Court) grants special leave to GSM, Merchant and the Commissioner of Taxation to appeal part of the judgment of the Full Court.	CAB 12 CAB 16
22/10/2025	The Commissioner of Taxation commences proceedings in the High Court (S157/2025).	CAB 13
23/10/2025	GSM and Merchant commence proceedings in the High Court (S158/2025).	CAB 17
31/10/2025	GSM and Merchant file a cross appeal and Notice of Contention in the Commissioner of Taxation's appeal before the High Court (S157/2025).	CAB 14 CAB 15
31/10/2025	The Commissioner of Taxation files a cross appeal in GSM and Merchant's appeal before the High Court (S158/2025).	CAB 18
18/11/2025	GSM and Merchant file an amended Notice of Contention in the Commissioner of Taxation's appeal (S157/2025).	-

Dated: 27 November 2025

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Kristen Deards SC
*Counsel for the Commissioner of
Taxation*
(02) 9376 0672
kristen.deards@banco.net.au

Justin Gleeson

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Justin Gleeson SC
*Counsel for Gordon Stanley Merchant
and GSM Pty Ltd ACN 074 508 124*
(02) 8239 0207
justin.gleeson@banco.net.au