

AUSTRALIAN TAX REVIEW

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EDITORIAL

Something old, something new, something 121

ARTICLES

The meaning and nature of goodwill in the tax context – Ian Tregoning

This article examines the meaning and nature of goodwill in several tax contexts. It examines the concept of goodwill as it relates to the relevant areas of tax legislation, rather than examining these areas of legislation themselves. First the legal concept of goodwill is examined based on relevant case law in the United Kingdom and Australia, and consideration is given to the important High Court case of *FCT v Murry*, as well as to the accounting concept of goodwill where appropriate. Goodwill is then examined in the following contexts: stamp duties; income tax including capital expenditures; the consolidation regime; and the goods and services tax. While the legal concept is found to apply generally in taxation, accounting and other conceptions also play a part in appropriate circumstances. 123

Dividend stripping schemes: Towards a broader judicial interpretation – Rodney Fisher

At issue before the Full Federal Court in *Lawrence v FCT* was the scope of the operation of s 177E(1) of the Income Tax Assessment Act 1936 (Cth), dealing with schemes by way of or in the nature of dividend stripping, or schemes having the effect of a scheme by way of or in the nature of a dividend stripping. While the taxpayer relied on High Court comments in *FCT v Consolidated Press Holdings* as limiting the ambit of schemes having the effect of dividend stripping, the Full Federal Court in *Lawrence* declined to adopt such an interpretation, finding instead that the High Court's comments were merely illustrative of such schemes. This decision arguably adopts a potentially much broader interpretation of s 177E in identifying schemes having the effect of a dividend stripping scheme. 139

Taxation implications of Australia's Carbon Pollution Reduction Scheme – Keith Kendall

The Australian government's proposed Carbon Pollution Reduction Scheme (CPRS) is the primary policy instrument addressing climate change. The model employed raises some significant tax considerations. The current proposal is to implement specialist tax provisions to avoid the uncertainties that would arise under general principles. The present model employs a rolling balance method for accounting for the costs of CPRS permits, similar to that used for trading stock. While this model deals with most concerns that would otherwise arise, there are still some important problems left unaddressed. The current regime effectively provides for a deduction when the permit is surrendered, undermining the stated objectives of simplicity and neutrality. It is proposed that a simple amendment that attributes permits surrendered to the period in which the emissions are made, thereby providing for a deduction when the emissions occur rather than when the permit is surrendered, will resolve these problems while remaining consistent with the CPRS's other purposes. 152

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