Australian Government
Australian Taxation Office

Decision impact statement

Oracle Corporation Australia Pty Ltd v Commissioner of Taxation [2025] FCAFC 145

Relying on this Decision impact statement

This publication provides our view on the implications of the court or tribunal decision discussed, including on related public advice or guidance.

Taxpayers can rely on this Decision impact statement to provide them with protection from interest and penalties in the following way. If a statement turns out to be incorrect and taxpayers underpay their tax as a result, they will not have to pay a penalty, nor will they have to pay interest on the underpayment provided they reasonably relied on this Decision impact statement in good faith. However, even if they do not have to pay a penalty or interest, taxpayers will have to pay the correct amount of tax provided the time limits under the law allow it.

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Venue:	Full Federal Court of Australia
Venue reference No:	NSD 1716 of 2024
	NSD 1717 of 2024
	NSD 1718 of 2024
Judgment date:	21 October 2025

Summary of decision

1. This Decision impact statement outlines the ATO's response to the decision of the Full Court of the Federal Court of Australia in *Oracle Corporation Australia Pty Ltd v Commissioner of Taxation* [2025] FCAFC 145.

2. The decision concerned an appeal against the refusal of the Appellants' applications to stay their Federal Court of Australia proceedings (the substantive proceedings) pending finalisation of the mutual agreement procedure (MAP) between the competent authorities of Australia and Ireland under the *Agreement between the Government of Australia and the Government of Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains* [1983] ATS 25 (DTA).

3. At first instance[1], the Commissioner successfully opposed the stay, relying on evidence that the case had broader significance, and would more efficiently resolve the dispute.

4. The Full Court concluded that, on the evidence before it, the stay applications should have been granted. The decision does not concern, and does not determine, the substantive characterisation of software payments under Australia's tax treaties.

5. All judgment references in this Decision impact statement are to the judgment of *Oracle Corporation Australia Pty Ltd v Commissioner of Taxation* [2025] FCAFC 145, unless otherwise indicated.

Overview of facts

6. The substantive proceedings test the position expressed in Taxation Ruling TR 2026/2 *Income tax: royalties - character of payments in respect of software and intellectual property rights* that certain payments made by Australian software distributors are royalties and subject to withholding tax.

7. In this Decision impact statement, the 3 appellants are collectively referred to as Oracle. Oracle Corporation Australia Pty Ltd and Vantive Australia Pty Ltd are collectively referred to as Oracle Australia and Oracle CAPAC Services Unlimited Company is referred to as Oracle Ireland.

8. The central issue in dispute concerns whether payments from Oracle Australia to Oracle Ireland (the central licensor of Oracle software to Oracle subsidiaries) to allow Oracle Australia to distribute software to other software distributors and end users in Australia are 'royalties' as defined by section 6(1) of the *Income Tax Assessment Act 1936* and Article 13 of the DTA.

9. The Commissioner concluded that the payments were royalties subject to withholding tax under sections 128B and 128C of the *Income Tax Assessment Act 1936*, and notified Oracle Australia of the penalties for failing to withhold (section 16-30 of Schedule 1 to the *Taxation Administration Act 1953*).

10. In the typical Australian tax treaty definition, as well as the DTA, a payment for the use of, or the right to use, copyright is a royalty. Since 'copyright' is not defined, the Commissioner contended that the term takes its meaning from Australian law and that this meant the dispute largely turned on the application of the *Copyright Act 1968*.

11. Oracle commenced proceedings seeking declarations from the Federal Court that the payments are not royalties, as well as appealing the Commissioner's objection decisions. However, Oracle also applied to stay those proceedings to allow the MAP cases between Australia and Ireland, including any potential arbitration, to be completed. The outcome of any arbitration would not be precedential and would not be accompanied by reasons.

12. At first instance, Justice Perram concluded that the stay should be refused.[2] His Honour found that the public interest in the judicial determination of the royalties question for the benefit of others was of sufficient weight such that the stay applications should be refused.

[1] *Oracle Corporation Australia Pty Ltd v Commissioner of Taxation (Stay Application)* [2024] FCA 1262.
[2] *Oracle Corporation Australia Pty Ltd v Commissioner of Taxation (Stay Application)* [2024] FCA 1262 at [85] and [86].

Issues decided

13. The issue on appeal was whether the primary judge erred in concluding that the stay should be refused on the public interest grounds.

14. Hespe, Button and Younan JJ found:

- the Commissioner had not led sufficient evidence to establish that Oracle's arrangements were sufficiently similar to the arrangements of other entities such that the Court decision would provide broader guidance[3],
- the letters from the United States Treasury were not sufficient evidence that there was broader uncertainty on how the word 'copyright' should be interpreted in Australia's tax treaties.[4]

15. The Full Court allowed the appeal and ordered that the substantive proceedings be stayed pending completion of the MAP processes.

ATO view of this decision

16. The Full Court's conclusions were directed to the suitability of these proceedings as a vehicle for resolving broader issues of public importance, based on the evidence before it. The findings on the evidence meant that Oracle was not a suitable case for the Commissioner to pursue an appeal to the High Court of Australia.

17. The Commissioner recognises the MAP as an important mechanism for resolving cases of potential double taxation between competent authorities, operating alongside domestic legal processes within Australia's treaty framework. However, where resolution through administrative or bilateral processes does not provide sufficient clarity for the consistent administration of Australia's tax treaties, we will continue to regard judicial consideration as an appropriate mechanism for resolving questions of treaty interpretation.

18. The Commissioner's approach to characterising payments as royalties is consistent with established principles, including the need to identify whether consideration is paid for the use, or right to use, intellectual property rights.

19. Nonetheless, we acknowledge that extensive feedback has been provided on the position expressed in TR 2026/2, and the complexity in applying established principles of royalty characterisation to modern business models is an issue that continues to arise in compliance activity. A court decision would therefore provide welcome guidance on the interpretation of royalties in the context of Australian tax treaties.

20. We will continue to seek appropriate opportunities to obtain judicial clarification on these issues, consistent with established treaty principles and the need for clarity in their application to contemporary software arrangements.

21. Where we seek to rely on the broader public importance of court proceedings to oppose a stay determination, we will have regard to the Full Court's comments concerning the need for more detailed evidence, including of the arrangements of other taxpayers that may benefit from judicial consideration of an issue.

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[3] At [84].
[4] At [89].

Comments

22. We invite you to advise us if you feel this decision has consequences we have not identified. Forward your comments to the contact officer.

Due date:	2 October 2026
Contact officer:	Melissa Spurge
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Commissioner of Taxation
4 September 2026

References

Related rulings and determinations:
TR 2026/2

Legislative references:
- ITAA 1936 128B
- ITAA 1936 128C
- TAA 1953 Sch 1 16-30
- Copyright Act 1968

Cases relied on:
- Oracle Corporation Australia Pty Ltd v Commissioner of Taxation [2024] FCA 1262; 2024 ATC 20-936
- Oracle Corporation Australia Pty Ltd v Commissioner of Taxation [2025] FCAFC 145; 2025 ATC 20-975

Other references:
Agreement between the Government of Australia and the Government of Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains [1983] ATS 25

ATO references

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