

Ermelinda Kovacs

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Education

2020	Completion of Unit of Study – Insurance Law & Risk, University of Sydney
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
International Fiscal Association
Australian Insurance Law Association

Publications

The importance of rulings (2021) – The Tax Institute - 21st Annual States' Taxation Conference
Dealing with a BEPS based tax review (2014) - The Tax Institute - International Masterclass Seminar Paper

Recent Matters

Tax

<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
<i>Willmott v O'Neill (No 2)</i> [2023] FedCFamC1F 345	Property settlement; recovery of unpaid taxation liabilities	Acted for the Commissioner of Taxation (intervening) (unled); resolved successfully for the Commissioner
<i>King v Commissioner of Taxation</i> [2022] FCA 935	Default assessments; asset betterment calculations	Acted for the taxpayer (unled). Resolved successfully for the taxpayer by consent before hearing. Court was persuaded it was appropriate to make consent orders. Commissioner agreed to pay the taxpayer's costs.
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)
Government client	Advice in connection with administrative law matters	Led by Simon White SC
<i>Fidge v Commissioner of Taxation</i> (AAT – ongoing)	Genuine redundancy payment; s 83-175 of the <i>Income Tax Assessment Act 1997</i> (Cth)	Acting for the taxpayer (unled)
Audit and objection stages for a high wealth individual (ongoing)	Application of the controlled foreign company rules	Acting for the taxpayer; led by Kristen Deards SC
Global financial services group	Advice regarding deductibility of fees (\$350m+)	Acted for the taxpayer; led by Chloe Burnett SC
Property development group	Advice regarding debt recovery action (\$20m+)	Acted for the Commissioner of Taxation; led by Richard Scruby SC (resolved)
Objections to amended assessments dating back to 1998 issued to a beneficiary	Allegations of tax evasion on the part of the trustee; sale and leaseback arrangements	Acting for the taxpayer; led by Daniel McInerney KC
Audit of a multinational enterprise in relation to an internal corporate restructure	Administrative law questions arising during conduct of audit; Accountants' Concession	Acted for the Commissioner of Taxation; led by Geoffrey Kennett SC

<i>Bowerman v Commissioner of Taxation</i> (AAT – ongoing)	Deductibility of a loss incurred on the sale of property; revenue / capital distinction	Acting for the Commissioner of Taxation (unled)
<i>Australian Investment Holding Group Pty Ltd v Commissioner of Taxation</i> (AAT – ongoing)	Whether certain deposits are assessable; s 6-5 of the <i>Income Tax Assessment Act 1997</i>	Acting for the taxpayer (unled)
Objection stage for a private group	Entitlement to small business capital gains tax concessions in respect of disposal of a property	Acting for the taxpayer; led by Mark Robertson KC
<i>XL Retail Services Pty Ltd v Chief Commissioner of State Revenue</i> (NCAT - ongoing)	Payroll tax; application of s 37 of the <i>Payroll Tax Act 2007</i> (NSW)	Acting for the taxpayer (unled)
<i>QYGZ v Commissioner of Taxation</i> (AAT – ongoing)	Goods & services tax; entitlement to input tax credits	Acting for the taxpayer (unled)
<i>BJYW & PSWB v Commissioner of Taxation</i> (AAT – ongoing)	Default assessments spanning 13 income years for; evasion findings	Acting for the taxpayers (unled)
Mortgage aggregator	Advice regarding payroll tax assessments; application of the 'relevant contracts' provisions; s 32 of the <i>Payroll Tax Act 2007</i> (NSW)	Acted for the taxpayer; led by Stuart Donaldson SC
Objections to amended assessments issued to property developer	Default assessments; asset betterment calculations	Acting for the taxpayer; led by Kristen Deards SC
<i>YGVQ and Commissioner of Taxation</i> (AAT)	Default assessments; asset betterment calculations	Acted for the taxpayer; led by Kristen Deards SC (resolved)
<i>Commissioner of Taxation v Fortunatow</i> [2020] FCAFC 139	Personal services income; unrelated clients test	Acted for the taxpayer; led by Mark Robertson KC and John Fickling of Counsel
<i>Shimden Pty Ltd v Deputy Commissioner of Taxation</i> (FCA - ongoing)	Revenue/capital; deductibility of interest expenses	Acting for the Commissioner of Taxation; led by Kristen Deards SC and Courtney Ensor of Counsel
<i>MMHZ and SYFW v Commissioner of Taxation</i> (AAT - ongoing)	Substantiation case relating to a shareholders' loan account	Acting for the Commissioner of Taxation; led by Kristen Deards SC and Courtney Ensor of Counsel
<i>Riley v Wagner & Anor</i> (Federal Circuit & Family Court of Australia)	Property settlement; recovery of unpaid taxation liabilities	Acted for the Commissioner of Taxation (intervening) (unled); resolved successfully
<i>Sule Arnautovic in his capacity as Administrator of Wrapaway Transport Pty Limited & Ors v Morondu Pty Limited as trustee</i>	Administrator's retention obligation under s 254 of the <i>Income Tax Assessment Act 1936</i> (Cth)	Acted for the Commissioner of Taxation (unled); ex tempore reasons given in respect of orders made consistently with the

<i>for 1984 No. 1 Investment Trust & Ors</i> (Supreme Court of NSW)		receiver's retention obligation under the ITAA 1936
<i>Alif Australia Pty Ltd v Commissioner of Taxation</i> (AAT)	Employee or independent contractor; s 12 of the <i>Superannuation Guarantee (Administration) Act 1992</i> (Cth)	Acted for the Commissioner of Taxation (unled); resolved successfully
<i>WCVB v Commissioner of Taxation</i> (AAT – ongoing)	Derivation of income in respect of the sale of land; deductibility of interest; deductibility of construction costs	Acting for the Commissioner of Taxation (unled); Commissioner was successful in opposing interlocutory application to set aside multiple subpoenas issued at the request of the Commissioner
Property development group	Advice regarding collection and administration of the Goods & Services Tax pre and post the enactment of the <i>Indirect Tax Laws Amendment (Assessment) Act 2012</i> (Cth); mistaken balances in Running Balance Account due to fraud	Acted for the Commissioner of Taxation; led by Courtney Ensor of Counsel with Amy Reid of Counsel
<i>Canberra Tradesmen's Union Club Limited v Commissioner of Taxation</i> (AAT)	Tax consequences associated with receipt of undissected settlement sum	Acted for the Commissioner of Taxation (unled); taxpayer withdrew application for review
<i>CLSW v Commissioner of Taxation</i> (AAT)	Deductibility of home occupancy expenses	Acted for the Commissioner of Taxation (unled); resolved successfully for the Commissioner pre-hearing
<i>Fortunatow v Commissioner of Taxation</i> [2019] FCA 1247	Personal services income; unrelated clients test	Acted for the taxpayer; led by John Fickling of Counsel
<i>Douglass v Commissioner of Taxation</i> [2019] FCA 1246	Personal services income; results test	Acted for the taxpayer; led by John Fickling of Counsel
<i>Rosebridge Nominees Pty Ltd (In Liq) and Commissioner of Taxation</i> [2019] AATA 426	Time limits on entitlement to claim input tax credits and GST refunds	Acted for the taxpayer; led by Tim Castle SC
<i>Commissioner of Taxation v ACN 154 520 199 Pty Ltd (In Liq)</i> [2018] FCA 1140	Judicial review of AAT decision to issue a direction	Acted for the taxpayer; led by Bradley Jones SC

Insurance, professional negligence and disciplinary matters

<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
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<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
<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
<i>DTZ Worldwide Limited v AIG Australia Limited</i> (Supreme Court of NSW – ongoing)	Claim under a number of Buyer's Warranty & Indemnity Insurance Policies; alleged breach of warranty; \$200m claim	Acting for the second to sixth defendants (insurers); led by Michael Jones SC
<i>IBM Australia Limited v Nextgen Networks Pty Ltd & Anor</i> (Supreme Court of NSW)	Negligence; statutory misleading conduct	Acted for the second defendant; led by Stuart Donaldson SC (resolved)
<i>The Leaders Advisory Network Pty Ltd & Ors ats Mayne & Ors</i> (Supreme Court of NSW – ongoing)	Chartered Accountant / tax agent; professional negligence claim	Acting for the defendants (unled)
<i>Tome Bros Pty Ltd v Ken Crossman & Co Pty Ltd</i> [2023] FCAFC 35	Auditor of real estate trust account; statutory misleading conduct	Acted for the applicant; led by Roger Marshall SC
<i>Bannerman & Anor v Carr & Ors</i> (Supreme Court of NSW - ongoing)	Chartered Accountant / tax agent; professional negligence	Acted for plaintiff; led by Stuart Donaldson SC; resolved successful for the plaintiff pre-hearing
<i>Willcocks v Croft & Ors</i> (Supreme Court of NSW)	Chartered Accountant and tax agent; professional negligence	Acted for first and fifth defendants; led by Stuart Donaldson SC
Advice to insurer which had granted indemnity under a policy of insurance	Equitable contribution	Acted for insurer; led by Peter Mann of Counsel
<i>Incollingo v Tax Practitioners Board</i> (FCA)	Review of decision of the Tax Practitioners Board to suspend tax agent registration	Acted for the respondent (unled)
<i>Raju v Tax Practitioners Board</i> (AAT)	Application for stay of decision of the Tax Practitioners Board to terminate tax agent registration	Acted for the successful respondent at the stay hearing; unled – tax agent subsequently withdrew application for review in the AAT
<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 Tax Practitioners Board; unled – appeared for successful respondent
<i>Territory Asset Management Services Pty Ltd v Theunissen Trollip Pty Ltd & 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)

Advice to the trustees of various self-managed superannuation funds	Auditor of self-managed superannuation fund; advice as to claims available in contract, tort and for statutory misleading conduct; quantum of loss; limitation of liability under the <i>Professional Standards Act 1994</i> (NSW); apportionment of liability under the <i>Civil Liability Act 2002</i> (NSW).	Acted for six trustees of self-managed superannuation funds (unled)
<i>CFMZ and Tax Practitioners Board</i> [2020] AATA 2955	Tax agent; breach of the Code of Conduct under the <i>Tax Agents Services Act 2009</i> (Cth)	Acted for Tax Practitioners Board; unled – appeared for successful respondent

Commercial

<i>Macaz Pty Ltd (In Liq) & Anor v Fusarelli & Ors</i> (FCA)	Insolvent trading claim; s 588G of the <i>Corporations Act 2001</i> (Cth)	Acting for the applicant (unled)
<i>Weiser v Skaf</i> (Local Court)	Tenancy dispute; rental arrears	Acting for the plaintiff (unled)
<i>Kamar Pty Ltd atf Reisel Family Trust v Toppi Martin Place t/as Toppi Restaurant</i> (Local Court)	Breach of contract	Acted for the successful defendant (unled)
<i>Williams v Williams & Ors</i> (Supreme Court of NSW)	Dispute involving division of assets between family members	Acted for the plaintiff; led by Roger Marshall SC (resolved successfully for the plaintiff)
<i>Ozmen Entertainment Pty Ltd & Anor v Neptune Hospitality Pty Ltd</i> [2019] FCA 721	Admiralty – termination of joint venture agreement – fiduciary duties;	Acted for the successful applicants; led by Tim Castle SC
<i>Ozmen Entertainment Pty Ltd & Anor v Neptune Hospitality Pty Ltd (No 5)</i> [2019] FCA 904	Admiralty – ship's mortgage	Acted for the successful applicants; led by Tim Castle SC
<i>Margaret Binetter in her capacity as the legal personal representative of the late Erwin Binetter and Ors v BCI Finances Pty Limited (In Liq) & Ors</i> (FCA)	Corporations – directors' duties	Acted for the first, third, fourth and fifth appellants; led by Noel Hutley SC and Bradley Jones SC
<i>Silvia (Trustee) v Williams</i> [2018] FCAFC 194	Common intention constructive trust	Acted for the appellant; led by Bradley Jones SC