

AUSTRALIAN TAX REVIEW

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ARTICLES

Trends in tax advice and litigation – what to do when it all turns on a word or two – *Justice Michelle Gordon*

Tax law, perhaps of all the fields in commercial law, is often associated with complexity. This complexity has significant consequences for how tax law is approached by practitioners and ultimately decided by courts. In this article, I contend that by understanding the underlying causes of this complexity, we are better able to address these problems and approach the interpretation of tax statutes in a more intelligent and effective fashion. By so doing, we can help shape a field often plagued by inefficiency and cost in the hope of making it more expeditious, inexpensive and ultimately, far more just. 202

Sex and drugs and income tax: Athletes’ legal fees on charges of misconduct – *Mark Brabazon SC*

This article investigates deductibility of athletes’ outgoings incurred to resist charges of bringing their sport into disrepute by personal, off-field misconduct contrary to a sporting code of conduct. The analysis is based on the “whole of operations” approach to the first limb of general s 8-1 deductibility, as enunciated in *FCT v Day*, and recent tax cases that recognise the commercial realities of modern sport. It concludes that, if the athlete derives assessable income from a sport with a binding code of conduct, whether directly or indirectly, those outgoings will generally be deductible. 225

Navigating the labyrinth: Evaluating trust loss rules, FTEs and IEEs – *Dale Pinto and Nicole Wilson-Rogers*

Like many other concepts in taxation law, understanding the trust loss rules and the interaction with family trust elections (FTEs) and Interposed Entity Elections (IEEs) can represent a formidable challenge to many practitioners. The complexity and uncertainty in this area of the tax legislation has been exacerbated by the attempt in 2008 by the Labor government to repeal some of the significant amendments made to these rules by the Coalition government in 2007. Furthermore, an exploration of this area is timely in the context of the current Henry Tax Review. Accordingly, this article critically evaluates the labyrinth of rules involving trust losses, FTEs and IEEs. The article undertakes the evaluation in a structured way that not only considers the effectiveness of these rules, but also suggests a practical five-step methodology for practitioners to utilise when applying the rules. 237

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 - ² Hayton, n 1, p 286.
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