



HIGH COURT OF AUSTRALIA

10 June 2026

COMMISSIONER OF TAXATION OF THE COMMONWEALTH OF AUSTRALIA v
BENDEL & ANOR
[2026] HCA 18

Today, the High Court dismissed an appeal from a judgment of the Full Court of the Federal Court of Australia. The appeal concerned the construction of the expanded definition of "loan" in s 109D(3) of the *Income Tax Assessment Act 1936* (Cth) ("the 1936 Act").

In each of the years of income ending 30 June 2014 to 30 June 2017, Gleewin Pty Ltd ("Gleewin") as trustee of the Steven Bendel 2005 Discretionary Trust ("the 2005 Trust") resolved to "set aside" for the benefit of its discretionary objects, Mr Bendel and Gleewin Investments Pty Ltd ("Gleewin Investments"), defined percentages of the net income of the 2005 Trust. Mr Bendel controlled each of Gleewin and Gleewin Investments, and, as such, each company had knowledge of the affairs of the other, and of Mr Bendel's own affairs and circumstances. The terms of the 2005 Trust required that the amounts set aside for Gleewin Investments be held on separate trust. Gleewin Investments did not call for payment of those amounts (called "unpaid present entitlements") at any relevant time.

The Commissioner issued notices of amended assessment to Gleewin Investments for each of the relevant years of income on the basis that the amounts set aside for Gleewin Investments in those years were each a "loan" for the purposes of s 109D(3). Therefore, the Commissioner considered that, under s 109D(1), the "loans" made by Gleewin Investments were deemed dividends to be included in the assessable income of Gleewin under s 44(1) of the 1936 Act, and consequently that Mr Bendel and Gleewin Investments, as discretionary objects of the 2005 Trust, were liable to be taxed on their respective "shares" of the net income of the 2005 Trust.

Mr Bendel and Gleewin Investments sought review of the Commissioner's objection decisions in the Administrative Appeals Tribunal. The Tribunal concluded that the amounts set aside for Gleewin Investments were not "loans" for the purposes of s 109D(3) but rather that the unpaid present entitlements were, in substance, lent to Mr Bendel, such that he should have been taxed in accordance with Subdiv EA of Div 7A of the 1936 Act. The Full Court unanimously dismissed the Commissioner's appeal from that decision.

The High Court held, by majority, that by not calling for payment of the unpaid present entitlements set aside for it, Gleewin Investments did not provide "financial accommodation" under s 109D(3)(b), nor did it "in substance" effect a "loan of money" under s 109D(3)(d), to Gleewin. In addition, by majority, the High Court held that the resolutions to set aside the amounts for Gleewin Investments did not relevantly effect the distribution of those unpaid present entitlements, nor did there arise a relationship of debtor and creditor between Gleewin and Gleewin Investments. Rather, by the resolutions, the unpaid present entitlements were held on separate trust for Gleewin Investments.

This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.