
Index

Access to taxpayer information

- ATO, held by, 23, 25
 - charges for documents, 24
 - exempt documents, 23-24
 - secrecy provisions, 24-25
 - third party access, 24-25
- Commissioner's powers, 21, 26
 - scope of powers, 23
- privacy principles, 22, 23, 25, 26, 27
- reform potential, 26
- third parties, held by, 20, 21, 26, 27, 28
 - confidentiality, 20, 21, 22
 - legal professional privilege, 21
 - privacy principles, 22, 23
 - privilege, 22
 - reverse FOI procedure, 26, 27

Accounting

- asset revaluation reserve distributions, 74-75
- finance leases, 106, 107
 - character of leases, 104, 105
 - hire purchase agreements, as, 106
 - land and buildings, 107
 - lessors and lessees, 107

Accounting standards

- asset revaluation reserves, 72
 - entry example, 73
 - utilisation of reserve, 73
- finance leases, 105
 - lease payments, 114
 - lessors and lessees, 107
- operating leases, 105

Amendment of assessments

- Commissioner's power, 9
- period for amendment, 12, 17, 18
- SPOR taxpayers, 17, 18
- Treasury Discussion Paper, 18

Appeals or objections

- assessments, 9

Assessable income

- athletes, 66, 118, 121
- Stone, test case, 118-120

TR 1999/17, 121

Assessments – *see also* Amendment of assessments

- appeals, 9
- certainty and finality, 9, 11-12, 14
- Commissioner's duties, 15-16
 - material relied upon, 16-17
- Commissioner's power, 8, 10
- compliance validation, 17-18
- definition, 8
- full self-assessment taxpayers, 8, 13-14
- inadequate records, 11
- legislative scheme, 8-9
- making an assessment, 7, 8, 10, 14, 18, 19
 - judicial exposition, 10-13
 - legislative scheme, 8-9
 - material relied upon, 10-11, 16-17
 - self-assessment, 14-17, 18, 19
- multiple assessments, 12
- nil tax liability, 12-13
- notice of assessment, 9
 - Commissioner's duties, 15-16
 - service of notice, 13
 - status under self-assessment, 14-15, 16, 19
- service of notice, 13
- tax liability, 12, 13
- taxable income, 10, 14, 17
 - attempt to ascertain, 10

Asset revaluation

- accounting standards, 72
- discretionary trusts, 71
 - trustees' power to revalue, 71-72
- individual taxation, 68, 69

Asset revaluation reserves

- accounting standards, 72
 - entry example, 73
 - utilisation of reserve, 73
- discretionary trust distributions, 66, 67, 71, 86, 87
- accounting, 74-75

- CGT event C2, 82, 83, 84, 85
- CGT event D1, 83, 84
- CGT event E4, 75, 76, 77, 84
- CGT event E5, 77, 78, 79, 84
 - Australian currency, 81
- CGT event H2, 82, 83
- CGT events, 71, 75, 81-82
 - order of events, 84-85
- entitlement clauses, 74
- entity taxation, 68, 70
- individual taxation, comparison, 68-69
- power to distribute, 73, 74
- tax-free status, 70, 85, 87
- test case potential, 87
- dividends, 74
- private companies, 68, 87
- Athletes**
 - appearance fees, 119
 - assessable income, 118, 121
 - Stone, test case, 118-120
 - TR 1999/17, 121
 - carrying on a business, 119, 120
 - sponsorship amounts, 119, 120, 121
- ATO**
 - asset revaluation reserve distributions, 86
 - test case potential, 87
 - High Wealth Individual Taskforce, 85
 - growth in trusts, 86
- ATO audit activity**
 - access to taxpayer information, 27
- Beneficial interest**
 - beneficial ownership, and, 34
 - termination of unit trust, 41
- Beneficial ownership – see also Equitable ownership**
 - beneficial interest, distinction, 34
 - meaning, 34, 35
 - sole unit holders, 32-33
 - maritime claims, 29, 30-31, 32, 34
 - trust deeds, 30, 33, 34
 - useage, 35
- Beneficiaries**
 - absolutely entitled, 77, 79
 - meaning, 77
 - Saunders v Vautier rule, 78
 - discretionary trusts, 75, 83
 - absolute entitlement, 77, 78, 79
 - interest of beneficiary, 75-76, 82
- Capital gains or losses**
 - Australian currency, 80
 - liquidation distributions, 91, 92, 99
 - comparison of jurisdictions, 93
 - otherwise assessable rule, 101, 102
- Carrying on a business**
 - athletes, 119, 120
- CGT assets**
 - Australian currency, 79, 80, 81
 - definition, 79, 82
 - discretionary interests, 82, 83
- CGT events**
 - asset revaluation reserve distributions, 71, 75
 - Australian currency, 81
 - entitlement as intangible asset, 82, 83, 84
 - excluded events, 81-82
 - market value substitution rule, 83, 84
 - order of events, 84-85
 - consolidated groups
 - finance leases, 115
 - liquidation distributions, 99, 101, 102
 - deregistration, 99, 100
 - final distributions, 100
 - interim distributions, 100
 - worthless shares, 101
- Civil liability – see also Offences and penalties**
 - contract, 134
 - damages, 139-140
 - defences, 140-142
 - exclusion of liability, 135
 - reasonable care, 135
 - retainers, 134

- damages, 139
 - causation, 139
 - object of damages, 140
- defences, 140, 142
 - contributory negligence, 142
 - illegality, 141, 142
- Fair Trading Act (Vic), 144
- ITAA 36 (Cth), 146
- tax advisers, 130, 133, 134, 145, 151, 152
 - contract, 134-135, 139-142
 - damages, 139-140
 - defences, 140-142
 - mass-marketed schemes, 152-153
 - safeguards to limit liability, 153
 - statutory liability, 144-146
 - tort of negligence, 135-139, 140, 142
 - Wrongs Act (Vic), 142-144
- tort of negligence, 135
 - advice from third parties, 138
 - damages, 139, 140
 - defences, 142
 - duty of care, 136
 - duty to warn, 137, 138, 150
 - prospects of failure, 138
- Trade Practices Act (Cth), 144
 - damages, 145-146
 - misleading or deceptive conduct, 144, 145
- Wrongs Act (Vic), 142
 - duty of care, 142-143, 144
 - contributory negligence, 143
 - factual causation, 143
 - negligence, definition, 142
- Collection of tax – see Recovery of overpaid GST/VAT**
- Companies – see also Liquidation; Timeshare companies**
 - private companies, 68, 87
- Compliance**
 - assessments, 17-18
- Consolidated groups**
 - entry history rule, 116
 - finance leases, 104, 111, 115, 117
 - allocable cost amount, 108, 109, 110, 112, 113, 114, 115
 - CGT event L3, 115
 - lease payments, 114, 115
 - lessee as joining entity, 111-113
 - lessor as joining entity, 113-116
 - hire purchase agreements, 116
 - deemed loans, 116, 117
 - resetting cost base, 104-105
 - single entry rule, 116
 - tax cost setting rules, 108
 - asset, meaning, 108-109
 - depreciating assets, 109
- Contracts**
 - equity in contracts, 48, 50
 - specific performance, 49, 50
 - sale of land, 55
 - calculation of GST, 58
 - GST clauses, 55, 56, 57
 - GST-inclusive price, 56, 57, 59
 - rectification, 58-59
 - tax invoices, 59-60
- Corporate entities – see also Companies**
 - assessment, 8, 13
 - entity taxation, 68, 70
- Criminal liability – see also Civil liability**
 - tax advisers, 133
- Debt and equity**
 - liquidation distributions, 92, 93, 97
- Deemed dividends – see Liquidation distributions**
- Definitions**
 - absolutely entitled, 77
 - assessment, 8
 - CGT asset, 79, 82
 - distribution, 98
 - flows indirectly through an entity, 161-162
 - flows indirectly to an entity, 161-162
 - full self-assessment taxpayer, 8
 - hire purchase agreement, 105, 116
 - scheme, 201-202
 - self-assessment, 9, 16

- share of the distribution, 162
- Depreciating assets**
 - consolidated groups, 109
 - finance leases, 108
 - lessee as joining entity, 111-112
- Discretionary trusts**
 - asset revaluation reserve, 71
 - accounting standards, 72
 - trustees' power to revalue, 71-72
 - utilisation of reserve, 73
 - asset revaluation reserve distributions, 66, 67, 86, 87
 - accounting, 74-75
 - CGT event C2, 82, 83, 84, 85
 - CGT event D1, 83, 84
 - CGT event E4, 75, 76, 77, 84
 - CGT event E5, 77, 78, 79, 84
 - Australian currency, 81
 - CGT event H2, 82, 83
 - CGT events, 71, 75, 81-82
 - order of events, 84-85
 - entitlement as intangible asset, 82, 83, 84
 - entitlement clauses, 74
 - entity taxation, 68, 70
 - individual taxation, comparison, 68-69
 - power to distribute, 73, 74
 - tax-free status, 70, 85, 87
 - test case potential, 87
 - beneficiaries, 75, 83
 - absolute entitlement, 77, 78, 79
 - interest of beneficiary, 75-76, 82
 - proprietary interest, 76
 - franking rebate, 69
 - 45-day holding rule, 69
 - losses (carried forward), 69
 - tax minimisation, 67
- Dividends**
 - asset revaluation reserve, 74
 - liquidation, 90
 - liquidation distributions, 92, 93, 102
 - additional deeming, 93-94
 - comparison of jurisdictions, 93
 - deemed dividends, 91, 93, 98, 101
 - ex-Australian sources, 94-95, 96
 - frankable distributions, 98-99
 - income derived by company, 95-96, 98
 - loss of paid-up share capital, 96, 97, 98
 - source of company's profit, 98
 - source of dividends, 98
- Entity taxation**
 - asset revaluation reserve distributions, 68, 70
- Equitable estates**
 - development of concept, 37
 - legal estates, and, 36-37, 38, 41
- Equitable ownership**
 - beneficiaries, 38, 39, 40
 - equitable interests, 50
 - equity in contracts, 49, 50
 - specific performance, 49, 50
 - equivalent relief, 51
 - meaning, 34, 35, 37, 38
 - Saunders v Vautier rule, 39-40, 50, 51
 - sole unit holders, 29, 30, 31, 32, 48
 - alternative test, 48-50
 - final distributions, 52, 53
 - lien or charge, 52
 - Saunders v Vautier rule, 50, 51, 52
 - trustees' right of indemnity, 51-54
 - trusts, 38-39, 40, 51
- Equity in contracts**
 - assignment of property, 48, 50
 - specific performance, 49, 50
- FCT v Hart**
 - application of Pt IVA, 196, 204, 214
 - facts of case, 199-200
 - Full Federal Court decision, 200
 - High Court decision, 196, 201-203, 204
 - consistency of decision, 215
 - new propositions, 205-207, 214
 - subsequent application, 208-213

- initial decision, 200
- scheme, 201
 - definition, 201-202
 - identification of scheme, 201, 202, 203
 - new propositions, 206
 - relevant scheme, 200, 201
- scheme to which Pt IVA applies, 204, 215
 - dominant purpose, 201, 203
 - factors determining, 204-205
 - wealth optimiser structure, 203
 - new propositions, 206
- tax benefit in connection with scheme, 200, 201
 - new propositions, 207-208
- Family trust elections, 69**
- Federal Budget, 2005-06**
 - rates of tax, 65
- Finance leases**
 - accounting consequences, 107
 - accounting purposes, 106, 107
 - land and buildings, 107
 - accounting standards, 105, 107, 114
 - character of leases, 104
 - accounting concepts, 104, 105
 - income tax purposes, 105
 - consolidated groups, 104, 111, 115, 116, 117
 - allocable cost amount, 108, 109, 110, 112, 113, 114, 115
 - CGT event L3, 115
 - joining entities, 108
 - lease payments, 114, 115
 - lessee as joining entity, 111-113
 - lessor as joining entity, 113-116
 - hire purchase agreements, as, 106, 116, 117
 - accounting purposes, 106
 - deemed loans, 116
 - deeming provisions, 109, 110, 111, 112
 - income tax consequences, 107-108
 - lessors and lessees, 107
- Frankable distributions**
 - imputation benefits, 99
 - liquidation distributions, 98-99
- Franked distributions**
 - flowing indirectly, 161
 - amendments, 2004, 161, 168
 - flows indirectly through an entity, 161-162
 - flows indirectly to an entity, 161-162
 - partnerships, 162
 - share of distribution, 162, 166-168
 - tax offset, 166, 167, 169, 170
 - trusts, 162
 - beneficiaries, flowing indirectly to, 162-164
 - share of distribution, 162-163, 165, 166, 168
 - share of franking credit, 168-169
 - tax offset, 166, 169, 170
 - trustees, flowing indirectly to, 164-165
- Franking credits**
 - liquidation distributions, 98, 99, 103
 - partnerships and trusts, flow through, 154
 - amendments, 2004, 158, 187-188
 - examples of operation, 170-178
 - flowing indirectly, 157, 159-160
 - franking credit on distribution, 158-159
 - gross-up, 157, 161
 - problematic provisions, ITAA 36 (Cth), 154-155, 187
 - share of credit on distribution, 156-157, 159
 - allocation of amount, 160-161
 - proportionate amount, 160
 - simplified imputation system, 155
 - suggestions for simplification, 178-181
 - examples of operation, 181-187

Franking rebate

45-day holding rule, 69

Freedom of information

access to taxpayer information, 20-21, 25, 26

charges for documents, 24

exempt documents, 23-24

secrecy provisions, 24-25

third parties, by, 24-25, 26-27

GST

contracts for sale of land, 55, 56, 57

calculation of GST, 58

GST-inclusive price, 56, 57, 59

rectification, 58-59

special conditions, 57

tax invoices, 59-60

overpaid tax, 230

recovery of overpaid GST, 230

customers, 241

claims by customers, 242

constructive trusts, 243

direct claims against tax authorities, 243-244

unidentifiable customers, 245, 246

unjust enrichment, 244-245

discretion to refuse refund, 238

common law right to refund, 239

use of discretion, 239

incentive to bring claims, 241

passing on defence, 232, 233, 236, 238, 245

absorption, concept of, 239, 240

mathematical errors, 237

relevant provisions, 236-238

scope of provisions, 237, 238

underclaimed input tax, 238

repayment of amount to customers, 240-241

definition, 105, 116

diagram of transaction, 106

finance leases, as, 106

accounting purposes, 106

deeming provisions, 109, 110, 111, 112

income tax consequences, 107-108

purchase option, 106

recharacterisation, 110

Leases – see also Finance leases

operating leases, 105

Legal estates

development of concept, 37

equitable estates, and, 36-37, 38, 41

Legal profession – see also Tax advisers

negligence, 136

damages, 139

duty of care, 136-137

duty to warn, 137, 138

obligations, 132

Legal professional privilege

access to taxpayer information, 21, 27, 28

Liquidation

compulsory winding-up, 88

dividends, 90

effect of winding-up, 90

voluntary liquidation, 89

Liquidation distributions

capital gains or losses, 91, 92, 99

comparison of jurisdictions, 93

otherwise assessable rule, 101, 102

CGT event C2, 99, 101, 102

deregistration, 99, 100

final distributions, 100

CGT event G1, 100

interim distributions, 100

CGT event G3, 100-101

worthless shares, 101

character of distribution, 91-92, 93

Archer Brothers principle, 91

Hire purchase agreements

consolidation provisions, 116-117

- compulsory liquidation, 89, 99
- debt and equity, 92, 93, 97
- determination of entitlement, 89
 - principle of equality, 89
- double taxation, 101-102
 - means of avoiding, 102
- dividends, as, 92, 93, 102
 - additional deeming, 93-94
 - comparison of jurisdictions, 93
 - deemed dividends, 91, 93, 98, 101
 - ex-Australian sources, 94-95, 96
 - frankable distributions, 98-99
 - income derived by company, 95-96, 98
 - loss of paid-up share capital, 96, 97, 98
 - source of company's profit, 98
- frankable distributions, 98-99
- franking credits, 98, 99, 103
- overview, 88
- paid-up share capital account, 90, 91
 - liquidator's discretion, 96
 - restoration of losses, 96, 97, 98
- preference shares, 89-90
- share tainting rules, 97
- source of surpluses, 90-91
 - taxation implications, 91
- voluntary liquidation, 89
 - deregistration, 99-100
- Losses (carried forward)**
 - continuity of beneficial ownership, 69
- Macquarie Finance v FCT**
 - facts of case, 208
 - Full Federal Court decision, 211-212
 - scheme, 208
 - relevant scheme, 209, 211
 - scheme to which Pt IVA applies, 209
 - dominant purpose, 209-210, 211-212
 - wealth optimiser features, 209, 210
 - tax benefit in connection with scheme, 208
- Maritime claims**
 - commencement of proceedings, 29-30
 - relevant person, 30
 - sole unit holders, 30, 42
 - beneficial ownership, 30-31, 32, 34
 - defeasible interests, 45
 - equitable ownership, 30, 31, 32, 48
 - owner, meaning, 30, 31, 36
 - Saunders v Vautier rule, 45
 - trust deeds, 30, 42, 43
 - vesting, effect of, 42, 43, 45
- Mutuality principle**
 - ancillary activities and benefits, 220
 - classes of membership, 218-219
 - collective benefits, 219-220
 - common fund and purpose, 217-218
 - contributors and participants, 218
 - disposal of membership interests, 219
 - distributions to non-contributors, 222
 - historical development, 216
 - legal status of entity, 217
 - legislative status, 216, 217, 228
 - non-mutual income, 221
 - derivation, 221
 - use of, 221-222
 - non-profit contributors, 222
 - prohibition clauses
 - dissolution clause, 222-223
 - non-profit clause, 222
 - refund of contributions, 220
 - timeshare companies, 223, 228
 - commonality, 224
 - personal benefit of members, 225
 - trading activities, 227
 - underlying concepts, 217-223
- National privacy principles – see Privacy principles**
- Non-profit entities**
 - cessation of membership, 224
 - mutuality principle, 216, 217, 228
 - ancillary activities, 220

- classes of membership, 218-219
 - collective benefits, 219-220
 - common fund and purpose, 217-218
 - contributors and participants, 218
 - derivation of non-mutual income, 221
 - disposal of membership interests, 219
 - distributions to non-contributors, 222
 - legal status of entity, 217
 - prohibition clauses, 222-223
 - refund of contributions, 220
 - trading activities, 227
 - use of non-mutual income, 221-222
- purpose of establishment, 225
- rights of members, 225-226
- timeshare companies, as, 224, 228
 - expectation of members, 225
 - personal benefit of members, 225
 - rights of members, 226
 - trading activities, 227
 - winding-up distributions, 226
- trading activities, 226
- winding-up distributions, 226
- Non-resident companies**
 - liquidation distributions, 94-95
 - income derived by company, 96
- Non-resident shareholders**
 - dividends, 98
- Obituary**
 - Justice Donald Graham Hill, 193-195
- Objections – see Appeals or objections**
- OECD economic surveys**
 - Australian fiscal policy, 5
 - tax reform, 6, 65
- Offences and penalties**
 - administrative penalties, 146
 - defence to penalty, 147-148
 - operative provisions, 146-147
 - reasonably arguable matters, 148-151
- scheme benefits, 147
- Overpaid tax – see Recovery of overpaid GST/VAT**
- Partnerships**
 - franked distributions flowing indirectly, 162
 - amendments, 2004, 161, 168
 - exempt income, 169, 170
 - non-assessable non-exempt income, 169, 170
 - share of the distribution, 162, 166-168
 - CGT anti-overlap provisions, 167
 - proportionate amount, 168
 - tax offset, 166, 167, 169, 170
 - franking credits flowing through, 154
 - amendments, 2004, 158, 187-188
 - examples of operation, 173-175
 - flowing indirectly, 157, 159-160
 - franking credit on distribution, 158-159
 - gross-up, 157, 161
 - net income of partnership, 155
 - problematic provisions, ITAA 36 (Cth), 154-155, 187
 - share of credit on distribution, 156-157, 159
 - allocation of amount, 160-161
 - proportionate amount, 160
 - simplified imputation system, 155
 - suggestions for simplification, 178-181
 - examples of operation, 182-186
- Pridecraft v FCT**
 - cancellation of tax benefit, 212
 - facts of case, 212
 - scheme to which Pt IVA applies, 213
 - commercial purpose, 214
 - dominant purpose, 212-213
 - new propositions, 213, 214

Privacy principles

- access to taxpayer information, 22, 23, 25, 27, 28
- private rulings, 25
- private sector organisations, 20, 22
 - excepted situations, 22, 23
 - general rule, 22

Private companies

- asset revaluation reserve distributions, 68, 87

Promoters – see Tax exploitation schemes**Rates of tax**

- Federal Budget measures, 65

Recovery of overpaid GST/VAT

- customers, 241
 - claims by customers, 242
 - constructive trusts, 243
 - direct claims against tax authorities, 243-244
 - unidentifiable customers, 245, 246
 - unjust enrichment, 244-245
- discretion to refuse refund, 238
 - common law right to refund, 239
 - use of discretion, 239
- incentive to bring claims, 241
- mechanisms for recovery, 230-231
- overview, 229
- passing on defence, 231-232, 233, 245, 246
 - absorption, concept of, 239-240
 - Australian GST provisions, 236-238
 - concept of defence, 233-234
 - denial in common law, 231, 234
 - repayment of amount to customers, 240-241
 - United Kingdom VAT provisions, 234-236
- statutory regime, 231
 - Australian position, 233
 - common law claims, and, 232, 233
 - passing on defence, 232, 233-234
 - United Kingdom, 232

- unjust enrichment at common law, 230-231

- unjust, concept, 231

Rulings and determinations

- private rulings, 16
- privacy, 25
- 2004-2005 releases, 5

Secrecy provisions

- access to taxpayer information, 24-25

Self-assessment – see also Assessments

- definition, 9, 16
- making an assessment, 7, 13, 14, 18
 - Commissioner's duties, 15-16
 - compliance validation, 17-18
 - full self-assessment taxpayers, 8, 13-14
 - legislative scheme, 8-9
 - material relied upon, 16-17
 - notice of assessment, 9, 14-15, 16, 19
 - taxable income, 14-15
- overview of introduction, 7
- Treasury Discussion Paper, 5, 6, 7, 18

Shareholders – see also Liquidation distributions

- dividends, 98

Small business CGT concessions

- review, 5

Split loan facilities – see FCT v Hart**SPOR taxpayers**

- amendment of assessments, 17, 18

Sportspersons – see Athletes**Tax advisers**

- administrative penalties, 146
 - defence to penalty, 147-148
 - operative provisions, 146-147
 - reasonably arguable matters, 148-151
 - scheme benefits, 147
- civil liability, 130, 133, 134, 145, 151, 152
 - contract, 134-135, 139-142
 - damages, 139-140

- defences, 140-142
- mass-marketed schemes, 152-153
- reasonably arguable matters, 148-151
- safeguards to limit liability, 153
- statutory liability, 144-146
- tort of negligence, 135-139, 140, 142
- Wrongs Act (Vic), 142-144
- contractual liability, 134
- damages, 139-140
- defences, 140-142
- exclusion of liability, 135
- reasonable care, 135
- retainers, 134
- criminal liability, 133
- duties and responsibilities, 133
- Fair Trading Act (Vic), 144
- ITAA 36 (Cth), 146
- tax avoidance, 133
 - evasion, distinction, 133
- tax exploitation schemes, 130
- tort of negligence, 135
 - advice from third parties, 138
 - damages, 139, 140
 - defences, 142
 - duty of care, 136-137
 - duty to warn, 137, 138, 150
 - prospects of failure, 138
- Trade Practices Act (Cth), 144
- damages, 145-146
- misleading or deceptive conduct, 144, 145
- Wrongs Act (Vic), 142
 - contributory negligence, 143
 - duty of care, 142-143, 144
 - factual causation, 143
 - negligence, definition, 142
- Tax agents**
 - obligations, 132
 - registration, 132
- Tax avoidance**
 - evasion, distinction, 131, 133
 - tax advisers, 133
- Tax avoidance schemes**
 - anti-avoidance provisions, 131, 196, 229
 - application of Pt IVA, 196, 204, 214
 - FCT v Hart, 196, 199-203, 204, 215
 - consistency of decision, 215
 - new propositions, 205-207, 214
 - subsequent application, 208-213
 - interpretation generally, 197
 - Macquarie Finance v FCT, 208-212
 - Pridecraft v FCT, 212-214
 - cancellation of tax benefit, 212
 - Commissioner's discretion, 197, 198
 - scheme, 198, 201
 - definition, 201-202
 - identification of scheme, 201, 202, 203
 - new propositions, 206
 - relevant scheme, 200, 201, 208, 211
 - scheme to which Pt IVA applies, 198, 204, 209, 213, 215
 - commercial purpose, 214
 - dominant purpose, 198, 199, 201, 203, 209-210, 212-213
 - factors determining, 198, 204-205, 210, 211-212
 - new propositions, 206, 213, 214
 - relevant purpose, 198
 - tax benefit in connection with scheme, 197, 200, 201, 208
 - new propositions, 207-208
- Tax exploitation schemes**
 - exposure draft bill, 129
 - scope of measures, 129-130
 - promoter, definition, 130
 - Senate report, 129
 - tax advisors, 130
- Tax minimisation**
 - discretionary trusts, 67
 - tax planning to achieve, 131-132

Tax planning

- aggressive planning, 129
 - measures to combat, 130
- tax minimisation, 131-132

Tax rates – see Rates of tax**Tax reform**

- access to taxpayer information, 26
 - reverse FOI procedure, 26, 27
- OECD report, 6, 65
- rates of tax, 65

Taxable income

- assessments, 10
 - self-assessment, 14-15, 17

Timeshare companies

- company structure, 223-224
- constitution, 224
- expectation of members, 225
- members' rights, 224
- mutuality principle, 223, 228
 - commonality, 224
- non-profit entities, as, 224
- personal benefit of members, 225
- promoters, 227
- rights of members, 226
- trading activities, 227
- winding-up distributions, 226

Trusts – see also Discretionary trusts

- ATO High Wealth Individual Taskforce, 85
 - growth in trusts, 86
- benefits of trusts, 67
- equitable estates, 36, 37
 - legal estates, and, 36, 37, 38, 41
- equitable ownership, 38-39, 40, 51
 - beneficiaries, 38, 39
- franked distributions flowing indirectly, 162
 - allocation of deductions, 164
 - amendments, 2004, 161, 168
 - beneficiaries, to, 162-164
 - exempt income, 169, 170
 - non-assessable non-exempt income, 169, 170

- share of the distribution, 162-163, 165, 166, 168
 - proportionate amount, 168

- share of franking credit, 168-169
- tax offset, 166, 169, 170

- trust income calculation, 162-164
- trustees, to, 164-165

- franking credits flowing through, 154
 - amendments, 2004, 158, 187-188
 - beneficiary's entitlement, 154, 155, 158, 159
 - examples of operation, 170-173, 175-178

- flowing indirectly, 157, 159-160

- franking credit on distribution, 158-159

- gross-up, 157, 161

- net income, 156

- problematic provisions, ITAA 36 (Cth), 154-155, 187

- share of credit on distribution, 156-157, 159
 - allocation of amount, 160-161

- proportionate amount, 160

- simplified imputation system, 155

- suggestions for simplification, 178-181

- examples of operation, 181-182, 186-187

- Saunders v Vautier rule, 39

- invocation of rule, 39-40

Unit trust assets

- beneficial ownership, 32-33, 54
 - maritime claims, 29, 30-31, 32, 34, 36, 42, 43, 45
 - meaning, 36, 54
 - trust deeds, 30, 33, 34, 42, 43
- equitable ownership, 29, 30, 31, 32, 48, 54
 - alternative test, 48-50
 - final distributions, 52, 53
 - lien or charge, 52
 - Saunders v Vautier rule, 50, 51, 52

Index

- trustees' right of indemnity, 51-54
- owner, meaning, 30, 31, 33, 36
- superannuation funds, 46
- termination of trust, 40, 46, 48, 51
 - beneficial interests, 41
 - contingent interests, 42, 43
 - indefeasibility, 44
 - Saunders v Vautier rule, 41, 43, 44, 45, 47, 48
 - trust deeds, 40, 41, 42, 43, 47, 48
 - vesting, effect of 41-42, 43, 44
- vesting, effect of, 41-42, 43, 45, 46
 - contingent interests, 42, 43, 46
 - trust deeds, 45-46

VAT

- overpaid tax, 230
- recovery of overpaid VAT, 230
 - customers, 241
 - claims by customers, 242
 - constructive trusts, 243
 - direct claims against tax authorities, 243-244
 - unidentifiable customers, 245, 246
 - unjust enrichment, 244-245
 - incentive to bring claims, 241
 - passing on defence, 232, 233, 234, 236
 - absorption, concept of, 240
 - relevant provisions, 234-236
 - underclaimed input tax, 238
 - unjust enrichment, 234, 235
 - repayment of amount to customers, 240, 241

Winding-up – see Liquidation