

FCT v S.N.A Group Pty Ltd

Matter: Related Party Dealings

Tax deductions on payments between related parties that are not made under written contracts need to be supported by objective evidence that the parties had created an inferred or implied contract under which the payments were incurred. This is the message coming from the recent Full Federal Court (FFC) case [*FCT v S.N.A Group Pty Ltd \[2026\] FCAFC 10*](#) (SNA case).

The SNA case has significant implications for private groups that may be conducting inter group arrangements on an informal basis, i.e. without written contracts or, if there are contracts, not following the terms of the contracts.

The FFC Judges in the SNA case accepted that in these circumstances it may be possible to identify that the payments were made and incurred under an inferred or implied contract, however, this requires evidence of communication between the parties agreeing to bind each of them to the inferred or implied contract.

The conduct of the parties can also be used to support that there was an inferred or implied contract, but it is rare that a contract can be inferred only on the conduct of the parties. In the SNA case, however, the FFC stated that there was no inferred contract.

The facts of SNA case

S.N.A Group Pty Ltd and ATPR Pty Ltd operated a real-estate agency business and a real estate management business and were part of the Coronis Group. They used key business assets (including intellectual property, rent rolls, systems, and staff) owned/employed by two related-party trusts – the Henry Trust and the Emily Trust.

There were written licence agreements that operated between 2005 and 2015 that required the operating companies to pay to the trusts service or licence fees for the use of these assets.

When those written agreements expired in 2015, the companies continued using the trust assets and continued making payments to the trustees during the 2016–2019 income years. The taxpayers claimed these payments as deductible ‘service fees’ under *section 8-1* of the *Income Tax Assessment Act 1997*.

The Commissioner of Taxation (the Commissioner) disallowed the deductions, arguing that the taxpayers had no legal or contractual obligation to pay the fees after 2015. The Commissioner maintained that, without a binding contract, the payments were not ‘incurred’ for tax purposes.

The taxpayers appealed the Commissioner’s objection decision to the Federal Court and, at first instance, the primary judge accepted the taxpayers’ position that contracts could be inferred from the conduct of the parties. However, the Commissioner appealed this decision to the FFC which found in favour of the Commissioner that there was no objective evidence of any contract, either written or inferred, requiring the taxpayers to pay the service fees after 2015. Because no enforceable obligation existed, the payments were found to be not deductible.

Implications of the case for other private groups

Many private groups conduct their affairs on an informal basis without always documenting the arrangements between the group members. Where these informal arrangements purport to create liabilities resulting in the incurring of tax deductible expenses, the deductibility of these expenses may be in doubt unless there is objective evidence the expenses are incurred under inferred contractual arrangements. This is particularly important where the decisions made by both parties to the arrangements are controlled by the same person or associated persons.

Examples of the arrangements that may be at risk include intergroup management fees, service fees, IP licence agreements, rent rolls, and employee cost sharing arrangements.

The importance of good tax governance

This case also highlights the importance of good tax governance for all business taxpayers. The Australian Taxation Office's interest in this area has recently expanded from listed companies to now include medium to large private corporate/trust groups. Having good tax governance generally requires the directors or trustees of corporate or trust groups to be fully aware of the framework of policies, documentation, controls, responsibilities and processes that the group uses to manage its tax affairs.

Summary of the findings in the SNA case

The FFC gave four essential reasons why it concluded that an agreement between each of the taxpayer companies and trustee companies cannot be inferred from the facts found and the evidence the primary judge accepted:

1. The taxpayers contended that the parties agreed for the taxpayers to pay a fair and reasonable fee for the use of the trusts' assets up to 8 per cent of the value of the company. However, there was no direct evidence of any communications between the natural persons who were the directors of the taxpayers and trustees of an accepted liability on the part of the taxpayers to pay a fair and reasonable fee for use of the trust assets
2. There was also no direct evidence of any communications of an accepted liability on the part of the taxpayers to pay up to an 8 per cent return. Further, the evidence regarding 'an 8 per cent return' was inconsistent regarding the benchmark for the 'return'
3. There was no evidence that the directors of the taxpayers and trustees had communicated to the internal bookkeeper or the external tax accountant, that the taxpayers were subject to a liability to pay a reasonable fee for use of the trust assets or for other services. No entries in the books and records of the taxpayers and trustees were made and none of the financial statements of the taxpayers and trustees was prepared on the basis that the taxpayers were liable to pay the trustees a fair and reasonable fee for use of the trust assets or other services
4. The evidence of the conduct of the taxpayers and trustees that was contemporaneous with the transfer of amounts from the taxpayers to the trustees in each relevant year was not consistent with payment of 'service fees' in accordance with a pre-existing agreement or understanding to pay a fair and reasonable fee for the use of the trust assets up to an 8 per cent return. Nor was the evidence of conduct consistent with payment of 'service fees' in the amounts claimed as deductions in each relevant year.

The judgement in the SNA case relied heavily on the evidential factual content, however, it also included detailed interpretation of contract law, particularly as it relates to contracts that

are inferred from the acts and conduct of the parties. Some of the relevant judicial comments are summarised below:

- The circumstances in which a contract will be inferred by conduct are rare. This is a reflection of the difficulty, in the absence of a communication of offer and acceptance, of demonstrating that there was mutual assent to contract on clear identifiable terms
- A contract cannot exist without communication. The subjective views of the parties are irrelevant: 'having it in your own mind is nothing'
- Evidence about subjective intentions or understandings is not relevant to determining whether a contract exists
- The uncommunicated private thoughts and intentions of the common directors or director are not relevant
- While a contract may be inferred from the acts and conduct of the parties as well as or in the absence of their words, the conduct of the parties must show a tacit understanding or agreement, however, the conduct of the parties must be capable of proving all the essential elements and terms that would be in an express (i.e. written) contract
- It cannot be inferred that there was a request for and provision of non-gratuitous use of the trust assets from the mere fact that the taxpayers were provided with the use of the trust assets or the mere fact that there had been earlier contracts that had required the taxpayers to pay for use of the trust assets and the taxpayers continued using those assets after termination of the earlier contracts.

High Court appeal

The taxpayers in this case have requested leave to appeal to the High Court. As there was a unanimous decision in the FFC and the decision was based heavily on the evidential factual context, the High Court may be unlikely to grant special leave, unless the High Court decides to look closer at the contract law aspects of the case.

Takeaways for groups with intergroup arrangements

Groups with intergroup arrangements should review these to determine whether they are being conducted under an express or inferred contract. If there is no written contract, the existence of an inferred contractual arrangement needs to be supported by objective evidence, preferably written evidence such as board/trustee minutes, emails between the relevant parties etc, and supported by the conduct of the parties. If there is a written contract, you should review whether the actual payments are still being made in accordance with the contract arrangements.