

AUSTRALIAN TAX REVIEW

Volume 35, Number 4

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EDITORIAL

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ARTICLES

Towards an appropriate interpretative approach to Australia's general tax avoidance rule – Part IVA – *Maurice Cashmere*

This article contains an examination of the jurisprudence which has emerged regarding the interpretation of Pt IVA, the Australian general anti-tax avoidance rule. The object of the examination is to determine the extent to which guidelines have emerged about the application of Pt IVA and the extent to which those guidelines may be appropriate to the application of the general anti-avoidance rule. What emerges is that there is a schism between the guidelines established by the Full Federal Court and the High Court and consequently the application of the statutory provision itself. This appears to have emerged as a result of a different focus of interpretative approach and the importance placed by Australia's appellate courts on the commercial context in which the rule should operate. 231

Isolated transactions: Current income tax implications – *Rami Hanegbi*

Profits from isolated transactions will often be potentially caught by the capital gains tax provisions of the income tax legislation. Because the provisions usually tax gains at concessional rates but only apply to gains that are not otherwise taxable, it is important to determine when gains from isolated transactions constitute ordinary income. This article discusses when isolated transactions generate ordinary income, as well as briefly mentioning what statutory provisions they might be assessable under. Isolated transactions will generate ordinary income when the transaction has the sufficient indicia of a business, or when it comes under one of the strands of Commissioner of Taxation (Cth) v Myer Emporium Ltd (1987) 163 CLR 199. However, the law in this area is complex and unclear in parts. The relevant tax ruling, TR 92/3, is incomplete and at times inaccurate and so is of very limited assistance. 248

Taxation of trust income under Div 6: A reflection on Justice Hill's contribution – *Michael Blissenden*

The late Justice Graham Hill was a most influential contributor to the judicial development in the field of taxation law. This article examines that contribution in the context of the taxation of trust income. In particular the article reflects on the significant views expressed by Hill J in the context of present entitlement (proportionate versus the quantum view) and deemed present entitlement under s 95A(2) of the Income Tax Assessment Act 1936 (Cth). The general conclusion reached is that Hill J was a leader in this field and has provided extensive guidance and leadership both to the judiciary and the profession as to how the key provisions in Div 6 should be interpreted and applied to the taxation of trust income. 262

The tax complexity crisis – David Wallis

Despite simplification attempts in the past, Australia's taxation system remains in a state of severe complexity, which stems from the volume and content of legislation. Though not always damaging – and indeed sometimes necessary – the volume of legislation is now undeniably excessive. The content itself is riddled with confusion. Even definitions may be marred by deeming provisions; reverse deeming provisions; and single, double and even triple negatives. The damaging effects of complexity are leading to an escalating cost of compliance and an erosion of the rule of law. A series of cases since *Essenbourne v FCT* demonstrates the possible dangers: how certain taxpayers may now have to choose between the very opposing views of the Tax Commissioner and the judiciary. As well as these burdens, studies show that even tax practitioners are losing confidence in their ability to cope with the system. 274

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