Australian Government
Australian Taxation Office

Decision impact statement

Ziegler v Commissioner of Taxation [2025] FCAFC 168

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.

Table of Contents	**Paragraph**

Venue:	High Court, Special Leave Application
	Full Federal Court
	Administrative Appeals Tribunal
Venue reference No:	B45/2025 (High Court – special leave disposition)
	B46/2025 (High Court – special leave disposition)
	QUD 617 of 2024 (Full Federal Court)
	QUD 618 of 2024 (Full Federal Court)
	2019/6154; 2019/6155; 2020/4276; 2020/4278; 2020/5219; 2021/0463; 2021/0464; 2021/0465; 2021/0466 (Administrative Appeals Tribunal)
	2020/4277; 2020/4279-4281; 2021/0467-0468; 2021/0469-0472 (Administrative Appeals Tribunal)

Judgment date: 9 April 2026 (High Court Special Leave Application)
26 November 2025 (Full Federal Court)
20 September 2024 (Administrative Appeals Tribunal)

Summary of decision

1. This Decision impact statement outlines the ATO's response to this case, which considered the tax effect of various transactions undertaken by Mr Ziegler (taxpayer) and associated entities following the settlement of earlier disputes with the Commissioner.

2. In particular, this case considered:

- whether a credit recorded on an income tax account was relevantly received as an assessable recoupment where a corresponding amount had been deducted from assessable income in an earlier income year
- the Commissioner's duty to assess penalties and notify liability to penalties where a previously notified liability is considered incorrect
- the proper identification of 'scheme' and 'purpose' relevant to a determination made under paragraph 177EA(5)(b) of the *Income Tax Assessment Act 1936* (ITAA 1936) that no imputation benefit is to arise, and
- the statutory meaning of 'excessive' and the taxpayer's onus of proof in proceedings under Part IVC of the *Taxation Administration Act 1953* (Part IVC proceedings).

3. The decision provides authoritative guidance on each issue and confirms key aspects of the Commissioner's existing administrative practice.

4. All judgment references in this Decision impact statement are to the judgment of *Ziegler v Commissioner of Taxation* [2025] FCAFC 168 unless otherwise indicated.

Overview of facts

5. Following settlement of earlier disputes with the Commissioner, an income tax assessment of Orrong Strategies Pty Ltd (Orrong) for the 2008 income year was made.

6. In accordance with the terms of the settlement, the tax liabilities were payable in 2 instalments, the first on 20 August 2009, the second on 21 July 2010.

7. The first amount of $550,000 was paid on time. The balance of $3.35 million plus general interest charge (GIC) was paid early, in the 2010 income year.

8. The taxpayer and associated entities undertook various transactions which ultimately resulted in the taxpayer getting an imputation credit of $2,993,610 from a dividend declared by Orrong. The Court found that, taking into account deductions to which the taxpayer considered he was entitled, and carried forward losses, the taxpayer received a refundable tax offset of $2,993,610 in the 2010 income year.

9. The Commissioner made a determination under paragraph 177EA(5)(b) of the ITAA 1936 that no imputation benefit was to arise and gave the taxpayer an administrative overpayment notice under section 8AAZN of the *Taxation Administration Act 1953* (TAA).

10. Additionally:

- In the 2009 income year, the taxpayer had claimed, and was allowed, a deduction under former paragraph 25-5(1)(c) of the *Income Tax Assessment Act 1997* (ITAA 1997) for GIC of $13,698,643.

- To give effect to the settlement, among other things, the Commissioner had recalculated the taxpayer's liability to the GIC and recorded a credit on the taxpayer's income tax account in the sum of $13,698,643 on 16 August 2010.
- The taxpayer returned that amount as an assessable recoupment in the 2011 income year but later took the position that it was not an assessable recoupment under subsection 20-20(3) of the ITAA 1997.

11. Following an audit, the Commissioner issued penalty notices to the taxpayer for the 2011 and 2012 income years, and to Wellton Holdings Pty Ltd for the 2011 to 2014 income years assessed on the basis of 25% of the relevant shortfall amounts.

12. Upon further review, the Commissioner concluded that the shortfall amounts resulted from intentional disregard of a taxation law and issued penalty notices recording administrative penalties calculated at 75% or 90% of the relevant shortfall. The Commissioner did not seek to disturb the Administrative Appeals Tribunal's decision[1] on review that the relevant shortfalls were instead the product of recklessness that ought to be calculated on 50% of the relevant shortfall.

Issues decided

'Assessable recoupment' issue

13. The Court held that a credit recorded on an Income Tax Account reflecting a recalculation of a liability to the GIC is relevantly 'received' as an assessable recoupment where a corresponding amount has in fact been deducted from assessable income in an earlier year.[2]

14. In particular, the Court found that the Commissioner's credit to the taxpayer's Income Tax Account of an amount for refund of the GIC reflected an actual transaction that was 'received as recoupment of a loss or outgoing' within the meaning of subsection 20-20(3) of the ITAA 1997.[3]

15. Importantly, the Court confirmed that paragraph 20-20(3)(b) of the ITAA 1997 is engaged where an amount has been actually deducted, regardless of whether the taxpayer was lawfully entitled to that deduction.

'Power to amend an assessment of administrative penalty' issue

16. The Court held that the Commissioner's duty under subsection 298-30(1) of Schedule 1 to the TAA to assess administrative penalties is not spent when first exercised. Rather, the Commissioner has a continuing duty and power to assess liability to administrative penalties as the occasion requires.[4]

17. This decision is now the binding authority for the proposition that[5]:

> … if the Commissioner, having made an assessment of penalties under s 298-30(1), reaches the view that the assessment is incorrect, then the Commissioner must continue his obligation of assessment under s 298-30(1) and notify the liability to pay the penalty

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[1] *BSKF and Commissioner of Taxation* [2024] AATA 3377.

[2] In this way, an equivalent outcome is achieved where a reduced liability to GIC is the result of a recalculation of that liability (following an amended assessment) to that achieved under subsection 20-25(2A) of the ITAA 1997 where the Commissioner remits an amount of GIC. Under subsection 20-25(2A), the remitted amount of GIC is taken to be received as a recoupment.

[3] See [20] and [21] (compare with taxpayer's contention recorded at [16(a)]).

[4] See [71–78] (in particular [72], [74] and [78]).

[5] See [63].

> under s 298-10. … A taxpayer dissatisfied with the assessment as altered may object by reason of s 298-30(2).

'177EA determination' issue

18. The Court confirmed that:

- a scheme for the disposition of membership interests may comprise a single step
- the purpose in paragraph 177EA(3)(e) of the ITAA 1936 is that of persons who entered into or carried out the scheme, determined objectively having regard to the relevant circumstances, and
- it is not necessary to incorporate those circumstances as a step in the scheme.

19. The decision reinforces the breadth of section 177EA of the ITAA 1936, including the inclusive nature of the 'relevant circumstances' in subsection 177EA(17) of the ITAA 1936.

'In Part IVC proceedings, an assessment is shown to be excessive only by reference to the proper operation of the relevant statutory provisions' issue

20. The Court confirmed that, in Part IVC proceedings, 'excessiveness' concerns the taxpayer's substantive liability under the tax law.

21. A taxpayer must establish what the correct assessment should have been; it is not sufficient to simply identify error.

22. In particular, a (contended) departure from the terms of a settlement deed does not establish excessiveness, as liability is determined by the operation of the tax law unless statutory effect is given to such arrangements (such as by way of a binding taxation ruling).

ATO view of this decision

23. We consider that the decision confirms and strengthens the Commissioner's existing views.

24. In particular, the decision provides authority for the following propositions:

- A recoupment is assessable under section 20-20 of the ITAA 1997 where an amount has been in fact deducted, irrespective of entitlement.
- The Commissioner has a continuing duty to assess administrative penalties and may amend a penalty assessment where it is considered incorrect.
- For the purposes of section 177EA of the ITAA 1936, a scheme may be identified broadly, including as a single step, and purpose is determined objectively by reference to the relevant circumstances.
- In Part IVC proceedings, 'excessiveness' depends on the correct application of the tax law, and not on administrative conduct or contractual arrangements.

Implications for affected advice or guidance

25. The decision does not require any change to existing ATO advice and provides additional judicial support for current administrative practice.

Comments

26. 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:	17 July 2026
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Commissioner of Taxation
17 June 2026

References

Legislative references:

ITAA 1936 177EA
ITAA 1936 177EA(3)(e)
ITAA 1936 177EA(5)(b)
ITAA 1936 177EA(17)
ITAA 1997 20-20
ITAA 1997 20-20(3)
ITAA 1997 20-20(3)(b)
ITAA 1997 20-30
ITAA 1997 25-5(1)(c)
TAA 1953 8AAZN
TAA 1953 Sch 1 298-30(1)

Cases relied on:

BSKF and Commissioner of Taxation [2024] AATA 3377; 2024 ATC 10-735; 121 ATR 182
Ziegler v Commissioner of Taxation [2025] FCAFC 168; 313 FCR 574; 2025 ATC 20-983
Ziegler v Commissioner of Taxation [2026] HCADisp 89

ATO references

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