

AUSTRALIAN TAX REVIEW

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ARTICLES

Reform of the taxation of foreign trusts in Australia and the United States: A comparative analysis – *Christopher Bevan*

This article undertakes a comparative analysis of the Australian and United States regimes for the taxation of foreign trusts. It does so both at the policy level and at the legislative level by undertaking a technical dissection of each regime. It identifies the principal features of each regime and then undertakes a detailed comparison of them. It makes that comparison for the purposes of assessing the strengths and weaknesses of each regime and, more importantly, to assess the success or failure of both the recently enacted reforms to the Australian regime effected by the RITA program and those yet to be enacted which are proposed by it. This article adopts the United States regime as the benchmark for what is a fair and equitable system for the taxation of foreign trusts for three reasons. First, it does so because of its status as Australia's principal source and destination of expatriates. Second, because of its status as one of Australia's principal trading partners and sources of foreign capital investment for many years. Third, because of the fact that the United States foreign trust taxation regime was fundamentally reformed in 1997-1998 under the Clinton Administration, leaving that regime as a proven model for the enactment of a successful foreign trust taxation regime in any major industrialised economy. The United States economy has many features common to the Australian economy. It is an economy that depends heavily on the movement of taxpayers between the two taxation systems due to the increasing incidence of globalisation and ties between the two nations at various levels. 7

Rationalising the “permanent establishment” – *Andrew Hamad*

This article seeks to unravel the concept of the “permanent establishment” in Australian taxation law by identifying and examining a selection of key interpretational issues that commonly arise in determining whether a permanent establishment is crystallised. In this context, reference is made to local and international jurisprudence and commentators on the topic, with particular attention given to the Commentary to the OECD Model Tax Convention, on which the definition of permanent establishment contained in Australia's double taxation agreements is extensively based. This area of law is worth visiting in light of recent developments in Australian law, in particular, the Full Federal Court's decision in *McDermott Industries (Aust) Pty Ltd v Commissioner of Taxation* (2005) 142 FCR 134; [2005] FCAFC 67..... 52

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