

# AUSTRALIAN TAX REVIEW

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## EDITORIAL

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## ARTICLES

### **Legal positivism and the characterisation of interest: A comparative Commonwealth perspective – *Chris Ohms and Karin Olesen***

Interest payable on borrowed funds or on amounts owing by reason of the operation of the law (such as damages) in relation to an income earning activity is a significant deductible expense throughout the Commonwealth. In this article the authors consider further this generic issue having regard to four specific case studies from different Commonwealth jurisdictions (Australia, Canada, New Zealand, and the United Kingdom). They conclude a posteriori that the Duke of Westminster approach still prevails and that the only time at which the legal form of a transaction giving rise to interest can be re-characterised is where the scheme- and purpose-specific taxing legislation requires a different approach. The characterisation of interest is also investigated regarding the International Financial Accounting Standards (IFRS) in the four jurisdictions. There has always been a relationship between accounting profits and taxable profits. However, with the IFRS being implemented in many countries worldwide, these harmonised accounting systems may provide some impetus towards a harmonised tax base and profits. .... 5

### **Environmental protection provisions – how useful are they? – *Sally Joseph***

This article discusses the accessibility and application of the environmental protection provisions that provide a deduction for expenditure incurred in preventative and remedial action regarding pollution and waste. Enacted in 1992 and subsequently twice rewritten, they are purported to have retained their original meaning and policy intent. Although an operating provision, there appears to be some incongruity with aspects of the tax law. In addition, the provision is not reflective of the current discourse regarding environmental issues. The provisions are prescriptive in their operation and impose both operative and substantive limits on deductions. As a result they are not easily accessible and apply only in very narrowly defined situations. .... 29

### **The accommodation bond conundrum and the taxation treatment of residential aged care facilities – *Hung Chu and Wayne Lonergan***

The valuation treatment of accommodation bonds has important implications for the taxation treatment of residential aged care facilities. Despite this, there has been much confusion among market participants about this valuation treatment. This article examines the sources of this confusion and provides a systematic conceptual framework to resolve the valuation uncertainty. It highlights cases where focusing strictly on the existence of what is technically a legal liability has resulted in an incorrect valuation outcome. Furthermore, given the conceptual similarities between accommodation bonds in the context of residential aged care facilities and resident loans in the context of retirement villages, the article also provides insights into how to resolve similar confusion about the valuation treatment of resident loans in practice. .... 42

