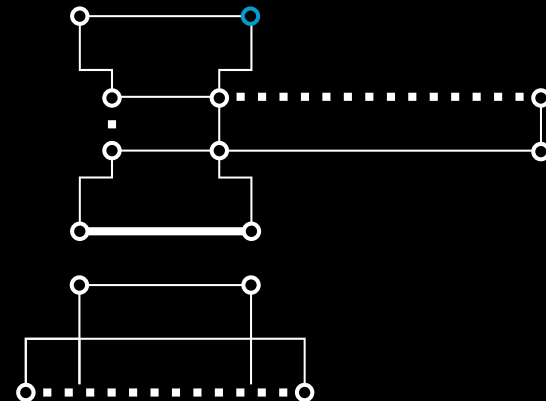


# Tax Notes Series

6 CPD hours



## *The capital revenue distinction in the current judicial landscape*

Whether an amount is on capital or revenue account is a perennial issue for tax practitioners. The characterisation of an expense requires a critical analysis between the circumstances in which an amount is incurred and the application of legal principles. Tax practitioners should be equipped with an expert understanding of how the Courts have recently approached these issues and be able to identify and advise in areas where there continues to be uncertainty.

Join us for a 6-part webinar series scheduled throughout July and August where our presenters will consider each of the recent High Court and Federal Court decisions on this issue. The series will culminate in a facilitated panel discussion made up of tax and legal experts. Our all-star line-up of leading tax professionals will guide you through the issues, share their insights and provide practical solutions to the challenges experienced by practitioners in this area.

### Topics

- Part 1: *Origin Energy Limited v Commissioner of Taxation* (No 2) [2020]
- Part 2: *Healius Limited v Commissioner of Taxation* [2019] FCA 2011
- Part 3: *Mussalli v Commissioner of Taxation* [2020] FCA 544
- Part 4: *Commissioner of Taxation v Sharpcan Pty Limited* [2019] HCA 36
- Part 5: *Watson as Trustee for the Murrindindi Bushfire Class Action Settlement Fund v Commissioner of Taxation* [2020] FCAFC 92
- Part 6: Panel discussion on recent capital v revenue decisions

### Who should attend?

The series has been designed specifically for tax professionals working in-house or advising SME, large and multinational corporates.

### Presenters

<b>Mat Chamberlain, CTA</b>	EY
<b>Fiona Knight, CTA</b>	Australian Taxation Office
<b>Rachel Law, CTA</b>	Hall & Wilcox Lawyers
<b>Kaitilin Lowdon, ATI</b>	Arnold Bloch Leibler
<b>Claire Nicholson, CTA</b>	Victorian Bar
<b>Ari Rosenbaum</b>	King & Wood Mallesons
<b>Jerome Tse, CTA</b>	King & Wood Mallesons
<b>Anna Wilson, FTI</b>	Victorian Bar

### Registration options

- 1 Full series registration – choose to be automatically registered to attend each of the webinars and save.
- 2 Individual sessions – tailor your attendance by simply indicating your preferred session/s on the registration form overleaf.

### Webinar schedule

Friday, 24 July 2020  
 Friday, 31 July 2020  
 Friday, 7 August 2020  
 Friday, 14 August 2020  
 Friday, 21 August 2020  
 Friday, 28 August 2020

**Time:** 10:30-11:30am AEST

**Location:** Online

### CPD proficiency level:

Proficient 

**Register now:**

[taxinstitute.com.au/taxnotes](https://taxinstitute.com.au/taxnotes)

**For event queries please contact:**

@britneymcivain@taxinstitute.com.au

 +61 03 9603 2007

# Technical program

Date / Time	Topic	Presenter
Friday, 24 July 2020	<p><b>Part 1: <i>Origin Energy Limited v Commissioner of Taxation</i> (No 2) [2020]</b></p> <p>This case arose in the context of the privatisation of the retail sale of electricity in NSW. The question before the court was whether “capacity charges” paid by Origin in the 2011, 2012 and 2013 tax years were deductible either under section 8-1 or section 40-880. In this session, Anna will address:</p> <ul style="list-style-type: none"> <li>– the factors that led the court to determine that the charges were capital in nature and therefore not deductible under section 8-1;</li> <li>– the court’s analysis of section 40-880 and the relevant exclusions to it, being the exclusions in ss 40-880(5)(d) and 40-880(5)(f).</li> </ul>	<p><b>Anna Wilson, FTI</b></p> <p>Victorian Bar</p>
Friday, 31 July 2020	<p><b>Part 2: <i>Healius Limited v Commissioner of Taxation</i> [2019] FCA 2011</b></p> <p>In this case, the Federal Court found that lump sum payments made by the Taxpayer to acquire medical practices were deductible under section 8-1 of the Income Tax Assessment Act 1997. This session will discuss in detail the facts of the Healius case as well as Perram J’s reasoning for allowing a deduction. It will also focus on the broader implications of the decision for the purpose of determining the distinction between capital/revenue and how the judgement may be relevant in practice.</p>	<p><b>Rachel Law, CTA</b></p> <p>Hall &amp; Wilcox Lawyers</p>
Friday, 7 August 2020	<p><b>Part 3: <i>Mussalli v Commissioner of Taxation</i> [2020] FCA 544</b></p> <p>Ari will be presenting on <i>Mussalli v Commissioner of Taxation</i> [2020] FCA 544, a case which considers the tax treatment for payments described as “prepaid rent” and paid by a franchisee to a franchisor upon entering into lease and license agreements. The presentation will:</p> <ul style="list-style-type: none"> <li>– provide an overview of the principles confirmed by the Court as being relevant to determining whether an outgoing is of a capital or revenue nature;</li> <li>– focus on the key issues identified by the Court in finding for the Commissioner that the payments were on capital account and therefore not deductible; and</li> <li>– explore the practical implications of the decision.</li> </ul>	<p><b>Ari Rosenbaum</b></p> <p>King &amp; Wood Mallesons</p>
Friday, 14 August 2020	<p><b>Part 4: <i>Commissioner of Taxation v Sharpcan Pty Ltd</i> [2019] HCA 36</b></p> <p>In <i>Sharpcan</i>, the High Court unanimously held that payments made by the trustee of the Daylesford Royal Hotel Trust to the Victorian State Government for 16 gaming machine entitlements were on capital account and not deductible under section 8-1 of the <i>Income Tax Assessment Act</i> 1997. The session will consider the reasoning of the High Court and Thawley J (who, dissenting in the Full Federal Court, also held the payments were on capital account). The session will also consider whether the High Court has established a new test to be used when considering questions of revenue or capital outgoings.</p>	<p><b>Kaitilin Lowdon, ATI</b></p> <p>Arnold Bloch Leibler</p>
Friday, 21 August 2020	<p><b>Part 5: <i>Watson as Trustee for the Murrindindi Bushfire Class Action Settlement Fund v Commissioner of Taxation</i> [2020] FCAFC 92</b></p>	<p><b>Claire Nicholson, CTA</b></p>
Friday, 28 August 2020	<p><b>Part 6: Panel discussion – Recent capital versus revenue decisions</b></p> <p>Our expert panel will wrap up the series with an in-depth discussion on all of the issues raised by these decisions, share understandings and consider some practical solutions that may assist in overcoming the challenges highlighted by these recent cases.</p>	<p><b>Mat Chamberlain, CTA</b></p> <p>EY</p> <p><b>Jerome Tse, CTA</b></p> <p>King &amp; Wood Mallesons</p> <p><b>Fiona Knight, CTA</b></p> <p>Australian Taxation Office</p>

# Presenter profiles

## *Led by tax practitioners for tax professionals*

**Mat Chamberlain, CTA** is a partner at EY and leads their Perth International Tax group. A legal practitioner admitted in WA and NSW, he has more than 27 years' experience in international tax, focusing on the large multinational and corporate environments across Australia, the US, Europe, Asia-Pacific and Africa. Mathew specialises in international tax reform, foreign investment into Australia and outbound investment from Australia. A long-time member of The Tax Institute, Mathew has presented at national and state conventions on international tax issues and has also lectured on tax law at the University of Western Australia and Curtin University, at both postgraduate and undergraduate level. Mathew has led and participated in a number of government and ATO initiatives, working groups etc. on international tax law and policy issues affecting Australian inbound and outbound investment, including through the development of professional body and EY submissions.

**Fiona Knight, CTA**, is an Assistant Commissioner at the ATO. She has over 20 years experience in taxation law and administration. Fiona currently works in the Tax Counsel Network providing advice on the most complex technical issues in audit, litigation and legislative development with a focus on anti-avoidance provisions. She is a member of the ATO's General Anti-Avoidance Rules (GAAR) Panel and has previously worked in the Large Business & International and Litigation areas of the ATO.

**Rachel Law, CTA** is a Senior Associate in the Hall & Wilcox tax team who specialises in direct taxes and tax disputes. Rachel's areas of experience include advising on a variety of domestic and international tax laws. Specifically, her experience includes dealing with the tax issues associated with cross-border transactions, tax consolidation, capital gains tax, income tax, managed investment funds and employment tax.

**Kaitilin Lowdon, ATI**, is a Senior Associate in the market-leading taxation practice of Arnold Bloch Leibler. Kaitilin has acted on a variety of high-profile and complex tax audits and disputes with the ATO, advising clients on all stages of the dispute process, including negotiation outcomes with the ATO. Kaitilin advises a range of clients, including high net wealth individuals, some of Australia's largest family groups and public companies.

**Claire Nicholson, CTA**, is a barrister practising predominantly in taxation and commercial law. Claire is experienced in advising on and appearing in litigious matters about a wide variety of taxes, both State and Federal.

**Ari Rosenbaum**, is a Senior Associate in the tax team at King & Wood Mallesons. His practice includes acting for, and advising, clients in matters that cover a range of taxes including income tax, GST, stamp duties, employment taxes and other taxes at a federal, state and territory level. Ari regularly assists large multi-national corporations in managing the tax issues that arise on mergers and acquisitions, business and asset transfers, joint ventures, property transactions and financial transactions as well as audits and disputes. He has significant experience in negotiating with the ATO, other regulators and various stakeholders and has run a number of cases at first instance and on appeal.

**Jerome Tse, CTA**, is a Partner at King & Wood Mallesons, specialising in taxation disputes and litigation. Jerome advises corporate taxpayers on all aspects of Australian tax disputes from the audit and independent review stage through to High Court litigation. He also guides clients through alternative dispute resolution processes, advance pricing agreements and mutual agreement procedures.

**Anna Wilson, FTI**, specialises in taxation, insolvency and related matters. She acts for the Commissioner and the taxpayer in both State and Federal jurisdictions. Her practice extends to tax technical and structuring advice, tax investigations and audits, private rulings and objections, through to litigation and alternative dispute resolution. Anna also acts in regulatory/disciplinary matters such as those involving registration with the Tax Practitioners Board and/or membership of professional accounting associations. She was involved in the superannuation round of the Financial Services Royal Commission and acts in disputes between members of self-managed superannuation funds. Anna has extensive experience as a tax and commercial specialist in large law firms having worked for over 10 years with Norton Rose Fulbright, including 15 months in Munich, Germany and two years with Gadens in Melbourne. She commenced her legal career working mainly in property law before concentrating on tax from 2008. Anna obtained her law and science degrees (majoring in mathematics and physics) from Monash University and has a Masters of Taxation Law from Melbourne University, where she was awarded the Graham Hill Taxation Law prize. Anna now lectures in the Masters program at Melbourne University, teaching the subject Capital Gains Tax: Problems in Practice. Anna is fluent in German and is accredited as a professional translator from German into English.



THE TAX INSTITUTE

# Tax Notes Series

## Registration form

41059 | IWDI

A tax invoice and confirmation letter will be sent on receipt of your registration. Please photocopy for additional delegates and retain original copy for your records. All prices quoted are in Australian dollars and include GST where applicable. ABN 45 008 392 372.

### 1 Registration

Please select your registration type:

Full series (6 parts)	<input type="checkbox"/> Member \$360	<input type="checkbox"/> Non-member \$480
Individual sessions	<input type="checkbox"/> \$70	<input type="checkbox"/> \$90

Please select your session/s:

<input type="checkbox"/> Fri, 24 Jul 41060	<input type="checkbox"/> Fri, 31 Jul 41061	<input type="checkbox"/> Fri, 7 Aug 41062	<input type="checkbox"/> Fri, 14 Aug 41063	<input type="checkbox"/> Fri, 21 Aug 41064	<input type="checkbox"/> Fri, 28 Aug 41065
-----------------------------------------------	-----------------------------------------------	----------------------------------------------	-----------------------------------------------	-----------------------------------------------	-----------------------------------------------

### Choose a format that suits?

- Attend the live webinars to interact with our expert presenters; or
- Replay the webinars (post-event) at a time that suits you.

Please note this is a paperless event, the materials will be emailed to you the day prior.

For event enquiries, please contact Britney McIlvain on 03 9603 2007 or [britneymcivain@taxinstitute.com.au](mailto:britneymcivain@taxinstitute.com.au).

6 CPD hours allocated for each session. CPD hours will be allocated to the designated attendee.

### 2 Delegate contact details

If your member details are up-to-date, you can skip this section

Member no.: \_\_\_\_\_

Title:	<input type="checkbox"/> Mr	<input type="checkbox"/> Mrs	<input type="checkbox"/> Miss	<input type="checkbox"/> Ms	
First name:	<input type="text"/>		Last name:	<input type="text"/>	
Position:	<input type="text"/>		Company:	<input type="text"/>	
Address:	<input type="text"/>				
Suburb:	<input type="text"/>	State:	<input type="text"/>	Postcode:	<input type="text"/>
Telephone:	<input type="text"/>		Mobile:	<input type="text"/>	
Email:	<input type="text"/>				

☐ Please tick this box if you do not wish your name to be included on the delegate list provided to all attendees for networking purposes.

### 3 Payment method

☐ Cheque payable to The Tax Institute (in Australian dollars)

☐ Credit card \$  Card type: ☐ AMEX ☐ Visa ☐ MasterCard ☐ Diners

Name on card:

Card no.:  Expiry date:  Cardholder's signature:

For our refund, cancellation and replacement policy visit [taxinstitute.com.au/professional-development/event-policy](http://taxinstitute.com.au/professional-development/event-policy).

### Collection notice

The Tax Institute (TTI) complies with its obligations under the Privacy Act 1988 (Cth) with respect to how it handles personal information. For information on how TTI collects, uses, holds and discloses personal information, please see its privacy policy at [www.taxinstitute.com.au](http://www.taxinstitute.com.au). [You can also request TTI's consultants to provide you with a copy of TTI Privacy Policy.] By submitting your application to TTI, you confirm that you have read TTI's Privacy Policy and you consent to your personal information being collected, used and held by TTI and disclosed to third parties in accordance with TTI's Privacy Policy.

### TO REGISTER

🔗 Online [taxinstitute.com.au](http://taxinstitute.com.au)

@ Email [customeradmin@taxinstitute.com.au](mailto:customeradmin@taxinstitute.com.au)

✉ Mail L37, 100 Miller Street, North Sydney NSW 2060

☎ Fax 02 8223 0077