

AUSTRALIAN TAX REVIEW

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EDITORIAL

Stronger, fairer simpler? But not yet 69

ARTICLES

A finding that a taxpayer carries on a business: What is required, related issues and what are the tax consequences? – *Justice Richard Edmonds*

Through the prism of the High Court's decision in *Spriggs & Riddell*, his Honour undertakes a survey of the cases relevant to the criteria that need to be satisfied before a court finds that a business is being carried on, or whether a transaction is in the ordinary course of carrying on business, including profit motive; scale of activities; commercial character of the transaction; system and organisation; species of taxpayer; the temporal context; commitment or whether the activities are provisional only, as well as related issues such as the vehicle used and the scope and nature of the business. Finally, his Honour looks at the tax consequences of such a finding for both outgoings and losses as well as receipts and receivables. 71

Strangers in a strange land: The taxation of services in a global economy – *Catherine Brown*

Trade in services is a growing and important part of the world economy. This article considers the impact of international agreements in disciplining tax discrimination in the cross-border trade in services, and in particular the potential implications of excluding discipline over direct taxes from trade agreements. It addresses three questions. First, how do tax and trade agreements interact in the discipline of tax measures affecting cross-border service providers? Secondly, does this interaction result in tax discrimination against foreign service providers? Thirdly, what role, if any, should tax treaties play in providing protection from tax discrimination. The subject is topical and timely. The ASEAN-Australia-New Zealand Free Trade Agreement came into force on 1 January 2010. Australia will almost certainly be challenged with many of the same questions that were faced by Canada as a signatory to the North American Free Trade Agreement, with respect to its obligations under this trade agreement and the tax treatment of inbound and outbound service providers. This will no doubt include the fundamental question underlying this article: should non-resident service providers be provided with some protection from tax discrimination? 82

The consequences of the German DTA for inbound investment – *Chris Colley*

The Australia-Germany double tax agreement (German DTA) has not been amended since its inception in 1972, despite many changes having occurred since then regarding Australia's tax laws and treaty practices. It is clear that the German DTA is in need of revision – this article seeks to examine its ongoing effect and to highlight the differences faced by German investors in Australia, compared to investors from other developed countries. 98

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