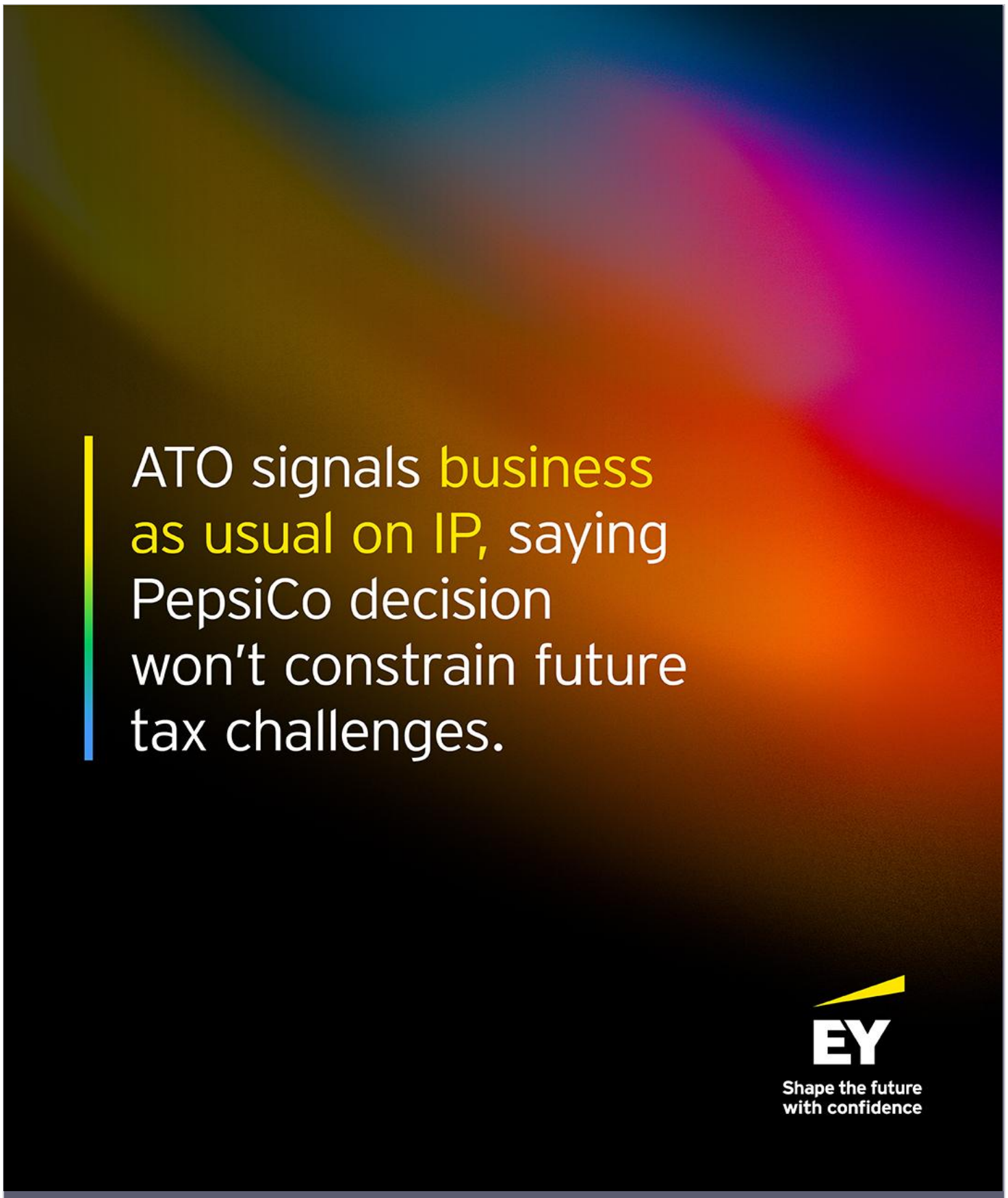

Issue 92, May 2026

ATO signals "Business as Usual" on IP Challenges Post-PepsiCo: Controversy risks remain high

The Australian High Court's decision in *Commissioner of Taxation v PepsiCo Inc & Anor [2025] HCA 30* was viewed by some as a setback for the Commissioner on royalty withholding tax and Diverted Profits Tax (DPT). However, the Australian Taxation Office's (ATO) newly released Decision Impact Statement (DIS) reflects the ATO's concern that the PepsiCo decision should not be treated as a broader constraint on future challenges involving intellectual property. From a tax controversy perspective, the DIS underscores the ATO's intent to continue scrutiny of intellectual property (IP) arrangements, royalty characterization, and embedded royalty theories — particularly in related-party contexts.

By emphasizing the "unique facts" of PepsiCo, the ATO preserves broad discretion to challenge the legal and economic substance of IP-driven structures, to look beyond contractual labels, and to apply anti-avoidance rules, including DPT and Part IVA. The DIS also foreshadows continued disputes over pricing evidence, composite agreements, and reasonable alternative postulates. Taxpayers with IP-heavy supply chains or royalty-free models should expect sustained audit and litigation risk. The **full tax alert** discusses the controversy implications and emerging fault lines in more detail.

Previous editions:

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