

AUSTRALIAN TAX REVIEW

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ARTICLES

Recourse to foreign authority in deciding Australian tax cases – Justice Richard Edmonds

There is a perception that references to foreign authorities in reasons for judgment of superior appellate courts are increasingly seen in deciding tax cases in this country. This article considers some of these cases to see if any points of principle can be discerned as to when a court is likely to embrace a foreign authority in support of an argument or process of reasoning and when it is likely to decline to do so; and, in some cases, to evaluate whether recourse to the foreign authority is, in all the circumstances, appropriate and, more importantly, helpful.

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The new value shifting regime: A quest for certainty or legislative overkill? – Lachlan Wolfers

The general value shifting regime (GVSR) was introduced on 1 July 2002 with the aims of delivering “significant integrity benefits”, providing for a “solid base”, introducing a “more consistent treatment for more comparable value shifts across entities and transactions” and removing “unintended outcomes” arising from the legislation being “too broadly defined in parts”, as described by the Review of Business Taxation. As this article will endeavour to demonstrate, the GVSR rules have not achieved these aims, but are instead overly-complex, poorly targeted, prone to prolixity, obsessively anti-avoidance, overly-layered with exemptions and, ultimately, in their execution, will be bedevilled by disputation.

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Double tax treaties and the new regime for capital gains taxation of non-residents – Philip Bender

The *Tax Laws Amendment (2006 Measures No 4) Act 2006* (Cth), part of which deals with non-resident capital gains tax (CGT), took effect from 12 December 2006, the date of Royal Assent of the Act. The new CGT provisions change the manner in which non-residents are taxed on capital gains in respect of certain CGT events happening to Australian property. The law previously taxed non-residents on capital gains made from CGT events happening in respect of CGT assets with the “necessary connection with Australia”. Assets with the “necessary connection with Australia” were specifically listed in Div 136 of the *Income Tax Assessment Act 1997* (Cth) and included assets such as land, interests in land, and shares and units in certain companies and trusts. This article examines the effect of Australia’s Double Tax Agreements on the new legislation.

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