

AUSTRALIAN TAX REVIEW

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EDITORIAL

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ARTICLES

Deductions and illegal income – Philip Burgess

Traditionally, treasuries and the courts have not distinguished between legal and illegal businesses in the collection of taxes. Thus, deductions for the expenses of illegal businesses were allowed, a recent example being the monies stolen from a drug dealer in *La Rosa v FCT*. Following a public outcry, the government added s 26-54 to the *Income Tax Assessment Act 1997* (Cth) to disallow the deductions of illegal businesses. This action was taken without regard to other relevant legislation such as the Proceeds of Crime Acts. It is argued that s 26-54 was misconceived and should be repealed. 7

The tax position of charities in Australia – why does it have to be so complicated? – Ann O’Connell

One of the difficulties with the tax concessions that are available to charities and similar bodies in Australia is that the provisions are extremely complex. A number of other jurisdictions including the United Kingdom, Canada and New Zealand grant concessions to bodies that are “charities” or that are engaged in “charitable purposes”. Some of these jurisdictions rely on the common law meaning of the term “charitable” while others have adopted a statutory definition that encompasses the common law meaning. By contrast, the Australian provisions relating to eligibility for concessions contain numerous categories, many of the categories do not use the term charity and there are also a number of overlapping conditions. This article suggests that the Australian tax concessions for charities should be simplified. 17

Foreign tax credits and overseas investment: More reform necessary? – Dr Philip Bender

Australia’s foreign tax credit system has recently been rewritten in legislation that introduces a new foreign income tax offset. The foreign tax offset system is aimed at providing relief from double taxation for foreign tax paid on assessable income derived by Australian taxpayers. This article will examine the rewrite and whether it has addressed deficiencies with the current foreign tax credit and foreign hybrid regimes. Further reform may be necessary to deal with continuing problems with these systems that result in double taxation and economic inefficiency. 38

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