
Index

Anti-avoidance provisions (Pt IVA, ITAA 1936)

- general anti-avoidance rules (GAAR) 20-22, 38
 - foreign legal authorities, 10-12
 - role of, 133-135
- promoter penalty regime *see* **Promoter penalty regime**
- specific anti-avoidance rules (SAARs), 135-136

Arbitration

- international *see* **International tax arbitration**

Canada

- tax avoidance, 73-76

Capital gains tax

- CGT events, 95, 97
 - trusts, 222-252
- interaction with GVSR *see* **General value shifting regime**
- non-residents *see* **Double tax agreements**
- reconciling with income tax, 98-99

Capital or income

- disposal of assets by consolidated groups, 253-255

CGT events *see* Trusts

Commissioner of Taxation

- views, contrasted with Federal Court tax decisions, 118-123, 197-200

Consolidated groups

- purpose in disposal of assets, 253-269
 - United States experience, 261-263

Cross-border disputes *see* International tax arbitration; Mutual agreement procedure

Deductions

- concession fees
 - FCT v Citilink Melbourne Ltd*, 118-123

Dividends

- concept of income, 142-148

Double tax agreements

- capital gains taxation of non-residents, 49-67
 - allocation of taxing rights, 56-57
 - effect of pre-CGT treaties, 61-62
 - gains of purely capital nature, 59-61
 - real property, 51-55
 - indirect holdings of real property, 62-66
 - revenue gains, 57-59
 - taxable Australian property, 49-51

Federal Court of Australia

- taxation decisions
 - contrast with Commissioner's views, 197-200

Financial arrangements

- tax reform, 160-172
 - adding TOFA to current law, 163-167
 - design of interaction systems, 169-172
 - handling overlaps, 166-169
- TOFA regime, 161-163
 - obscurity & exclusivity, 172

Foreign legal authorities

- use in deciding Australian tax cases, 5-16
 - general anti-avoidance provisions, 10-12
 - income, 12-16
 - restitution of overpayment, 8-10
 - statutory construction, 5-8

Foreign residents *see* **Double tax agreements**

GAAR *see* **Anti-avoidance provisions**

General anti-avoidance rules *see* **Anti-avoidance provisions**

General value shifting regime (GVSR), 17-48

- deficiencies in, 33-48
 - CGT provisions interaction
 - arm's length transactions, 33-34
 - CGT events, 18-19
 - rights over non-depreciating assets (Div 723), 36-38
 - control tests, 46-48
 - dividend access shares, 43-44
 - interaction with other provisions, 39
 - legislating in EM, 40-42
 - market value concepts, 34-36
 - poor targeting, 42-43
 - residual application of Pt IVA, 38-39
 - service trust agreements, 46
 - terminological inconsistency, 38
 - unrelated parties, 45
- direct value shifting (Div 725), 23-27
 - consequences of, 27-28
- history of, 18-19
- indirect value shifting (Div 727), 28
 - conditions for, 29-33
 - exclusions, 28-29
- policy reasons for, 20-22
- rights over non-depreciating assets (Div 723), 22-23
 - CGT provisions, 36-38

GVSR *see* **General value shifting regime**

Income

- concepts
 - business concept, 140-141
 - dividends, 142-148
 - financial accommodation, 146-147
 - foreign legal authorities, 12-16
 - property law, 138-140
 - tax, legal and accounting reasoning, 138-159
 - choosing correct analysis, 152-154
 - direction from intersection, 155-158
 - way forward, 158-159
 - tax statutes, 141-142
 - trust income, 147-152
 - whether receipt is income, 124-126
- distinction from capital *see* **Capital or income**
- United States
 - Eisner v Macomber*, 13-16

International tax arbitration, 173-190; *see also* **Mutual agreement procedure**

- arbitral panel, 183
- confidentiality and precedent, 185-186
- history and strengths, 180-182
- implications for Australia, 186-188
- OECD Model Tax Treaty amendment, 173-174
- relationship with domestic litigation, 184-185
- standing and participation, 182
- terms of reference & procedure, 183-184
- waiver of MAP, 186

International tax disputes *see* **International tax arbitration**; **Mutual agreement procedure**

Interpretation *see* **Foreign legal authorities**; **Statutory construction**

Legal authorities

- foreign *see* **Foreign legal authorities**

Mutual agreement procedure, 174-180; *see also* **International tax arbitration**

- Australia's recent experience, 176-177
- case data, 189-190
- shortcomings of, 178-180
- strengths of, 176
- subject matter of international tax disputes, 174-175
- waiver of, 186

Non-residents *see* **Double tax agreements**

OECD *see* **International tax arbitration**

Overpayment of tax

restitution *see* **Restitution**

Part IVA *see* **Anti-avoidance rules**

Precedents *see* **Foreign legal authorities**

Promoter penalty regime

role of, 136-137

Rates of tax, *see* **Income**

Receipts

income according to ordinary principles
McNeill's case, 124-126

Restitution

recovery of tax overpaid
foreign legal authorities, 8-10

Shares

profit from sales of
long-dated payment, 78-99
AMP shareholders' offer from NSPC, 79-80
capital gains tax, 95-99
income tax (non-CGT consequences), 80-95

Statutory construction

foreign legal authorities, 5-8

Tax avoidance *see also* **Anti-avoidance provisions**; **Promoter penalty regime**

judicial barriers in common law jurisdictions, 73-77
weapons against, 133-137

Tax compliance *see* **Compliance burden**

Tax laws *see* **Tax system**

Tax system

complexity
causes, 222-251

TOFA *see* **Financial arrangements**

Transfer pricing *see* **Mutual agreement procedure**

Trust income

concept of income, 147-152

Trustees

- co-trusteeship and custodian trustees, 203
- liability, 203-204
- powers and duties, 203
- core obligations, 202-203
 - definitional requirement of trust property, 202-203
- indemnities, creditor subrogation & beneficiary liability, 204-205

Trusts

- CGT events
 - distribution of preferences, 225-239
- GVSr, 18-19
- split trusts, 206, 209, 212, 214-216, 219
- dissection
 - appropriating assets, 205-207
 - cloning trusts, 213-217
 - creating subtrusts, 210-213
 - creating umbrella trusts, 218-220
 - land rich duty, 219-220
 - means of splitting, 205-221
 - separating trusteeship, 207-210
- stamp duty on
 - splitting trusts, 206-207, 209-210, 212-213, 216-218, 219
- unit *see* **Unit trusts**

United Kingdom

- income, 13
- statutory construction, 6-7
- tax avoidance, 73-77

United States

- consolidation
 - purpose test, 261-263
- Eisner v Macomber*, 13
- statutory construction, 6-7
- tax exemption, 11

Unit trusts

- CGT events
 - distribution of preferences, 225-239

Value shifting provisions *see* General value shifting regime (GVSr)**Withholding tax**

- recovery of payments deducted but not paid to ATO, 100-117
- defences under ITAA 1936, 103-107
- directors' liabilities under Pt VI, Divs 8-9, ITAA 1936, 101-103
- directors' obligations under Corporations Act, 107-108
- DCT v Dick*, 108-116