

AUSTRALIAN TAX REVIEW

Volume 37, Number 2

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EDITORIAL

| | |
|--------------------------------------|-----------|
| Benefits of 2020 vision | 77 |
|--------------------------------------|-----------|

ARTICLES

Recent tax litigation: A view from the Bench – Justice Richard Edmonds

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| In this article, the author gives us the benefit of his experience with, and responses to, tax litigation during 2007 as a judge of the Federal Court. At least two important cases were decided by the High Court; a number of important cases are pending or reserved; the author's observations on all these are instructive; as are his observations on those that did not get there. On another subject, the author canvasses the debate that has been ventilated over the last six to 12 months concerning the obligation, or lack of it, on the part of the Commissioner to follow decisions of single judges of the Federal Court. Finally, the author refers to the practice changes currently on foot which are designed to improve the efficiency with which the Federal Court dispenses its services in taxation disputes coming before it. | 79 |
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Dutiable value for stamp duty – the New South Wales anti-avoidance rule – Christopher Bevan

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| A recent decision of the Court of Appeal of New South Wales has undertaken an important contribution to the jurisprudence of State taxation in two respects. First, it has reviewed the long-standing case law on the nature of an interest in leasehold land and the concept of concurrent leases as creatures of property law. It has done so in the area of stamp duty in a way which serves to better understand these two property law concepts. Secondly, it has undertaken, in the context of the operation of stamp duties legislation, a review of the approach to be adopted henceforth in Australia generally (because Australia only has one nationwide body of common law according to the recent precepts of the High Court) to the interpretation of legislation, and in particular, it has (by a majority decision) confirmed the adoption of a purposive approach to the interpretation of (State taxation) legislation, not merely subsequently in the case of ambiguity, but in the first instance when the legislation's meaning arises for judicial determination. | 96 |
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Sons of Gwalia – a taxing decision – Kalmen Datt

This article considers the tax effects, particularly from a capital gains tax perspective, of the High Court decision *Sons of Gwalia Ltd v Margaretic* (2007) 81 ALJR 525; [2007] HCA 1. This case considered the possibility of a taxpayer suing a company for damages arising out of a breach of, inter alia, the duty of continuous disclosure under the *Corporations Act 2001* (Cth). The article reviews the “look-through” approach of the Commissioner in TR 95/35 which includes consideration of the recoupment provisions of the *Income Tax Assessment Act 1997* (Cth). The author concludes (a) both the look-through approach and the recoupment provisions are not applicable in the instant case; and (b) that TR 95/35 should be withdrawn. In particular, the Commissioner should reconsider the look-through approach identified in TR 95/35 to ensure it complies with the provisions of the *Income Tax Assessment Act 1997* (Cth). 104

CASE NOTE

Star City: A change of approach to Part IVA? Don’t bet on it! – Kirk Wilson 120

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5. Austin, n 4, p 56.

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