



Smith and Commissioner of Taxation (Taxation) [2026] ARTA 25 (12 January 2026)

Last Updated: 12 January 2026

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Applicant: Alexander Smith

Respondent: Commissioner of Taxation

Tribunal Number: 2024/2425; 2024/6875-6878

Tribunal: General Member J Dunne

Place: Melbourne / Sydney

Date: 12 January 2026

Decision: The Tribunal sets aside the decisions under review and substitutes a decision that

- The Applicant carried on an enterprise of dog breeding in the Relevant Periods; and
- The 20% base penalty uplift should not be applied and should be remitted in any event.

Remitted to the Respondent for determination are the following matters:

- The question of allowable input tax credits for the dog breeding enterprise, for material on the Tribunal Book that is specified by cross reference in this decision, and subject to recommendations made by the Tribunal in this decision; and
- Whether any of the material on the Tribunal Book that is identified in this decision as relating to the dog breeding operation should be treated as a tax invoice pursuant to subsection 29-70(1B) of *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

The Tribunal otherwise affirms the decisions under review.

.....[SGD].....

General Member J Dunne

Catchwords

TAXATION – GST - whether an enterprise of dog breeding – whether sufficient evidence of costs to substantiate input tax credit claims – impact of Central Coast flood

TAXATION – GST – whether material should be treated as a tax invoice -section 29-70(1B) of the GST Act

TAXATION – PENALTIES – whether Applicant took reasonable care – whether Applicant reckless – application of base penalty uplift - whether penalties should be remitted in whole or in part

GENERAL – use of  artificial intelligence  when preparing filings at the Tribunal

Legislation

A New Tax System (Goods and Services Tax) Act 1999 (Cth) ss 7-1, 9-5, 9-20, 9-70, 9-75, 11-5, 11-10, 11-15, 29-10, 29-70(1B), 29-80, 69-5(1), 195-1

Administrative Decisions (Judicial Review) Act 1977 (Cth) s 5

Administrative Review Tribunal Act 2024 (Cth) s 56

Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024 (Cth)

Income Tax Assessment Act 1936 (Cth) s 170

Judiciary Act 1903 (Cth) s 39B

Taxation Administration Act 1953 (Cth) ss 14ZZK, Schedule 1 ss 284-75; 284-90, 284-220, 298-20, 382-5

Cases

Abotomey v Federal Commissioner of Taxation [2025] ARTA 719

Annetts v McCann (1990) 170 CLR 596

Arthur Murray (NSW) Pty Ltd v Federal Commissioner of Taxation [1965] HCA 58; (1965) 114 CLR 314

Assad v Federal Commissioner of Taxation [2023] AATA 2995

Barclay and Repatriation Commission [2011] AATA 206

BRK (Bris) Pty Ltd v Commissioner of Taxation [2001] FCA 164

Case 54/96 96 ATC 521

Case X28 90 ATC 276

Cash World Gold Buyers Pty Ltd v Federal Commissioner of Taxation [2020] AATA 1546

Cecil Bros Pty Ltd v Federal Commissioner of Taxation [1964] HCA 82; (1964) 111 CLR 430

Charles Apartments Pty Limited v Commissioner of Taxation [2025] FCAFC 180

Commissioner of Taxation v Huang [2025] FCA 1314

Commissioner of Taxation v Montgomery [1999] HCA 34

D'Arcy v Federal Commissioner of Taxation [2008] AATA 709

Dixon as Trustee for the Dixon Holdsworth Superannuation Fund v Commissioner of Taxation [2008] FCAFC 54

Fairway Estates Pty Ltd v Federal Commissioner of Taxation [1970] HCA 29; (1970) 123 CLR 153

Federal Commissioner of Land Tax v Jowett [1930] HCA 51

Federal Commissioner of Taxation v Myer Emporium Ltd [1987] HCA 18; (1987) 163 CLR 199

Federal Commissioner of Taxation v Stone [2005] HCA 21

Federal Commissioner of Taxation v Swansea Services Pty Ltd [2009] FCA 402

Ferguson v Federal Commissioner of Taxation [1979] FCA 29; (1979) 37 FLR 310

Fowler v Federal Commissioner of Taxation [2013] FCAFC 69

Hart v Federal Commissioner of Taxation [2003] FCAFC 105

H & B Auto Repair Centre Pty Ltd v Federal Commissioner of Taxation [2022] AATA 3561

Hope v Bathurst City Council [1980] HCA 16; (1980) 144 CLR 1

Inglis v Federal Commissioner of Taxation [1979] FCA 106

John v Federal Commissioner of Taxation (1989) 166 CLR 417

Kioa v West [1985] HCA 81; (1985) 159 CLR 550

Konebada Pty Ltd as trustee for the William Lewski Family Trust v Federal Commissioner of Taxation [2024] FCAFC 42

Marana Holdings Pty Ltd v Federal Commissioner of Taxation [2004] FCAFC 307

Mitri v Federal Commissioner of Taxation [2024] AATA 1268

MLC Ltd v Commissioner of Taxation [2002] FCA 1491

MR & SL Block and others v Federal Commissioner of Taxation [2007] AATA 1897.

Professional Admin Services Centres Pty Ltd v Federal Commissioner of Taxation [2013] FCA 1123

Puzey v Commissioner of Taxation [2003] FCAFC 197 [48]

Sanctuary Lakes Pty Ltd v Commissioner of Taxation [2013] FCAFC 50; (2013) 212 FCR 483

Santavas and Commissioner of Taxation [2025] ARTA 2515

Shakeel (Migration) [2019] AATA 2332

Skourmallas v Federal Commissioner of Taxation [2019] AATA 5535

Spassked v Commissioner of Taxation [2003] FCAFC 282

SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs [2006] HCA 63

Toyama Pty Ltd v Landmark Building Developments Pty Ltd [2006] NSWSC 83

Trnka v Federal Commissioner of Taxation [2012] AATA 492

Tweddle v Federal Commissioner of Taxation [1942] HCA 40; (1952) 180 CLR 1

Very Important Business Pty Ltd v Federal Commissioner of Taxation [2019] AATA 1120

Vidler v Commissioner of Taxation [2010] FCAFC 59

Wall and Secretary, Department of Education, Employment and Workplace Relations [2011] AATA 433

Woods v Deputy Federal Commissioner of Taxation 99 ATC 5306

Secondary Materials

Australian Business Register Lookup <https://abr.business.gov.au/ABN/View?abn=79891467561>

Dogs Australia website: <https://dogsaustralia.org.au/> (26 November 2025)

Dogs NSW website <https://www.dogsnsw.org.au/breeders/find-a-breeder> (5 December 2025)

Edited private advice: 1052338603606 (5 December 2024) at <https://www.ato.gov.au/law/view/print?DocID=EV%2F1052338603606&PiT=99991231235958>.

Explanatory Memorandum to *A New Tax System (Goods and Services Tax) Bill 1998* (Cth)

Explanatory Memorandum to *A New Tax System (Tax Administration) Bill (No.2) 2000* (Cth)

Goods and Services Tax Determination GSTD 2006/6 *Goods and Services Tax: does MT2006/1 have equal application to the meaning of 'entity' and 'enterprise' for the purposes of the A New Tax System (Goods and Services Tax) Act 1999?*

Goods and Services Tax Ruling GSTR 2001/3 *Goods and Services Tax: GST and how it applies to supplies of fringe benefits*

Goods and Services Tax Ruling GSTR 2013/1 *GST: Tax invoices*

Law Administration Practice Statement PS LA 2006/2 *Administration of shortfall penalty for false or misleading statement*

Law Administration Practice Statement PS LA 2012/5 *Administration of the false or misleading statement penalty – where there is a shortfall amount*

Law Administration Practice Statement PS LA 2011/25 *Reconstructing records and making reasonable estimates for taxpayers affected by disasters*

Law Administration Practice Statement PS LA 2004/11 *The Commissioner's discretion to treat a particular document as a tax invoice or adjustment note*

Master Dog Breeders and Associates website: <https://mdba.net.au/> (26 November 2025)

Miscellaneous Taxation Ruling MT 2006/1 *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number*

Miscellaneous Taxation Ruling MT 2008/1 *Penalty relating to statements: meaning of reasonable care, recklessness and intentional disregard*

Taxation Ruling TR 97/11 *Income tax: am I carrying on a business of primary production?*

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STATEMENT OF REASONS

ISSUES AND CONCLUSIONS

1. This case is about goods and services tax (“**GST**”) and tax penalties. The relevant periods at issue are the quarters ended 30 September 2018 to 31 December 2021 (inclusive) (“**Relevant Periods**”).

2. At a high level, there are five issues:

(a) Whether the Applicant’s dog breeding operation^[1] in the Relevant Periods is an “enterprise” pursuant to section 9-20 of *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (“**GST Act**”).

(b) Whether the Applicant can claim input tax credits under the GST Act relating to his dog breeding operation.

(c) Three input credit-related issues:

(i) Whether input tax credits can be claimed for food and consumables expenses that the Commissioner says are entertainment expenses.

(ii) The Applicant says records were lost due to a major flood in the Central Coast of NSW, and there is a dispute as to whether the Applicant took reasonable steps to reconstruct those lost records and whether the Commissioner is bound or obliged to accept that reconstructed material to substantiate input credit claims as a consequence of guidance the Commissioner has issued.

(iii) A double claim for input tax credits relating to the Applicant's property investment/speculation operation and the acquisition of a property at 51 Grand Parade Rutherford NSW 2320.

(d) Whether shortfall penalties should be imposed at 50% for recklessness pursuant to section 284-75 and section 284-90 of Schedule 1 to the *Taxation Administration Act 1953* (Cth) ("TAA") and uplifted by 20% in the first period.^[2]

(e) Whether the penalties and/or the uplift should be remitted in whole or in part.

3. Other issues including vehicle expenses claims, photography claims, input tax credit claims disallowed for reimbursed expenses have been concluded, and are not before the Tribunal as no evidence or argument was presented in relation to those matters.^[3]

4. For the detailed reasons set out below, I have concluded as follows:

(a) The Applicant's dog breeding operation was an *enterprise* in accordance with the definition in the GST Act. The Commissioner's decision in that regard is set aside.

(b) In principle, the Applicant can claim input tax credits for creditable acquisitions in carrying on the dog breeding operation in accordance with Division 11 of the GST Act. The question of the input tax credits that the Applicant can claim for the dog breeding operation is remitted to the Commissioner for further consideration of particular material on the Tribunal Book which the Tribunal specifies in this decision, and subject to the guidance and recommendations set out in this decision.^[4]

(c) Input tax credits cannot be claimed for food and other consumables as they are insufficiently evidenced as having any connection with *any* enterprise carried on by the Applicant. The Applicant has not met his burden of proof. The Commissioner's decision in that regard is affirmed.

(d) The Commissioner is not obliged to accept the Applicant's reconstructed records and the Applicant's submissions are misguided. The Applicant's reconstructed records are insufficient to substantiate his claims for input tax credits. In the context of the dog-breeding operation, the question of whether any of the other material on the Tribunal Book which the Tribunal specifies in this decision can be treated as a tax invoice pursuant to section 29-70(1B) of the GST Act is remitted to the Commissioner for determination as part of the remittal referred to above at paragraph 4(b).

(e) The Commissioner's decision to reduce input tax credits claimed for the acquisition of a property at 51 Grand Parade Rutherford NSW 2320 is affirmed.

(f) The Applicant has not met his burden of proof to demonstrate that the penalty for recklessness was inappropriately imposed. Other than is specified below, no remission of penalty is justified in the overall circumstances.

(g) The 20% uplift to the base penalty amount in the first period of the Relevant Period should not have been applied or should be remitted.

FACTUAL BACKGROUND

5. The Applicant is entrepreneurial. He was a consultant contracted to a company based in NSW,^[5] and also had an interest in property investment and speculation, French bulldog breeding, and photography. The Applicant has conceded that the photography activities were minimal and more of a hobby and GST input credits claimed for that activity are no longer claimed.^[6] The Applicant's dog breeding and property investment activities are at issue in this case.^[7]

The BAS and Amended Assessments

6. Effective 1 October 2017, the Applicant was registered for GST on a cash basis, reporting quarterly.

^[8] In the Relevant Periods, the Commissioner says that the Applicant lodged activity statements to

the following effect:^[9]

Quarter ended	GST on sales (Label 1A)	Input tax credits (Label 1B)	Date lodged
30 Sep 2018	1,798	3,409	22/10/2018
31 Dec 2018	1,788	5,994	06/03/2019
31 Mar 2019	3,000	6,044	20/03/2019
30 Jun 2019	3,000	6,144	24/07/2019
30 Sep 2019	3,636	5,771	20/10/2019
31 Dec 2019	2,500	6,387	16/12/2019
31 Mar 2020	4,400	9,571	04/05/2020
30 Jun 2020	1,970	8,749	08/10/2020
30 Sep 2020	3,345	7,431	08/10/2020
31 Dec 2020	3,903	10,492	27/01/2021
31 Mar 2021	3,346	16,423	27/03/2021
30 Jun 2021	5,437	11,688	08/07/2021
30 Sep 2021	Nil	8,863	14/10/2021
31 Dec 2021	7,146	21,804	30/12/2021

7. The Respondent's Written Outline of Submissions dated 26 September 2025 ("**Commissioner's Outline**") is different to the Commissioner's SFIC when describing the BAS lodged by the Applicant. The Commissioner's Outline says that the Applicant's BAS filings were to the effect that there was no GST on sales returned in any of the Relevant Periods until \$7,146 in the 31 December 2021 period.^[10] One of these positions from the Commissioner is wrong. It seems likely that the Commissioner's Outline is wrong.^[11] It is extremely unhelpful for the Tribunal to see inconsistency such as this in the Commissioner's filings. Filings at the Tribunal are supposed to be accurate, and the parties are required to assist the Tribunal to meet its objectives.^[12]

8. Following an investigation by the Commissioner, amended assessments were issued and the first impact on the Applicant of those amended assessments was further GST to pay on sales:^[13]

Quarter ended	GST on sales (Original)	GST on Sales (Amended)	Shortfall	Shortfall penalty
30 Sep 2021	0	6,767	6,767	3,383.50
31 Dec 2021	7,146	10,166	3,020	302
TOTAL			9,787.00	3,685.50

9. The second impact from the amended assessments was that input tax credits claimed by the Applicant were disallowed for reasons that included that enterprises were not carried on, there was a lack of appropriate substantiation, and some of the expenditure comprised entertainment expenses. Shortfall penalties were also imposed. The Commissioner's SFIC says that resulted in a shortfall and penalties as follows:^[14]

Quarter ended	Input tax credits (Original)	Input tax credits (Amended)	Shortfall	Shortfall penalty
30 Sep 2018	3,409	0	3,409	2,045.40
31 Dec 2018	5,994	0	5,994	3,596.40
31 Mar 2019	6,044	0	6,044	3,626.40
30 Jun 2019	6,144	0	6,144	3,686.40
30 Sep 2019	5,771	0	5,771	3,462.60
31 Dec 2019	6,387	0	6,387	3,832.20
31 Mar 2020	9,571	0	9,571	5,742.60
30 Jun 2020	8,749	0	8,749	5,249.40
30 Sep 2020	7,431	0	7,431	4,458.60
31 Dec 2020	10,492	0	10,492	6,295.20
31 Mar 2021	16,423	0	16,423	9,853.80
30 Jun 2021	11,688	0	11,688	7,012.80

30 Sep 2021	8,863	0	8,863	5,317.80
31 Dec 2021	21,804	636	21,168	12,700.80
TOTAL			128,134	76,880.40

10. The third impact on the Applicant was that there was an increase to the base penalty amount by 20% for the first period in the Relevant Periods.^[15] Unfortunately once again, there is a mismatch in the Commissioner's filings at the Tribunal. In the Commissioner's SFIC it is stated that the result was that the **\$76,880.40** penalties (leaving aside the general interest charge) were increased by that limited 20% uplift, and the total penalty amounted to **\$80,565.90**.^[16] It is noted that the Commissioner's SFIC refers to what happened at audit and stops there. It is hardly illuminating to entirely leave out what happened after the audit, nor was it helpful not to provide the Tribunal with what are now said in the Commissioner's Outline to be the real penalty figures in dispute. A SFIC is supposed to set out the Facts, Issues and Contentions. When the facts are not fully set out, that is not a good start, and it certainly does not meet the requirements of the Tribunal. A small amount of tax in dispute does not excuse a half-hearted effort from the Commissioner.

11. The \$80,565.90 total penalty referred to in the Commissioner's SFIC is matched in the Commissioner's Outline at [116], but then at [119] the penalty in dispute is said to be **\$68,093.40**. None of this is particularly clear, as it was *at audit* that the 20% base penalty uplift was limited to only the first period of the Relevant Periods^[17] so it might be expected that the Commissioner would have the figures right years later when appearing before the Tribunal.

12. It may be that the sentence in the Commissioner's Outline at [118] "*However the decrease in uplift was only actioned in relation to the penalties relating to claims for [input tax credits] by the Commissioner in May 2025*" is intended to provide some explanation.^[18] I cannot see how that explains an approximately \$12,000 difference between the penalties set out in Commissioner's SFIC and the penalties set out in the Commissioner's Outline.^[19] It seems from TB1575 - TB1576 that the Commissioner has not applied its audit decision correctly from the outset as the 20% uplift appears to have been applied in every period of the Relevant Period. That would mean that years have passed with the wrong calculations. Maybe this explains the Commissioner's different penalty position in the Commissioner's Outline. From the poor state of the Commissioner's filings, the Tribunal cannot be certain.^[20] There were also a vast array of problems with the Tribunal Book filed by the Commissioner.^[21] The Tribunal expects more of the Commissioner as a Model Litigant.

The Objections and the Applications for Review

13. The assessments at issue were issued on 1 November 2022 and 11 November 2022.^[22] The assessments were objected to on 30 December 2022.^[23] The Applicant's objection was disallowed on 12 February 2024^[24] and 9 September 2024.^[25] On 12 April 2024^[26] and 9 September 2024^[27] the Applicant filed Applications for Review in this Tribunal.^[28] Both applications were heard together in this case.

14. It is noted that the Applicant's Objection^[29] focuses on the process of the Commissioner's decision-making, making an array of complaints. Taxpayers are advised that the Tribunal does not have the power to review the process of decision-making,^[30] and instead focuses on the tax issues themselves. Submissions need to focus on the tax issues, not complaints about the process.

15. The Applicant bears the burden of proof in these proceedings.^[31] He must satisfy the Tribunal as to his case on the balance of probabilities.

REASONS FOR DECISION – THE DOG BREEDING OPERATION

The evidence of the dog breeding operation

16. The Applicant provided a witness statement^[32] and gave evidence before the Tribunal. He was cross-examined by Ms Taylor for the Commissioner.

17. In summary, the Applicant said:

(a) He bred French bulldogs between 2018-2021.^[33] His operation was known as "*Delish Frenchies*".

(b) The puppies were sold under formal contracts.^[34] There were about 7 litters in total, and between 18-22 puppies.^[35]

(c) The breeding operation was set up at his home. He established kennels. The dogs had wet weather areas and dry areas, and access to grass. Males and females needed to be separated, and a clean space was available for customers looking to breed their dogs with his dogs (what he called "partner potential purchasers").^[36]

(d) The Applicant was licensed with the Australian National Kennel Club (“**ANKC**”) and was also licenced by the Master Dogs Breeders and Associates (“**MDBA**”).^[37]

(e) Licensing at ANKC was rigorous and involved the Applicant’s dogs being both visually and medically examined. There were also regular checks of the Applicant’s dogs. Once the ANKC licensing was satisfied, the Applicant said he transferred to MDBA and got licensed at MDBA. The reason he did this is because ANKC required dog breeders to show their dogs at dog shows, and the Applicant was not keen on that. MDBA registration required completion of written exams, including on first aid, animal welfare, and other elements involving the care of animals.^[38] The Applicant completed that process and was also registered at MDBA. Evidence is provided of membership renewal costs for MDBA.^[39]

(f) In terms of additional costs, he had to purchase breeding animals,^[40] and rotate those animals. He also incurred costs in caring for the animals – such as food and veterinary costs.^[41] French bulldogs are not active breeders naturally, and artificial insemination is typical. Caesarean births are also typical. That meant he incurred specialist vet costs.^[42]

(g) He had supplier accounts for vet services and from food providers,^[43] and was approached for business from pet food suppliers.^[44] He acquired related items for the dogs which are evidenced on the Tribunal Book (such as a large amount of pet training pads).^[45]

(h) The Applicant provided the Commissioner with spreadsheets^[46] setting out costs alongside the invoices noted above, as well as hundreds of pages of bank statements. The Applicant did not however benchmark his spreadsheets to any particular bank statements and from the Tribunal’s review it can see only some expenses evidenced as having been paid by those bank statements.^[47]

(i) The Applicant microchipped and registered his dogs.^[48] His dogs also received pedigree certification.^[49] The Applicant provided a Puppy Info Pack to purchasers.^[50]

(j) The Applicant also provided screenshots of a website page he maintained for Delish Frenchies which also recorded an email address delishfrenchies@gmail.com. There are plenty of pictures of the various litters in various stages and of puppies for sale, as well as of a smiling Applicant enjoying the dogs.^[51]

(k) The Applicant also said he made a profit of just over \$96,000 from the dog breeding operation as a whole, although he said it might be slightly less than that for the Relevant Periods.^[52] He said he intended to make a profit.^[53] It was not clear from the Applicant’s evidence before the Tribunal whether this \$96,000 “profit” is after having taken into account costs. The Tribunal anticipates that figure reflects income from selling the dogs and it does not take into account costs.

(l) In cross-examination the Applicant acknowledged he had not returned that income from the sale of dogs in his GST returns nor his income tax returns. In response to Ms Taylor’s (for the Commissioner) questions, the Applicant said:^[54]

And I put it to you that the income you’ve purported to have made from those activities was never recorded in your BAS or your income tax return?---I was waiting until – and I would agree with that. I was waiting until the – all of the refunds had been processed to generate it. So we – and again, this may be a complexity issue or a misunderstanding of how I lodge, it on my end back at the time. On all of those spreadsheets you would have seen client details, drivers licences, all of the active clients, all of the contracts and how we were holding money in hand until they met certain milestones then we’d refund it – or I would refund it at that – whenever they reached that point in time, whether that be one – two years down the track and then I’d send –I would deem that as income. But if that’s the incorrect way to do it, then that would be a ...mistake.

And, I put it to you that you never issued a tax invoice to the purchasers of the puppies that included the GST on the purchase?---Yes, they would - or I assume they would have been part of the contracts. That would be in the contract itself. The contracts all stipulate monetary values, they stipulate refundables. They were like a 14 or a 15-page contract.

You’ve never provided full bank statements detailing the expenses in relation to the breeding?---I definitely have, they’re in Dropbox files which have been referenced by the ATO....

... why, on the face of the contracts, is there no GST detailed?---It was just all done on the face of the contract. It was GST inclusive. All references for your comments around the bank statements, in the SIGBOX submissions, the Dropbox submissions and all of the various methods of zip files I provided to the ATO over the last two years, an extra file 2, was 5 labelled 'Bank statements and financial documents'. That includes full bank statements for 2018 to 2021, subjected down by quarters, it also includes three spreadsheets and a summary PDF.

18. When considering that evidence from the Applicant, I first consider the reference he made to bank statements. Hundreds of pages of ANZ bank statements are on the Tribunal Book^[55] and there appears to be some bank material that comprises a visa card statement relied upon by the Applicant for a short period in one year of the Relevant Periods.^[56] I suspect the Commissioner's point is that these documents do not clearly demonstrate anything relating to the dog breeding operation. The Applicant has provided spreadsheets outlining costs, and they do not always clearly match to any bank statements.^[57] In terms of sales income from the sale of puppies, some of the bank statements refer to deposits from other accounts which may be related to this matter and there are some bank payment summaries demonstrating deposits were received for puppies.^[58] There is also other material the Commissioner can rely upon that demonstrates income was derived, particularly the sale contracts.

19. The Applicant provided example contracts to the Commissioner, and they appear on the Tribunal Book.^[59] They demonstrate sales occurred. There is no suggestion of any relationship between the Applicant and the purchasers of dogs, other than a commercial relationship. There are broadly two types of example contracts. There is what seems to be the earlier version of the contract which is shorter than the later version of the contract which has a Delish Frenchies cover page. The Applicant says he no longer carries on a dog breeding operation. For that reason, it should be expected that all of the 18 to 22 puppies^[60] the Applicant referred to in evidence have been sold. The Commissioner can act on the basis of this material.

20. From the contracts provided, the Tribunal understands that:

(a) A bond is paid as part of the purchase price to ensure the dog acquired by a purchaser is desexed. Failure to do that within a particular time period forfeits both the bond and the dog. There is nothing obvious which talks about the price paid by the purchaser for the dog being refunded in circumstances where the dog is forfeited for this reason.^[61]

(b) In the later version of the contract (with cover sheets referring to "Delish Frenchies") there is a clause relating to the new owner being required to have the dog checked by a vet twice, and there are clauses suggesting a "*partial refund may be negotiated*" if the dog does not pass those vet checks.^[62] There is also a clause providing that the dog can be returned for a refund within 24 hours of a second vet visit, as long as that is no later than 1 week after taking ownership.^[63] There do not appear to be similar clauses in the earlier version of the contract.^[64]

(c) In the later version of the contract there is a clause that provides that a replacement dog might be provided where a dog dies due to a genetic cause identified following an autopsy. The replacement dog seems to be without further cost due to clauses talking about a higher value animal requiring the purchaser to pay the difference and a lower value animal leading to a refund of the difference being paid to the purchaser.^[65] Once again, there is no such clause in the earlier version of the contract.^[66]

21. The Applicant's evidence in cross-examination to explain his lack of tax filings might be to suggest that he concluded from those clauses in the example contracts that income derived from the sale of dogs did not need to be returned until a specific time period expires, the first vet visit is completed, or until the dog does not die (the last of which is obviously absurd). The Applicant's evidence on cross-examination suggests there are a lot of refunds, and this may mean he refers to the desexing bond only. The Tribunal is not asked to consider this point, but records that if the Applicant's view is the desexing bond means he need not return sales income in his BAS or in his income tax returns, that is wrong.^[67] The Applicant is registered on a *cash basis* for GST purposes. That means that when cash is received from the sale of puppies, the BAS must return it. Adjustments can be made in later BAS where necessary for any desexing bond refunded or any other refund event.

22. The fact that the Applicant has not returned this income in his BAS and income tax returns is of serious concern to the Tribunal. It has adversely impacted my assessment of the Applicant and his evidence. It gives rise to credibility concerns.^[68] I also agree with the Commissioner that his failure to return this income is a factor that supports the view that he does not carry on an enterprise of dog breeding. The Applicant should have contacted the Commissioner and asked questions about how to manage this issue or sought tax advice if he was unsure. The Applicant's actions in failing to return

income are more significant than the claims he makes against the Commissioner. It seems that the Commissioner is merely withholding refunds in order to ensure the Applicant meets his tax obligations like all other Australians in the absence of the Applicant filing his BAS and returns as required by law.

[69] The Applicant complains this explanation from the Commissioner for withholding GST refunds has not been set out before,^[70] but as this case is not about the Commissioner's withholding of GST refunds, it is not relevant to the points before the Tribunal.

23. For completeness, I reject the Applicant's attempt to blame the Commissioner for his failure to file BAS and tax returns.^[71] This should not be a revelation to anybody, but the Applicant is not the first taxpayer in Australia to face a situation where BAS and/or returns are due when he is in dispute with the Commissioner for earlier periods. Other taxpayers in such circumstances know to meet their legal obligations. Being in dispute with the Commissioner in relation to earlier periods does not exempt the Applicant from being obliged to file BAS and returns in accordance with the law like every other taxpayer in Australia. The Applicant should have filed his returns as he was required to do by law, and as all other Australians do. He had two options. The first option was to file returns consistent with the Commissioner's view and then lodge an objection on the basis that the dog breeding operation should be included. That objection could have been put on hold pending the outcome of the Tribunal case. The second option that Applicant had was to file his returns on his argued position (that is including the dog breeding operation) and to engage with the Commissioner to essentially put amended assessments on hold pending the outcome of the case before the Tribunal. In any event, the Applicant ought to have liaised with the Commissioner to seek its guidance about how to meet his legal obligations.^[72] His failure to file BAS and returns is inexcusable.

24. Turning back to the sale contracts and the point at issue in this case, it is true, as the Commissioner pointed out, that there is no reference to GST on either version of the sale contract. There is no evidence of GST invoices being issued by the Applicant to purchasers of dogs, although it seems from the face of the purchaser contracts that the Applicant's dogs were sold as pets and that GST was not likely to be claimed by purchasers as a result. Nevertheless, I agree with the Commissioner that the Applicant's failure to issue tax invoices is a fact against his assertion that the dog breeding operation was an enterprise. A GST-registered enterprise issues invoices in the ordinary course.

25. However, from the manner in which the Commissioner presented its case to the Tribunal, the Commissioner's approach is, in essence, that it would not have entered into sales contracts such as those entered into by the Applicant without dealing with taxation matters and that alone makes this material uncommercial or not businesslike. Case law supports the conclusion that the Commissioner must take what it finds, and such a position from the Commissioner is not sustainable.^[73] In any event, a contract being silent as to GST is not problematic for GST purposes. The GST Act provides that GST is 10% of the *value* of the taxable supply, the *value* of a supply is 10/11^{ths} of the price, and the *price* is the *consideration* for the supply and if expressed in money, the *price* is that money without any discount for the GST payable.^[74] All of that means that a contract price that is silent as to GST is GST inclusive (such as the price on the Applicant's sale contracts).

26. The Applicant also provided example Stud Service Contracts to the Commissioner that appear on the Tribunal Book.^[75] The Applicant's dogs were on occasion serviced by stud dogs. There is no evidence of costs for this.

27. Finally, as noted on the Commissioner's correspondence,^[76] the Applicant maintains an ABN^[77] linked to his GST registration. That ABN number on ABN Lookup suggests he may also use other business names.^[78]

Legislation, case law and guidance

28. The relevant parts of section 9-20 of the GST Act provide:

(1) An enterprise is an activity, or series of activities, done:

(a) in the form of a business; or

(b) in the form of an adventure or concern in the nature of trade; or [...]

(2) However, enterprise does not include an activity, or series of activities, done: [...]

(b) as a private recreational pursuit or hobby; [...]

(c) by an individual ... without a reasonable expectation of profit or gain

29. There is case law on what these parts of section 9-20 of the GST Act mean. The Commissioner has issued guidance on its view, and there is other material that is of assistance. That material and my findings are set out below.

A series of activities in one enterprise, and a number of different enterprises by one entity

30. An entity (including an individual) can carry out a number of different enterprises under the same ABN if they all operate under the same business structure.^[79] The definition of *enterprise* in section 9-20 contemplates that, referring to “one activity” or “a series of activities”.^[80]

31. The Respondent’s Written Closing Submissions dated 12 November 2025 (“**Commissioner’s Closing Submissions**”) state that the Applicant’s dog breeding operation must be “connected to the carrying on of his enterprise” or “relate to his enterprise”.^[81] The enterprise the Commissioner refers to is that found by it on 22 October 2022 – that is, an enterprise comprised of the Applicant acting as a consultant to a NSW company and his property investment/speculation operation.^[82] The Commissioner’s submission does not set out the legal position correctly.

32. A number of enterprises can be carried on under the same ABN and GST registration numbers even if the activities are unconnected with each other. The Commissioner says as much itself.^[83] That means there can be multiple enterprises carried out by one GST-registered person.

33. The other approach is to consider whether the one *enterprise* carried out by one taxpayer can comprise a number of different activities even where they are unconnected with each other. That appears to be how the Commissioner has exclusively approached this case, and it has taken the position that this is not possible. That is also not correct. A number of unconnected activities can each comprise an overall operation that is an enterprise where they are carried out by the same entity. The statutory test specifically provides for that. Case law also supports this.^[84]

34. The Commissioner also says as much itself referring to an overall “operation” focus in MT 2006/1 at [153]:

Entities can undertake a wide range of activities with varying degrees of interrelationship. The meaning of the term ‘activity, or series of activities’ for an entity can range from a single undertaking including a single act to groups of related activities or to the entire operations of the entity.

35. The Explanatory Memorandum to *A New Tax System (Goods and Services Tax) Bill 1998* (Cth) confirms this was intended:

2.2 An entity may be registered for GST if it is carrying on an enterprise. Section 9-20 defines enterprise. An entity (you) can carry on more than one enterprise, and can carry on more than one type of enterprise.

2.3 Enterprise has been defined very broadly. Several of the things included as enterprises are included not so that they charge GST on their supplies, but so that they can become registered and obtain input tax credits.

36. As was noted in *Federal Commissioner of Taxation v Swansea Services Pty Ltd* [2009] FCA 402 at [66], [68] (“**Swansea Services**”), an *enterprise* has been defined deliberately as wide in scope and section 9-20 does not mirror income tax concepts such as “*carrying on a business*”.

Was the dog breeding operation an enterprise?

In the form of a business

37. Paragraph 9-20(1)(a) of the GST Act provides that any activity or series of activities “*in the form of a business*” can be an *enterprise*.

38. The Applicant has approached his case by saying that the dog breeding operation is a “business”.^[85] The Tribunal notes that section 9-20 of the GST merely requires there be an activity or activities “*in the form of*” a business and a business itself is not required. The meaning of “*in the form of*” is considered further below.

39. Starting with the Applicant’s case as he presented it, when considering whether there is a business, there are a huge number of cases which can be referred to. For instance:

(a) Determining whether there is a business is a question of fact: *Hope v Bathurst City Council* [1980] HCA 16; (1980) 144 CLR 1; *Swansea Services*.

(b) Repetition and regularity of activity is important, but even isolated activities or limited activity can amount to carrying on a business: *Ferguson v Federal Commissioner of Taxation* [1979] FCA 29; (1979) 37 FLR 310 (“**Ferguson**”).^[86]

(c) An intention to profit and a pattern of trading can be relevant factors when determining whether a business arises: *John v Federal Commissioner of Taxation* (1989) 166 CLR 417 [24]-[25].

(d) A new type of activity added to an existing operation, and the first step of a business can constitute a business: *Fairway Estates Pty Ltd v Federal Commissioner of Taxation* [1970] HCA 29; (1970) 123 CLR 153 [30]-[33], [36].

(e) The state of mind of the taxpayer does not of itself determine whether there is a business, but it may be relevant evidence when characterising the activities objectively: *Inglis v Federal Commissioner of Taxation* [1979] FCA 106 [13]; *Spassked v Commissioner of Taxation* [2003] FCAFC 282 [64].

(f) A person can carry on more than one business: *Ferguson* at [15]:

The fact that, concurrently with the activities in question, the taxpayer carries on the practice of a profession or another business, does not preclude a finding that his additional activities constitute the carrying on of a business.

40. As noted above, paragraph 2-90(1)(a) of the GST Act merely requires that there be an activity or activities "in the form of" a business. As is noted by the Commissioner in GSTD 2006/6 at [11]:

An enterprise includes an activity, or series of activities, done in the form of a business. The phrase 'in the form of a business' is broad and has as its foundation the longstanding concept of a business. The wider phrase has not been considered by Australian courts. The definition clearly includes a business and the use of the phrase 'in the form of' indicates a wider meaning than the word 'business' on its own. This occurs in the case of non-profit entities. In such instances we consider that not all of the main features of a business such as a capacity to earn and distribute profits need to be present before an activity has the form of a business (emphasis added).

41. In *Toyama Pty Ltd v Landmark Building Developments Pty Ltd* [2006] NSWSC 83 ("*Toyama*") Justice White was considering a submission that an enterprise of trustees was to the trust beneficiaries and the sale of property was not in furtherance of that enterprise. Justice White rejected that submission and held at [69]:

Further, the activity, or series of activities, which they carried on was done in the form of business. The words "in the form of" have the effect of extending the meaning of enterprise beyond entities carrying on a business, to encompass activities that have the appearance or characteristics of business activities. ... However, even without this extension, what was done by the trustees were business activities, whether considered from the point of view of their providing services to the beneficiaries, or from the point of view of their effecting a sale of the land (emphasis added).

42. In holding that there was an enterprise, Justice White pointed to a series of acts carried on by the trustees, including engaging consultants, marketing, obtaining advice and held that the sale of property had the necessary business or commercial character.^[87]

43. I find that the Applicant was carrying on dog breeding activities *in the form of a business*. There are a similar series of acts to those in *Toyama* in the Applicant's case. I specifically note that I am not finding he was *carrying on a business*, although he may have been. There is insufficient evidence for me to conclude on the balance of probabilities that there was a business due to missing material, missing accounts and material on the Tribunal Book that the Tribunal cannot access. However, there is sufficient evidence to demonstrate that the Applicant was operating *in the form of a business*.

44. The Applicant has provided evidence on the Tribunal Book that he was engaged in marketing, he had distinct email addresses, he entered into contractual arrangements with customers (and there is evidence of approximately 16 sales contracts with apparently unrelated persons), he entered into contracts with suppliers of dogs to acquire dogs, and contracts to stud service his dogs, he acquired stock, he established kennels, he registered as a breeder and maintained that registration, he entered into arrangements with food and veterinary suppliers, he sought pedigree certificates and other evidence to ensure his stock was as valuable as possible, he maintained his stock with vet visits and his evidence is that he sold puppies and made a profit. All of this has the necessary commercial character. While this activity was small scale, the Commissioner's own guidance identifies that small scale activities can be operated *in the form of a business* even where they are one-off, and in this case, there is repetition and regularity.^[88]

45. The Commissioner's case focuses on the burden of proof and suggests that the Applicant has failed to evidence consideration for his taxable supplies of dogs.^[89] Yet the Applicant has provided around 16 signed contracts demonstrating sales and sale prices. The Applicant has also demonstrated his marketing. The Applicant has told the Commissioner the number of dogs he bred, evidenced that in photos, pedigree certificates and vet bills, and the contracts demonstrate the broad pricing parameters. Some of the bank statements refer to deposits from other accounts which may be related to this matter.^[90] There are limited bank payment summaries demonstrating deposits were received for puppies.^[91] I find he has met the requirements to be *in the form of a business* and met his burden of proof on this aspect.

46. This means I find the dog breeding operation was an *enterprise* as paragraph 9-20(1)(a) of the GST Act applies.

In the form of an adventure or concern in the nature of trade

47. Paragraph 9-20(1)(b) provides that any activity or series of activities “*in the form of an adventure or concern in the nature of trade*” can be an *enterprise*. The Commissioner says that this paragraph applies to operations of a commercial character where goods and services are provided for a reward, even where that activity is of an isolated nature.^[92]

48. The Commissioner’s Closing Submissions at [20] refers to the so-called ‘badges of trade’ also outlined in MT 2006/1 at [243] and following.^[93] As was noted in *Puzey v Commissioner of Taxation* [2003] FCAFC 197 at [48] no one badge of trade is determinative, and it is a collective assessment.

49. The Commissioner’s Closing Submissions make a broad submission^[94] that is to the effect that those criterion do not demonstrate that the dog breeding activities are “*connected to*” the carrying on of the Applicant’s enterprise (being comprised of the Applicant’s consultancy and property activities which the Commissioner found were an enterprise on 31 October 2022).^[95] As stated above, this is an incorrect approach. Section 9-20 of the GST Act deliberately has a wider focus. Many entirely unconnected enterprises can be carried on by the one entity.

50. In terms of the ‘badges of trade’, the Applicant has provided evidence of an operation that has the following ‘badges of trade’ specified in MT 2006/1:^[96]

(a) *The subject matter of realisation* – the dogs – could be for personal enjoyment, but are evidenced by the contractual arrangements as having been sold to clients.

(b) *The length of the period of ownership* – this can be seen from the sale contracts as being months at the most.

(c) *The frequency or number of similar transactions* – in evidence are approximately 16 contracts showing the sale of dogs.

(d) *Supplementary work on or in connection with realised property* – this is about taking steps to make the sold property more marketable. In this case there is evidence of that in terms of pedigree certification and stud breeding for example.

(e) *The circumstances of sale* – the evidenced circumstances do not suggest that the dogs were sold for reasons other than trade (such as forced sales for financial reasons).

51. The Commissioner’s Outline considers other factors which are said to be ‘badges of trade’ some of which essentially double up and are dealt with together below:^[97]

(a) *The significance of the commercial activity / whether the activities are of a reasonable size and scale* – as can be discovered by simply googling dog breeders, dog breeding is not always significant in scale.^[98] The Commissioner acknowledges that a small scale operation can comprise an adventure of concern in the nature of trade.^[99] These factors are in favour of the Applicant.

(b) *A purpose and intention of the taxpayer to engage in commercial activity / intention to profit* – the Tribunal finds there is sufficient evidence of this. For instance, the website page, email addresses, acquisition of stock, sale contracts, marketing, supplier arrangements, registration as a breeder, and the use of that registration number. The Applicant’s evidence is he intended to make a profit and achieves sale prices for the dogs. These factors are in favour of the Applicant.

(c) *The activity is or will be profitable* – this is not a requirement at law, and the Applicant’s evidence was that he did profit from the dog breeding operation. I have found above that he intended to profit. In any event, as was held in *Commissioner of Taxation v Stone* [2005] HCA 21 at [55] a profit-making purpose may not always be necessary for activities to qualify as a business.^[100] As was noted in *Konebada Pty Ltd as trustee for the William Lewski Family Trust v Federal Commissioner of Taxation* [2024] FCAFC 42 [66] the fact an enterprise is less profitable than anticipated, does not ordinarily rob the enterprise of having the character of being directed to making a profit. In my view, the potential for losses also does not adversely impact there being a reasonable expectation of making a profit. The prospect of the Applicant making a profit from selling his dogs was not in the category of the decidedly remote circumstances of there being any profit set out in *Professional Admin Services Centres Pty Ltd v Federal Commissioner of Taxation* [2013] FCA 1123 at [62] and [64] for example. This factor is in favour of the Applicant.

(d) *The recurrent or regular nature of the activity / commercial sales of products* – this case has evidence of 16 sales contracts, and evidence of regular sales in the Relevant Periods. Dog-breeding is not always of a large scale. These factors are in favour of the Applicant. This is not a situation akin to *Assad v Federal Commissioner of Taxation* [2023] AATA 2995 where there were no sales and no marketing to external customers.

(e) *The activity is carried on in a similar manner to other businesses in the same or similar trade* – a google search reveals this to be the case.^[101] This factor is in favour of the Applicant.

(f) *The activity is systematic, organised and carried on in a businesslike manner with records kept / a business plan exists* - these are features which suggest that the Applicant was not operating the dog breeding operation as *an adventure or concern in the nature of trade*. The material on the Tribunal Book is disorganised, while there are spreadsheets, there are no obvious documents in the form of accounts, there is no business plan. Some records are on the Tribunal Book, there are some records of costs incurred, contracts entered into, and prices received for dogs and records of customers.^[102] There is case law which supports the view that failing to meet basic business organisational matters can be determinative of whether there is an adventure or concern in the nature of trade.^[103] Other cases take the view that if there are no books of account and no business plan that does not necessarily mean there is no business or adventure in the nature of trade and it depends on the type of business operation.^[104] For example, a very small scale operation is unlikely to have a detailed business plan. However, on balance, I have assessed this factor as *not* in favour of the Applicant. This is because of the lack of anything like accounts for this enterprise and the unsatisfactory nature of the material provided by the Applicant that appears on the Tribunal Book. This is also in part because of the Applicant's failure to return the income from this operation in his BAS, his failure to issue tax invoices to his customers, and his failure to return income in his income tax returns.

(g) *The Applicant has relevant knowledge or skill* – there is material on the Tribunal Book to suggest this arises. That material relates to the registration of the Applicant with ANKC and MDBA. In particular, the material from MDBA required the Applicant to educate himself on a number of aspects including hygiene, the health of his dogs, health management plans, breeding, and regulatory requirements.^[105] I assess this factor as neutral, however. This is because there is little to no evidence how the Applicant was tested against these requirements (whether it was a one-off), nor is it clear whether the dog breeding operation or the Applicant was regularly checked for compliance with these requirements, nor is there anything in evidence that suggests that the Applicant continued with professional development.

52. Overall, when considering the 'badges of trade', the Tribunal has concluded that, while there are factors against the Applicant or that are neutral, on balance, the Applicant's dog breeding operation does have the badges of trade.

53. The Commissioner's Outline also submits that the following factors suggesting that he did not carry out "*an adventure or concern in the nature of trade*"^[106] - the Applicant did not reveal his dog breeding operation until the objection process, the Applicant has not returned income from that activity, the Applicant has not provided tax invoices or properly reconstructed those records, and has not sought to say how they are related to his enterprise. These factors have been considered by the Tribunal.

54. The Tribunal does not think that the timing when the Applicant raised the dog breeding operation with the Commissioner has anything to do with the statutory test. The Tribunal has already indicated to the Commissioner that it ought to take action in relation to income from the dog breeding activity. There *are* invoices on the Tribunal Book,^[107] along with others embedded in emails but not accessible by the Tribunal.^[108] As will be seen later in this decision, the Tribunal's view is that some of the Applicant's claimed costs may be disallowed but this does not of itself impact where or not the Applicant's activities were "*in the form of an adventure or concern in the nature of trade.*"

55. The Tribunal finds that, on balance, the Applicant's dog breeding operation is also "*in the form of an adventure or concern in the nature of trade*" and an *enterprise* for that reason as well.

A private recreational pursuit or hobby or activities carried on by an individual without a reasonable expectation of profit

56. The Commissioner's case is that the Applicant's dog breeding operation is not an *enterprise* because it falls within the above two exclusions specified in subsection 9-20(2) of the GST Act.

57. The Tribunal finds that the Applicant's dog breeding activities do not fall within those exclusions for the following reasons:

(a) The case law is to the effect that the question of whether an activity is a private recreational pursuit or hobby is question of degree.

(b) In *D'Arcy v Federal Commissioner of Taxation* [2008] AATA 709 the Tribunal found at [26] that it was unable to distinguish the activities of the taxpayer from a person who chose to part-own brood mares for pleasure, recreation or as a hobby. *D'Arcy* has

similarities to the Applicant's case. The taxpayer was registered with the NSW thoroughbred owners and breeders association, obtained advice from experts, bred from brood mares and sold about 22 progeny from his mares. The taxpayer had another job and pursued his horse breeding activities part-time. There is a point of distinction from the Applicant's case, as the taxpayer in *D'Arcy* co-owned the horses with a large number of others, had no contractual arrangements with his co-owners, and it was unclear how much the taxpayer was actually involved in or influenced the breeding activities. He had nothing like a controlling ownership interest. In addition, the taxpayer seemed more engaged in racing than breeding. Those factors do not arise in relation to the Applicant's dog breeding activities which he was engaged in, involved in, and he owned the dogs that he sold.

(c) In *Woods v Deputy Federal Commissioner of Taxation* 99 ATC 5306 the taxpayer maintained that he was engaged in horse breeding as a business, and the Federal Court held that the taxpayer was engaged in a hobby. There are reasons to distinguish this case from the Applicant. In particular, the taxpayer's affidavit evidence was not accepted by the Court as there was evidence contradicting his claims of completing further education, of particular sales of horses, and there was evidence that sales that did occur were to family members or associates.^[109] In the present case, the clients that purchased dogs do not have any evidenced link to the Applicant, there are contractual arrangements with them, they came to the Applicant because of his marketing,^[110] and the Applicant completed the education required by MDBA as evidenced by being registered with MDBA.^[111]

(d) In *Ferguson* the taxpayer was a naval officer and entered into a number of arrangements involving leasing and breeding cattle. He claimed expenses for this activity. The Court held that the taxpayer's operations were a business and not a hobby as a deductible expense for income tax purposes. There were factors in *Ferguson* such as detailed business records that are not present here, and are not in favour of the Applicant. Those aspects weaken the Applicant's case. However, in *Ferguson* those records were maintained by others, and not by the taxpayer himself. In addition, in this case there is sufficient evidence in the form of contractual arrangements, evidence of purchases of dogs, evidence of sales of dogs to unrelated customers (at least 16 times), evidence of registration and licensing, evidence of costs incurred, and evidence of marketing to demonstrate that the Applicant was engaged in the form of a business or the form of an adventure in the nature of trade as opposed to a hobby.

(e) Similarly to *Ferguson* the fact the Applicant was engaged in other activities does not of itself make the dog breeding activities a hobby. As is noted above, the GST Act contemplates that unconnected activities carried on by an individual can each comprise an enterprise.

(f) Because the sale contracts on the Tribunal Book provide corroboration, the Tribunal accepts the Applicant's evidence that he has derived income from the dog breeding operation, although it seems likely that the profit he ascribes was not calculated after taking into account the claimed costs. The Commissioner's argument appears to be that there could be no reasonable expectation of profit. *Skourmallas v Federal Commissioner of Taxation* [2019] AATA 5535 (at [55]-[63]) is an example of a case where a small scale car dealing operation was found to be an enterprise and the individual was found to have a reasonable expectation of a profit despite its small scale and the fact the enterprise was in loss. This was because there was no rational explanation for the sales that occurred other than that the taxpayer intended to profit. The same can be said of the Applicant's sales of puppies. While small scale, the Applicant has given a coherent explanation of his dog breeding operation that has satisfied the Tribunal that he had a reasonable expectation of a profit.^[112]

Conclusion

58. For the above reasons, the Tribunal finds the Applicant's dog breeding operation was an *enterprise* and the exclusions in subsection 9-20(2) of the GST Act do not apply.

Is the Applicant entitled to input tax credits in relation to his dog breeding operation?

59. The Tribunal's finding above means that *in principle* the Applicant can claim input tax credits for creditable acquisitions in accordance with section 7-1 and Division 11 of the GST Act. The Tribunal accepts that costs such as vet fees, dog food, costs of registration as a breeder were goods and services acquired in carrying on his dog breeding enterprise and *in principle* have a creditable

purpose pursuant to section 11-5 and section 11-15 of the GST Act. I record that I do not accept vehicle expenses can be claimed for this enterprise,^[113] as the Applicant has not demonstrated with any particularity what those expenses are, nor for what vehicle, nor the dates in which it was necessary to transport the dogs (for example). What the Applicant can claim becomes a question of what he has evidenced and whether he satisfies the requirements in the GST Act.

60. The Applicant has outlined the input credits in his BAS^[114] for each of the Relevant Periods in a table on the Tribunal Book^[115] and sought to allocate those total claims to his various enterprises. Item 1B (input tax credit) claims for the dog breeding enterprise are said by the Applicant in that table to be \$607.71 in 2018, \$1,151.26 in 2019, \$1,451.83 in 2020, and \$954.11 in 2021. These are relatively small amounts, but it is not clear exactly what material on the Tribunal Book is identified as substantiating these claims.^[116] In addition, material on the Tribunal Book included emails with PDFs annexed that were inaccessible to the Tribunal.

61. In those circumstances, the question of the amount of input tax credits that can be claimed by the Applicant for the dog breeding enterprise must be remitted to the Commissioner for determination. For the avoidance of doubt, it is not intended that the Commissioner consider any material other than that already on the Tribunal Book nor any costs other than the costs specifically identified by the Tribunal. If the Applicant produces any other material for the Relevant Periods which is not on the Tribunal Book, that material should not be taken into account as he has had the opportunity to meet his burden of proof before the Tribunal based on the material on the Tribunal Book.^[117]

62. In addition, the Commissioner is to determine the available input tax credits subject to the following recommendations from the Tribunal:

(a) Costs that are vet fees, dog food, costs of registration as a breeder, puppy pads, dog products evidenced on the Tribunal Book are, in principle, goods and services acquired in carrying on the Applicant's dog breeding enterprise.^[118] Those costs are evidenced on the Tribunal Book and that material is identified in this decision.^[119]

(b) If the claims the Applicant has made on TB1619 for the dog breeding operation have a connection to invoices or receipts on the Tribunal Book for the expenses that the Tribunal finds in principle can be claimed, and there are receipts on the Tribunal Book demonstrating payment occurred in the Relevant Period or there is sufficient evidence of payment, then those claims should be allowed.

(c) In terms of evidence of payment, the Commissioner is warned to not be rigid and to act sensibly particularly if there is an invoice but no receipt, and nothing obvious on the bank statements or visa statements on the Tribunal Book. For example, if a payment for dog food cannot be demonstrated, but there is an invoice for dog food, the Commissioner knows the dogs were sold, it can be sensibly concluded each dog was fed. The Commissioner must act sensibly, taking into account the comments of the Full Federal Court in *Charles Apartments Pty Limited v Commissioner of Taxation* [2025] FCAFC 180 at [17] about small businesses:

Eligibility to claim a deduction under s 8-1 of the [Income Tax Assessment Act 1997 (Cth)] is not conditioned upon the existence of evidence in writing to prove that a liability was incurred in the amount claimed. It is singularly important that the Commissioner brings to bear this understanding of small business and of s 8-1 in his administration of the ITAA 1997 and other taxation legislation. Great injustices can be done if he does not do so.

(d) Amounts evidenced by invoices on the Tribunal Book that relate to the Relevant Periods should also be further considered even if there is no link to the claims the Applicant has made (for instance in the table on TB1619). If bank statements or visa statements on the Tribunal Book provided by the Applicant demonstrate those amounts were paid in the Relevant Periods, or there are receipts on the Tribunal Book demonstrating payment occurred in the Relevant Period,^[120] or it can be sensibly concluded payment occurred, input tax credit claims for those costs should be allowed.

(e) To the extent there are no invoices supporting claimed costs and no other evidence, the claims cannot be substantiated and the requirements of Division 11 of the GST Act and section 382-5 of Schedule 1 to the TAA have not been met. Those claims should be rejected. For instance, this category includes items coloured in orange on visa statements at TB1610-TB1618 and TB1621 and following which are labelled as "TBC - More than likely related to Breeding or Consultancy – but as discussed, no records post natural disaster". If these costs are being claimed (which is not clear), a line item being highlighted on a visa statement that does not cover all of the Relevant Periods with a self-created description suggesting that this *could be* related to certain enterprises does not meet the Applicant's burden of proof on the balance of probabilities, does not meet the requirements of Division 11 of the GST Act, and such claims should be disallowed.

For the avoidance of doubt, the decision outlined below^[121] about reconstructed records also equally applies to claims for the dog breeding operation.

(f) As discussed below,^[122] the Commissioner needs to also consider whether subsection 29-70(1B) of the GST Act should be applied to any of the material on the Tribunal Book.

(g) The Applicant should be required to file amended BAS to ensure the proceeds of sale of dogs are included and to correct any overclaimed input tax credits at item 1B.

REASONS FOR DECISION - INPUT TAX CREDITS CLAIMED BY THE APPLICANT FOR OTHER ENTERPRISES

The remaining matters at issue before the Tribunal

63. The exact claims that are being argued about have changed, the Applicant has filed spreadsheets and tables that are not consistent with the claimed input credits in the BAS he has filed, ^[123] no amended BAS have been filed, the Tribunal Book contains thousands of pages of material that do not have a clear connection with anything at all, and some of which have PDFs that cannot be accessed. All of this has made this case complicated and excessively time consuming, despite the relatively small amounts at issue.

64. When turning to what the Tribunal understands to be the remaining GST issues, I record the following facts:

(a) The Commissioner accepts the property investment / speculation operation and consultancy are enterprises carried on by the Applicant.^[124]

(b) The Applicant has conceded some of the GST calculations relating to the property investment / speculation operation.^[125] The Applicant concedes \$941.65 claimed in relation to a rental claim^[126] although that *seems* related to the photography operation which he has conceded was a hobby in any event. That means any claim for GST input credits should be disallowed in any event.^[127]

(c) The Applicant also concedes that errors identified by the Commissioner in the calculation of the margin scheme relating to properties in Grand Parade, Rutherford and Sutcliffe Street, Cameron Park.^[128]

(d) What is left for the Tribunal to consider are:

(i) Food and consumables expenditure – for instance at McDonalds, cafes, grocery stores. This appears in the main to be claimed by the Applicant in relation to his consultancy business.^[129]

(ii) Whether the Commissioner is *obliged* to accept what the Applicant says are reconstructed records following a flood in the Central Coast of NSW. This relates to all enterprises carried on by the Applicant, although his evidence before the Tribunal focused on this issue as relating to the dog breeding enterprise.^[130]

(iii) Input tax credit claims which the Commissioner says are double claimed for the acquisition of property.^[131]

Food and consumables expenditure

65. The Tribunal has concluded that input credits claimed for food and consumables expenditure should be disallowed because the Applicant has not met his burden of proof. There is insufficient evidence of a connection between the claimed costs and any enterprise carried on by the Applicant.

66. There is a lot of food and consumables expenditure listed and random receipts, but it is not clear to the Tribunal what exactly the Applicant is claiming.^[132] The Commissioner describes these claims as totalling \$20,159.92 in the Relevant Periods.^[133]

67. The Applicant labels this expenditure as "*Meeting – staff/contractor/Channel partner/Supplier/Trade etc*" on visa statement material on the Tribunal Book for a *short period* in the Relevant Periods.^[134] The other spreadsheets on the Tribunal Book demonstrate that this is a category of expenditure that represents a majority of the claimed costs and the line items exceed those on the visa statements.^[135] The Applicant's evidence before the Tribunal was that he met clients in cafes and this expenditure is related to his consultancy business.^[136]

68. I do not accept the Applicant's evidence. The expenditure noted on the visa statement as relating to his consultancy^[137] also includes expenditure at Repco (which is an auto-parts store), expenditure at Lush (a cosmetics company), and expenditure at supermarkets when it cannot be seriously contended that a client meeting would take place at the local Woolworths.

69. In addition, the available evidence presented by the Applicant is entirely insufficient to meet his burden of proof. There is no evidence corroborating any meetings with clients, nothing substantiating when and where meetings were held, with whom, on what dates and for what purpose, nothing matching expenses to those dates, there are no diary entries (which would be expected to be held electronically), and there is no evidence from clients that meetings occurred. Instead, what we have is the Applicant's vague oral evidence,^[138] a *short* period of allocation by the Applicant in some visa statements, and some random receipts showing food without demonstrating anything linking that to any enterprise.^[139] The Tribunal notes that in the Applicant's Outline he asserts that the Commissioner's delays "*compromised the Applicant's ability to rely upon contemporaneous evidence, including time-sensitive digital records.*" There is no evidence as to what the Applicant is talking about, how digital records are "time sensitive", and, in any event, he is required to maintain tax records for the period specified in section 382-5 of Schedule 1 to the TAA. The Applicant simply does not meet his burden of proof.

70. I am not satisfied on the balance of probabilities that the food and consumables expenditure meets the requirements in Division 11 of the GST Act for any enterprise carried on by the Applicant. There is simply insufficient evidence, and such claims should be entirely disallowed. These costs do not need to be categorised as "entertainment" although that obviously is a relevant consideration were there any linkage with any enterprise.^[140] I find that instead, from the material before the Tribunal, the Applicant has not satisfied the Tribunal that any of these costs are creditable acquisitions and particularly that any of these costs represent goods and services acquired in carrying on any enterprise.^[141] This means the Applicant has not satisfied Division 11 of the GST Act, particularly sections 11-5 and 11-15.

71. The Applicant's submissions have no basis at law. He cites "*FC of T v Montgomery (1999) HCA 34*" for the proposition that "*the High Court emphasised the importance of linking claimed expenses to income-producing activities*"^[142] or suggesting that the High Court "*addresses the connection between entertainment expenses and income production*".^[143] *Commissioner of Taxation v Montgomery [1999] HCA 34* is about whether a lease incentive payment is taxable or not. It is not about expenses. It is not about entertainment expenses. It does not support the Applicant in any way.

72. If the Applicant determines in future to claim such costs in his BAS, he needs to ensure he maintains proper evidence to demonstrate that there were meetings in cafes and that they were business meetings. The Applicant is warned that he also needs to consider subsection 69-5(1) of the GST Act and material available on the Commissioner's website before making any such claims as they may well not be sustainable at all.^[144] It is for the Applicant to determine whether he will continue to claim such expenses. The Applicant must take greater care than the material on the Tribunal Book demonstrates has been done to date.

Reconstructed records – Central Coast Flood

73. The Applicant says that some of the supporting material for claimed input credits were lost in the Central Coast Floods of 2021, he reconstructed that material, and this must be accepted by the Commissioner – and ergo, the Tribunal. I reject the Applicant's Closing Submissions for the reasons which follow.

74. It is of course accepted that there were floods in the NSW Central Coast in 2021. However, there is little evidence of any damage from the Central Coast Floods to the Applicant's records. There are some images on the Tribunal Book which *might* be about water ingress although that is decidedly unclear and none of these images were referred to by either party.^[145] In fairness, flood damage to pieces of paper is not usually photographed; although it might be anticipated that much of this material would have been held electronically. The Applicant said in evidence that he made no insurance claims, and it is accepted that may well be explained by the nature of the damage he suffered.^[146] My judgment of the Applicant's credibility has been adversely impacted by some of the assertions he has made in this case and some of the material he has filed,^[147] as well as his failure to meet his obligations at law such as to file his BAS and returns.

75. Nevertheless, I operate on the basis that hard copy tax records were lost due to that flooding event.

The Applicant's submissions and the status of guidance issued by the Commissioner

76. The Applicant submits that the Commissioner does not have the discretion whether to accept (what he says) are his reconstructed records. He says the Commissioner is "*directed to*" "*must*" or is obliged to accept his records by Law Administration Practice Statement PS LA 2011/25 *Reconstructing records and making reasonable estimates for taxpayers affected by disasters* ("**PS LA 2011/25**") and is also obliged not to impose penalties.^[148] This submission is rejected. It is wrong at law.

77. The Tribunal has commented on the status of guidance from the Commissioner on many occasions as have the Courts.^[149] PS LA 2011/25 is not the law. It is misguided for the Applicant to assert that a discretion set out in guidance issued by the Commissioner to its officials somehow gazumps the statutory provisions. It does not. Solely relying upon guidance issued by the Commissioner before the Tribunal is misguided. While such guidance is relevant for the Tribunal to consider, it is not the law. The Tribunal does not apply guidance issued by the Commissioner, it applies the law.^[150]

78. Pursuant to section 382-5 of Schedule 1 of the TAA (amongst other matters) a taxpayer is required to maintain records if a claim is made for GST input tax credits. It is an offence not to do so.^[151] Pursuant to subsection 29-10(3) of the GST Act a tax invoice (as defined in section 195-1 and subsection 29-70(1) of the GST Act) is required to be held if GST input tax credits are claimed in a BAS, unless the circumstances are those that the Commissioner determines in writing to be circumstances in which the requirement for a tax invoice does not apply.^[152] It is not, as the Applicant asserts “*arbitrary and unreasoned*” for GST to be imposed on sales while input tax credits are not allowed.^[153] The statutory provisions impose obligations on taxpayers that must be met before input tax credits will be claimable.

79. PS LA 2011/25 does not say anywhere that taxpayers impacted by a natural disaster do not have to meet the above statutory provisions. PS LA 2011/25 does not say anywhere that the exception referred to in subsection 29-10(3) of the GST Act applies in these circumstances, and that is because it is merely guidance issued by the Commissioner to its officials. Legislative instruments are issued to set out what falls in the exception in subsection 29-10(3), not administrative guidance from the Commissioner to its officials.^[154]

80. In addition, in the GST context, all PS LA 2011/25 says is that a taxpayer *may* be able to make a reasonable estimate of GST or the Commissioner *may* consider the assessment provisions in the TAA – provisions such as default assessments.^[155] These statements are hardly the sort of guidance that can be pointed to as in any way justifying the Applicant’s assertions of “*administrative inconsistency and procedural unfairness*”.^[156] It is not even clear what inconsistency the Applicant is arguing about.

81. In addition, it is not clear what the Applicant is referring to as “reconstructed records”. He may be referring to his spreadsheets, which do not always identify suppliers, do not refer to GST, and are sometimes so vague that it is unclear what was actually acquired.^[157] He might be referring to bank statements or the visa statements which have the same problem – they do not refer to GST and are so vague on occasion that it is unclear what was actually acquired. He might be referring to the Applicant’s Outline where he puts some ‘reconstructed claims’ at [5] or the Applicant’s SFIC [2]. It is hard to see how he can assert that the claims disallowed by the Commissioner should be fully reallocated at ‘Schedule C’ of the Applicant’s Outline or in the Applicant’s SFIC at [2] while also conceding aspects and putting the table at TB1619 to the Tribunal. All of this material does not meet his burden of proof.

82. I note the Applicant says in the Applicant’s Outline “*itemisation at this stage would be premature and is therefore reserved for the quantum phase, to be undertaken in consultation with the Commissioner if directed*”. Pursuant to section 14ZZK of the TAA, the Applicant has the burden of proof to demonstrate on the balance of probabilities that the Commissioner’s assessments were incorrect *and* what they should have been. He had the opportunity to put his case to the Tribunal. The Tribunal acts on the basis of the material before it. There is no “quantum phase”; the case is completed.

The Applicant’s submissions – case law – use of artificial intelligence at the Tribunal

83. The cases the Applicant cites in support of his submissions do not stand for the principles he asserts, if the cases exist at all. The Tribunal is not certain that this has occurred in the present case, but comments that if artificial intelligence is used as a research tool by litigants before the Tribunal, each case identified by artificial intelligence needs to be located on public websites (such as www.austlii.edu.au)^[158] and (assuming it exists) read in order to ensure it stands for the proposition for which it is cited before it is put to the Tribunal. Otherwise, the Tribunal’s time and scarce resources are being wasted, as the Tribunal must look for cases that do not exist and read cases that have no relevance at all. Unfortunately, that is exactly what has happened here, whether artificial intelligence was used or not.

84. In particular, in terms of the cases the Applicant is relying upon:

- (a) *Vidler v Commissioner of Taxation* [2010] FCAFC 59 has nothing to say about reconstructed records as the Applicant asserts.^[159] It is a case about whether land can comprise “*residential premises*” under the GST Act despite it having no building, on the basis it had residential zoning. It also has nothing to say about creditable acquisitions as the Applicant asserts.^[160] It is irrelevant to the present case.^[161]

(b) The Applicant also cites “*Re Jowett v Commissioner of Taxation* [2011] AATA 433” for a similar proposition.^[162] The case that has that citation is *Wall and Secretary, Department of Education, Employment and Workplace Relations* [2011] AATA 433 and it too has nothing to say about reconstructed records. The “*Jowett*” case the Applicant cites as a Tribunal case does not exist under any citation. It is an hallucination. The Applicant links *Federal Commissioner of Land Tax v Jowett* [1930] HCA 51 to the Applicant’s Closing Submissions; presumably on the basis the word “*Jowett*” is in the title. The Applicant clearly has not read that High Court case from 1930 which is nothing like the case he cited; a Tribunal case from 2011. The High Court case he linked is about a claim for court costs and the main High Court decision is about land tax and provides assistance on valuing pastoral leases and unimproved land. It has nothing to say about reconstructed records. It is entirely irrelevant to this case.

(c) The Applicant refers to other cases that also do not support him or do not exist – this includes “*AAT Case* [2011] AATA 206” and “*Case V164 (1989)*”.^[163]

(d) References to *Kioa v West* [1985] HCA 81; (1985) 159 CLR 550 and “*SZBEL v MIMIA*” which is actually *SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs* [2006] HCA 63 are also misguided,^[164] including because they are judicial review cases, and the Tribunal is not empowered to hear judicial review matters.^[165] *SZBEL* was a challenge to a decision of the Tribunal on jurisdictional and procedural fairness grounds, and the High Court found at [47] there was no breach of procedural fairness by the Tribunal nor was there a jurisdictional issue. The case has nothing to add to the present matter. In *Kioa* there was a potential deportation order and an allegation against the applicant in that case had not been put to him for response. The High Court said it ought to have been put to him. The Commissioner’s position in this case has been put to the Applicant for response, many times. There is no breach of natural justice. *Kioa* does not impact the present matter. So, while the cases exist, both of those cases are about immigration law and they do not stand for the proposition asserted by the Applicant which is that if the Commissioner regularly changes personnel on a case or there is delay, that is a denial of procedural fairness.^[166] Those cases simply do not say that.

(e) In addition, the Applicant says that the Commissioner did not take into account all relevant material before coming to a decision and that *Kioa v West* [1985] HCA 81; (1985) 159 CLR 550 supports the proposition that it is improper for the Commissioner to have failed to do so.^[167] *Kioa* has nothing to say about that either as it holds that the Minister’s delegate in that case took all relevant matters into account. In any event, if the Applicant wishes to pursue such a judicial review ground, he must do so in another Court and not before the Tribunal.^[168]

(f) For completeness, *Annetts v McCann* (1990) 170 CLR 596 also does not have any relevance at all for similar reasons to *Kioa*. *Annetts v McCann* is about natural justice at an inquest. The Commissioner has not failed to put its case to the Applicant nor to hear from the Applicant. *Annetts v McCann* does not articulate a vague “*broader obligation of good administration*” as the Applicant asserts in the Applicant’s Outline at [6].

Section 29-70(1B) of the GST Act

85. Section 29-70(1B) of the GST Act provides that “*the Commissioner may treat as a tax invoice a particular document that would not, apart from this subsection, be a tax invoice.*” This provision may be applied by the Commissioner (or the Tribunal on review). The Applicant does not refer to this provision. The Commissioner does not refer to this provision.

86. PS LA 2011/25 refers at [55] to the potential for GST claims to be substantiated where the Commissioner determines to treat a particular document as a tax invoice pursuant to subsection 29-70(1B) of the GST Act in a case involving a natural disaster. PS LA 2011/25 states at [59] that the Commissioner can consider that provision “[w]here it is reasonable to conclude from the available evidence that there is a creditable acquisition.”

87. Other policies are to be referred to by the Commissioner’s officials when considering whether it is reasonable to conclude there is a creditable acquisition - particularly GSTR 2013/1, and Law Administration Practice Statement PS LA 2004/11 *The Commissioner’s discretion to treat a particular document as a tax invoice or adjustment note* (“**PS LA 2004/11**”). PS LA 2004/11 sets out a number of factors that the Commissioner considers including whether reasonable attempts have been made to obtain a tax invoice from the supplier, and the tax compliance history of the taxpayer.^[169]

88. The Commissioner has not applied section 29-70(1B) in this case. The question is whether, on the evidence before it, the Tribunal should consider any of the material to comprise a tax invoice and exercise the discretion in section 29-70(1B) of the GST Act. Nothing has been put to the Tribunal as to

why it ought to exercise the discretion in section 29-70(1B). Nothing has been identified to the Tribunal as a potential document over which it should exercise the discretion. The case law is to the effect that it is not appropriate to apply section 29-70(1B) to admit "half good" invoices, adequate details needed to be provided to treat a document as a tax invoice, there needs to be credible evidence of the transactions at issue including direct evidence, and there must be credible evidence of payment.^[170]

89. In relation to the dog breeding enterprise, the issue of whether any of the material identified by the Tribunal in this decision^[171] and that is on the Tribunal Book should be treated as a tax invoice pursuant to section 29-70(1B) of the GST Act is also remitted to the Commissioner for consideration, subject to the comments made above in paragraph 88 about what the case law requires. For all other enterprises, other than to the extent that there are available^[172] invoices,¹⁷² evidence of a connection to an enterprise, and evidence of payment or a receipt or it can be sensibly concluded payment occurred, the Applicant has not met his burden of proof to demonstrate that any other material should be treated as a tax invoice pursuant to subsection 29-70(1B).

Double-claimed input tax credits

90. The Commissioner says at [112b] of the Commissioner's Outline:

The Applicant also claimed ITCs for the costs of the purchase [of 51 Grand Parade Rutherford] which in effect resulted in a double claim. The Commissioner reviewed the claim for ITCs and determined some of the amounts claimed were in relation to stamp duty expenses for which there is no entitlement to ITCs and therefore reduced the claimed ITCs in relation to this property purchase from \$1,756 to \$636 for the period ended 31 December 2021.

91. It is not particularly clear whether the Applicant accepts this or not.^[173] He may well do. In any event, the Tribunal agrees with the position as set out the Commissioner and that decision is affirmed.

REASONS FOR DECISION - PENALTIES

Background and the burden of proof

92. The next issue is whether the Applicant had met his burden of proof to demonstrate the penalty imposed was wrong.^[174]

93. I have found above that the dog breeding operation was an enterprise. I have also found above that there *may be* some limited input tax credits that are claimable in relation to that enterprise. Penalties will inevitably reduce as a result of those findings. I have also found above that the considerable food and consumables expenditure claimed by the Applicant was not claimable. I have also found that the Applicant's reconstructed records do not substantiate his input tax credit claims. I note that the Commissioner also succeeds on a number of other claims which the Applicant has conceded before the Tribunal.

94. It is for the Applicant to demonstrate in accordance with section 14ZZK(b)(i) of the TAA that the Commissioner's assessment is wrong – in this case he must show that he was not reckless.^[175] I have concluded that he has not met his burden of proof in this regard.

Reasonable care

95. The base case for the imposition of penalties is a failure to take *reasonable care*. Other than in relation to the dog breeding operation being an enterprise where I am satisfied the Applicant did not make a false or misleading statement, it is clear to the Tribunal that when taking the positions that he did in his BAS for the Relevant Periods, the Applicant made false or misleading statements and has failed to take *reasonable care*. The Applicant has not demonstrated otherwise, and he seems not to argue otherwise.^[176] I am satisfied that *at minimum* a 25% penalty should be imposed pursuant to section 284-75 and section 284-90 of Schedule 1 to the TAA.

96. This is because:

(a) The records of his various enterprises are, at best, chaotic, even taking into account a loss of records.^[177]

(b) Even taking into account the potential for Applicant to have lost records, from my assessment of the credibility of the Applicant, I do not accept that there were invoices to substantiate all of his claims.

(c) For lost records, the Applicant's reconstruction of the claimed amounts for each enterprise on TB1619 demonstrates that his claims were in error, sometimes by tens of thousands of dollars. His reconstruction in the Applicant's Outline and in the Applicant's SFIC differs from this, without any obvious supporting material.

(d) The Applicant accepts he was careless.^[178]

(e) The Applicant did not return all his sales income in his BAS, particularly from his dog breeding enterprise during the Relevant Periods, despite claiming input tax credits for that enterprise. There was no justification for this.

(f) The Applicant has claimed food and consumables expenditure without basis, and without a connection to any enterprise. He has not considered the requirements of the GST Act, including section 69-5, when so doing.

(g) The Applicant has double claimed GST input credits on 51 Grand Parade Rutherford, and made errors in his margin scheme calculations in relation to that property and Sutcliffe Street, Cameron Park.

(h) The Applicant claimed and has now conceded input tax credits in relation to a photography operation which was at best a hobby.

97. In taking the positions he did in his BAS, the Applicant did not meet the standard expected in the tax legislation. I have taken into account his personal circumstances, his age, his apparent education and my assessment of his knowledge of tax laws from his evidence at the Tribunal.

98. My assessment is that the Applicant is an intelligent person, has a basic tax understanding, is experienced in various businesses, and was operating a number of enterprises. He should be expected to maintain coherent records for those enterprises. I am satisfied he did not do so, even taking into account the Central Coast Floods. He also made considerable errors in his BAS for the Relevant Periods including the application of the margin scheme, when he has experience in the property sector. I do not accept that he has met his burden of proof to demonstrate to the Tribunal that he made the necessary reasonable and genuine attempt to comply with taxation law, nor that he took the steps that a reasonable person would have objectively taken before taking the position he did in his BAS.^[179]

99. I record that I do not accept some of the Commissioner's assertions such as that because the Applicant "*worked in housing and construction a higher level of knowledge would be reasonably expected.*"^[180] The Tribunal comments that such a statement has little basis.^[181] I also do not accept that every taxpayer in Australia should seek the services of a tax agent, and the Applicant's failure to do so is not a factor the Commissioner should be relying upon. The Applicant's failure to do so does not, of itself, suggest a lack of reasonable care, just as using a tax agent does not mean reasonable care was necessarily taken.^[182]

Recklessness

100. I turn to consider whether the Applicant has met his burden of proof to show on the balance of probabilities that he did not act with *recklessness* in his BAS for the Relevant Periods, and that the applicable penalty should not be 50% under section 284-90 of Schedule 1 of the TAA.

101. When assessing whether the Applicant has met his burden of proof to demonstrate he was not reckless, the question is if he has shown that his actions do not go beyond mere carelessness and are not at a level that falls significantly short of that expected of a reasonable person in the Applicant's position. The Applicant also needs to demonstrate to the Tribunal that he was not indifferent as to the outcome of the position he took in his BAS. Indifference to the outcome can be a feature of recklessness, recklessness is not found merely because erroneous claims were made.^[183] Recklessness is less of a standard of culpability than intentional disregard. Dishonesty is not required.^[184]

102. The Applicant's submissions must be considered. In substance they consist of him saying he was careless but not reckless.^[185] He also suggests the following:

(a) The Applicant says that recklessness requires "*conscious disregard of tax obligations*" and cites "*Hart v FCT*" for that.^[186] This is wrong at law, and *Hart v Federal Commissioner of Taxation* [2003] FCAFC 105 does not say that. As is noted above, recklessness involves indifference or not caring whether a claim is correct or not. It does not require conscious disregard.^[187] Recklessness also does not require "*intention*" nor "*wilful non-compliance*" as suggested by the Applicant.^[188] These submissions are rejected as they are wrong at law.

(b) The Applicant cites "*Harris v Federal Commissioner of Taxation* [2019 AATA 2332]" for a proposition that "*errors made in good faith following professional advice do not constitute recklessness.*"^[189] The case with that citation is *Shakeel* [2019] AATA 2332, a migration case, and it says nothing of the sort. The "*Harris*" case is yet another hallucination. There is no principle that supports the Applicant's assertion, and it is simply wrong at law. For instance, in *Mitri v Federal Commissioner of Taxation* [2024] AATA 1268 ("*Mitri*") at [29]-[30] confirms that merely obtaining tax advice does not mean that a taxpayer cannot be found to have acted recklessly.

(c) The Applicant says he relied on professional advice, but the Tribunal has no evidence of that. His reference to professional advice is to emails from a conveyancer^[190] but that material does not support the idea that when taking positions in his BAS that he acted on 'professional advice'. Conveyancing is not tax advice. A conveyancer is not a tax agent. Conveyancing does not explain all of the GST positions taken by the Applicant that are considered in this case. Nor does MT 2008/1 say that acting on tax advice (even if there was evidence of it) negates recklessness;^[191] it says nothing of the sort. MT 2008/1 [63]-[64], says that depending on the circumstances, it *might* be that taking tax advice means *reasonable care may* have been taken. And, after all, MT 2008/1 is not the law, it is merely guidance issued by the Commissioner to its officials.

(d) The legislation, and particularly subsection 284-75(6) of Schedule 1 to the TAA, provides a number of tests must be satisfied before the provision of tax advice by a tax agent is a relevant factor when considering penalties. The Applicant does not engage with that material because he cannot demonstrate tax advice from a tax agent was taken. The Applicant's submission is rejected.

(e) There is also no principle that acting in "*good faith*" negates recklessness, far from it. That is not said in MT 2008/1 as the Applicant asserts.^[192] It is not said in the case law. That submission is rejected.

103. The Commissioner takes a different view, and submits that the Tribunal cannot be satisfied that Applicant has met his burden of proof to show he was not reckless.^[193]

104. I affirm the Commissioner's decision. The Applicant has not met his burden of proof to demonstrate otherwise. His submissions do not come close to satisfying his burden of proof and in the absence of any contemporaneous evidence as to why the Applicant took the erroneous tax positions he did, I cannot be satisfied he was not reckless.^[194]

105. I also record I find the following aspects of the facts concerning and have taken these matters into account when reaching my conclusions:

(a) *The volume of errors*: The Applicant has demonstrated that his claims in his BAS were wrong, he acknowledges numerous errors, and he has admitted he was careless.^[195] Error alone does not of itself demonstrate recklessness, but it is a question of degree. The volume of errors is an issue to consider when determining if the carelessness is gross carelessness.^[196]

(b) *The claims for food and consumables expenditure*: There is no evidenced link to any enterprise. The claims amount to a considerable sum in the context of this case. My assessment is that the Applicant thought this was 'worth a go.' I have taken into account his assertion that this related to meetings he had with clients, and he thought it was a business expense as a result. I do not find that particularly credible, when claims are made (for instance) at Woolworths and Hoyts.^[197] He has only explained these claims by referring to a purported linkage to clients, but it is almost impossible to entirely link the Applicant's claims to the Tribunal Book materials, and he has presented no evidence that links these claims to any enterprise nor any client. In addition, the Applicant simply did not consider the GST Act (such as section 69-5) when making such claims. He has not done the most basic research before taking a tax position in his BAS.

(c) *Invoice alteration*: The Commissioner has referred to an invoice which the Applicant presented to the Commissioner and relied upon in a relevant BAS, and which had been altered by the Applicant.^[198] It is understood this related to a claim for GST included in rent paid for a property at 8 Port Jackson Road, Terrigal. This matter was put to the Applicant by the Tribunal.^[199] The explanation was that this related to the use of a residential property for commercial purposes, a discussion with a landlord based in China, and then an adjustment (presumably by the Applicant) to an invoice from that landlord to reflect that discussion and to add GST. The Applicant also said this had been entirely fixed up with the relevant officer of the Commissioner. It is unclear from the Commissioner's filings at the Tribunal as to whether the matter had been resolved.^[200] In any event, it is hard to see how altering an invoice in this manner can *ever* be justified.

(d) *Not returning sales income*: The Applicant did not return sales income from enterprises in the Relevant Periods, such as dog breeding, for which he was claiming input tax credits. That is not excusable in the Tribunal's view.

(e) *The reconstructed records*: The Applicant's reconstructed records are inadequate and do not assist him for the reasons stated above.

The 20% base penalty uplift

106. As is noted above,^[201] the Commissioner imposed a 20% base penalty uplift in the first of the Relevant Periods at audit. The evident purpose of 284-220(1)(a) of Schedule 1 to the TAA which provides for the uplift is to provide an additional deterrent to the taxpayer.^[202] The Commissioner's reasoning was outlined in its Statement of Audit Position^[203]

We have increased the base penalty amount by 20% because:

› *you tried to make it difficult for us or stop us from finding out about the shortfall amount. This is obvious because you:*

- *did not provide information regarding your 'photography business and / or consultancy services',*
- *did not provide sales invoices / receipts issued to customers for period 1/10/2017 to 31/12/2021,*
- *did not supply GST detail report for period 1/10/2017 to 31/12/2021,*
- *did not supply tax invoices for purchases for period 1/10/2017 to 31/12/2021,*
- *did not supply evidence substantiating your claim of destroyed records, and*
- *provided a falsified document rent receipt showing GST was included in the residential rent paid at 8 Port Jackson Road, Terrigal NSW 2260*

› *a penalty for false or misleading statement applies for Jul-Sep 2018 tax period*

› *you also made false or misleading statements in your activity statements for the Oct-Dec 2018, Jan-Mar 2019, Apr-Jun 2019, Jul-Sep 2019, Oct-Dec 2019, Jan-Mar 2020, Apr-Jun 2020, Jul-Sep 2020, Oct-Dec 2020, Jan-Mar 2021, Apr-Jun 2021, Jul-Sep 2021 and Oct-Dec 2021 and we have increased the base penalty by 20% for those statements.*

Increase remission

In most cases where you didn't intentionally ignore the law, we think it's unfair if a 20% increase applies and you weren't aware that two or more base penalty amounts would be calculated in the same audit. We have decided to remit the increase part of the penalty because you didn't intentionally ignore the law. We will remit the 20% increase in the penalty for the second and later periods of this audit.

107. The problem for the Commissioner is that after saying this, it apparently then imposed the 20% uplift on every single period.^[204] It has also apparently calculated interest on these amounts, which it should not have. All of that needs to be fixed by the Commissioner.

108. Paragraph 284-220(1)(a) of Schedule 1 to the TAA requires that the Applicant "took steps to obstruct or hinder the Commissioner from finding out about a shortfall amount, or the false or misleading nature of a statement, in relation to which the base penalty amount was calculated". The Commissioner's assertions involve the Applicant not providing information when thousands of pages of information was provided, and where the Applicant says other records were destroyed in the Central Coast flood in 2021. The Applicant will say he was unable to produce the material the Commissioner sought and explained why. From the Tribunal Book there appears to have been a great deal of engagement by the Applicant with the Commissioner. I am not of the view that, on its own, the alteration of the invoice referred to above^[205] justifies the 20% base penalty uplift.

109. The Commissioner also obliquely refers to an earlier penalty in the July to September 2018 tax period, so may be relying upon paragraph 284-220(1)(c) of Schedule 1 of the TAA. No evidence of that has been put before the Tribunal, and it is not clear what that penalty was for. The Applicant has made no submissions on this point, which admittedly is minor in the overall circumstances.

110. Overall, I am not satisfied on the face of the provisions that the 20% uplift should have been applied at all, and in any event, as is outlined below I would remit that uplift. The 50% recklessness penalty was more than sufficient deterrent to the Applicant. The Commissioner should not be looking to section 284-220 of Schedule 1 to the TAA on every occasion a penalty arises. The Tribunal fears that is what has happened in this case.

Remission of penalties

111. Section 298-20 of Schedule 1 of the TAA provides that the Commissioner may remit a penalty in whole or in part. The Commissioner set out its policy to its officials in PS LA 2012/5 at [155] and following. Case law in the Courts and the Tribunal consider whether it is appropriate in 'all the circumstances' to remit the penalty and the power to remit must be exercised for a proper purpose taking into account the object of the penalty regime.^[206]

112. As was noted by Member Willis in *Abotomey* at [345] "The purposes of the penalty provisions of the TAA ... (Division 284 of Schedule 1 and its predecessor provisions) include encouraging taxpayers

to take care in their compliance with tax laws and to promote consistency of treatment as between taxpayers in like circumstances.”

113. The Applicant’s submissions on remission have been dealt with above. They are wrong at law, they rely on non-existent cases or cases that do not stand for the principle asserted, and they misquote and give too much weight to the Commissioner’s guidance to its officials.^[207] The only other matters the Applicant has put forward are the withholding of GST refunds and the time it took for the Commissioner to come to conclusions on the penalty issues.^[208] The Tribunal often finds itself remarking about the time the Commissioner takes to come to conclusions being difficult to understand. However, this is not a major factor in favour of penalty remission. Penalties are imposed as a result of actions of taxpayers.

114. I have found above that the Applicant made a number of errors in his BAS and has taken positions that are not sustainable (for instance the food and consumables claims, the failure to return sales income for an enterprise for which he was seeking input tax credits). I have also found above that he has not met his burden of proof to demonstrate that when he took those tax positions that he was not reckless. I am not satisfied that the reconstructed records the Applicant presents come anywhere close to meeting his burden of proof. I also note that in any event the penalties will be reduced as a result of my holdings above about the dog breeding operation.

115. The factors in the Applicant’s favour for remission are that he has a reasonably low tax shortfall, his argument that he has lost records, and the error ridden material presented to the Tribunal and the Applicant by the Commissioner on penalties.

116. However, I am not satisfied that, other than in relation to the 20% base penalty uplift, there is any justification for further remission.

117. That is because the Applicant did not in my assessment take reasonable care, he did not maintain coherent records, he made claims without justification or substantiation, he did not do basic research, and he took tax positions that benefitted himself without meeting his legal requirements. I am satisfied he was indifferent to the risks of so doing. Similarly to the Tribunal’s holding in *Abotomey* at [345] in the circumstances of my holdings above, I do not believe it is appropriate to further remit the penalties imposed upon the Applicant. The Applicant has not met his burden of proof to demonstrate otherwise.

CONCLUSIONS

118. I have concluded that:

- (a) The Applicant’s dog breeding operation was an enterprise.
- (b) The Applicant is entitled to input tax credits for that enterprise, in principle. The matter is remitted to the Commissioner for determination focusing on specified material in the Tribunal Book, and taking into account the recommendations of the Tribunal in this decision. The Commissioner is also to determine the applicability of section 29-70(1B) of the GST Act in relation to this material.
- (c) The Applicant has not met his burden of proof and is not entitled to input tax credits for food and consumables expenditure, nor do his reconstructed records substantiate his claims for input tax credits. The Commissioner’s decision to reduce input tax credits claimed for the acquisition of a property at 51 Grand Parade Rutherford NSW 2320 is affirmed.
- (d) Because of my findings above in relation to the dog breeding operation, the penalty will reduce. The penalty for recklessness was appropriately applied to all of the other issues and the Applicant has not met his burden of proof to demonstrate otherwise. The 20% base penalty uplift should not have been applied.
- (e) The 20% base penalty uplift should be remitted, but the Applicant has not persuaded the Tribunal that the penalty should otherwise be remitted in whole or in part.

.....[SGD].....

General Member J Dunne

Dated: 12 January 2026

Date of hearing:	23 October 2025
Advocate for the Applicant:	Self-represented
Advocate for the Respondent:	ATO Review and Dispute Resolution (Ms Taylor)
Solicitors for the Respondent:	ATO Review and Dispute Resolution

[1] The Applicant has conceded an issue relating to a photography operation so that issue is not dealt within this decision: Applicant's Response to Respondent's Submissions dated 17 October 2025 ("Applicant's Outline") [4.2]. Applicant's Closing Submissions dated 12 November 2025 ("Applicant's Closing Submissions") [4.3].

[2] T75-1567. The other periods where the 20% base penalty uplift could have been imposed were remitted.

[3] Recorded for example at TB1936 [18], TB1572. It is fair to say the Applicant's objection is not particularly clear (TB1915, TB1916, TB1577), but the Applicant's submissions before the Tribunal – for instance the Applicant's Closing Submissions - focus on dog breeding and, in a limited way, some other claims relating to his property and consultancy enterprises.

[4] See paragraphs 59 to 61 of this decision.

[5] TB1311, TB1324-TB1337

[6] Applicant's Outline [4.2]. Applicant's Closing Submissions [4.3].

[7] The Tribunal notes that there is material on the Tribunal Book relating to an operation called "Fast 'n' Loose Customs" which seems to be an online operation selling vehicles or vehicle parts. There is evidence relating to the sale of a vintage truck (see TB3071-TB3098, TB6082) and an image of a car grill (TB3485) and other car/motorcycle images (TB4855-TB4865, TB4880-TB4901, TB4969-TB4999, TB5013). There is evidence of a payment to ASIC to (possibly) reserve a name "East Coast Tyre & Auto NSW" at TB3596. There is also material relating to car insurance and some Harley Davison related purchases for instance TB3105-TB3126, TB3158-TB3174, TB3499-TB3502, TB3605, TB3767-TB3774, TB4866 and a raft of other material including from carsales.com.au (e.g., TB4077) and schedules (TB5671 and following). There is also material of a clearly personal nature, or which is completely unidentifiable as to what it is for. For instance (and there is a *huge amount* of such material), TB3961 and TB4389 (personal grooming) TB4081, TB4243, TB4253-TB4297, TB4393-TB4935, TB4441 and TB4241 (entertainment/gaming), TB4245-TB4250, TB4639, TB5050, TB5052-TB5053, TB5070 (personal clothing and/or food), TB4608 (Ebay), TB4231 (travel), TB4086 and TB4583 (pizza), TB4237 (Kmart), TB4581 (Bunnings), TB4474 (Credit card debt collection), TB3965-TB4055 (unknown), TB4088-TB4093 (unknown). There are hundreds of pages of such material on the Tribunal Book unlinked to anything before the Tribunal.

[8] T3-23.

[9] This is sourced from the Respondent's Statement of Facts, Issues and Contentions dated 24 January 2025 ("Commissioner's SFIC") TB1951 [15].

[10] Respondent's Written Outline of Submissions dated 26 September 2025 ("Commissioner's Outline") [114], [115]. This is internally inconsistent with [14] of the Commissioner's Outline.

[11] For instance, TB61 is the BAS for the 31 March 2021 period and records \$3,346 as 'GST on Sales or GST Instalment.'

[12] Section 56 of the *Administrative Review Tribunal Act 2024* (Cth).

[13] Sourced from the Commissioner's SFIC [20] TB1954. T75-1570.

[14] ST7-1930; ST6-1928 [28]. Commissioner's SFIC [22]. There are complications when considering penalties -such as a voluntary disclosure being taken into account for the period ended 31 December 2021 (Commissioner's SFIC [21]) and two penalties being imposed in the 30 September 2021 and 31 December 2021 period – one for inappropriate claims of input tax credits and one for failing to return GST on sales correctly (Commissioner's Outline [118] and footnote 75 of the Commissioner's Outline).

[15] Commissioner's Outline [118].

[16] Sourced from the Commissioner's SFIC [24]. Consistent with the Commissioner's Outline [116]. Consistent with the Commissioner's Objection Decision at ST6-1926 [5] and ST6-1928 [28]. Consistent with the assessment ST7-1930.

[17] TB1572 under "Increase remission".

[18] That is, the explanation is to the effect that the penalty applied to GST on sales should have been reduced. This is referred to and explained in footnote 14 above.

[19] It is noted in paragraph 8 that shortfall penalties for that issue totalled \$3,685.50.

[20] For instance, which figures of GST on sales were used by the Commissioner when imposing penalties. That is whether the figures in the Commissioner's SFIC were used, which would have limited the penalties on understated sales (presumably) to those noted in paragraph 8 above. Alternatively, it is possible that the figures in the Commissioner's Outline at [114] were used.

[21] The Tribunal Book caused considerable problems for the Tribunal. The parties are required to assist the Tribunal. The Tribunal Book was in no order, there were no hyperlinks, the index was wrong, the T documents were dumped in a group without a hyperlinked index, and then supplementary documents were filed and not included in the Tribunal Book with wildly wrong page references in the index. Other issues arose like an index suddenly appearing at TB1910 for some items in a 6000 page Tribunal Book. The Tribunal appreciates that the bulk of the material being in no order at all was likely due to how those materials were presented to the Commissioner by the Applicant. Nevertheless, the manner in which the material in this case was presented in the Tribunal Book has caused the Tribunal to have to spend considerable time on this case scrolling through page by page of thousands of documents, scrolling back and forth laboriously. The amount of work required by the Tribunal vastly exceeded what it should have. The Tribunal expects better from the Commissioner as a Model Litigant. Tribunal Books are going to be returned by this Member if they are presented in this manner again.

[22] ST1-1905; ST7-1930.

[23] There were issues about the validity of the 30 December 2022 objection that were raised by the Commissioner with the Applicant on 15 May 2023 (around 6 months later), and resolved on 24 May 2023 by the Applicant filing the objection form. The Tribunal treats the objection as dated 30 December 2022. ST2-1908; ST3-1910, T76-1572.

[24] T84-1903.

[25] ST6-1923. This was in relation to penalties.

[26] T1.

[27] ST5-1915. This was in relation to the penalty objection decision.

[28] On 14 October 2024, the Administrative Appeals Tribunal became the Administrative Review Tribunal. Under the transitional provisions in the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024* (Cth) proceedings that were not finalised before 14 October 2024 are continued and finalised by the Administrative Review Tribunal. Anything done in relation to any such proceeding before 14 October 2024 is taken to have been done by the Administrative Review Tribunal.

[29] ST2-1908 (TB1915), ST2-1909 (TB1916), TB1577-TB1581.

[30] Judicial review of the process of decision-making by the Commissioner is the purview of the Federal Court or the Federal Circuit Court and Family Court (Division 2) as a consequence of section 5 of the *Administrative Decisions (Judicial Review) Act 1977* (Cth) or the Federal Court as a consequence of section 39B of the *Judiciary Act 1903* (Cth).

[31] Section 14ZZK of the TAA.

[32] Witness Statement of Alexander Smith dated 15 March 2025 ("**Applicant's Witness Statement**"). The Tribunal records dismay at some of the material on the Tribunal Book which purport to be statements from persons who did not appear as witnesses at the hearing, are unsigned, do not appear on letterhead other than that created in Microsoft Word, and which is entirely self-serving material. See, for instance, TB2733-TB2735 (amongst other such material). This material is not considered by the Tribunal to be evidence of anything and does not support the Applicant in any way. This kind of material undermines the Applicant's credibility.

[33] Transcript 7 [36]. Transcript 9 [46]-[47].

[34] Applicant's Witness Statement [4].

[35] Transcript 8 [28]-[33].

[36] Transcript 7 [44]-[47], 10 [6]-[7].

[37] Transcript 8 [41]-[47], 9 [1]-[16]. <https://mdba.net.au/> and <https://dogsaustralia.org.au/> (it is understood ANKC has changed its name to Dogs Australia).

[38] Transcript 8 [39]-[47], 9 [1]-[16]. Also see evidence of MDBA requirements at TB2798-TB2830.

[39] TB2832-TB2833, TB2996, TB3786-TB3803, TB3890-TB3908, TB3958-TB3960, TB4517-TB4518, TB4647. Some material comprises requests for unpaid invoices, some are receipts. There is also evidence that the Applicant had a registration card TB2993. He recorded his registration number on relevant documents-for instance, TB3055.

[40] Evidenced by dog purchases at TB2834, TB2891-TB2894, TB3062.

[41] Evidenced by invoices on the Tribunal Book although some are PDFs embedded in emails in the Tribunal Book and which themselves do not seem to appear on the Tribunal Book and the material needs to be carefully analysed to ensure it is not doubled up. See TB2836-TB2847, TB2954, TB3063-TB3064, TB3807-TB3816, TB4761-TB4764 from Sires on Ice a Canine Reproduction Clinic, from the Terrigal Vet Hospital at TB2848-TB2861, TB2894-TB2952, TB2956-TB2986, TB3818-TB3869, TB3914-TB3916, TB4486-TB4487, TB4765-TB4778 and from the Small Animal Specialist Hospital or SASH TB2879-TB2883, TB2953-TB2955, TB3014, TB3067-TB3070, TB3817, TB4488. This activity is also evidenced by some emails on the Tribunal Book such as TB2884-TB2890 asking questions of the vet after a dog had a caesarean.

[42] Transcript 9 [36]-[38].

[43] Applicant's Witness Statement [6]. TB2732, TB2734, TB2876, TB3603, TB3607-TB3620, TB3909-TB3913, TB3917-TB3923, TB4056-TB4071, TB4301-TB4305, TB4311-TB4368, TB4460, TB4759, TB4787-TB4790, TB4853. Occasionally refunds are recorded TB4836 for example.

[44] TB3778.

[45] TB3495-TB3498, TB3506.

[46] For example, TB1616-TB1617, TB1619, TB3134-TB3156, TB5471-TB5505.

[47] For instance, TB1103 demonstrates payment of some vet costs in April 2020, and this should be compared to a veterinary invoice. Also see footnote 57 below for examples where the Applicant's claimed costs are not evidenced as incurred on bank statements provided.

[48] Examples of that are a TB2862-TB2873, TB2875-TB2876, TB2991-TB2992, TB2994-TB2995, TB3058-TB3061, TB3065-TB 3066.

[49] TB2878. TB2996-TB3013. TB3015-TB3054.

[50] TB3055.

[51] TB2784-TB2797. Other pictures of the dogs are on the Tribunal Book TB2987-TB2989.

[52] Transcript 7 [9]-[13], 17 [17]-[45]. Applicant's Witness Statement [2]. See the summary spreadsheet at TB2990. Looking at the sales contracts on the Tribunal Book the average dog price is approximately \$5,000 (some were more than \$7,000 others were \$2,500). Multiplying that by the number of puppies the Applicant said were in litters (18-22 puppies) that is \$90,000 - \$110,000. The Applicant says his *profit* was around \$96,000. Refunds to purchasers are for the Applicant to evidence to the Commissioner from the available material.

[53] Transcript 7 [6]-[28], 10 [19]-[23].

[54] Transcript 17 [24]-[45], 18 [1]-[8].

[55] TB886-TB1303.

[56] TB1610-TB1618. It is noted that some of this material is cut off on the Tribunal Book (for instance, the base of TB1618 suggests there are further line items that cannot be reviewed).

[57] For example, TB81 and TB3135 show a vet cost of \$620.64 on 21 October 2021, and TB85 and TB3136 show a vet cost of \$254.55 on 15 November 2021. Each relevant bank statement shows no evidence of such payments having been made. For October 2021 TB1261-TB1265 does not show a \$620.64 payment to anyone, let alone such a payment on 15 October 2021. The visa statement (at TB1613) does not demonstrate such a payment. For November 2021, TB1271 shows a payment on 15 November 2021 to Terrigal Veterinary Hospital of \$394.90 not \$254.55. There is no such payment on the visa statement either (TB1614). This material also needs to be matched against the vet invoices that are on the Tribunal Book (see footnote 41).

[58] For example, TB893 17 January 2020 show a credit which could have a linkage to a dog sale – there appears a date correlation to the contract at TB2672. Also see TB2674.

[59] TB2608-TB2731.

[60] See footnote 52 above.

[61] For example, TB2609 and TB2620 under “Desexing”.

[62] For example, TB2633 [7ii]. [7iii].

[63] For example, TB2633 [7i].

[64] For example, TB2611-TB2613.

[65] For example, TB2634 [8iii]-[8iv].

[66] For example, TB2640-TB2642.

[67] For example, because, even leaving the desexing bond aside, the remainder of the purchase price *is* income for income tax purposes. Straight forward income tax principle articulated in *Arthur Murray (NSW) Pty Ltd v Federal Commissioner of Taxation* [1965] HCA 58; (1965) 114 CLR 314 about when income is *derived* may impact the derivation of the desexing bond, but not the remaining purchase price. The income tax issues are not at issue in this case.

[68] That is, it gives rise to a perception that the Applicant utilises the tax system only for benefit and does not meet his tax payment obligations. Other inferences such as whether there may be *evasion* for the purposes of the time bar in section 170 of the *Income Tax Assessment Act 1936* (Cth) might be considered. Such inferences will be disputed by the Applicant. The Tribunal is not asked to, nor is it making a finding about any of those matters and specifically records that there are strong arguments against such inferences.

[69] The Applicant made submissions about procedural unfairness focusing in part on refunds retained by the Commissioner (see Applicant’s Closing Submissions [4.5]). The Tribunal is not empowered to hear judicial review grounds such as that, as such grounds are the purview of the Federal Court or the Federal Circuit Court and Family Court (Division 2) as a consequence of section 5 of the *Administrative Decisions (Judicial Review) Act 1977* (Cth). However, for clarity as to the background facts, the Tribunal requested that the Commissioner advise it about the Applicant’s GST refunds that were being withheld and of which the Applicant complained. In its 12 November 2025 email the Commissioner advised that four credits were withheld: \$30,405 (for the 31/12/2021 period), \$42,000 (for the 31/3/2022 period) both of which were withheld to meet assessed liabilities and \$45,000 and \$27,650 for the tax periods ended 30 June 2022 and 31 August 2022 (which may be intended to say September 2022(?)) which are being withheld. That is because the Commissioner says it is waiting for margin scheme calculations from the Applicant and “no BAS have been lodged for periods after 31/3/2022.” That latter comment confused the Tribunal, since refunds for periods after 31 March 2022 are being withheld, so presumably something was filed. However, the Applicant acknowledged there are missing BAS (Applicant’s Closing Submissions [4.6] and [5.7]). These factual matters do not impact the case before the Tribunal, and the Tribunal encourages the Commissioner to finalise all matters following receipt of the Tribunal’s decision in this case and to not allow the Applicant’s matters to continue to be unresolved when they already have been for a considerable period. That includes taking all necessary steps to ensure the Applicant files the BAS and returns he is required to file.

[70] Applicant’s email to the Tribunal dated 17 November 2025 referring to the facts outlined above in footnote 69.

[71] Applicant’s Closing Submissions [4.6] “[T]he ATO’s refusal to recognise the breeding enterprise prevented lodgement of BAS and tax returns during the audit period, causing procedural disadvantage.” [4.5] “The Member noted that the Respondent had frozen GST property credits without resolution, depriving the Applicant of funds and impeding the lodgement of returns.” If that latter sentence refers to Member in this Tribunal, the statement referred to was never said. Particularly, this issue does not impede the filing of returns nor excuse the Applicant’s failure to meet his legal obligations in any way.

[72] Liaison with the Commissioner is referred to in Law Administration Practice Statement PS LA 2006/2 *Administration of shortfall penalty for false or misleading statement* [67] as something that would have been in the Applicant’s favour when assessing penalties and considering if he took *reasonable care*. That position is also supported by *MLC Ltd v Commissioner of Taxation* [2002] FCA 1491 [53].

[73] It is not for the Commissioner to dictate the way in which a business should be run, what expenditure should be incurred nor the nature of contractual arrangements: *Tweddle v Federal Commissioner of Taxation* [1942] HCA 40; (1952) 180 CLR 1, [10], *Cecil Bros Pty Ltd v Federal Commissioner of Taxation* [1964] HCA 82; (1964) 111 CLR 430, [3].

[74] Sections 9-70 and 9-75 of the GST Act.

[75] TB2831, TB2874. Also see TB3880-TB3889, TB4521-TB4560 evidencing requests for Stud Service Certificates.

[76] For instance, see TB1912.

[77] See <https://abr.business.gov.au/ABN/View?abn=79891467561>

[78] Again, this is not relevant to the case before the Tribunal, and those business names and whether they are active is an issue for the Commissioner.

[79] <https://abr.business.gov.au/FAQ/ABNBasics#:~:text=You%20can%20conduct%20any%20number,for%20each%20new%20business%20structure> **"Can I use the same ABN for more than one business? You can conduct any number of businesses/activities under the same ABN provided they all operate under the same business structure. If your second or subsequent business operates under a different structure, you need to apply for separate ABNs for each new business structure."** There is no evidence that the Applicant was the trustee of a trust or had any other status or capacity, other than operating all activities as an individual.

[80] Miscellaneous Taxation Ruling MT 2006/1 *The New Tax System: the meaning of entity carrying on an enterprise for the purposes of entitlement to an Australian Business Number ("MT 2006/1")* at [153] also supports this, referring to interrelated activities or the 'entire operations' of the one entity, and at [155] "An entity is ordinarily only entitled to **one** ABN even though the activities or series of activities it conducts may amount to several separate enterprises. It is the entity and not the enterprise that is entitled to an ABN." MT 2006/1 is relevant to GST as a consequence of Goods and Services Tax Determination 2006/6 *Goods and Services Tax: does MT2006/1 have equal application to the meaning of 'entity' and 'enterprise' for the purposes of the A New Tax System (Goods and Services Tax) Act 1999?* ("GSTD 2006/6") [1].

[81] Commissioner's Closing Submissions [16], [19], [20], [21].

[82] TB1566, TB1567.

[83] *Ibid*, footnote 80.

[84] For instance, in the income tax context a business was found to be carried on by a husband and wife despite it having two entirely unrelated arms – smash repairs and horse breeding: Case 54/96 96 ATC 521. Sheep and horse breeding activities were held to comprise a partnership's enterprise for GST purposes, despite there being no linkage between those activities: *MR & SL Block and others v Federal Commissioner of Taxation* [2007] AATA 1897. Also see *Ferguson v Federal Commissioner of Taxation* [1979] FCA 29; (1979) 37 FLR 310 [15].

[85] Applicant's Closing Submissions [4.7]

[86] MT 2006/1 [122] and [149] and following is consistent.

[87] *Toyama* [72], [76], [77].

[88] MT 2006/1 [180]-[186].

[89] Commissioner's Outline [43].

[90] For example, TB893 17 January 2020 show a credit which could have a linkage to a dog sale – there appears a date correlation to the contract at TB2672.

[91] For instance, TB2674.

[92] GSTD 2006/6 [13]-[14]; MT 2006/1 [233]-[242].

[93] Also see *Federal Commissioner of Taxation v Myer Emporium Ltd* [1987] HCA 18; (1987) 163 CLR 199 [21]-[22].

[94] Commissioner's Closing Submissions [21].

[95] TB1566, TB1567.

[96] MT2006/1 [243] and following, and Taxation Ruling TR 97/11 *Income tax: am I carrying on a business of primary production?* at [87].

[97] Commissioner's Outline [8 5].

[98] For instance, there are an array of small breeders noted on <https://www.dogsnsw.org.au/breeders/find-a-breeder>.

[99] Ibid, footnote 92.

[100] *Stone* does not have anything to say about the GST Act definition of *enterprise* as suggested by the Applicant – “business” and “enterprise” are not interchangeable. Applicant's Position Paper dated 8 December 2024 (“**Applicant's SFIC**”) 4.

[101] See footnote 98.

[102] For example, TB2990 is a spreadsheet of dogs sold and to whom.

[103] *D'Arcy v Federal Commissioner of Taxation* [2008] AATA 709 although this case can be distinguished as it involved no contractual arrangements *and* no accounts. We have contractual arrangements in this case.

[104] *Puzey v Commissioner of Taxation* [2003] FCAFC 197 [48]. *Skourmallas v Federal Commissioner of Taxation* [2019] AATA 5535 [55].

[105] TB2798 and following.

[106] Commissioner's Outline [87f]-[87h], [88]-[89].

[107] For instance, TB2836-TB2861 and TB2954-TB2986. These are vet costs for dogs recorded later as sold.

[108] For instance, TB4762-TB4765. The Tribunal cannot determine whether this is due to the state of the Tribunal Book presented by the Commissioner or due to the materials provided by the Applicant being in inaccessible form.

[109] Similar findings were made in *Trnka v Federal Commissioner of Taxation* [2012] AATA 492 (“*Trnka*”) where again the claimed enterprise involved transfers from related entities to each other.

[110] These are points which distinguishes the Applicant's dog breeding operation from that outlined in MT 2006/1 at example 51, [402] and following.

[111] See footnote 38 above.

[112] Making a lesser profit than intended is not of itself problematic: *Konebada Pty Ltd as trustee for the William Lewski Family Trust v Federal Commissioner of Taxation* [2024] FCAFC 42 [66]. The prospect of profit was not so remote to be unlikely as was the circumstances in *Professional Admin Services Centres Pty Ltd v Federal Commissioner of Taxation* [2013] FCA 1123 at [62] and [64]. Making a loss does not suggest that a small scale breeding operation was not entered into in order to profit from that activity: *Case X28 90 ATC 276*, [16].

[113] Applicant's Witness Statement [6.22].

[114] As specified above in paragraph 6 of this decision, the claimed amounts in his BAS appear at the top of the table on TB1619.

[115] TB1619.

[116] In addition, the Applicant's efforts to identify from his total claims what he has claimed in relation to what enterprise, demonstrate that he may have *overclaimed* input tax credits in his BAS every year except for 2020 where it is said that an additional \$3,014.23 should have been claimed. It is not clear in which enterprise that additional amount arises nor for what. When considering potential overclaimed amounts, for instance, in 2021 a “difference” of -\$21,379.15 is identified, suggesting a potential overclaim of that amount for that year. It may be that the Applicant is saying he cannot substantiate nor reconstruct all of his claims. If that is the case, they are overclaimed amounts as he cannot meet his burden of proof.

[117] See the comments at paragraph 82 of this decision which are relevant here.

[118] Subject to a reduction to the extent the Applicant owned a personal pet outside of the dog breeding enterprise and the invoice does not specify the name of a dog where there are records on the Tribunal Book of those dogs being part of the breeding enterprise. For instance, it can be seen from TB3880 that Mocha was part of the breeding enterprise.

[119] See footnotes 39, 40, 41 and 43 above. Also see TB1610-TB1619 which demonstrates some veterinary costs were incurred and costs relating *potentially* to dog related products (e.g., 14 June reference to ‘Sommerzby’ a pet retailer on TB1618).

[120] For instance, TB3486, TB3496-TB3498.

[121] See paragraphs 73 to 89 below.

[122] See paragraph 89 below.

[123] TB1619 is inconsistent with the total claimed amounts recorded at paragraph 6 above.

[124] TB1566-TB1567.

[125] Applicant's Closing Submissions [3.1]-[3.3].

[126] This does not relate to the Commissioner's Outline [112b], so it is assumed the Applicant does not accept that point.

[127] Transcript 30 [26]-[47], 31 [1]-[45].

[128] Commissioner's Outline [112a] and [113] are accepted by the Applicant. The Applicant says these errors have been corrected – but the Tribunal is not sure where this correction arises: Applicant's Closing Submissions [3.1]-[3.3]. Commissioner's Closing Submissions [41].

[129] Commissioner's Outline [108].

[130] Transcript 12 [13].

[131] Commissioner's Outline [112b].

[132] TB1619 refers to total input credit claims in aggregate for Relevant Periods in the BAS total \$9,403 in 2018, \$24,346 for 2019, \$36,243 for 2020, \$48,258 but then suggests those are not correct and instead it is \$9,073.97 for 2018, \$20,585.69 for 2019, \$39,257.23 for 2020, \$26,878.85 for 2021. Other spreadsheets (such as TB5471-TB5505) set out claimed costs without totals so there can be no clear cross-reference. There are no amended BAS.

[133] Commissioner's Outline [4c], [108].

[134] TB1610-TB1615

[135] For example, see TB3134-TB3139, TB5471-5505.

[136] Transcript 28, [1]-[35].

[137] TB1610-TB1615.

[138] For instance, *"I would not have been eating at McDonald's twice on the same day for leisure."* Transcript 28, [1]-[35].

[139] For example, TB5075, TB5076, TB5090.

[140] Per subsection 69-5(1) of the GST Act.

[141] I agree with the Commissioner's Outline at [110] and the Commissioner's Closing Submissions at [28].

[142] Applicant's SFIC [3].

[143] Applicant's SFIC 7.

[144] There are publicly available rulings from the Commissioner on its website that should be considered: For example, (although this is dated after the position was taken) Edited private advice: 1052338603606 5 December 2024 at <https://www.ato.gov.au/law/view/print?DocID=EV%2F1052338603606&PiT=99991231235958>. GST Ruling GSTR 2001/3 *Goods and Services Tax: GST and how it applies to supplies of fringe benefits* [99] is another reference that could have been considered at the time the Applicant took the position he did in his BAS.

[145] TB3268-TB3271, TB3485, TB5002-TB5006; TB6080. There is no clear evidence, and these images may relate to damage to rental properties from tenants, or images relating to car parts, as opposed to tax records.

[146] Transcript 12, [1]-[47], 13 [1]-[6].

[147] For instance, see footnote 32.

[148] Applicant's Closing Submissions [4.2] *"PS LA 2011/25 further directs that, in disaster-affected cases, the Commissioner must assist the taxpayer to reconstruct records for income-tax and GST purposes, and must not impose penalties for any failure to maintain or lodge records arising from that disaster. This reinforces that the Applicant's reconstructed records are not discretionary submissions but documents the Commissioner is administratively obliged to consider under established law and*

practice.” Also, Applicant’s Closing Submissions [4.5] and the assertion in the index to the materials he is relying upon “*ATO Practice Statement confirming the Commissioner must assist taxpayers and accept reconstructed records after a natural disaster. Supports the Applicant’s Flood-loss explanation under s 11-5 GST Act 1999 and penalty remission.*”

[149] For instance, most recently, see *Santavas and Commissioner of Taxation* [2025] ARTA 2515 at [42] and Court decisions referred to in footnote 103 of that decision.

[150] The Applicant’s SFIC at [2] refers to “*Errors, if any, were inadvertent and not reckless, aligning with the High Court’s interpretation of recklessness in MT 2008/1*”. This is rejected as well. The High Court does not apply MT 2008/1 either. It is not law.

[151] Subsection 382-5(9) of Schedule 1 of the TAA.

[152] There are also some statutory provisions which alleviate the need for a tax invoices in some circumstances. Section 29-80 of the GST provides that subsection 29-10(3) does not apply to low-value acquisitions i.e. \$75 or less (exclusive of GST).

[153] Applicant’s Outline [4.3].

[154] The relevant legislative instruments are listed in Goods and Services Tax Ruling GSTR 2013/1 *Goods and services tax: tax invoices* (“**GSTR 2013/1**”) [118].

[155] PS LA 2011/25 [42]-[43].

[156] Applicant’s Closing Submissions [4.5].

[157] For instance, TB5502 references to “*EBay Commerce Australia Pty Ltd*”.

[158] To the Tribunal’s frustration, this website was referred to the Applicant prior to the close of the hearing for him to check the cases he was relying upon and confirm those cases in the Applicant’s Closing Submissions. While he said in the Applicant’s Closing at [3.4] that everything was checked, it clearly was not.

[159] Applicant’s Closing Submissions [4.2].

[160] Applicant’s Witness Statement [5.19], [6.23].

[161] The same can be said of the Applicant’s reference (for example Applicant’s Witness Statement [5.19]) to *Marana Holdings Pty Ltd v Federal Commissioner of Taxation* [2004] FCAFC 307. This case is about what comprises “residential premises”. It has nothing to do with the margin scheme and does not assist the Applicant.

[162] Applicant’s Closing Submissions [4.2] “*Re Jowett confirms that reconstructed evidence is capable of satisfying statutory substantiation where the original records have been lost through circumstances outside the taxpayer’s control.*”

[163] Applicant’s Witness Statement [10]. Once again, the case that has [2011] AATA 206 as its citation is not the case the Applicant asserts and instead is *Barclay and Repatriation Commission*. That case says nothing about reconstructed records. “*Case V164*” is another hallucination.

[164] Applicant’s Closing Submissions [4.5].

[165] See footnotes 30 and 69 above.

[166] Applicant’s Closing Submissions [4.5].

[167] Applicant’s SFIC [4].

[168] See footnotes 30 and 69 above.

[169] PS LA 2011/4 [4]-[5].

[170] *Cash World Gold Buyers Pty Ltd v Federal Commissioner of Taxation* [2020] AATA 1546 at [209]; *H & B Auto Repair Centre Pty Ltd v Federal Commissioner of Taxation* [2022] AATA 3561 [74]-[75]; *Very Important Business Pty Ltd v Federal Commissioner of Taxation* [2019] AATA 1120, [101]; *Trnka* [72].

[171] See footnotes 39, 40, 41 and 43 above.

[172] For example, TB5500 assuming it relates to an investment property (which is unclear, as it is addressed to the photography hobby).

[173] Transcript 25 [10]-[46], 26 [1]-[11].

[174] I record I have taken into account Law Administration Practice Statement PS LA 2012/5 *Administration of the false or misleading statement penalty – where there is a shortfall amount* {PS LA 2012/5} and Miscellaneous Taxation Ruling MT 2008/1 *Penalty relating to statements: meaning of reasonable care, recklessness and intentional disregard* (“MT 2008/1”).

[175] *Commissioner of Taxation v Huang* [2025] FCA 1314, [71].

[176] Applicant’s Closing Submissions [4.4]. He accepts he was careless.

[177] MT 2008/1 [68]-[70].

[178] Applicant’s Closing Submissions [4.4].

[179] Explanatory Memorandum to *A New Tax System (Tax Administration) Bill (No.2) 2000* (Cth) [1.167]-1.169]. A failure to maintain coherent records was a factor for a similar finding in *Fowler v Federal Commissioner of Taxation* [2013] FCAFC 69 [129].

[180] Audit Position Paper, TB1571, TB1572.

[181] The Commissioner must explain itself better than this in its correspondence with taxpayers. It is assumed that the Commissioner intended to say that participants in the housing and construction industry have considerable tax compliance obligations, and the Applicant’s BAS filings and the sheer number of errors were out of step with taxpayers that are peers in that industry. Instead, the Commissioner made a bald statement without basis.

[182] MT 2008/1 [65]. The Commissioner cannot say on the one hand that engaging a tax agent does not mean that penalties will not apply, and on the other that a failure to engage a tax agent means that penalties will apply. *Abotomey and Commissioner of Taxation* [2025] ARTA 719 (“**Abotomey**”) [328]-[332], [338] is another case where the Commissioner’s position on the use of a tax agent in the context of penalties was inconsistent.

[183] *Hart v Federal Commissioner of Taxation* [2003] FCAFC 105 [33].

[184] Explanatory Memorandum to *A New Tax System (Tax Administration) Bill (No.2) 2000* (Cth) [1.163]-[1.165]. MT 2008/1 [99]-[102]. PS LA 2012/5 [107]-[108]. *Hart v Federal Commissioner of Taxation* [2003] FCAFC 105 [33]-[34].

[185] Applicant’s Closing Submissions [4.4]. Applicant’s Outline

[186] Applicant’s Witness Statement [25]. Applicant’s SFIC [3].

[187] *Hart v Federal Commissioner of Taxation* [2003] FCAFC 105 [33]-[34]. Also see *BRK (Bris) Pty Ltd v Commissioner of Taxation* [2001] FCA 164 [77].

[188] Applicant’s Witness Statement [31]. Applicant’s SFIC [3].

[189] Applicant’s Witness Statement [30]-[31].

[190] Applicant’s SFIC [2].

[191] Applicant’s Witness Statement [37]. Applicant’s SFIC page 3 under “MT2008/1”.

[192] Applicant’s Witness Statement [27].

[193] Commissioner’s Outline [121], [125]; Commissioner’s Closing [44]-[46].

[194] *Mitri* [43].

[195] TB1619.

[196] *Hart v Federal Commissioner of Taxation* [2003] FCAFC 105 [43].

[197] TB913, TB922-TB923, TB1618.

[198] TB1571, TB1921. It is also said to have been “falsified” by the Applicant.

[199] Transcript 13 [32]-[47], 14 [1]-[30].

[200] Commissioner’s Outline [25]

[201] See paragraphs 10 to 12 of this decision.

[202] *Mitri* [56].

[203] TB1572.

As was not ^[204] TB1575, TB1576.

^[205] See paragraph 105(c) above.

^[206] *Dixon as Trustee for the Dixon Holdsworth Superannuation Fund v Commissioner of Taxation* [2008] FCAFC 54 [15], [17]; *Sanctuary Lakes Pty Ltd v Commissioner of Taxation* [2013] FCAFC 50; (2013) 212 FCR 483 [157], [193], [207].

^[207] Applicant's Witness Statement [7]; Applicant's SFIC [3], Applicant's Outline [4.4], [4.6], [6]; Applicant's Closing [4.5], [4.6].

^[208] Applicant's Outline [6].