

# Ermelinda Kovacs

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## Education

2017	Master of Laws (Taxation), University of Sydney
2010	Bachelor of Laws, University of Technology Sydney (UTS)
2008	First Place in Revenue Law, Thomson Reuters Award, UTS
2008	Bachelor of Business with Distinction (Accounting), UTS
2004	Bethlehem Ladies' College - School Captain, Dux

## Admissions to Practice

2018	Barrister
2010	Solicitor

## Professional Experience

2018 - present	Barrister, Ground Floor Wentworth Chambers
2005 - 2018	Ernst & Young, Sydney – Director, Tax Controversy

## Professional Memberships

Secretary, Australian Bar Association - Taxation Committee (2019 - present)

Floor Secretary, Ground Floor Wentworth Chambers (2020 – 2021, 2022 – present)

New South Wales Bar Association

Law Council of Australia, Taxation Committee

The Tax Institute of Australia, National Dispute Resolution Technical Committee

International Fiscal Association

Australian Insurance Law Association

## Publications

*Deep dive into derivation of income* (2024) – The Tax Institute – The Tax Summit

*The importance of rulings* (2021) – The Tax Institute - 21<sup>st</sup> Annual States' Taxation Conference

*Dealing with a BEPS based tax review* (2014) - The Tax Institute - International Masterclass Seminar Paper

## Select cases

### Tax

<i>Evolution Mining Limited v Commissioner of Taxation</i> (FCA - ongoing)	Utilisation of tax losses (\$32 million); consolidation regime; application of the same business test	Acting for the Commissioner of Taxation (unled); instructed by the Australian Government Solicitor
<i>G2A LLC v Commissioner of Taxation</i> (ART – ongoing)	GST; inbound intangible consumer supplies	Acting for the taxpayer (unled); instructed by Clayton Utz
Confidential investigations in connection with certain advisers	Promoter penalty provisions; Division 290 of Sch 1 to the <i>Taxation Administration Act 1953</i> (Cth); mass marketed schemes	Acting for the Commissioner of Taxation (unled); leading Christopher Beshara; instructed by the Australian Government Solicitor
<i>Tran v Commissioner of Taxation</i> (ART - ongoing)	Default assessments under s 167 of the <i>Income Tax Assessment Act 1936</i> (Cth); asset betterment calculations; (\$11 million primary tax and penalties in dispute)	Acting for the taxpayer (unled); instructed by Ernst & Young
<i>Australian Investment Holding Group Pty Ltd v Commissioner of Taxation</i> (ART – ongoing)	Substantiation case; whether certain deposits are assessable or loans; (circa \$7 million in primary tax and penalties in dispute)	Acting for the taxpayer (unled); leading Alexander Schatz; instructed by Brown Wright Stein
<i>Charles Apartments Pty Ltd v Commissioner of Taxation</i> (FCA – judgment reserved)	Appeal / cross-appeal to the Federal Court of Australia under s 44 of the <i>Administrative Appeals Tribunal Act 1975</i> (Cth)	Acting for the Commissioner of Taxation (unled); leading Lindsay Muir; instructed by the Australian Government Solicitor
<i>WCVB v Commissioner of Taxation</i> [2024] AATA 1259	Constructive derivation of income by a special purpose vehicle; deductibility of interest; deductibility of construction costs; penalties	Acted for the successful Commissioner of Taxation (unled) against silk; instructed by the Australian Government Solicitor
<i>Commissioner of Taxation v ACN 154 520 199 Pty Ltd (In Liquidation)</i> (FFCA – judgment reserved)	Appeal to the Full Court of the Federal Court of Australia; GST; application of Division 165 to negate input tax credits (\$73 million)	Acting for the taxpayer; led by Bret Walker SC and Bradley Jones SC; instructed by Polczynski Robinson
<i>ACN 607 537 548 Pty Ltd v Commissioner of Taxation</i> (FCA – judgment reserved)	GST; application of the anti-avoidance provisions in Division 165 to negate input tax credits (\$25 million)	Acting for the taxpayer; led by Bradley Jones SC; instructed by Clayton Utz
<i>Samadi v Commissioner of Taxation</i> (FCA - ongoing)	Small business relief provisions contained in Division 152 of the <i>Income Tax Assessment Act 1997</i> (Cth) in connection with a \$20 million capital gain	Acting for the taxpayer (unled); leading Justen Nixon; instructed by Ernst & Young
<i>XL Retail Services Pty Ltd v Chief Commissioner of State Revenue</i> [2025] NSWCATAD 22	Payroll tax; application of the employment agency provisions; s 37 of the <i>Payroll Tax Act 2007</i> (NSW)	Acted for the taxpayer (unled); led Justen Nixon; successful in having penalties assessments revoked; instructed by Brown Wright Stein. Currently acting for the taxpayer (unled), leading Justen Nixon, in the appeal.

<i>CTJC Holdings Pty Ltd atf Makari Unit Trust v Chief Commissioner of State Revenue</i> (NCAT)	Land tax; primary production exemption	Acted for the Chief Commissioner of State Revenue (unled); taxpayer withdrew day before final hearing; instructed by the Crown Solicitor's Office
<i>Niu v Chief Commissioner of State Revenue</i> [2023] NSWCATAP 123	Surcharge purchaser duty	Acted for the Chief Commissioner of State Revenue (unled); the Chief Commissioner was successful at trial and on appeal; instructed by the Crown Solicitor's Office
<i>Willmott v O'Neill (No 2)</i> [2023] FedCFamC1F 345	Property settlement; recovery of unpaid taxation liabilities	Acted successfully for the Commissioner of Taxation (intervening) (unled); instructed by HWL Ebsworth
High wealth individual - audit and objection stages	Application of the general anti-avoidance rules; Part IVA of the <i>Income Tax Assessment Act 1936</i> (Cth)	Appeared for the taxpayer before the General Anti-Avoidance Rules (GAAR) Panel (unled); instructed by Brown Wright Stein
<i>Fidge v Commissioner of Taxation</i> [2023] AATA 4245	Genuine redundancy payment; s 83-175 of the <i>Income Tax Assessment Act 1997</i> (Cth)	Acted for the successful taxpayer (unled); instructed by Jones Day

## Insurance, professional negligence and disciplinary matters

<i>DTZ Worldwide Limited v AIG Australia Limited</i> [2025] NSWSC 12	Claim under a number of Buyer's Warranty & Indemnity Insurance Policies; alleged breach of warranty; \$234 million claim	Acted for the successful second to sixth defendants (excess insurers – the primary insurer had settled with the plaintiff prior to hearing); the plaintiff's claim was dismissed; led by Michael Jones SC; instructed by Norton Rose Fulbright Australia
<i>Seymour White Constructions Pty Limited v Liberty Mutual Insurance Company</i> (Supreme Court of NSW – ongoing)	Claim under a Contractors Pollution Legal Liability Policy	Acting for the insurer; led by Stuart Donaldson SC; instructed by Carter Newell
<i>The Leaders Advisory Network Pty Ltd &amp; Ors ats Mayne &amp; Ors</i> (Supreme Court of NSW – resolved)	Chartered Accountant / tax agent; professional negligence claim; \$3 million claim	Acted for the defendants (unled); instructed by Gilchrist Connell; (resolved favourably for the defendants at mediation)
<i>CIMIC Group Limited v AIG Australia Limit (No 2)</i> [2023] NSWSC 640	Costs where insured proceeded against two insurance towers of different policy years	Acted for second defendant; led by Stuart Donaldson SC; instructed by Lander & Rogers
<i>Intersnack Australia Holding Company Pty Ltd t/as Snack Brands Australia v AIG Australia Limited</i> (FCA)	Acts of dishonesty committed by an employee resulting in Direct Financial Loss	Acted for the insured; led by Stuart Donaldson SC; resolved successfully for the insured pre-hearing; instructed by Gillis Delaney Lawyers
<i>IBM Australia Limited v Nextgen Networks Pty Ltd &amp; Anor</i> (Supreme Court of NSW)	Negligence; statutory misleading conduct (\$35 million claim)	Acted for the second defendant; led by Stuart Donaldson SC (resolved); instructed by Norton Rose Fulbright Australia

<i>Bannerman &amp; Anor v Carr &amp; Ors</i> (Supreme Court of NSW)	Chartered Accountant / tax agent; professional negligence	Acted for plaintiff; led by Stuart Donaldson SC; resolved successfully for the plaintiff pre-hearing
<i>Willcocks v Croft &amp; Ors</i> (Supreme Court of NSW)	Chartered Accountant and tax agent; professional negligence	Acted for first and fifth defendants; led by Stuart Donaldson SC; instructed by Norton Rose Fulbright Australia (resolved)
<i>Mihajlovic and Tax Practitioners Board</i> [2022] AATA 342	Review of decision of the Tax Practitioners Board to terminate tax agent registration	Acted for the successful Tax Practitioners Board (unled)
<i>Territory Asset Management Services Pty Ltd v Theunissen Trollip Pty Ltd &amp; Anor</i> (Supreme Court of NSW)	Solicitor; breach of fiduciary duty and professional negligence	Acted for plaintiff; led by David Marks KC (resolved favourably for the plaintiff at mediation)