

AUSTRALIAN TAX REVIEW

Volume 34, Number 4

December 2005

OBITUARY	193
----------------	-----

ARTICLES

FCT v Hart: An analysis of the impact of the High Court decision on the application of Pt IVA – *Domenic Carbone and John Tretola*

It has been claimed that the decision of the High Court in FCT v Hart has left the application of the general anti-avoidance provisions of Pt IVA in total confusion. This article sets out the High Court's interpretation and application of Pt IVA since it was first litigated in that court in 1994 through to its decision in Hart. The authors' analysis of the Hart decision shows that, far from the decision being unexpected and leaving the application of Pt IVA in total confusion, the decision is rather a logical, incremental development of propositions laid down in earlier High Court cases on Pt IVA. Further, the authors conclude that the Hart decision does not represent a significant broadening of the operation of Pt IVA 196

The application of the mutuality principle to timeshare companies – *Nathalie Love*

The mutuality principle originates back to the 19th century, where the benevolent nature of certain activities undertaken by individuals solely for their own benefits was acknowledged by the courts in the United Kingdom. The principle is based on the proposition that individuals cannot derive income from themselves and that such income is not treated as being assessable for tax purposes. While the mutuality principle has a solid foundation under common law, there are currently no Australian legislative provisions that deal specifically with mutuality. The issue addressed in this article is not the validity of the principle itself, but its extrapolation over the years to new commercial products which were not necessarily envisaged when the principle was first established. More specifically, questions are raised as to the application of the mutuality principle to timeshare schemes operating under a corporate structure. It is concluded that such entities have no entitlement to the mutuality principle in order to minimise their tax liabilities 216

Recovery of overpaid GST and VAT and the “passing on” defence – *Monica Chowdry*

This article explores the issues that arise in relation to recovery of overpaid GST and VAT in Australia and the UK. The focus is on the division between statutory and common law regimes for recovery of overpaid tax. In particular, the availability of a form of passing on defence to the tax authorities in GST and VAT cases that is not available to private individuals bringing claims under the common law of unjust enrichment. The article considers whether or not the operation of the defence is in line with the justification for its existence in tax law and, if not, where improvements to the legislation need to be made.229

BOOK REVIEW

Global Challenges in Tax Administration, by Rodney Fisher and Michael Walpole247

VOLUME 34

Table of authors – Articles	253
Table of cases	255
Index	267

Guidelines for Contributors

Submission and licence agreement instructions

All contributions to the journal are welcome and should be sent, with a signed licence agreement, to the Production Editor, *Australian Tax Review*, Lawbook Co., PO Box 3502, Rozelle, NSW 2039 (mail), 100 Harris St, Pyrmont, NSW 2009 (courier) or by email to atrev@thomson.com.au, for forwarding to the Editor. Licence agreements can be downloaded via the internet at http://www.lawbookco.com.au/authorsupport/d_authorJournals.asp. If you submit your contribution via email, please confirm that you have printed, signed and mailed the licence agreement to the attention of the Production Editor at the mailing address noted above.

Letters to the Editor

By submitting a letter to the editor of this journal for publication, you agree that Thomson Legal & Regulatory Limited, trading as Lawbook Co., may edit and has the right to, and may license third parties to, reproduce in electronic form and communicate the letter.

Manuscript

- Manuscript must be original, unpublished work that has not been submitted for publication elsewhere.
- Personal details (name, qualifications, position) for publication and a delivery address, email address and phone number must be included with the manuscript.
- Manuscript must be submitted electronically via email or on disk in Microsoft Word format.
- Manuscript should not exceed 15,000 words for articles or 3,000 words for section commentary or book reviews. An abstract of 100-150 words is to be submitted with article manuscripts.
- Proof pages will be sent to contributors. Authors are responsible for the accuracy of case names, citations and other references. Excessive changes to the text cannot be accommodated.
- Contributors of articles receive 25 free offprints of their article and a copy of the part in which the article is published. Other contributors receive a copy of the part to which they have contributed.
- This is an externally peer-reviewed journal. Articles published will meet the DETYA classification C1 for the purposes of computing Research Quantum.

Style

1. Levels of headings should be clearly indicated (no more than four levels).

2. Cases:

- Case citation follows case name. Where a case is cited in the text, the citation should follow immediately rather than as a footnote. Give at least two and preferably all available citations, the first listed being the authorised reference.
- Australian citations should appear in the following order: authorised series; Lawbook Co./ATP series; other company series (ie CCH, Butterworths); media neutral citation.
- “At” references should only refer to the best available citation, eg: *Mabo v Queensland [No 2]* (1992) 175 CLR 1 at 34; 66 ALJR 408; 107 ALR 1.
- Where only a media neutral citation is available, “at” references should be to paragraph, eg: *YG v Minister for Community Services* [2002] NSWCA 247 at [19].
- For international cases best references only should be included.

3. Legislation should be cited as follows:

Trade Practices Act 1974 (Cth), s 51AC. The full citation should be repeated in footnotes.

4. Books should be cited as follows:

Macken JJ, O’Grady P, Sappideen C and Warburton G, *The Law of Employment* (5th ed, Lawbook Co., 2002) p 55.

- In footnotes do not use *ibid* or *op cit*. The following style is preferred:

4. Austin RP, “Constructive Trusts” in Finn PD (ed), *Essays in Equity* (Law Book Co, 1985).

5. Austin, n 4, p 56.

5. Journals should be cited as follows:

Odgers S, “Police Interrogation: A Decade of Legal Development” (1990) 14 Crim LJ 220.

Wherever possible use official abbreviations not the full name for journal titles.

- In footnotes do not use *ibid* or *op cit*. The following style is preferred:

6. Sheehy EA, Stubbs J and Tolmie J, “Defending Battered Women on Trial: The Battered Woman Syndrome and its Limitations” (1992) 16 Crim LJ 220.

7. Sheehy et al, n 6 at 221.

6. Internet references should be cited as follows:

Ricketson S, *The Law of Intellectual Property: Copyright, Designs and Confidential Information* (Lawbook Co., subscription service) at [16.340], <http://subscriber.lawbookco.com.au> viewed 25 June 2002. Underline the URL and include the date the document was viewed.

For further information visit the Lawbook Co. website at <http://www.lawbookco.com.au> or contact the Production Editor.

SUBSCRIPTION INFORMATION

The *Australian Tax Review* comprises four parts a year.

Customer Service and sales inquiries:

Tel: 1300 304 195

Fax: 1300 304 196

Web: www.lawbookco.com.au

Email: LRA.Service@thomson.com

Editorial inquiries:

Tel: (02) 8587 7000

HEAD OFFICE

100 Harris Street PYRMONT NSW 2009

Tel: (02) 8587 7000 Fax: (02) 8587 7100



© Thomson Legal & Regulatory Limited ABN 64 058 914 668 trading as Lawbook Co.

ISSN 0311-094X

Typeset by Lawbook Co., Pyrmont, NSW
Printed by Ligare Pty Ltd, Riverwood, NSW