

# AUSTRALIAN TAX REVIEW

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## EDITORIAL

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## ARTICLES

### **Share sales at amounts significantly in excess of market value on long-dated payment terms – Dale Boccabella**

Many shareholders in AMP Ltd have received an offer to purchase their shares at an offer price some 46% in excess of market value. A condition of acceptance is that the sale proceeds are payable over a 19-year period in equal instalments. Transactions such as this where there is a time gap between entry into a transaction (taxable event) and the discharge of the transaction present numerous problems for the income tax. The problem is compounded here by the long time gap. This article analyses the transaction in regard to the non-CGT rules and the CGT rules. Issues that arise under the non-CGT provisions include the purchase of an income/annuity, dissection of each instalment into principal and interest and the accruals regime for discounted securities. Issues that arise under the CGT provisions include the deferred receipt of sale proceeds and dissection of each instalment into principal and interest. Reconciling the operation of the non-CGT provisions with the CGT provisions is also dealt with. .... 78

### **DCT v Dick: Are the barbarians at the gate of the fiscus? – Kalmen Datt**

This article reviews the recent decision in the *New South Wales District Court of Deputy Commissioner of Taxation v Dick* (2006) 3 DCLR (NSW) 244; [2006] NSWDC 17 which held that the provisions of s 1318 of the *Corporations Act 2001* (Cth) are a defence to claims under Pt VI, Div 9 of the *Income Tax Assessment Act 1936* (Cth). Although a judgment of the District Court, the decision has important implications and, if correct, could reduce the ability of the Commissioner to recover withholding payments deducted, but not paid to the Australian Tax Office (ATO). The facts and reasons for judgment call for a comprehensive review of the law by which a director can be held personally liable by way of penalty for the monetary equivalent of withholding taxes deducted but not paid over to the ATO under Divs 8-9 of the *Income Tax Assessment Act 1936* (Cth) and whether s 1318 of the *Corporations Act* is available as a defence to such a claim. The conclusion reached is that notwithstanding the finding in *Dick*, s 1318 is not available as a defence to such claims and, even if it were, the facts in *Dick* were of such a nature that the court could not come to the assistance of the defendant. .... 100

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