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EDITORIAL

Henry begins to take effect – or does it? 143

ARTICLES

Aspects of tax avoidance: Trans-Tasman observations – *GT Pagone*

This article examines aspects of the anti avoidance provisions in Australia and New Zealand. It considers the benefits and disadvantages of Australia’s detailed statutory scheme in Pt IVA as compared to the much more broadly worded New Zealand anti avoidance provision. Finally, it asks: has the enactment of the two provisions created certainty and predictability in the application of the anti avoidance provisions? 145

CPT Custodian and the effect of trustee recoupment rights on the taxation of beneficiaries – *John Hyde Page*

This article discusses the role that the trustees’ right of indemnity plays in tax analysis and how it relates to key concepts such as “present entitlement”, “vested and indefeasible interest”, and “absolute entitlement”. A matter of particular interest is whether the indemnity gives trustees an interest in trust assets which derogates from the prima facie rights of beneficiaries. The central contention here is that a trustee’s right of indemnity has no necessary impact on the tax position of trust beneficiaries. A related contention is that the High Court decision in CPT Custodian clarified aspects of the law, but did little to change it. 165

Predicting the past – the problem of finding a counterfactual in Part IVA – *Graeme S Cooper*

Australia’s general anti avoidance rule permits the revenue authority to strike down transactions which occurred, and the tax consequences they generated. This is the easy step. The harder task is the next step because the rule seems to require speculation about what might have happened instead, although there is currently some dispute about just how far this speculation needs to venture, and how accurately it needs to be done. Recent cases show this to be the new battleground of tax avoidance disputes – the problems that inevitably arise from having to speculate about a past that did not happen, but might have. 185

