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Tax Insights

Implications of S.N.A Group Pty Ltd litigation for transfer pricing

On 17 February 2026, Australia's Full Federal Court (FFC) released its decision in favour of the Commissioner of Taxation ("Commissioner") in *Commissioner of Taxation v. S.N.A Group Pty Ltd [2026] FCAFC 10* finding that around AUD 19 million of inter-entity service fees paid during the tax years 30 June 2016 and 30 June 2019 were not deductible under section 8-1 of the Income Tax Assessment Act 1997 (Cth) (ITAA 1997).

Background

The taxpayers were two operating entities in the Coronis real estate group: S.N.A Group Pty Ltd (a real estate agent sales business) and APTR Pty Ltd (a real estate management business). The assets the taxpayers used in conducting their businesses were owned by two related trustee companies:

- CLAARS Pty Ltd, as trustee of the Henry Trust, owned certain intellectual property including trademarks to use certain "brand rights"; and
- P.A.C. Realty Pty Ltd, as trustee of the Emily Trust, owned a rent roll asset, comprising of rental management contracts between landlords and the trustee.

Between 2005 and 2015 the related taxpayers and the trustees had written agreements in which the taxpayers were obliged to pay the trustees certain fees for the use of the trust assets. In 2015 the written agreements ended, but thereafter the taxpayers continued using the trust assets and made payments in respect of those assets. The taxpayers claimed deductions for the payments which the Commissioner denied. The FFC rejected that the continued use of the assets, payments after year end, accounting treatment, and directors approving the financial statements recording the payments was sufficient to form a binding contract. The uncommunicated internal intentions of the common directors were irrelevant.

Relevance to transfer pricing

While the decision focuses on section 8-1 deductibility, has no international element, and therefore does not fall under Australian transfer pricing rules, it does highlight the importance of intercompany agreements between related entities and may offer precedential value for future transfer pricing decisions should a similar fact pattern occur between international parties. Key themes that might be relevant to consider if the arrangement was set between international parties and tested under transfer pricing rules include:

- Form versus substance under section 815-130 of the ITAA 1997;
- Transfer pricing benchmarking studies cannot retroactively create an agreement;
- Transaction characterisation may be open to interpretation in the absence of a formal written agreement; and
- Demonstrating benefits conferred between parties requires more than evidence of payments made.

Each of these themes is explored below.

Form versus substance under section 815-130

The FFC stated that "The circumstances in which a contract will be inferred by conduct are rare" and "The objective theory of contract demands an outward manifestation or communication… of a mutual assent to contract on particular terms." (FFC at [18] and [20]).

This reasoning creates tension with section 815-130 of the ITAA 1997, which requires regard to both the form and substance of the actual commercial or financial relations. While the FFC suggests that, in the absence of a legally binding agreement, there may be no identifiable "form," Division 815 does not depend on formal agreements and instead focuses on the parties' conduct and the relations evidenced by that conduct. Accordingly, the absence of a written agreement does not preclude the identification or pricing of a deal for transfer pricing purposes, although it may create significant uncertainty as to the nature of the rights and obligations. Consistent with this, the ATO's Practical Compliance Guideline PCG 2024/1 treats the absence of formal agreements, particularly in relation to intangible arrangements, as a high-risk indicator rather than evidence that no transfer pricing analysis is required.

Transfer pricing benchmarking studies cannot retroactively create an agreement

The FFC sets out that the mere fact that payments fell within or below an arm's-length range does not evidence a contractual liability (FFC at [81]). Therefore, the FFC decision reinforces that benchmarking reports, demonstrating arm's length pricing, alone and without a supporting agreement, do not establish the existence of an arrangement, only the suggested arm's length quantum of consideration if an arrangement exists. The benchmarking report only determines the amount to be paid under an existing obligation if the parties have agreed an amount will be paid and the amount will be determined by the benchmarking study. This aligns with Australian transfer pricing law, which presupposes an identifiable beneficial commercial relationship before arm's length conditions can be tested or substituted. Simply put, a benchmarking study cannot retroactively create an agreement.

This potentially has direct implications for international groups that rely on post-year end transfer pricing studies to support international transactions in the absence of contemporaneous intercompany agreements. While the existence of a written agreement may assist in evidencing the form of an arrangement, it does not, of itself, guarantee deductibility in Australia. Deductibility will ultimately depend on whether a real service or benefit has been provided and whether the arrangement, in substance, aligns with the asserted form. From a transfer pricing perspective, Division 815 requires that the conditions of the actual commercial or financial relations—as evidenced by both form and conduct—be consistent with arm's length outcomes, meaning that misalignment between form and substance may result in both deductibility challenges and pricing adjustments.

Transaction characterisation may be open to interpretation in the absence of a formal agreement

From a transfer pricing perspective, the absence of a formal contract can often cloud the characterisation of the dealings if tested under section 815-125 and section D, chapter 1 in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations ("OECD guidelines"). If there is no agreement specifying services, intellectual property rights, or pricing mechanics, the Commissioner is potentially more likely to argue that payments are not for services at all, but potentially royalties, distributions, gifts, or non-deductible outgoings—with flow-on potential consequences for withholding tax.

Given a reduction in withholding tax is explicitly part of the transfer pricing benefit concept under section 815-120, if payments are recharacterised (for example, from services to royalties) due to lack of contractual form then this presents potential withholding tax exposure.

Demonstrating benefits conferred between parties requires more than evidence of payments made

Chapter 7 of the OECD guidelines requires that a service provides a benefit to the recipient for which an independent party would be willing to pay. The decision in S.N.A reinforces that payments alone are insufficient evidence of such a benefit where there is no contemporaneous agreement defining what is being provided and why. Chapter 7 of the OECD guidelines is not directly enacted in section 815-20, its logic is embedded in section 815-125 and section 815-130, which require identification and accurate delineation of the actual commercial relations. Without documentation specifying services, scope, and expected benefits, it becomes difficult to establish that a charge reflects something an independent party would have agreed to—particularly for low-value or centralised services.

Implications for rights to intangible assets

The decision considered the use of identifiable intangible assets (brands) between the parties involved. Both chapter 6 of the OECD guidelines and ATO's PCG 2024/1 reflect the administrative expectation that taxpayers clearly identify the relevant intangible arrangement and explain key development, enhancement, maintenance, protection, and exploitation in their transfer pricing documentation. For trademark/brand arrangements between related parties, the taxpayer must be able to prove the actual bundle of rights granted and show that the pricing matches the real exploitation and enhancement of those rights; otherwise the arrangement is potentially exposed to not only the denial or reconstruction of the position (as outlined above) but also challenged on the value created by the operating entity has been misallocated offshore.

Practical transfer pricing takeaways for international groups

While Commissioner of Taxation v. S.N.A Group Pty Ltd is subject to a potential High Court appeal at the date of publication of this article, the FFC decision represents more than a local Australian deductibility precedent. For international transactions, the decision reinforces that robust transfer pricing analysis sits on top of legal form, not the other way around. For tax and finance managers reviewing governance processes following the S.N.A decision, practical steps may include:

- Reviewing and implementing contemporaneous written intercompany agreements prior to year end to evidence contractual liability and clearly define the legal form of material arrangements;
- Clearly defining services, intellectual property arrangements, or other cross-border dealings, including the benefits conferred to the recipient, within both transfer pricing documentation and written agreements; and
- Establishing and applying agreed pricing mechanisms throughout the year, rather than relying on retrospective "fair and reasonable" adjustments determined after year end.

The S.N.A decision is a timely reminder that transfer pricing policies alone cannot substitute for legal form. This position is reinforced by the ATO's PepsiCo decision impact statement, which emphasises that the legal characterisation of payments—including whether they give rise to royalty withholding tax—must be grounded in the rights and obligations actually created between the parties, not merely how arrangements are described in transfer pricing analyses. Together, these developments highlight that misalignment between legal form, economic substance, and pricing outcomes may expose taxpayers not only to transfer pricing adjustments, but also to broader risks including denial of deductions and recharacterisation of payments for withholding tax purposes.

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