

Tax planning 101: when accountants fail to get the basics right for themselves

7 July 2026 by Matthew Burgess, View Legal

A recent Federal Court decision offers a stark warning for advisers and taxpayers alike, writes Matthew Burgess.

6 minutes read

It is only a few months since a high-profile win for the Tax Office, in which the absence of basic legal documentation supporting the accounting evidence resulted in a material tax impost on the taxpayer. That is, the February 2026 full Federal Court appeal decision concerning the Coronis Real Estate group (and the case of Commissioner of Taxation v S.N.A Group Pty Ltd [2026] FCAFC 10).

In that case, the court confirmed that there was 'insufficient evidence of an objective manifestation of mutual assent' between the related parties to enter into a contract for the payment of service fees that would have otherwise achieved a preferable tax outcome.

Now, high-profile Brisbane accountant and property developer Earl Larmer has had circa \$30 million attributed to him personally as ordinary income from property developments dating back to 2005.

Larmer had said that the income was properly derived by various entities in his wider group of controlled companies and trusts.

In a stark warning for advisers and taxpayers alike, and <https://www.accountingtimes.com.au/tax/wealthy-accountant-loses-bid-to-reclassify-income-from-property-syndicates> by Accountants Daily's sister brand, Accounting Times, the decision in Larmer v Commissioner of Taxation [2026] FCA 826, relevantly confirmed:

1. Where it is necessary to consider a claimed contract, as the objective theory of contract is in command of the field, it is an outward objective manifestation that must be apparent. Thus, while informality is one thing, where a contract needs to be established, it is still necessary for an outward objective manifestation of the relevant terms of the contract. This is so even where the contracting parties (who may be corporate entities, natural persons or corporate trustees of trusts) have a common or common directing minds (see the aforementioned Coronis decision, namely, Commissioner of Taxation v S.N.A Group Pty Ltd [2026] FCAFC 10).
2. This is despite the fact that a degree of informality would not be unexpected in a closely held family business (see Melbourne Corporation of Australia Pty Ltd v Commissioner of Taxation [2022] FCA 972).
3. Completing tax returns in a manner inconsistent with other evidence will call the evidence into question, particularly when it conflicts with statements provided to external financiers.

4. Statements made by Larmar about his personal wealth to an external financier were likely to be true, particularly given that the counterfactual was that Larmar was prepared to provide false or misleading information to a bank, an assumption rejected by the court.

5. Although Larmar evidently regarded his property development activities and his accounting firm as 'separate divisions', this was irrelevant because he operated as a sole trader.

6. The management fees charged were a combination of hourly rates, success fees, and percentages of total funds under management, determined at the sole discretion of Larmar and generally based on the amount of value he felt he had contributed to the project, factors that again counted against the revenue being attributed to the services of anyone other than Larmar personally.

7. Even if the conclusion reached on first principles was that the income was not Larmar's, it would have been deemed to be so under the personal services income regime.

8. The Tax Office can amend an assessment within 2 or 4 years of the day on which notice of the assessment is given (depending on the avatar of the taxpayer), unless there is fraud or evasion (in which case there is no time limit). In this case, but for evasion, the Tax Office would have been unable to amend some of the earlier assessments. Here, the court was comfortable that the Tax Office had correctly concluded Larmar had engaged in evasion and therefore there was no limit on the issuing of amended assessments.

The decision against Larmar follows a previous case that starkly demonstrated the 'read the deed' heuristic and was decided in favour of the Tax Office.

In particular, the decision in *Benaroon Pty Ltd v Larmar & Ors* [2020] QCA 62 concerned an attempted 'retrospective' amendment to a trust deed by way of rectification.

In summary, the case involved:

- An assumed, thought-to-be 'standard' discretionary trust deed was created in 1977.
- For over 40 years, distributions had been made to Larmar and to his wife at the time of the trust's establishment, and to a subsequent wife (following divorce from the first wife).
- The trust deed, however, did not include Larmar in the range of potential beneficiaries, nor either wife.
- It was accepted that in the absence of rectification of the trust deed to add Larmar as a beneficiary, any distribution to him (and his former and current spouses) would have been made without authority.
- The requested rectification was opposed by Larmar's current wife (Margaret Larmar), in relation to whom the Tax Office took the view, after an audit, that she would be entitled to a tax refund if not a beneficiary of the trust, but would have a tax liability of nearly \$8 million if she were a beneficiary.

The rectification application was denied by the court, which confirmed "...there must be clear and convincing evidence that at the time the trust deed was executed the trustee and the settlor had an actual intention as to the effect which the deed was intended to create which was different from the effect which the instrument did have in a clearly identified way. It must be demonstrated with clarity that the parties had a sufficiently precise intention that the court can determine both the substance and the detail of the precise variation to be made to the wording of the instrument."

Here, while the available evidence was uncertain in many respects, the court held that it could not be described as either clear or convincing.

