

# AUSTRALIAN TAX REVIEW

Volume 40, Number 1

February 2011

EDITORIAL .....	3
ARTICLES	
<b>GST in Australia: Looking forward from the first decade</b> – <i>Justice Richard Edmonds</i>	
His Honour undertakes a snapshot review of the first 10 years of the goods and services tax (GST) in Australia: from the predictions made by the late Justice Hill in 2000 as to the issues that were most likely to occupy the courts in the early years of GST; to the complexities created by the architectural structure of the legislation; to the “intolerable wrestle” that pervades the application of the principles of statutory interpretation; to whether one can discern a shift back to the literalist approach away from the contextual purposive approach. ....	5
<b>Public policy concerns in taxpayer claims against the Commissioner of Taxation: Myths and realities</b> – <i>John Bevacqua</i>	
This article aims to separate myth from reality in relation to three of the public policy concerns most commonly considered by judges in determining taxpayer claims against the Commissioner of Taxation. Specifically, policy arguments around possible adverse motivational impacts of imposing liability on the Commissioner, justiciability concerns and arguments that imposing liability on the Commissioner might open the floodgates to indeterminate liability are assessed. The article concludes that there is little evidence to support treating any of these arguments as determinative in taxpayer claims against the Commissioner. It calls for these concerns to be subjected to the usual rigours of the rules of evidence rather than accepted because of their inherent appeal to logic. ....	10
<b>Theft of trading stock: Preventing a double deduction on loss by theft is problematic</b> – <i>Dale Boccabella</i>	
The theft of trading stock (inventories) is a common occurrence in Australian industry, especially in the retail sector. If the occasion of the theft of trading stock is a taxable event under the general deduction section, a double deduction may arise in regard to the cost/value of the stolen trading stock; once on purchase or through the trading stock tax accounting regime, and again on the occasion of theft. From a policy perspective, double deduction of the one cost is not appropriate. This article analyses the way in which a double deduction could arise in cases of theft of trading stock. From there, it canvasses various ways of preventing a double deduction arising. The conclusion is that the most plausible way to prevent a double deduction is for the occasion of the theft not to be viewed as a taxable event. The most likely way of achieving this is to make the trading stock regime, in conjunction with a limited number of other rules, an exclusive code in regard to the purchase, holding and alienation of trading stock. A second way to prevent a double deduction is to recognise the tax history of the item at the time of the theft, namely, that the economic cost of possessing the stock has already been recognised by the tax rules at the time of purchase, and that it would not be appropriate to recognise the economic cost of the theft. ....	26

## NOTES

### **Avoiding the New South Wales stamp duty anti-avoidance measure in section 24: The decision in *Centro* – Christopher Peadon**

The anti-avoidance provision “targeted” at long-term leasing arrangements in s 24 of the *Duties Act 1997* (NSW) has previously been interpreted liberally and held to apply to such an arrangement by a majority of the Court of Appeal in *Trust Co Ltd v Chief Commissioner of State Revenue*. Nevertheless, the New South Wales Supreme Court recently held in *Centro (CPL) Ltd v Chief Commissioner of State Revenue* that s 24 did not apply to such an arrangement entered into for “duty avoidance” purposes. With respect, it is submitted that the decision in *Centro* is correct. However, that decision illustrates the difficulties in applying s 24 in light of the decision in *Trust Co*. It is suggested that the better view is that s 24 should rather be interpreted and applied in accordance with the views expressed by Giles JA in his Honour’s dissenting judgment in that case. .... 52

### **Legislative change to director penalty notices and security for tax payments – Matthew Broderick**

The director penalty notice provisions have remained largely unchanged since their introduction in 1993. These provisions were previously considered in this journal in “Company Directors: Federal Taxation Liabilities and Obligations When Nearing Insolvency – Part I” (2009) 38 AT Rev 7. New amendments enacted by Commonwealth Parliament in June 2010 are designed to curtail fraudulent phoenix activity by company directors. This is achieved by simplifying the Commissioner’s recovery processes for director penalty liabilities, and by allowing the Commissioner to seek a security bond or deposit for an existing or future tax-related liability where fraudulent phoenix activity occurs, or may occur. .... 60