

AUSTRALIAN TAX REVIEW

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EDITORIAL	65
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ARTICLES

The forgotten CGT events: Are asset revaluation reserve distributions by trustees of discretionary trusts capital gains? – Brett Freudenberg and Associate Professor Peter M McDermott

It is the present practice that asset revaluation reserve distributions by trustees of discretionary trusts are not taxed in Australia. Are such distributions not meant to be taxed, or have relevant sections in the Income Tax Assessment Acts been overlooked? This article will review how trustees of discretionary trusts perform asset revaluation reserve distributions. It then challenges the current accepted view that they can be distributed tax-free to discretionary beneficiaries by analysing relevant CGT events, which the authors regard as forgotten events. It will be submitted that a discretionary beneficiary in receipt of an asset revaluation reserve distribution may have a capital gain which is required to be included in its assessable income. This liability for tax is regardless of the government's recent introduction of s 109XA to address the practice of asset revaluation reserve distributions bypassing the operation of Div 7A of the ITAA 1936 with such distributions.67

Taxing liquidation distributions: An assessment of Australian deemed dividend and capital gains regimes and how they interrelate – Dr John Glover

Persons who receive distributions of surplus assets in the liquidation of Australian companies may be liable to taxation under either the deemed dividends or capital gains regimes. The deemed dividend regime is now nearly 80 years old and contains many anomalous features. Inappropriately, the legislation prominently excludes the once tax-free, "capital" class of surplus distributions. Several tax jurisdictions comparable with Australia have legislation which is similar. High Court judgments over the years have invented a "character" for liquidation distributions and interpreted that legislation in ways that ill accord with modern commerce. Statutory amendments have not removed all the unhelpful judicial glosses that have intruded. By contrast, the capital gains regime has fewer fictions and better reflects the general law nature of liquidation surpluses. However, a further anomaly arises from the manner by which capital gains are subordinated to deemed dividends for the avoidance of "double taxation". In this article suggestions are made for the drafting of an improved code for the future taxation of liquidation surpluses.88

Finance leases and consolidation – *Jane Michie*

Measures to deal specifically with finance leases in the context of the consolidation regime were recently enacted. These measures are deceptively short and simple but they seem to raise more issues than they resolve. The purpose of this article is to discuss recent changes to the tax treatment of finance leases under the consolidation regime. This article outlines the accounting and income tax treatment of finance leases and discusses the application of these new measures. The article highlights the difficulties in applying these new measures and shows that, at least in one important instance, it is not clear that the measures achieve their intended outcome.....104

CASE NOTE

Athlete's income all taxable – Commissioner wins again in High Court.....118

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