

# AUSTRALIAN TAX REVIEW

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## EDITORIAL

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## ARTICLES

### **Company directors: Federal taxation liabilities and obligations when nearing insolvency – Part I – *Matthew Broderick***

In the sphere of federal taxation, prior to the introduction of the *Corporate Law Reform Act 1992* (Cth) and the *Insolvency (Tax Priorities) Legislation Amendment Act 1993* (Cth), personal liability for company taxes was of little concern to most company directors. Some 15 years on, things have changed markedly for directors. Liability may now be imposed pursuant to a director penalty notice where a company fails to remit income tax taken from employees' wages and various other withholdings. A substantial body of case law has developed in this area, and is the subject of the first part of this two-part article. The area is not as "dry" as many would think, and interrelates to other areas of law such as directors' duties. Part II will address taxation-related liability of directors under the *Corporations Act 2001* (Cth) for insolvent trading, the recovery of unfair preferences from directors under the Commissioner of Taxation's statutory indemnity in s 588FGA of that Act, and other miscellaneous forms of federal taxation related liability. ....

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### **Financial and tax accounting differences: Product warranties and employee leave entitlements – *Jacqueline De Fazio***

This article addresses the difference between financial and tax accounting, with a focus on two particular types of transactions or events – product warranties and employee leave entitlements. Both financial and tax accounting methods of treating these items are discussed and it is established that while both regimes recognise a deduction/expense in respect of these items at the time when a liability fully crystallises, the exact point in time when this is considered to occur differs substantially. This is followed by an analysis of whether there exists any valid policy reason which supports a different method being adopted by either system, concentrating on whether a more accurate measurement of taxable income could be derived by substituting the tax accounting laws, policies and practices with the rules and standards of financial accounting. It is concluded that it may be more appropriate for the tax treatment of product warranties to follow the financial accounting treatment. ....

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### **Stamp duty avoidance – *AH Slater QC***

This article suggests that general anti-avoidance provisions are less likely to be efficacious in the context of State transactional and property taxes than they have (from time to time) been in relation to Commonwealth taxes, and explores the proposition in the context of decided cases dealing with avoidance of State taxes over the past three decades. ....

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