

# AUSTRALIAN TAX REVIEW

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## SPECIAL ISSUE – TRIBUTE TO THE HONOURABLE RICHARD EDMONDS

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## ARTICLES

### **Justice Richard Edmonds: Part IVA – “I am firmly of the view ...”** – *Justice Michelle Gordon*

Justice Richard Edmonds’ involvement in the history and development of Pt IVA of the *Income Tax Assessment Act 1936* (Cth), both as counsel and as a Federal Court judge, can only be described as unique. This article traces a number of his Honour’s key Pt IVA cases at the Bar and on the Bench, and considers his Honour’s views on two particular aspects of Pt IVA – the Commissioner’s power to narrowly define the relevant “scheme”, and recent legislative amendments affecting how a taxpayer’s alleged “tax benefit” is to be assessed. It then considers how Justice Edmonds’ unique involvement with Pt IVA has shaped his Honour’s ongoing concern to protect Australia’s economic future. .... 67

### **The Indooroopilly saga** – *David Bloom QC*

In *Federal Commissioner of Taxation v Indooroopilly Children’s Services (Qld) Pty Ltd*, the Full Federal Court considered an issue arising under the *Fringe Benefits Tax Assessment Act 1986* (Cth). Five single Federal Court judges had previously and separately determined the issue in a way with which the Commissioner did not agree. Indooroopilly was the first case in which the Commissioner sought to test the issue on appeal. This article focuses on the Full Court’s decision and the reaction to it. .... 78

### **Justice Edmonds’ contributions to extra-judicial writing and tax reform** – *Chloe Burnett*

Justice Edmonds’ judicial output was large, but it did not prevent him from presenting several extra-judicial speeches and papers every year. These represent an impressive body of work, both scholarly and practical. In these writings, Justice Edmonds analyses the Australian tax system and advocates for tax reform. A number of tax proposals “on the table” in this election year have been consistently called for by Justice Edmonds. This chapter explores Justice Edmonds’ extra-judicial contributions in the areas of the capital gains tax, negative gearing, superannuation tax concessions, inheritance tax, the goods and services tax, international taxation and statutory interpretation, as well as the process of tax reform itself. .... 88

**Charities, tax and wrongdoing: A principled approach – Ann O’Connell and Fiona Martin**

The charitable and wider not-for-profit (NFP) sector enjoy significant tax concessions at federal (and State and municipal) level. Until recently there was little checking of entitlement or ongoing eligibility for these valuable concessions. Although the vast majority of entities within the sector behave appropriately, there is inevitably some wrongdoing by those who seek to exploit the tax concessions. The establishment of the Australian Charities and Not-for-profit Commission in 2012 has introduced some scrutiny but may not ensure that all wrongdoing is exposed. In this context, the judgments of Justice Edmonds relating to the NFP tax concessions are significant. The judgments demand high standards of entities claiming tax concessions and assist in ensuring that the integrity of the entire sector is maintained. .... 99

**A shining light: Justice Richard Edmonds and the jurisprudence relating to the taxation of capital gains in Australia – Chris Evans and Gordon Cooper AM**

Justice Edmonds has been involved in a large number of cases which directly or indirectly involve the provisions dealing with the taxation of capital gains in Australia. It is argued that his Honour’s contribution in these cases has been considerable and significant. Above all, his judgments have cast much-needed light on some of the more shaded areas where the capital gains tax provisions operate. .... 108

**Justice Edmonds and interpretation of Australia’s GST legislation – Richard Krever and Jonathan Teoh**

This article considers the contribution of Justice Edmonds to the jurisprudence of the goods and services tax (GST), Australia’s version of a value-added tax. The judgments deal with a range of issues including transitional issues, definitional issues, contributions by third parties and cases dealing with supplies that differ in substance from the notion services provided as well as administrative shortcomings in the legislation. As a new tax covering new concepts, the GST was genuinely open to a range of alternative interpretations. The judgments of the Full Federal Court including Edmonds J played a role in the development of GST interpretation principles both directly and indirectly by opening opportunities for statutory amendment and High Court decisions settling contentious issues, particularly in terms of identifying a supply in arm’s length transactions where form may differ from commercial substance. .... 121

**From Switzerland to New Zealand: Around the world in 13 cases – Dale Pinto and Kerrie Sadiq**

Justice Edmonds is well known for his decisions which involve questions of law relating to Pt IVA of the *Income Tax Assessment Act 1936* (Cth), capital gains tax, the goods and services tax and taxation of the not-for-profit sector. As such, there is no doubt that cases determining principles of international tax law are the lesser known of Justice Edmonds’ judgments. Despite this, their significance and influence cannot be underestimated. As with any grouping of international tax cases, common themes emerge. In this instance, Justice Edmonds’ influence on treaty interpretation as well as on issues of residence, source and jurisdiction to tax becomes apparent. His influence in decisions relating to Pt IVA also incorporated aspects of international tax, as did several cases relating to capital gains tax. In this article, we explore the influence Justice Edmonds has had in this important area of tax law and policy. .... 133

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