

TAKE THE STRESS OUT OF TAX

Register for Brown Wright Stein's 2024 Tax Training Sessions

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LAWYERS

Division 7A and UPEs

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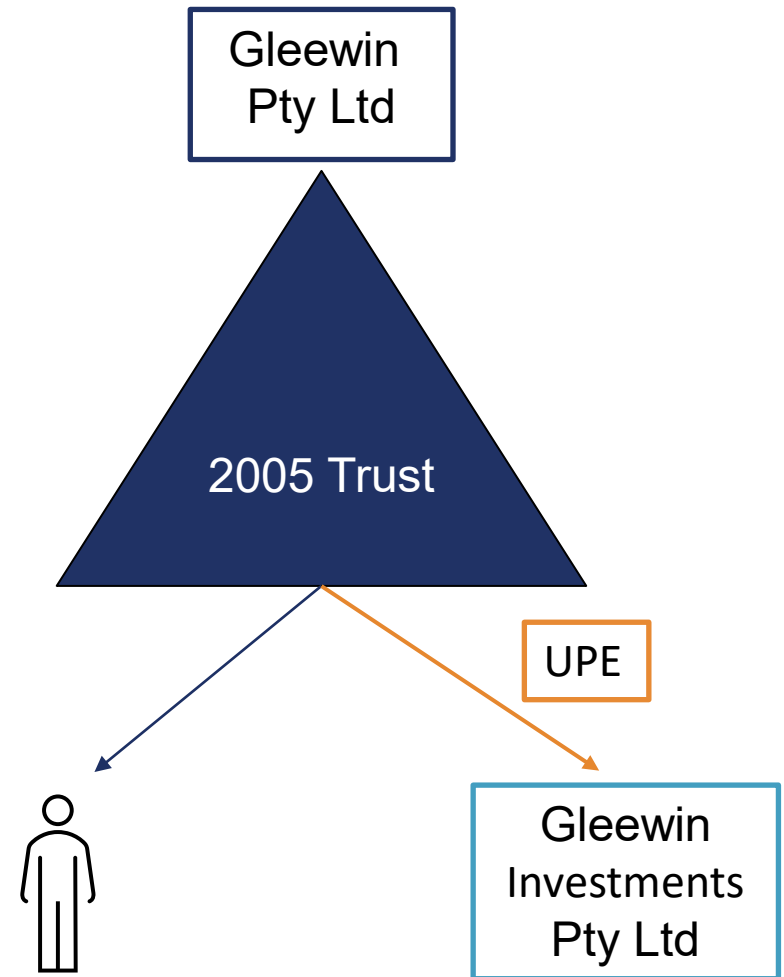
Webinar | 18 October 2023

History of Division 7A

- Section 108 deemed dividend if loan represented distribution of profits
- 4 December 1997: Division 7A Loans, payments, forgiveness
- 27 March 1998: 109UB interposed entity provisions (trusts)
- 12 December 2002: Subdivision EA (109XA and 109XB)
- 16 December 2009:
 - TR 2010/3 and PS LA 2010/4
- 2014 BoT review
- 2016-17 and 2017-18 Budgets
- 2018 Treasury Discussion Paper
- TD 2022/11

Bendel

- *“[a]ny amount set aside for any beneficiary ...shall cease to form part of the Trust Fund and upon such setting aside ... shall thenceforth be held by the Trustee on a separate trust for such person absolutely ...”*



Submissions

Steven's arguments

- Trust relationship is **not** a debtor/creditor relationship
- “Unintended and absurd” tax implications
- 6-25 of the ITAA 1997 prevents double tax

Commissioner's arguments

- ... *“a provision of credit or any other form of financial accommodation”*
- or *“in substance loan”*
- Subdivision EA is not enlivened

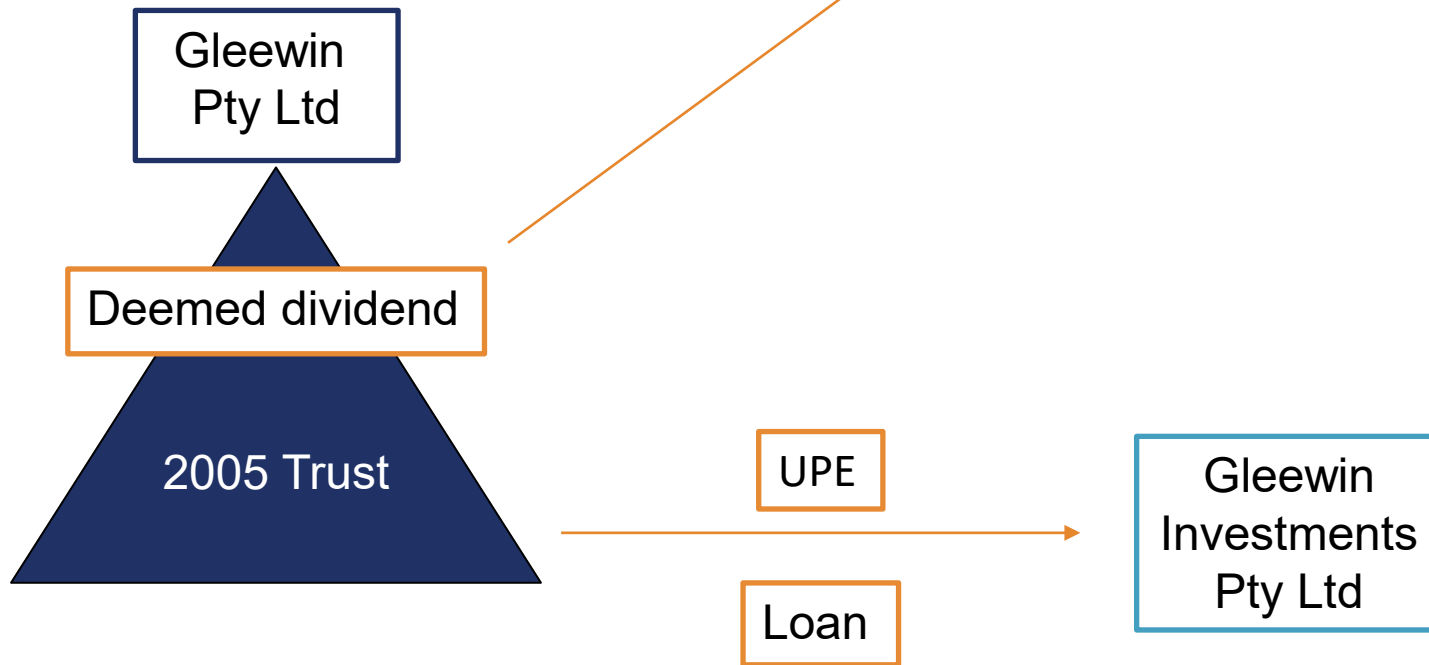
AAT decision

- At [101] “[section 109D(3)] *does not go so far as to embrace the rights in equity created when entitlements to trust income are created but not paid, and remain unpaid... the balance of an outstanding or unpaid present entitlement of a corporate beneficiary of a trust, whether held on a separate trust or otherwise, is not a loan to the trust*”

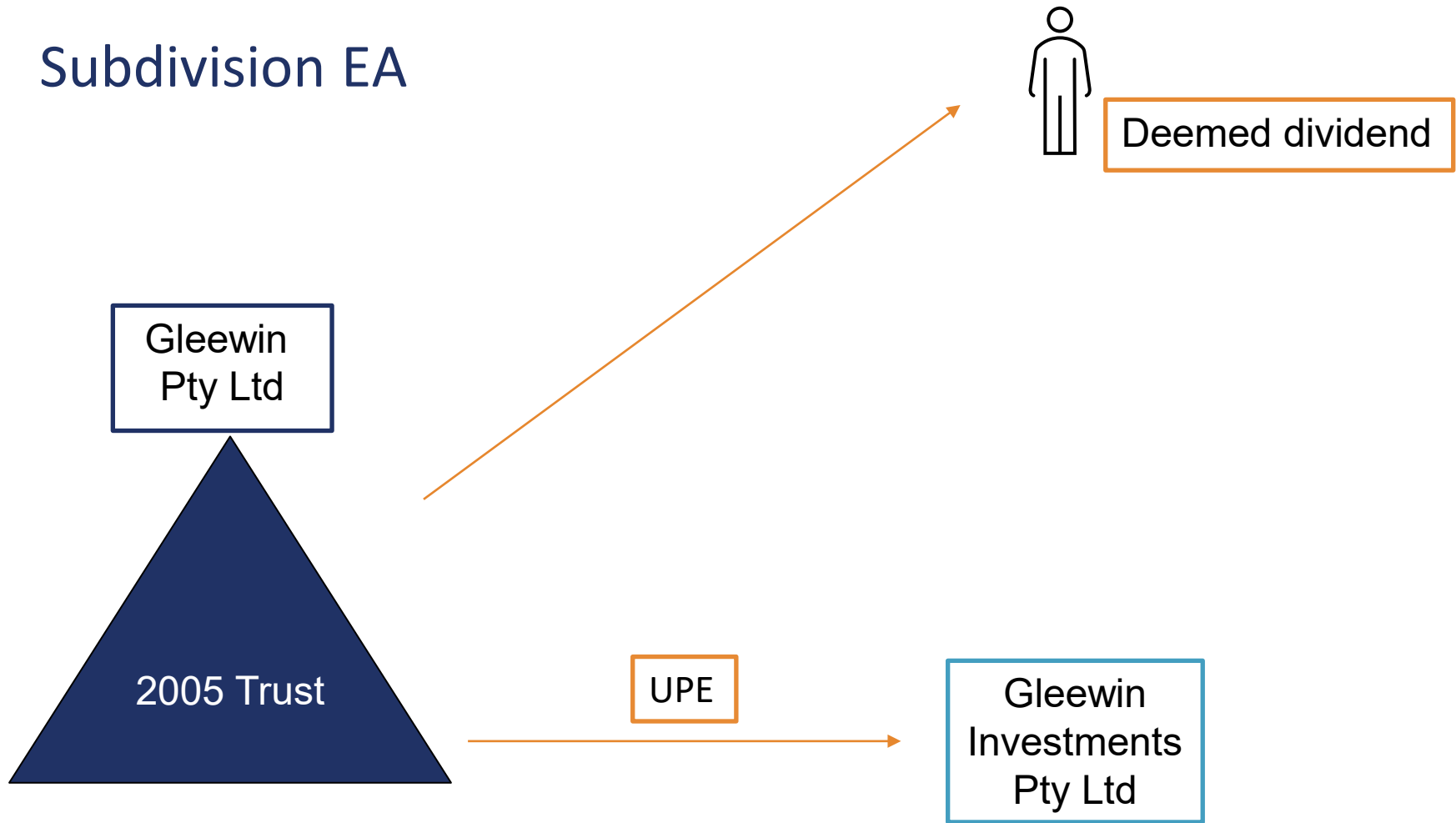
Summary of AAT reasons

- the policy of Division 7A
- statutory construction principles call for regard to statutory context and legislative history and potentially competing provisions to be construed in a manner which 'gives effect to harmonious goals'
- no tiebreaker provision
- s 109RB discretion only for honest mistakes and inadvertent omissions
- Subdivision EA is a specific, and therefore lead, provision
- the lack of clarity as to the nature of an unpaid present entitlement

109D(3)



Subdivision EA



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