# Index

```
Accountants see Tax practitioners
Anti-avoidance rules
    admissibility of evidence, 244-245
    alternate postulate test, 236-237, 245
    application, 5-6, 243, 246-247
    ATO application, 5
      Practice Statements, 6
      test case program, 6
    choice principle, 232-234
    design of Pt IVA, 233
    government policy, 231-232, 246
    historical background, 231
      choice principle, 232-233
      predication test, 232
    income amounts, 244
      reasonable expectations, 244-245
    interpretation, 231, 235, 247
      extrinsic aids, 238, 245
      High Court cases, 235-236, 238
      literal approach, 237-238
      Parliament's intention, 245-246
      purposive approach, 237-238
    operation, 233-234
    overview, 5, 231
    predication test, 232-234, 246
    scheme, 238
      definition, 238-239
      identification, 238-239, 241
      particular scheme, 242
    scope of Pt IVA, 232
      High Court cases, 235-236
    structural assumptions of ITAA 36, 232
    tax benefit, 234, 236
      alternate postulate test, 236-237, 245
      commercial purpose, 240-243
      dominant purpose, 239-240, 242, 244, 246-247
      identification, 238-239, 241-242, 247
Assessable income
    foreign trusts, 12
      attributable taxpayers, 13-15
      deemed entitlement, 15
```

```
excluded receipts, 16-17
      FIF rules, 18
ATO
    anti-avoidance rules, 5
      Practice Statements, 6
      test case program, 6
    compliance burden, 282
    double tax agreements, 56
      interpretation, 56-57
    promoter penalty regime, 166
    rule of law, and, 283-284
      judicial authority, 284
    rulings system, 283
    trust income, 270-271
      capital gains tax, 271
Australian Tax Office see ATO
Business expenses
    capital characterisation, 161
    concession fees, 161-162
Capital gains tax
    CGT events, 45
      isolated transactions, 258
      trusts, 187, 196, 198
    debt defeasance, 105
    discounts, 97-98
    embedded debt, 95-96
    foreign exchange gains and losses, 107
    foreign residents, 8-10
    foreign trusts, 21, 32, 45
      double counting rule, 45-46
      United States, 32-33, 44-45
    isolated transactions, 248, 250, 258, 260
    overview, 257
    trust income, 270-272
    trusts, 187
      change of ownership, 196
      creation of trust over asset, 198
Companies see Transparent companies
Compliance burden
    ATO, effect on, 282
    direct costs, 281
    financial arrangements, 92-94
    overview, 281
```

```
United Kingdom, 89
Controlled foreign companies
    control tests, 23-24
    controlled foreign trusts, 22-23
      interposed entities, 33
    FIF rules, 19
    operation of regime, 22-23
    overview, 22
    United States, 22, 25, 33
      comparison of regimes, 22-24
      control tests, 23-24
      foreign corporations, 33
      object of regime, 34
Cross-border equipment leasing see Equipment leasing
Debt arrangements
    ATO approach, 95
    definitions, 94-95
    embedded debt, 95
      capital gains tax, 95-96
    repo transactions, 95
Debt defeasance schemes
    capital gains tax, 105
    illustration, 104-105
    legislative responses, 103, 105-106
    overview, 102, 104
Deductions
    concession fees, 161
      timing issues, 162
    finance leases, 100
    loan principal schemes, 102
      debt defeasance, 103-106
      interest assignments, 103-104, 106
      legislative responses, 103, 105-106
Definitions
    business, 65
    control test, 36
    entity, 166, 186-187
    financial arrangement, 95
    income, 263
    net income, 37, 262-263
    permanent establishment, 52-53, 59-68, 71, 77, 134-135, 141
    promoter, 169
    scheme, 167, 238, 239
```

```
scheme benefit, 168
    substantial, 73
    tax exploitation scheme, 167
    transparent company, 201
      trustee, 24
      trust estate, 24
Depreciation
    finance leases, 100
Discounts
    accrual rules, 97
    capital gains tax, 97-98
    classes of discounts, 96
    deferred interest debentures, 97
    exclusions from TOFA, 98-99
    overview, 97
    small business, 98-99
    traditional securities, 98
Double tax agreements
    allocation of taxing powers, 129
      methods of taxation, 129-130, 144-147
      split taxation, 129-130, 144, 146-147
    equipment leasing, 70-71, 127, 149
      OECD Model Convention, 71, 135-136
      residence taxation, 144-145
      royalty taxation, 142-144, 146-147
      source taxation, 144-146
      split taxation, 130, 144, 146-147
      substantial equipment see substantial equipment
      tables of treaties, 150-155
      types of taxation, 142-144
      United Kingdom Agreement, 70, 131-132
      United States Convention, 70, 136-137
    historical development, 129
    interpretation, 53, 127
      ATO material, 56-57
      explanatory memoranda, 56
      extrinsic materials, 54-55
      foreign court decisions, 57
      High Court's approach, 54
      multiple language treaties, 57-58
      OECD commentary, 55-56, 59
      undefined terms, 58-59
    OECD Model Convention, 53, 69, 129
```

```
carrying on a business, 65, 68
  enterprise, 68
  equipment leasing, 71, 135-136
  interpretation, 55-56, 58-59
  offices, 70
  place of business, 62-65
  substantial equipment, 71-72, 135
permanent establishment, 52, 62, 83, 127, 134-135
  branches, 69-70
  business activity, 66
  business, meaning, 65
  carrying on a business, 65-68
  context of definition, 59, 61
  employees, 80-82
  equipment leasing, 70-71, 127-128, 137
  excluded activities, 78-80
  fixed place of business, 63
  foreign bank offices, 79-80
  general definition, 62, 68
  geographical permanence, 63-64
  inclusions, 68-69
  offices, 70
  place of business, 62-65
  substantial equipment see substantial equipment
  temporal permanence, 64-65
  United Kingdom Agreement, 132
  United States Convention, 59-61, 137
royalties, 70, 127-128, 142-144
  split taxation, 130
substantial equipment, 71, 127, 132, 149
  by, for or under contract, 74-75, 129
  construction of clauses, 72
  deeming provision, 75, 127-128, 141
  maintains, meaning, 76
  McDermott Industries case, 70, 74-75, 127-130, 149
  non-Australian treaties, 138, 144
  passive leasing, 75, 77
  Reservation, 71-72
  Singapore Agreement, 136
  split taxation, 130
  substantial, meaning, 72-74
  tables of treaties, 150-155
  types of taxation, 142-144
```

```
United Kingdom Agreement, 75-77, 138
      United States Convention, 75-76, 133-134, 138
    United Kingdom Agreement, 131
      equipment leasing, 70, 131-132, 136
      permanent establishment, 132
      substantial equipment, 75-77, 138
    United States Convention, 46
      characterisation of income, 46-47
      equipment leasing, 70, 136-137
      foreign trusts, 46-47, 49
      permanent establishment, 59-61, 137
      substantial equipment, 75-77, 133-134, 138
Double taxation
    foreign trusts, 14, 17, 19
      deemed entitlement rules, 20-21
      priority of provisions, 20, 42
      United States Convention, 46-47
Equipment leasing
    domestic law, 131
      inbound taxation, 139-140
      outbound taxation, 140-141
    finance leasing transactions, 139
    historical analysis, 131-138, 149
    McDermott Industries case, 70, 127
      by, for or under contract, 74-75, 129
      facts of case, 128
      split taxation, 130
    OECD Model Convention, 71, 135-136
    OECD Report (1985), 137
    overview, 70, 127-128
    permanent establishment, 70-71, 127
      United Kingdom Agreement, 132
      United States Convention, 137
    passive leasing, 71, 75, 77-78
    reform proposals, 148-149
    residence taxation, 144-145
    royalties, 70, 127-128
      domestic law, 131
      restructure of taxation, 137
      split taxation, 130, 144, 146-147
      types of taxation, 142-144
      withholding tax, 138
    source taxation, 144-146
```

```
split taxation, 130, 144, 146-147
    substantial equipment, 71, 127, 132, 141, 149
      by, for or under contract, 74-75, 129
      construction of clauses, 72
      deeming provision, 75, 127-128, 141
      maintains, meaning, 76
      McDermott Industries case, 70, 74-75, 127-130, 149
      non-Australian treaties, 138, 144
      passive leasing, 75, 77-78
      Reservation, 71-72
      Singapore Agreement, 136
      split taxation, 130
      substantial, meaning, 72-74
      tables of treaties, 150-155
      types of taxation, 142-144
      United Kingdom Agreement, 75-77, 138
      United States Convention, 75-77, 133-134
    tax planning, 147-148
    United Kingdom Agreement, 70, 131, 136
      permanent establishment, 132
      substantial equipment, 75-77, 138
    United States Convention, 70, 136-137
      substantial equipment, 75-77, 133, 137-138
Federal Budget, 2006
    overview, 89
Finance leases
    cross-border transactions, 139
    overview, 99-100
    sale and loan measures, 101-102
    tax losses, 100-101
    TOFA proposals, 102
    transfer of depreciation, 100
Financial arrangements
    compliance burden, 92-94
    debt, 94
      embedded debt, 95-96
      repo transactions, 95
    debt defeasance, 102, 104
      capital gains tax, 105
      illustration, 104-105
      legislative responses, 103, 105-106
    definition, 95
    discounts, 96-97
```

```
accrual rules, 97
       capital gains tax, 97-98
       exclusions, 98-99
    effectiveness of proposed rules, 108-109
    finance leases, 99-100, 102
       sale and loan measures, 101-102
       tax losses, 100-101
    foreign exchange gains and losses, 91, 107
       underlying transaction, 108
    interaction of rules, 94
    legislative background, 91-93
       principle-based design, 94
    loan principal deduction schemes, 102, 105-106
       debt defeasance, 103-105
       interest assignments, 103-104
    overview, 89-91, 108
    tax minimisation schemes, 91-92, 108
       interest assignments, 103-104
    tax reform, 92-94
Foreign banks
    representative offices, 79
       permanent establishment, 79-80
Foreign exchange gains and losses
    capital gains tax, 107
    overview, 91, 107
    underlying transaction, 108
Foreign investment fund rules
    assessable income, 18
    calculating FIF income, 19
    commencement, 17
    design objectives, 17-18
    double taxation, 14, 19
       priority of provisions, 20, 42
    exceptions, 18-19
       CFC regime, 19
    foreign companies, 18
    historical background, 37
    overview, 17, 37
    policy objective, 17
    priority of provisions, 20, 42
    reversionary interests, 39-40
    RITA reforms, 8, 11
       policy rationale, 9-10
```

```
unit trusts, 11
    transfers on death, 41
Foreign residents
    capital gains tax, 8-10
Foreign source income
    foreign trusts, 12
Foreign trusts
    assessable income, 12
       attributable taxpayers, 13-15
       deemed entitlement, 15
       excluded receipts, 16-17
    benefits of consistency with United States, 48-50
    capital gains tax, 21, 32, 45
       double counting rule, 45-46
       United States, 32-33, 44-45
    CFC regime, 19, 22
       control tests, 23-24
       controlled foreign trusts, 22-23, 33
    control of trust, 36, 38-39
       CFC regime, 23-24
       transferor trust rules, 11, 36-37
       United States, 35-39
    deemed entitlement rules, 10-11, 15, 38, 40
       capital gains tax, 21
       double taxation, 20-21
       interest, meaning, 15
       operation of rules, 15
    distributions, 15
       corpus or income, 16
       excluded receipts, 16-17
    double taxation, 14, 17, 19
       deemed entitlement rules, 20-21
       priority of provisions, 20, 42
    FIF rules, 17, 37
       assessable income, 18
       commencement, 17
       design objectives, 17-18
       double taxation, 14, 17, 19
       exemptions, 18-19
       historical background, 37
       policy objective, 17
       priority of provisions, 20, 42
       reversionary interests, 39-40
```

```
RITA reforms, 8-11
  transfers on death, 41
foreign source income, 12
loans, 37
net income, 37
overview, 11
priority rules, 20, 42-43
RITA reforms, 7, 46, 48
  conclusions, 50-51
  double taxation, 17
  impact on United States inconsistencies, 47-48, 50
  policy rationale, 9-10
source of income, 41-42
transferor trust rules, 10-11, 48
  application of rules, 12
  attributable income, 13-15, 17
  change in residence, 43-44
  control test, 11, 36-37
  double taxation, 14, 17, 19
  exceptions, 13-14
  fiscal reach, 39
  object of measures, 13
  priority of provisions, 20
  transfers on death, 40-41
  uncontrolled trusts, 20
United States, 7, 22, 25, 49
  administrative powers, 28-29
  benefits of consistency, 48-50
  characterisation of trusts, 34-35
  comparison with Australia, 36-46
  control of beneficial enjoyment, 27-28, 39, 43
  control test, 35--39
  distributions, 26
  double tax convention, 46-47, 49
  excess distributions, 27
  excise tax, 32
  foreign grantors, 30, 43
  gains on transfers, 32-33, 44-45
  grantor trust rules, 25-27, 31-32
  income components, 26
  interest charge, 38
  intermediaries, 31
  loans, 37
```

```
net income, 37
      outbound trust migrations, 31
      owner of portion of trust, 29-30, 40
      pre-immigration trust rule, 30, 43-44
      priority rules, 42-43
      reversionary interests, 27, 39
      source of income, 41
      substantial owners, 26-27
      transfers on death, 32-33, 40
Gifts
    default beneficiaries, 114-115
Graham Hill
    annual award, 162
    trust income, 262-273
Interest see also Discounts
    assignments, 103, 106
      FCT v Myer, 103-104
    deferred interest debentures, 97
    United States
      foreign trusts, 38
International law see also Double tax agreements
    interpretation of treaties, 53
      extrinsic materials, 54-57
      foreign court decisions, 57
      High Court's approach, 54
      multiple language treaties, 57-58
      OECD Model Convention, 55-56
International tax reform see RITA reforms
Interpretation
    anti-avoidance rules, 231, 235, 247
      extrinsic aids, 238, 245
      High Court cases, 235-236, 238
      literal approach, 237-238
      Parliament's intention, 245-246
      purposive approach, 237-238
    double tax agreements, 53, 127
      ATO material, 56-57
      explanatory memoranda, 56
      extrinsic materials, 54-55
      foreign court decisions, 57
      High Court's approach, 54
      multiple language treaties, 57-58
      OECD commentary, 55-56, 59
```

```
undefined terms, 58-59
    extrinsic aids, 54-55, 238, 245
    objective, 238
    tax system, 278, 286
      definitions, 279
      judicial comment, 278-279
    trust income, 266, 270, 273, 278
      legislative clarification, 266-267
Isolated transactions
    business, as, 251
      continuing underlying business, 252
      matter of fact, 252
      non-business taxpayers, 255
    capital gains tax, 248, 250, 258, 260
      CGT events, 258
    extraordinary transactions, 249
    meaning, 249
    non-business taxpayers, 254
      profit-making intention, 255-256
      right to income, 256
      Tax Ruling, 256
    ordinary course of business, 249-250
    ordinary income, 248, 250
      continuing businesses, 249-254
      non-business taxpayers, 254-256
      profit-making intention, 249, 253-254
      profit-making plans, 259
      right to income, 249, 254
      Tax Ruling, 256
    overview, 248-257, 261
    profit-making intention, 249, 253-254
      course of business, 254
      non-business taxpayers, 255-256
      possibility, distinction, 254
      pre-CGT gains, 260
      Tax Ruling, 256-257
    profit-making plans, 259
      commercial transactions, 260
      intention, 260
    profit-making schemes, 258
    statutory income, 257-258
    Tax Ruling, 249, 253, 256
      criticisms, 256-257
```

#### Legal reasoning, 185

#### Limited liability companies see Transparent companies

## Loan principal deduction schemes

debt defeasance, 103-104, 106

capital gains tax, 105

illustration, 104-105

interest assignments, 103, 106

FCT v Myer, 103-104

legislative responses, 103, 105-106

overview, 102

#### Losses see also Deductions

finance leases, 100-101

foreign exchange, 91, 107-108

transparent companies, 202, 217

trusts, 197

venture capital companies, 217

#### Mass marketed investment schemes

counteraction measures, 164-165

disallowed deductions, 5

overview, 163

promoters see Promoter penalty regime

tax avoidance, 5, 154

#### New Zealand

transparent companies, 202, 213, 222-223

competition, 220

Qualifying Companies, 213

rationale for introduction, 213-214

tax neutrality, 214

# Offences and penalties

promoter penalties, 181, 229

### **Ordinary income**

isolated transactions, 248, 250

business, as, 251-252, 255

continuing businesses, 249-254

non-business taxpayers, 254-256

profit-making intention, 249, 253-256

profit-making plans, 259

right to income, 249, 254, 256

Tax Ruling, 256-257

# Part IVA see Anti-avoidance rules

#### Permanent establishment

auxiliary activities, 78-79

foreign bank offices, 79-80

```
branches, 69-70
carrying on a business, 65
  business activity, 66
  business, meaning, 65
  carried on, meaning, 67
  enterprise, 68
  Thiel decision, 67-68
conditions required, 62
deeming provisions, 75, 127-128, 141
definition, 53, 63, 71, 77, 134, 141
  context, 59, 61
  general definition, 62-68
  OECD Model Convention, 135
  United States Convention, 60-61
employees, 80
  contractual authority, 80-81
  designated work areas, 81-82
equipment leasing, 70-71, 127, 149
  passive leasing, 71, 75, 77-78
  substantial equipment see substantial equipment
  tables of treaties, 150-155
  United Kingdom Agreement, 132
  United States Convention, 137
excluded activities, 78-80
foreign bank offices, 79-80
inclusions, 68-69
offices, 70
overview, 52, 83, 127-128, 134
place of business, 62-63
  fixed requirement, 63
  geographical permanence, 63-64
  temporal permanence, 64-65
preparatory activities, 78-79
  foreign bank offices, 79-80
substantial equipment, 71, 77, 127, 132, 149
  by, for or under contract, 74-75, 129
  construction of clauses, 72
  deeming provision, 75, 127-128, 141
  domestic law, under, 77-78
  maintains, meaning, 76
  McDermott Industries case, 70, 74-75, 127-129, 149
  passive leasing, 75, 77-78
  permanence, 77
```

```
Reservation, 71-72
      Singapore Agreement, 136
      substantial, meaning, 72-74
      tables of treaties, 150-155
      United Kingdom Agreement, 75-77, 138
      United States Convention, 75-77, 133-134
    United Kingdom Agreement, 132
      substantial equipment, 75-77, 138
    United States Tax Convention, 59-60
      business activities, 61
      definition clause, 60-61
      equipment leasing, 137
      exclusions from PE, 61
      substantial equipment, 75-77, 133-134, 138
Product disclosure regimes
    overview, 229
    United Kingdom, 229-230
      conditions for disclosure, 230
      Hallmarking, 230
Product rulings
    non-conforming schemes, 179
      exceptions, 180
      material difference, 180
      requirements, 179
Promoter penalty regime
    adviser exclusion, 173
      consideration received, 174, 176
      EM examples, 173-176
      onus of proof, 173
      scope, 173, 175-176
    causation test, 177-178
      EM example, 178-179
    civil penalties, 181, 229
    consideration received, 170, 178-179
      adviser exclusion, 174, 176
      fees linked to scheme, 171-172
      in respect of, 171
      receives, 172
    employee exclusion, 176
      activities of employee, 177
      causation test, 178-179
      EM example, 176-177
      scope, 177
```

```
entities, 166
    exposure draft bill, 164
      submissions, 164-165
    injunctions, 181, 229
    new provisions, 165, 229
      related powers, 166
    non-conforming schemes, 179
      exceptions, 180
      material difference, 180
      requirements, 179
    overview, 163-164, 182, 229
    policy objectives, 165
    product rulings, 179
      non-conforming schemes, 179-180
    prohibited conduct, 166
      causation test, 177-179
      elements of limbs, 166-167, 183
      non-conforming schemes, 179-180
    promoters, 169
      consideration received, 170-172
      criteria, 169-172
      marketing or encouragement, 170
      substantial role, 172
    tax advisers, 165, 229
      exclusion, 173-176
    tax exploitation schemes, 167, 169, 184
      dominant purpose test, 168
      reasonably arguable test, 168-169
      scheme benefit, 168
      scheme, definition, 167
    voluntary undertakings, 182, 229
Rates of tax
    Federal Budget, 2006, 89
Retirement income
    Federal Budget 2006, 89
Returns
    trustee's mistakes, 111
Review of International Tax Arrangements see RITA reforms
RITA reforms
    Board of Taxation recommendations, 8-9
    capital gains tax, 8
      foreign residents, 9-10
    FIF rules, 8, 10
```

```
unit trusts, 11
    foreign trusts, 7-8, 46, 48
       conclusions, 50-51
       double taxation, 17
       impact on United States inconsistencies, 47-48, 50
       policy rationale, 9-10
       transferor trust rules, 10-11, 48
    temporary residents, 9
    United States, and, 9, 46
Royalties
    equipment leasing, 70, 127-128
       domestic law, 131
       restructure of taxation, 137
       split taxation, 130, 144, 146-147
       withholding tax, 138
    OECD Model Convention, 135-136
Rulings
    I-G of T's Issues Papers, 283
    isolated transactions, 249, 253, 256
       criticisms, 256-257
    product rulings, 179
       non-conforming schemes, 179-180
Small business
    interest discounts, 98-99
Statutory income
    isolated transactions, 257-258
       profit-making plans, 259-260
       profit-making schemes, 258
Tax advisers
    promoter penalty regime, 165, 229
       exclusion, 173-176
       scope of exclusion, 173, 175-176
Tax avoidance see also Anti-avoidance rules; Promoter penalty regime
    aggressive tax planning, 5
    bottom of the harbour schemes, 5
    evasion, distinction, 5
    mass marketed schemes, 5, 164
Tax compliance see Compliance burden
Tax evasion
    avoidance, distinction, 5
Tax exploitation schemes see Promoter penalty regime
Tax laws see Tax system
```

#### Tax minimisation schemes

legislative responses, 91-92, 108 loan principal deduction schemes, 103 FCT v Myer, 103-104

# Tax planning

aggressive planning, 5

# Tax practitioners see also Promoter penalty regime

tax system, and, 285 attitudes of practitioners, 286 inoperative provisions, 277 use of practitioners, 280, 285 trustee's mistakes, 110, 126 disclaimers, 114-116 discretionary powers, 122-124 exercise of power, 110-111, 118-124 investigation of events, 126 legal nullities, 112-113 mistaken agreements, 116-117 rectification, 116-118 rescission, 117, 118 returns, 111 setting aside decisions, 118-124 signing documents, 111-112

void or voidable, 121-122, 124-126

#### Tax rates see Rates of tax

#### Tax reform see also RITA reforms

Federal Budget 2006, 89 financial arrangements, 92-94 objects, 280

# Tax rulings see Rulings

# Tax system

compliance burden, 281
ATO, effect on, 282
benefits of reform, 282
direct costs, 281
consequences of complexity, 280
compliance, 281-282
rule of law, 282-284
content of provisions, 278
definitions, 279
I-G of T's Issues Papers, 275
rulings system, 283
inoperative provisions, 277

```
repeal Act, 279
    interpretation, 278, 286
       definitions, 279
       judicial comment, 278-279
    overview, 89, 274, 286
    principle-based law design, 94
    rule of law, 282
       ATO, and, 283-284
      judicial authority, 284
       separation of powers, 283
    self-assessment, 280, 285
    simplification, 285
       multiplicity of purpose, 285
    sources of complexity, 279-280
    Tax Law Improvement Project, 94, 275
       abandonment, 276
       scope of project, 275
    tax policy, 280, 285-286
    tax practitioners, 285
       attitudes, 286
       inoperative provisions, 277
       utilisation statistics, 280, 285
    United Kingdom, 89
    volume of legislation, 276
       growth statistics, 276-277
       regulatory error, 278
Temporary residents
    RITA reforms, 9
TOFA see Financial arrangements
Transparent companies
    Australian position, 200, 214
       competition, 220
       efficiency, 221-222
       flow-through taxation, 219-220
       government policy, 201, 215-216
       interest groups, 218-219
       limited liability, 215-216, 221
       tax neutrality, 214-216
       tax revenue, 219-220
       taxation, 219-220
       venture capital companies, 217-218, 222
    characteristics, 200
```

impact on practitioners, 278

```
hybridity, 201-202
    definition, 201
    limited liability companies (United States), 203, 222
       competition, 207-208, 220
       efficiency, 208-209
       four-factor test, 205-206
       interest groups, 204-205
       limited liability, 207, 210
       taxation, 205-207, 219
    losses, 202
    New Zealand, 202, 213, 222-223
       competition, 220
       Qualifying Companies, 213
       rationale for introduction, 213-214
       tax neutrality, 214
    partial loss companies, 202, 213-214
    overview, 201, 222-223
    United Kingdom, 210, 222-223
       competition, 210-211, 220
       interest groups, 211-212
       regulatory issues, 212-213
       taxation, 212-213
    United States, 202, 222
       limited liability companies, 203-210, 219
       S Corporations, 203-204, 208-209
    venture capital companies, 217, 222
       loss limitation rule, 218
       net income, 217
Trust income
    accounting principles, 263, 270
    assessment, 263-264, 273
       ATO's approach, 270-271
       differential approach, 268
       legislative response, 271-272
       no entitlement, 269
       present entitlement, 264-265
       proportionate approach, 265-269, 271
       quantum approach, 267, 269
    capital gains tax, 270-272
    capital receipts, 263
    deemed present entitlement, 264, 272
       vested and indefeasible, 272-273
    distributions, 26, 193
```

```
fixed trusts, 264
    income, definition, 263
    interpretation, 266, 270, 273, 278
       legislative clarification, 266-267
    investment income, 193-195
    net income, 193-195, 263
       definition, 37, 262-263
    present entitlement, 193-196, 263
       deemed entitlement, 264, 272-273
       determination, 264
       meaning, 265
       no entitlement, 269
Trusts
    business activities, 194
    CGT events, 187
       change of ownership, 196
       creation of trust over asset, 198
    characterisation, 24
    discretionary trusts, 187-188, 262
    entities, as, 186-187
    fiduciary relationship, 262
    fixed trusts, 197-198, 262, 264
    foreign see Foreign trusts
    meaning, 24, 185-188, 262
    restructures, 187
    Saunders v Vautier rule, 192
    trust losses, 197
    unit see Unit trusts
    United States, 25-26, 34, 41
       characterisation, 34-35
       control test, 35
Trustee's mistakes
    disclaimers, 114, 116
       default beneficiaries, 114-115
    exercise of power, 110-111
       challenges, 118-119
       consideration of consequences, 120-123
       discretionary powers, 122-124
       invalid exercise, 120-121
       void or voidable, 121-122
    investigation of events, 126
    legal nullities, 112
       strands of argument, 113
```

```
overview, 110, 126
    rectification, 116
       mistaken agreements, 116-117
       rescission, 117-118
    returns, 111
       estoppel, 111
    setting aside decisions, 118
       challenges to trustee's power, 118-119
    signing documents, 111
       non est factum, 111-112
    void or voidable, 121-122, 124, 126
       summary of issues, 124-125
Trusts
    business activities, 194
    CGT events, 187
       change of ownership, 196
       creation of trust over asset, 198
    characterisation, 24
    discretionary trusts, 187-188
    distributions, 26, 193
    entities, as, 186-187
    fixed trusts, 197
    foreign see Foreign trusts
    meaning, 24, 185-188
    net income, 193, 195
       investment income, 193-195
       present entitlement, 193-196
    restructures, 187
    Saunders v Vautier rule, 192
    trust losses, 197
    unit see Unit trusts
    United States, 25-26, 34, 41
       characterisation, 34-35
       control test, 35
Unit trusts
    absolute entitlement, 198-199
    beneficial interests, 191, 196
       change in, 196-197
    business activities, 194
    CGT events, 187
       change of ownership, 196
       creation of trust over asset, 198
    discretionary trusts, 192
```

```
entities, as, 197
    features, 189-190
    FIF rules, 11
    fixed trusts, as, 197-198, 262
    historical origins, 188-189
    meaning, 187-189, 199
    net income, 193, 195
      investment income, 193-195
      present entitlement, 195-196
    overview, 185, 199
    present entitlement, 195-196
    RITA reforms, 11
    Saunders v Vautier rule, 192
    trust losses, 197
    trustees' powers, 190, 192
    unit holders, 189-190, 192
      beneficial interests, 191, 196
      vested and indefeasible interests, 197-198
United Kingdom
    product disclosure regime, 229
      conditions for disclosure, 230
      Hallmarking, 230
    transparent companies, 210, 222-223
      competition, 210-211, 220
      interest groups, 211-212
      regulatory issues, 212-213
      taxation, 212-213
United Kingdom Tax Agreement
    equipment leasing, 70, 131-132, 136
    permanent establishment, 132
    substantial equipment, 75-77, 138
United States
    CFC regime, 22, 25, 33
      comparison with Australia, 22-24
      control tests, 23-24
      foreign corporations, 33
      object of regime, 34
    foreign personal holding companies, 33-34
    foreign trusts, 7, 22, 25
      administrative powers, 28-29
      benefits of consistency, 48-50
      characterisation, 34-35
      comparison with Australia, 36-46, 49
```

```
control of beneficial enjoyment, 27-28, 39, 43
      control test, 35-39
      distributions, 26
      double tax convention, 46-47, 49
      excess distributions, 27
      excise tax, 32
      foreign grantors, 30, 43
      gains on transfers, 32-33, 44-45
      grantor trust rules, 25-27, 31-32
      income components, 26
      interest charge, 38
      intermediaries, 31
      loans, 37
      net income, 37
      outbound trust migrations, 31
      owner of portion of trust, 29-30, 40
      pre-immigration trust rule, 30, 43-44
      priority rules, 42-43
      reversionary interests, 27, 39
      source of income, 41
      substantial owners, 26-27
      transfers on death, 32-33, 40
    limited liability companies, 203, 222
      competition, 207-208, 220
      efficiency, 208-209
      four-factor test, 205-206
      interest groups, 204-205
      limited liability, 207, 210
      taxation, 205-207, 219
    passive foreign investment companies, 33-34
    RITA reforms, and, 9, 46
    transparent companies, 202, 222
      limited liability companies, 203-210
      S Corporations, 203-204, 208-209
    trusts, 25-26, 34, 41
      characterisation, 34-35
      control test, 35-36
United States Tax Convention
    business profits, 46
    characterisation of income, 46-47
    equipment leasing, 70, 136-137
    foreign trusts, 46-47, 49
    permanent establishment, 59-60
```

business activities, 61 definition, 60-61 equipment leasing, 70, 137 exclusions, 61 substantial equipment, 75-77, 133-134, 138

# Venture capital companies

loss limitation rule, 218 net income, 217 overview, 217, 222