
Index

Accounting

- revenue assets ... 30, 48-49
- trading stock ... 29-30, 45-46, 48-50
- transfer pricing ... 227
 - United States reforms ... 227-228

Accounting standards

- trust income ... 85

Anti-avoidance provisions

- alternate postulate ... 154, 185, 192, 200
 - absence of alternative ... 195
 - actual events, and ... 196-197
 - ascertaining ... 192-193
 - ATO's response ... 185, 193, 199
 - ATO's responsibility ... 194-195
 - circumstances of taxpayer ... 195-196
 - consequences of alternative ... 197
 - "do almost the same thing" ... 197
 - "do nothing" option ... 197
 - reasonableness ... 193-194
 - recent cases ... 185-186
 - responsibility for setting out ... 194-195
 - tax benefit, and ... 159-162, 193-194, 198
 - tax benefit, definition ... 193
 - taxpayer's responsibility ... 194-195
 - timing issues ... 198
- application of provisions ... 151, 162
 - acceptable practice ... 163
 - actual purpose ... 153
 - alternate postulate ... 154
 - dominant purpose ... 153-154
 - New Zealand ... 151, 157
 - objective matters ... 153-154
 - permissible structuring ... 154-155
 - predication test ... 152-154
- Australian Tax Office ... 186-187
 - alternate postulate ... 185, 193-195, 199
- competing policy considerations ... 151
- dominant purpose ... 153-154, 158, 189, 192, 195
 - actual purpose ... 153
 - competing and inconsistent purposes ... 190
 - profit enhancement ... 191-192
 - taxpayer's stated purpose ... 189-190

- timing considerations ... 190-191
- financial products ... 163-164
- former provisions ... 150
 - criticisms of terms ... 150-151
- identification of scheme ... 158-160
- interpretation ... 145-146
 - criticisms of approach ... 149
 - New Zealand ... 146-149, 155-157
 - purposive approach ... 147, 149, 157
 - Ramsay principle ... 146-147
 - United States ... 148-149
- New Zealand ... 145-146, 149-150, 163
 - application of provisions ... 151, 157
 - Ben Nevis case ... 147-148, 155-157
 - criticisms of provision ... 151
 - parliamentary contemplation approach ... 147-148, 155-157
 - purposive approach ... 157
- other provisions ... 188, 199-200
- overview ... 144-145, 149, 164, 185, 200
- purpose of provisions ... 146
- role of scheme ... 157-158
- scope of scheme ... 187, 192
 - defining scope ... 187-188
 - effect of other provisions ... 188
 - single or several schemes ... 189
 - tax benefit, and ... 188-189
 - timing dimension ... 189
- stamp duty ... 4, 52-55
- statutory provisions ... 157, 162
 - drafting of legislation ... 162-163
- structure of transactions ... 163
- tax benefit ... 159, 192
 - alternate postulate ... 159-162, 193-194, 198
 - definition ... 193
 - objective fact ... 161
 - profit enhancement, or ... 191-192
 - scope of scheme, and ... 188-189
- tax uncertainty ... 163
 - proposal to reduce ... 164
- United States ... 148
 - economic/business substance test ... 148-149

Index

Assessable income

- tax history of items ... 47
- trading stock theft ... 34-35, 41
- trust income ... 82

ATO *see* **Australian Tax Office**

Australian Tax Office *see also* **Commissioner**

- advance pricing program ... 225, 232, 235
 - case leaders ... 234
 - independent review ... 232-233
 - internal review ... 234
 - practice statement ... 233
 - processing target times ... 233
- anti-avoidance provisions ... 186-187
 - alternate postulate ... 185, 193-195, 199
- information provision ... 11
- tax administration ... 3-4, 10
- Tax System Advisory Board, and ... 3
- transfer pricing ... 226-227
 - advance pricing program ... 225, 232-234

Beneficiaries *see also* **Trust income**

- trustee indemnity, and ... 165-166, 170
 - absolute entitlement ... 169, 181-183
 - beneficial interests ... 171-178
 - insufficient value in trust estate ... 166-167
 - present entitlement ... 170, 179-181, 184
 - tax implications ... 169-170
 - termination of trust ... 165-166, 177-178, 182-183
 - Thistlethwayte presumption ... 178-179
 - vested and indefeasible ... 183-184

Board of Taxation

- small business concessions ... 108-109

Capital gains tax *see also* **Small business concessions**

- anti-double counting rule ... 36
- indirect Australian real property interests ... 210, 220-221
 - all-or-nothing rule ... 213, 217
 - identifying gain or loss ... 213-215, 217-220
 - non-portfolio interest test ... 211
 - principal asset test ... 211-213, 216-217
- non-residents ... 203, 205, 210, 221-222
 - background to amendments ... 205-206

- double tax agreements ... 208-210, 213, 215-220
- indirect Australian real property interests ... 210-221
- integrity measures ... 206-207
- OECD Model Convention ... 206-208
- policy objectives ... 206, 221
- taxable Australia property ... 211, 213
- trust income ... 80, 81-82, 87-88
- trustees' indemnity ... 169

Car parking benefits

- exempt fringe benefits ... 6
- carve-outs ... 6

Carrying on a business

- individuals ... 116, 118
- managed investment schemes ... 113-114
- overview ... 113
- small business enterprises ... 113, 131
 - managed investment schemes ... 113-114
 - property investment business ... 117-119
 - timing issues ... 119
 - types of entities ... 114-117
- types of entities ... 114
 - companies ... 115-116
 - individuals ... 116
 - partnerships ... 117
 - trusts ... 116-117

Commissioner

- tax administration ... 3-4, 10
- Tax System Advisory Board, and ... 3
- taxpayer claims against ... 4, 10, 24-25
 - adverse motivational impacts ... 10-15
 - common law claims ... 16-17
 - deductibility claims ... 20-21
 - estoppel claims ... 16, 19
 - indeterminate liability ... 20-24
 - justiciability concerns ... 15-20
 - negligence ... 11
 - rules of evidence ... 15, 25
 - special protection of revenue ... 23-24
 - tortious claims ... 17, 19

Companies

- carrying on a business ... 115-116

-
- control of company ... 126
 - affiliates ... 127
 - beneficial ownership ... 126-127
 - small business concessions ... 115-116, 126-127
 - sale of shares or units ... 135
 - small business participation percentage ... 133-134
 - Compensation**
 - loss of trading stock ... 43-44, 46-47
 - Deductions**
 - claims against Commissioner ... 20-21
 - tax history of items ... 47-48
 - trading stock theft ... 4, 26, 29-30, 41, 44-47, 50
 - case examples ... 49-50
 - double deductions ... 4, 26, 27-28, 35-50
 - examples ... 27-28, 30-31, 37-40
 - incurred ... 32
 - loss or outgoing ... 32
 - non-cash transaction ... 33-34
 - prevention of double deduction ... 27, 35-50
 - stock on hand ... 30-31
 - revenue or capital ... 32-33
 - timing of deduction ... 44-45
 - Deed of settlement companies** ... 78
 - Defences**
 - directors' penalty notices ... 63
 - Definitions**
 - active asset ... 131
 - affiliate ... 123, 130
 - aggregated turnover ... 119
 - annual turnover ... 119-120
 - business real property ... 111
 - control ... 126-129
 - indirect Australian real property interest ... 210-211
 - ordinary income ... 119-120
 - provision ... 37
 - significant individual ... 133
 - small business CGT affiliate ... 123
 - small business entity ... 112
 - small business participation percentage ... 133
 - supply ... 7, 9
 - tax avoidance arrangement ... 151
 - tax benefit ... 193
 - Directors' penalty notices**
 - agreements with Commissioner ... 62
 - commencement of proceedings ... 61
 - defences ... 63
 - formal requirements ... 63
 - overview ... 4, 60
 - PAYG obligations ... 61
 - phoenix activities, and ... 60, 63
 - scope of amendments ... 60-61
 - security bonds ... 63-64
 - service of notices ... 61-62
 - deemed giving ... 62
 - Discretionary trusts**
 - carrying on a business ... 117
 - control of trust ... 128
 - distribution test ... 128
 - influence test ... 128-129
 - structuring issue ... 129
 - small business concessions ... 117, 128
 - small business participation percentage ... 133-134
 - trust income ... 75-76
 - Double tax agreements**
 - alienation of real property ... 208, 215
 - effect of amendments ... 208-209, 215, 221
 - multi-tier look through ... 208-209, 215-216, 220
 - conflict of provisions ... 215
 - indirect Australian real property interests ... 213, 215, 220-221
 - all-or-nothing rule ... 217
 - identifying gain or loss ... 217-220
 - principal asset test ... 216-217
 - transfer pricing disputes ... 224
 - Estoppel**
 - claims against Commissioner ... 16, 19
 - Evidence**
 - claims against Commissioner ... 15, 25
 - Ferguson Report**
 - trust income ... 73, 75-76
-

Index

Foreign currency

- supply of rights ... 9, 102, 105
 - construction issue ... 104
- contextual considerations ... 102-104

Franking credits

- trust income ... 88-89

Fringe benefits tax

- car parking benefits ... 6
- exempt fringe benefits... 6
 - carve-outs ... 6

Goods and services tax

- apportionment ... 7
- composite supplies ... 7
- consideration ... 7
- construction of Act ... 5-6, 94-95, 107
 - language of Act ... 100-101
 - practical business tax ... 99, 100-102, 107
 - principles of construction ... 95-99
 - subjective construction ... 106-107
- foreign currency ... 102
 - supply of rights ... 9, 102-103
- GST-free supplies ... 5, 7
 - carve-outs ... 5-6, 9
- input taxed supplies ... 8-9
- interpretation ... 4, 7-8, 68, 94, 99
 - context ... 96-97, 100-107
 - extrinsic materials ... 96-97, 99
 - Gloxinia case ... 105-106
 - literal approach ... 95, 97, 102, 105
 - policy objectives ... 99
 - practical business tax ... 94-95, 99-103, 105-107
 - purposive approach ... 94
 - Sunchen case ... 106-107
 - supply of rights ... 9, 102-105
 - text of Act ... 94-96, 99
 - Travellex case ... 9, 102-105
- new residential premises ... 105-106
- overview ... 5
- practical business tax, as ... 94-95, 99-100, 103, 105-107
 - characterisation cases ... 101-102
 - underlying contention ... 100

residential accommodation ... 106-107

structure of Act ... 5-6, 94

supply ... 7

definition ... 7, 9

supply of money ... 9

supply of rights ... 9, 102, 105

construction issue ... 104

contextual considerations ... 102-104

literal approach ... 105

Henry Review

- Asprey Committee, and ... 143
- minerals resource rent tax ... 143
- overview ... 3, 143
- policy implementation ... 143-144
- release of report ... 67
- resource super profits tax ... 67, 203
- small business concessions ... 68
- Tax System Advisory Board ... 3
 - efficacy of proposal ... 3-4
 - submissions ... 4
- trust income ... 84, 89-90, 93

High Court

- special leave to appeal ... 69

Interpretation

- anti-avoidance provisions ... 145-146
 - criticisms of approach ... 149
 - New Zealand ... 147-149, 155-157
 - purposive approach ... 147, 149, 157
 - Ramsay principle ... 146-148
 - United States ... 148-149
- context ... 96-98, 100-107
- extrinsic materials ... 96-99
- goods and services tax ... 4, 7-8, 68, 94-95, 99
 - context ... 96-97, 100-107
 - extrinsic materials ... 96-97, 99
 - Gloxinia case ... 105-106
 - literal approach ... 95, 97, 102, 105
 - policy objectives ... 99
 - practical business tax, as ... 94-95, 99, 100-103, 105-107
 - purposive approach ... 94
 - Sunchen case ... 106-107
 - supply of rights ... 9, 102-105

-
- text of Act ... 94-96, 99
 - Travelex case ... 9, 102-105
 - literal approach ... 7, 9, 95-98, 102, 105, 145
 - overview ... 7, 95
 - policy objectives ... 98-99
 - purposive approach ... 8, 58, 94, 98-99, 145, 147, 149, 157
 - stamp duty (NSW) ... 4
 - long-term lease arrangements ... 53, 55, 58-59
 - text of Act ... 94-96, 99
 - trust income ... 237
 - Income Tax Act 1895 (Vic) ... 237
 - Managed investment schemes**
 - carrying on a business ... 113-114
 - CPT Custodian case ... 175
 - Minerals resource rent tax** ... 143
 - Negligence**
 - claims against Commissioner ... 11
 - New Zealand**
 - anti-avoidance provisions ... 145, 149-150, 163
 - application of provisions ... 151, 157
 - Ben Nevis case ... 147-148, 155-157
 - criticisms of provision ... 151
 - parliamentary contemplation approach ... 147-148, 155-157
 - purpose of provisions ... 146
 - purposive approach ... 157
 - present entitlement ... 242, 245, 247
 - Tax Working Group Review ... 143
 - Non-residents**
 - capital gains tax ... 203, 205, 210, 221-222
 - background to amendments ... 205-206
 - double tax agreements ... 208-210, 213, 215-220
 - indirect Australian real property interests ... 210-221
 - integrity measures ... 206-207
 - OECD Model Convention ... 206-208
 - policy objectives ... 206, 221
 - taxable Australia property ... 211, 213
 - indirect Australian real property interests ... 210, 220
 - all-or-nothing rule ... 213, 217
 - identifying gain or loss ... 213-215, 217-220
 - non-portfolio interest test ... 211
 - principal asset test ... 211-213, 216-217
 - OECD**
 - cross-border collaboration ... 229
 - global forum ... 229-230
 - tax information exchange ... 230
 - OECD Model Convention**
 - arbitration ... 225
 - capital gains tax ... 206-207
 - double taxation ... 221
 - immovable property ... 207, 210, 221-222
 - indirect disposal ... 208-209
 - multi-tier look through amendments ... 209-210
 - transfer pricing disputes ... 225
 - Ownership**
 - beneficial ownership ... 165
 - control of company ... 126-127
 - concepts of ownership ... 165
 - Partnerships**
 - carrying on a business ... 117
 - control of partnership ... 127-128
 - liability for tax ... 70-71
 - small business concessions ... 110, 117, 127-128, 130
 - active asset test ... 132-133
 - PAYG obligations**
 - directors' personal liability ... 61
 - Phoenix activities**
 - directors' penalty notices ... 60, 63
 - Public policy and taxpayer claims**
 - adverse motivational impacts ... 10-11, 15
 - academic debate ... 13
 - countervailing positive considerations ... 13-15
 - empirical evidence ... 11-13
 - information provision ... 11
 - taxpayer compliance ... 14-15
 - indeterminate liability ... 10, 20, 24
 - bearing of losses ... 21-23
 - deductibility claims ... 20-21
 - empirical evidence ... 24
 - special protection of revenue ... 23-24
-

- justiciability concerns ... 10, 15, 18
 - common law claims ... 16-17
 - estoppel claims ... 16, 19
 - nuanced approaches ... 18-20
 - policy/operational matters, distinction ... 18-19
 - political matters ... 18
 - tortious claims ... 17, 19
- negligence ... 11
- overview ... 4, 10, 24-25
- rules of evidence ... 15, 25
- Resource super profits tax** ... 67, 203
- Revenue assets** *see also* **Trading stock theft**
 - accounting ... 30, 48-49
 - tax history of item ... 47
- Self-managed superannuation funds**
 - business real property ... 111
 - carrying on a business ... 117-118
- Separation of powers**
 - Australian position ... 17-18
 - claims against Commissioner, and ... 15-18
 - estoppel claims ... 16, 19
 - nuanced approaches ... 18-20
 - policy/operational matters, distinction ... 18-19
 - political matters ... 18
 - tortious claims ... 17, 19
 - United Kingdom ... 18
- Simplified tax system**
 - small business concessions ... 109
- Small business concessions**
 - active asset test ... 109-110, 131-132
 - active asset, definition ... 131
 - extent of use ... 132
 - partnerships ... 132-133
 - affiliates ... 123, 131
 - acting in concert ... 124-125
 - acts in accordance with directions ... 123-124
 - deemed affiliates ... 130-131
 - definition ... 123, 130
 - shareholders ... 127
 - spouse ... 130
 - trusts ... 125-126
 - aggregated turnover ... 119
 - affiliates ... 123
 - “connected with” test ... 126
 - definition ... 119
 - amendments ... 108
 - Board of Taxation review ... 108-109
 - simplified tax system ... 109, 123
 - 2009 amendments ... 109-110, 123, 130
 - annual turnover ... 119
 - definition ... 119-120
 - excluded receipts ... 120
 - ordinary course of business ... 120-122
 - ordinary income ... 120-121
 - outside ordinary course ... 122-123
 - part-year turnover ... 120
 - profit-making activities ... 122-123
 - background to introduction ... 108
 - carrying on a business ... 113, 131
 - companies ... 115-116
 - individuals ... 116, 118
 - managed investment schemes ... 113-114
 - partnerships ... 117
 - property investment business ... 117-119
 - timing issues ... 119
 - trusts ... 116-117
 - types of entities ... 114-117
 - CGT concession stakeholders ... 110-111, 133
 - sale of shares or units ... 135
 - significant individual, definition ... 133
 - small business participation percentage ... 133-135
 - CGT rollover relief ... 108, 135-136
 - cessation of entity ... 136-137
 - effect of death ... 137
 - replacement assets ... 136-137
 - companies ... 115-116
 - control of company ... 126-127
 - sale of shares or units ... 135
 - “connected with” test ... 126, 131
 - control, definition ... 126-129
 - companies ... 126-127
 - discretionary trusts ... 128-129
 - partnerships ... 127-128

- unit trusts ... 128
 - discretionary trusts ... 128
 - control of trust ... 128-129
 - Henry review ... 68
 - net assets test ... 109-110, 123
 - main residence ... 112
 - personal use assets ... 111-112
 - timing ... 111-112
 - overview ... 68, 108, 137
 - partnerships ... 110, 117, 130
 - active asset test ... 132-133
 - control of partnership ... 127-128
 - small business entity test ... 109-110, 130
 - actual turnover ... 112
 - aggregated turnover ... 119, 123, 126
 - annual turnover ... 119-123
 - carrying on a business ... 113-119
 - requirements ... 112
 - threshold tests ... 108, 110-111, 130
 - trusts ... 116-117
 - affiliates ... 125-126
 - sale of shares or units ... 135
- Stamp duty (NSW)**
- long-term lease arrangements ... 52, 59
 - amendments to provision ... 52, 54-55
 - anti-avoidance provisions ... 4, 52-55
 - background to Centro ... 54
 - decision in Centro ... 56
 - interpretation ... 4, 53, 55, 58-59
 - pre-existing arrangements ... 56-58
 - scope of provision ... 53-56
 - significant purpose of arrangement ... 55
- Tax avoidance** *see also* **Anti-avoidance provisions**
- discussion papers ... 67
 - overview ... 145
- Tax forum** ... 203
- Tax legislation** *see also* **Interpretation**
- application of provisions ... 145
- Tax reform** *see also* **Henry Review**
- business tax reform working group ... 203
 - consultation ... 67
 - tax forum ... 203
 - trust income ... 68, 236-237, 253
- Tax System Advisory Board**
- efficacy of proposal ... 3-4
 - submissions ... 4
- Tax system review** *see* **Henry Review**
- Taxpayers' Charter** ... 24
- Taxpayer compliance**
- sanctions, and ... 14-15
- Testamentary trusts**
- trust income ... 72, 74
 - conduct of business by trustees ... 78
- Theft** *see* **Trading stock theft**
- Tort**
- claims against Commissioner ... 17, 19
- Trading stock theft**
- accounting ... 45-46
 - profit and loss ... 29-30, 48-49
 - receipts and outgoings ... 29, 48, 50
 - acquisition of stock ... 29, 30, 42, 44
 - livestock ... 42-43
 - purchase cost ... 32, 43
 - recognition of cost ... 47
 - assessable income ... 34-35, 41
 - circulating capital ... 33
 - disposal of stock ... 43
 - Div 70 as exclusive code ... 41-42, 44, 47
 - acquisition of stock ... 42-43
 - disposal of stock ... 43
 - drafting of provisions ... 45
 - holding of stock ... 43
 - loss of stock ... 43-44
 - valuation issues ... 44-46
 - double deductions ... 4, 26-27, 35, 50
 - examples ... 27-28, 30-31, 37-40
 - prevention approaches ... 27, 35-50
 - economic loss ... 33
 - examples ... 27
 - after year of purchase ... 27-28, 31, 38-40
 - same year as purchase ... 27, 30-31, 37-40
 - two years after purchase ... 28, 31, 38-39
 - general deduction ... 4, 31-32, 34, 41, 44, 46-47
 - acquisition of stock ... 29-30, 42
 - case examples ... 49-50
 - exclusion approach ... 39-41

- incurred ... 32
 - loss or outgoing ... 32
 - non-cash transaction ... 33-34
 - revenue or capital ... 32-33
 - timing of deduction ... 44-45
 - holding of stock ... 43
 - loss of stock ... 43, 46, 50
 - compensation receipts ... 43-44, 46-47
 - loss, meaning ... 46
 - realisation event, as ... 46-47
 - overview ... 26-27, 50
 - prevention of double deduction ... 27, 35
 - capital gains provisions ... 36
 - Div 70 as exclusive code ... 41-46
 - general deduction exclusion ... 39-41
 - ITAA 36 provisions ... 35-36
 - ITAA 97 provisions ... 36-39
 - legislature's intent ... 35
 - same amount requirement ... 37-38
 - realisation event, as ... 46-47
 - stock on hand ... 30, 43
 - examples ... 30-31
 - tax history of items ... 47
 - valuation issues ... 44-46
- Trading trusts**
- insolvency ... 78
 - overview ... 78
 - trustees' indemnity ... 166
- Transfer pricing**
- accounting reforms ... 227-228
 - advance pricing agreements ... 203-204, 223, 225-226, 230, 235
 - ATO program ... 225, 232-235
 - background to introduction ... 223
 - benefits ... 227, 234-235
 - criticisms ... 234
 - new developments ... 231-234
 - United States ... 231-232, 235
- arm's length price ... 226
- audits ... 224-225, 227, 229-230
- Australian Tax Office ... 226-227
 - survey results ... 226
 - United States ... 226
- Australian Tax Office ... 226-227
- advance pricing program ... 225, 232-235
- cross-border collaboration ... 229
- OECD initiatives ... 229-230
- documentation requirements ... 223-224
- OECD initiatives ... 229
- global forum ... 229-230
 - tax information exchange ... 230
- overview ... 223
- reporting requirements ... 227, 229
- uncertain tax positions ... 228-229
- United Kingdom ... 228-229
- United States ... 227-228
- resolution of disputes ... 224
- advance pricing agreements ... 225
 - arbitration ... 224-225
 - survey results ... 225
- United States ... 226
- accounting reforms ... 227-228
 - advance pricing agreements ... 231-232, 235
 - uncertain tax positions ... 228
- Trust income**
- accounting standards ... 85
 - background to taxation ... 67, 70, 252
 - colonial tax legislation ... 70, 241-246
 - concept of income ... 76, 78-80
 - conduct of business ... 77-80
 - conference of tax officers, 1917 ... 250-251
 - deed of settlement companies ... 78
 - Ferguson Report ... 73, 75-76
 - High Court decisions ... 72-76
 - Income Tax Act 1895 (Vic) ... 70, 237-238, 241-245
 - Income Tax Assessment Act 1915 ... 70-71, 248-251
 - Income Tax Assessment Act 1918 ... 71-72, 248-252
 - Income Tax Assessment Act 1922-34 ... 72-73
 - investment of trust funds ... 76-80
 - present entitlement ... 73, 75-76, 79-80, 236-253
 - proportionate approach ... 80-81
 - quantum approach ... 80-81

-
- representative taxpayer ... 238, 241-242, 245, 251
 - trustees' liability, and ... 243-245, 250-251
 - uniform tax act proposal ... 250-252
 - Bamford case ... 81, 236
 - Commissioner's support ... 76, 81
 - decision impact statement ... 87
 - implications of decision ... 83
 - issues ... 81-82
 - judgment ... 69-70, 82-83
 - conduct of business ... 77-78, 80
 - concept of income ... 78-80
 - life tenants ... 79-80
 - profits ... 79, 84
 - statutory recognition ... 78
 - trading trusts ... 78
 - discretionary trusts ... 75-76
 - distributable income ... 83-86, 90
 - Henry report ... 84, 89-90, 93
 - income of the trust estate ... 75-76, 80, 82-83
 - assessable income ... 82
 - share, meaning ... 83
 - share of the income ... 73-74, 82-84
 - interpretation ... 237
 - Income Tax Act 1895 (Vic) ... 237
 - investment of trust funds ... 76-77
 - conduct of business by trustees ... 77-80
 - speculative transactions ... 77
 - net income of the trust estate ... 75-76, 80, 82, 90
 - capital gains ... 87-88
 - franking credits ... 88-89
 - possible reform approach ... 91-93
 - redefining net income ... 85-86
 - resolving difficulties ... 90-93
 - share, meaning ... 82, 88
 - share of the net income ... 73-74, 82, 87
 - trust deed amendments ... 85-87
 - trustees' indemnity ... 166, 170
 - New Zealand ... 242, 245, 247
 - present entitlement ... 73, 75-76, 79-80, 204, 236, 252-253
 - actual receipt, distinction ... 247
 - colonial tax legislation ... 241-246
 - conference of taxation officers, 1917 ... 250
 - Crowley's case ... 237, 239-241, 244
 - double taxation ... 244
 - first use of term ... 237-238
 - interpretation of 1895 Act ... 237
 - legislative origins ... 237
 - meaning ... 246-247, 252
 - New Zealand ... 242, 245, 247
 - rationale for introduction ... 237
 - representative taxpayer ... 238, 241-242, 245, 251
 - trustee indemnity, and ... 170, 179-181, 184
 - trustees' liability, and ... 243-245, 250-251
 - uniform tax act proposal ... 250-252
 - United Kingdom ... 246-247
 - property income ... 78-79
 - proportionate approach ... 80-81, 83, 87
 - quantum approach ... 80-81
 - tax reform ... 68, 236-237, 253
 - Henry report ... 84, 89-90, 93
 - possible reform approach ... 91-93
 - testamentary trusts ... 72, 74
 - conduct of business by trustees ... 78
 - trust deeds ... 84-85
 - amendments ... 85-87
 - redefining net income ... 85-86
 - Trustees' indemnity**
 - beneficial interests ... 171-172, 179
 - CPT Custodian case ... 175-178
 - general law rights ... 172-174
 - statutory rights ... 174-175
 - beneficiaries' interests ... 165-166, 170
 - absolute entitlement ... 169, 181-183
 - beneficial interests ... 171-179
 - insufficient value in trust estate ... 166-167
 - present entitlement ... 170, 179-181, 184
 - termination of trust ... 165-166, 177-178, 182-183
 - Thistlethwayte presumption ... 178-179
 - vested and indefeasible ... 183-184
 - capital gains tax ... 169
 - CPT Custodian case ... 175, 179
 - absolute entitlement ... 181
-

Index

- beneficial ownership ... 175-179
- High Court reasons ... 176
- termination of trust ... 177-178
- equitable security interests ... 165, 172-174
- failure to assert ... 167
- general law rights ... 167, 172-174
- overview ... 166, 184
- quantum of right ... 169
- security interests ... 165, 172-174
 - statutory rights ... 174-175
- sources of recoupment rights ... 166-167
 - general law rights ... 167
 - statutory rights ... 167-168
 - trust deeds ... 168-169
- statutory rights ... 167-168, 174
- tax implications ... 165-166, 169-170
- Trusts** *see also* **Beneficiaries; Discretionary trusts; Trading trusts; Unit trusts**
 - conduct of business ... 77-78, 80, 116-117
 - concept of income ... 78-80
 - life tenants ... 79-80
 - profits ... 79, 84
 - statutory recognition ... 78
 - trading trusts ... 78
 - trustees' liability ... 169
 - small business concessions ... 116-117
 - affiliates ... 125-126
 - sale of shares or units ... 135
 - small business participation ... 133-134
- Unit trusts**
 - control of unit trust ... 128
 - CPT Custodian case ... 175
 - beneficial ownership ... 175-177
 - small business concessions ... 128
 - small business participation ... 133-134
- United Kingdom**
 - Mirrlees Review ... 143
 - present entitlement ... 246-247
 - transfer pricing ... 226
 - reporting requirements ... 228-229
- United States**
 - anti avoidance provisions ... 148
 - economic/business substance test ... 148-149
 - transfer pricing ... 226
 - accounting reforms ... 227-228
 - advance pricing agreements ... 231-232, 235
 - uncertain tax positions ... 228