

# AUSTRALIAN TAX REVIEW

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## ARTICLES

### **Australian international taxation of attributed trust gains – Mark Brabazon SC**

Australia’s international claim to tax trust-level capital gains attributed to beneficiaries or trustees involves a contested question whether the jurisdictional rules of trust taxation based on source apply, or those of capital gains taxation (CGT) based on “taxable Australian property”, or a hybrid of the two. The article sets out to answer the question by tracing the development of those rules and their interaction with substantive taxing and attribution rules. It tests the jurisdictional claim across a range of single-trust and chain-of-trust scenarios and concludes that, despite the complexity of the rule structure, the current settings resolve to a small number of basic propositions which involve elements of both CGT and trust tax jurisdictional rules. It argues that the rules should be revised for clarity and should be rationalised to bring the international settings for trust gains into line with direct CGT settings. ....

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### **Tracking down stamp duty avoidance – do Western Australia’s general anti-avoidance rules capture tracking notes? – Jared Clements and Matthew Plint**

A tracking note is a hybrid security instrument that allows the holder to economically participate in a project held by a company without acquiring any ordinary shares in the company or a direct interest in the company’s assets. One advantage of a tracking note is that it generally does not give rise to landholder duty under the Duties Act 2008 (WA). However, there is a real question about whether these instruments fall foul of Western Australia’s stamp duty general anti-avoidance rules. This article will examine the technical difficulties associated with applying those rules to tracking note arrangements. It will argue that the general anti-avoidance rules are unlikely to apply to tracking notes in circumstances where there is a strong legal or commercial rationale which justifies their use in a transaction. ....

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### **Unit Trend: It’s not just about GST – Nick Gangemi**

The 2013 case of FCT v Unit Trend Services Pty Ltd was a recent goods and services tax (GST) decision of the High Court on the impact of Div 165 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (GST Act). It is the first major decision on Div 165; and also the first major decision on the “election exclusion” contained in s 165(1)(b) of the GST Act, and which is very similar to provisions in the income tax regime. This article analyses the decision of Unit Trend and the provisions of the GST and the income tax rules, and concludes that the principles of Unit Trend should be applied not only to Div 165, but also to the equivalent provisions in Pt IVA. ....

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