

AUSTRALIAN TAX REVIEW

Volume 38, Number 3

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ARTICLES

Can you keep a secret? The obligation of secrecy and right to disclose taxpayers' information – Mark Keating

The secrecy of taxpayer information is a vital component of the tax system in both Australia and New Zealand. Strict limits on the use of information are contained in tax legislation and harsh penalties are imposed for breaches of secrecy. However, the statutory restrictions are subject to a wide exception permitting disclosure of information for the purpose of carrying out the Commissioner's lawful duties. In a recent judgment, the New Zealand Supreme Court upheld the Commissioner's use of confidential information belonging to other taxpayers in litigation to defend an assessment, effectively overriding the secrecy of those other taxpayers. At the same time, courts in both Australia and New Zealand have consistently restricted taxpayers' access to confidential information about other taxpayers on the grounds of secrecy. The secrecy provisions and the right to disclose confidential information have therefore potentially become a tactical weapon for the Commissioner against which taxpayers have little defence. 135

A model idea: Is the ICAA proposal for a tax transparent company the ideal model for Australia? – Brett Freudenberg

One of the potential reforms currently being considered by the Henry Review is a proposal by the Institute of Chartered Accountants in Australia (ICAA) and Deloitte for the introduction of a tax transparent company (ICAA proposal). This proposal argues that tax transparency applying to closely held corporations and unit trusts would provide an enhanced tax system for micro-enterprises in Australia. While there are arguments that tax transparency does provide for an enhanced method for taxing business forms and their members, there are concerns about the consequences of following this economic ideal. This article will evaluate the model outlined in the ICAA proposal, and discuss what will be achieved if a transparent company is introduced in Australia. A number of alternative models will also be considered. Through this analysis it will be argued that a partial loss transparent company is the preferred model to achieve transparency, given the existing tax regime in Australia. 161

Earn out arrangements and draft Taxation Ruling TR 2007/D10 – Bernard Walrut

This article considers the way in which the capital gains tax (CGT) provisions and related tax rules apply, or should apply, to earn out arrangements. After considering draft Taxation Ruling TR 2007/D10, the article considers what constitutes the proceeds or the money required to be paid for CGT purposes, the distinction between money and a debt, and a significant body of cases developed in a like situation in respect of stamp duty. It concludes by suggesting that a system of reassessment is authorised by the applicable taxation laws, as the facts become known, and that should be preferred to the split asset approach of draft TR 2007/D10. 181

BOOK REVIEW – Philip Burgess

Tax Administration: Safe Harbours and New Horizons by Michael Walpole and Chris Evans 194

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 - ² Hayton, n 1, p 286.
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