Index

Accountants see also Client legal privilege; Confidentiality	guidance for legal professionals 121-122
anti-money laundering 117, 119	New Zealand 135
Australia 128, 130-131, 142	non-European responses 118, 128
Canada 138	recommendations 117-118
European response 122-124	risk-based approach 121-122
New Zealand 142	United Kingdom 117, 122, 126-128, 143
	United States 118, 133-134
risk-based approach guidance 122	"gatekeeper" initiative 78, 117-118
United States 133-134	European response 117, 123, 143
Accountants' advice see also Choice of business form; Tax advisors	"gatekeeper", use of term 118
business formation 41	lawyers' traditional role 119-120
Anti-avoidance rules see General anti-avoidance	United States 133, 134
rules; Tax avoidance schemes	goals of regulation 117
Anti-money laundering see also Terrorism	New Zealand 135, 142
financing	overview 78, 117, 143
Australia 118, 128, 131, 142-143	suspicious transaction reporting 118-119
classification of offences 128	Australia 130, 131
client legal privilege 130, 142-143	Canada 135-136
mutual evaluation process 128-129	client legal privilege 119, 123-127, 130
proposed second tranche 130-131, 143	confidentiality 119, 123-128, 130
Canada 135, 139	exemptions from requirements 124-125
accountants 138	European Union 122-126
client legal privilege 136, 139, 141	safe harbour clauses 118
confidentiality 136	United Kingdom 126-128
lawyer exemptions 135-137	United States 133-134
lawyer involvement study 137-138	tax advisors 119, 139
lawyer self-governance rules 136	Australia 142-143
privacy 141	client legal privilege 139-143
European Union 117, 122, 143	confidentiality 127-128
client legal privilege 123-125	New Zealand 142
confidentiality 123-126	United Kingdom 117, 122, 126, 143
exemptions from requirements 124-125	accountants 139-140
"gatekeeper" initiative 123, 143	client legal privilege 126-127, 139-140
lawyers' obligations 122-123	confidentiality 127-128
risk-based approach 125	exemptions from disclosure 127
Financial Action Task Force 117, 120	failure to report offence 126
	privilege against self-incrimination 140
Australia 118, 128-130	reporting threshold 126
Canada 137, 139	United States 118, 131
criticisms of process 121	accountants 133-134
European response 117, 122-126, 143	
"gatekeeper" initiative 78, 117-120, 123, 133-134, 143	auditors 132-134 client legal privilege 140-141

312

"gatekeeper" initiative 133-134	reversal of deduction 93		
lawyers 132, 134	written off requirement 87		
Assessable income	guidelines for determining 86-87		
bad debts 88, 92	overview 85		
Assessable recoupments	related party financing 113-114		
bad debts 92-93	timing issues 114-115		
recoupment, definition 92	subsequent recovery 92, 112-113		
Asset protection	reversal of deduction 93		
choice of business form 34, 47-49	statutory income 92-93		
Assignment of debts see Debt parking	taxation of financial arrangements 111-112		
Auditors	balancing adjustment 112		
anti-money laundering 132-134	subsequent recovery of debt 112-113		
AUSTRAC	Bankruptcy		
enforcement powers 130	commercial debt forgiveness 100		
overview 128-129	superannuation interests 148, 160, 181		
Australian Tax Office (ATO) see also	current protection 163		
Commissioner; GAAR Panel; Recovery of tax	historical background 160-163		
debts	intention to defeat creditors 163, 180		
audit disputes 82-83	pre-conditions of release 172-173		
consultation process 83-84	reasonable benefit limits 161-162		
dispute resolution 82	rollovers 162-163		
audit disputes 82-83	transfer of entitlements 161		
clarity of legislative change 83	superannuation trust deeds 161-163		
multinational corporations 81-82	Blackhole expenditure		
overview 78-80, 84	farmout arrangements 29		
tax issues entry system 58	Business entities see Choice of business form		
tax litigation 82	Canada		
tax policy 80-81	anti-avoidance rules 150-151, 158-159, 243, 251,		
tax system design 80-81 Bad debts	265		
	anti-money laundering 135, 139		
assessable income 88, 92 assessable recoupments 92-93	accountants 138		
capital gains tax 91	client legal privilege 136, 139, 141		
recoupment of debt 93	confidentiality 136		
deductions 85	lawyer exemptions 135-137		
company ownership or control 91	lawyer involvement study 137-138		
debt in assessable income 88	lawyer self-governance rules 136		
existence of debt 86, 93	privacy 141		
general deductions 90-91	terrorism financing 135, 138-139		
money-lending business 88-90	Capital allowances see also Depreciating assets		
recoupment of debt 92-93	farmout arrangements 3, 5-6, 8-9, 18-19, 32		
related party financing 113-115	rulings approach 10		
requirements for deduction 85-90	Capital gains tax see also CGT events		
requirements for acquetion 63-70	apportionment rules 198-199		

CGT assets 186	forgiveness of debts 94, 98
collectables 183	market value substitution rule 105-106
historical treatment 189-190	personal use component 148, 183, 196-197, 205
loss disregard rule 203	cost recognition 199-201
depreciating assets 182-183	efficiency issues 204
collectables 190, 203	full loss recognition 201-202, 205
historical treatment 186-194, 199	loss disregard rule 202-204
personal use assets 190-191, 193, 197-198,	motor vehicles 204
202-203	tax revenue 204
personal use component 148, 183, 186-189, 199-205	Choice of business form
farmout arrangements 6, 8-9, 11	asset protection 34, 47-49
farmors' perspective 19-25	available forms 33-34
look-through approach 19-20, 23-24, 32	complexity of forms 48, 52
separate asset approach 18-23, 30-32	considerations in choice 34, 39, 47
single asset approach 19-20, 23-24	rankings of factors 50
forgiveness of debts 94, 98	corporations 33, 36, 38-41, 51
consolidated groups 104	reasons for incorporating 43-44
introduction of regime 186	limited partnerships 35-36, 38-39
main residence 203-204	partner's liability 35-36
market value substitution rule 105-106	overview 4, 33, 49
personal use assets 183, 189	partnerships 35, 38-44, 51
	partner's liability 35
capital losses 190-191, 193	public unit trusts 44-45
dual use assets 192-193	sole proprietors 33-34, 38-39, 41, 43-44, 51
definition 191	suitability of form 39-40
historical treatment 189-193	formal advice 41
loss disregard rule 191, 197-198, 202-203	United Kingdom 40-41
personal use or enjoyment 191-192	survey on choice 34, 45
reduced cost base 187-189	aims of research 45
Carbon pricing	conduct of survey 46
floating price 147	content of survey 45
Carrying on a business	demographics of participants 46-47
money-lending business 88-89	findings 47-48
CGT events	future research 49
bad debts 91	limitations 49
recoupment of debt 93	rankings data 50-52
debt for equity swaps 105-106	tax benefits 34, 39, 41-42, 47-48
depreciating assets 182-183, 194-195	public unit trusts 44-45
collectables 203	rankings of forms 51-52
determining gain and loss 195	tax compliance costs 47-49, 52
motor vehicles 204	rankings of forms 51
personal use assets 197-198, 202-203	-
personal use component 148, 183, 196-205	tax neutrality 42, 45
	tax return data 38-39

tax treatment 42	civil law systems 125-126		
changes to tax system 42-45	Consolidated groups		
United Kingdom 43	forgiveness of debts 98, 102		
United States 43	depreciating assets 102-104		
trusts 36, 38-39, 51	reduction of cost base 104		
limitation of liability 37	taxation of financial arrangements 110-111		
rule against perpetuities 37	Corporations see also Large corporate entities;		
taxation treatment 37-38	Multinational corporations		
types of trusts 37	choice of business form 33, 36		
utilisation of forms 38-39	reasons for incorporating 43-44		
changes to tax system 42-43	suitability of form 40-41		
Civil law systems	tax benefits 51		
anti-avoidance rules 150-151	tax return data 38-39		
confidentiality 125-126	economic development, and 33		
Client legal privilege	imputation system 36		
accountants 139-140	limited by shares 36		
Australia 142-143	Corporations Act		
anti-money laundering 119, 143	extra statutory concession powers 55		
Australia 130, 142-143	Debt see Impaired debt		
Canada 136, 139, 141	Debt for equity swaps		
European Union 123-125	borrowers/debtors 106-107		
tax advisors 139-141	commercial debt forgiveness 99, 101, 106-107		
United Kingdom 126-127, 139-140	convertible interests 107-108		
United States 140-141	lenders/creditors 104-105		
common law 119, 125	convertible interests 107-108		
scope of protection 125	deductions 105		
Collection and recovery see Recovery of tax	direct value shifting 105		
debts	exchangeable interests 106		
Commissioner see also Extra statutory	market value substitution rule 105-106		
concession powers	overview 104		
discretion 65-66	same share test 107		
general administration power 54	share capital tainting 107		
new Commissioner 78-79	taxation of financial arrangements 113		
rulings power 54-55, 57-58	Debt parking		
Company ownership or control	commercial debt forgiveness 99-101		
bad debts 91	repayment of debt 101		
debt for equity swaps 107	Deductions see also Depreciating assets		
Confidentiality	apportionment rules 198		
anti-money laundering 119	bad debts 85, 90-91		
Australia 130	company ownership or control 91		
Canada 136	debt in assessable income 88		
European Union 123-126	existence of debt 86, 93		
United Kingdom 127-128	money-lending business 88-90		

recoupment of debt 92-93	commercial debt forgiveness 102-104
related party financing 113-115	farmout arrangements 8-9
requirements 85-90	balancing adjustment events 8, 10, 17
written off requirement 87	cost 10, 12
debt for equity swaps 105	farmees' perspective 26-27, 29
capital expenditure 183	rulings approach 10
farmout arrangements 9, 11, 26-31	termination value 10, 12
forgiveness of debts 93, 105	historical treatment 183-184
personal consumption expenditure 182	cost recognition 199
tax avoidance schemes 237, 256-257	1936 to Sept 1985 184-186
Definitions	Sept 1985 to Sept 1999 186-193
debt 99	Sept 1999 to June 2001 193-194
limited recourse debt 109	July 2001 to present 194-198
loss company 94	non-income use 183
non-cash benefits 12	historical treatment 183-186, 199
personal use asset 191	overview 183
recoupment 92	personal use component 148, 183, 194-196, 205
scheme 212-213, 215, 235-236	cost recognition 199-201
tax benefit 66-67, 227-228, 255, 260	efficiency issues 204
Depreciating assets	examples 196-197
adjustable value 194	full loss recognition 201-202, 205
balancing adjustment rules 194-195	historical treatment 183, 186-189
historical treatment 184-186	loss disregard rule 202-204
capital gains tax 182-183	motor vehicles 204
collectables 190, 203	tax revenue 204
historical treatment 186-194, 199	Direct value shifting
personal use assets 190-193, 197-198,	debt for equity swaps 105
202-203	forgiveness of debts 94, 95
personal use component 148, 183, 186,	limited recourse debt 108
187-189, 199-205	overview 105
capital losses 187	Dividend stripping schemes
collectables 190, 203	statutory interpretation 214-215
determining loss 195	Economic development
personal use assets 190-191, 193, 202-203	corporations, and 33
personal use component 148, 183, 186-189, 196-205	European Union
reduced cost base 187-189	anti-money laundering 117, 122, 143
CGT events 182-183, 194-195	client legal privilege 123-125
collectables 203	confidentiality 123-126
determining gain and loss 195	exemptions from requirements 124-125
motor vehicles 204	"gatekeeper" initiative 123, 143
personal use assets 197-198, 202-203	lawyers' obligations 122-123
personal use component 148, 183, 196-197,	risk-based approach 125
199-205	doctrine of abuse of law 153

terrorism financing 124	overview 4, 53-54, 71		
Exploration or prospecting expenditure	policy issues 53		
farmout arrangements 9, 11, 26, 30-31	post-implementation considerations 70-71		
Extra statutory concession powers	recording concessions 71		
advantages 54, 56	rule of law 54, 61-63, 66		
efficient administration 56-58	scope of power 66		
flexibility 57, 59-60	benefit, definition 66		
key employee work loads 58-59	benefit of taxpayers 66-67		
principles-based drafting 59-60	care and maintenance 67-68		
simplicity 60	identification of susceptible provisions 68		
taxpayers' attitudes 60-61	safeguards 67		
timeliness 57-58	tax benefit, definition 66-67		
alternative approaches 61	types of issues 67-69		
Commissioner's discretion 65-66	Farmout arrangements		
disadvantages 54, 61	additional consideration 7		
legislative practice 63	applicable assets 7		
rule of law 61-63	application of rulings 11		
uncertainty 63-64	benefit or liability requirement 12		
unintended inequities 64-65	non-cash benefits 12-14		
draft model 73-74	specified sum 12		
drafting and design 65-66, 71	unascertainable amounts 13-14		
implementation 68-70	benefits provided or received 9, 11		
post-implementation considerations 70-71	benefit or liability 12-14		
scope 66-68	immediate farmouts 13, 18		
examples in legislation 55	nexus 17-18		
United Kingdom 56	received or incurred 14-17		
exercise of powers 57, 68-69	capital allowances 3, 5-6, 8-9, 18-19, 32		
process 72	rulings approach 10		
evaluation of effectiveness 56, 65	capital gains tax 6, 8-9, 11		
advantages 56-61	farmees' perspective 19-20, 25-26		
alternative approaches 61	farmors' perspective 19-25		
disadvantages 61-65	look-through approach 19-20, 23-24, 32		
flexibility in legislation 53, 57, 59-65	separate asset approach 18-31		
implementation 68	single asset approach 19-20, 23-24, 32		
consultation benefits 68-69	deferred farmouts 7, 13, 29		
consultation panel 69	depreciating assets 8		
discretion model 69-70	balancing adjustment events 8, 10, 17		
legislative instrument model 69-70	cost 10, 12		
method of executing 69-70	decline in value 9-10		
private sector consultation 69	farmees' perspective 26-27, 29		
nature of powers 54-55	termination value 10, 12		
origins of proposal 55	exploration or prospecting expenditure 9, 11, 26,		
overarching goal 53	30-31		

farmees' perspective 19-20, 25-32	traditional securities 97		
earnout rights 29	capital gains tax 94, 98		
exploration or prospecting expenditure 26	consolidated groups 104		
free-carry payments 27-29, 32	commercial debt forgiveness 98		
farmors' perspective 19-22, 30	application of forgiven amount 101-102		
look-through approach 23-24	application of provisions 100		
payments or services received 24-25	consolidated groups 102-104		
recognition of separate asset 22-23	conversion of interests 99		
immediate farmouts 7, 13, 18, 29-31	debt, definition 99		
income tax treatment 8-11	debt for equity swaps 99, 101, 106-107		
rulings approach 9-11	debt parking 99-101		
joint ventures 7-8, 15, 29-32	exceptions 100		
free-carry payments 29, 32	forgiveness 99-100		
nature of arrangements 6-8	rewrite of provisions 99		
nexus requirement 17-18	consolidated groups 98, 102-104		
farmees' perspective 26, 28	depreciating assets 102-104		
specified sum 18	reduction of cost base 104		
unascertainable amounts 18	deductions 93, 105		
overview 3, 5-6, 32	lenders/creditors 93		
received or incurred requirement 14-15	capital account 94		
non-cash benefits 16, 17	direct value shifting 94-95		
receipt, meaning 14-15	loss companies 94-95		
specified sum 15-16	limited recourse debt 108-109		
unascertainable amounts 16-17	overview 93		
tax uncertainty 5-6, 8-9, 18-19, 29	qualifying securities 93, 98		
transfer of interest 7-8	related party financing 114		
types of arrangements 7	traditional securities 93, 97		
Federal budget	France		
tax advisors, and 77	anti-avoidance rules 152-153		
Federal election	international tax avoidance 3		
tax policy 147	Fraud		
Financial Transaction Reports Act see also	Enron case 117		
AUSTRAC	Fringe benefits tax		
overview 128	statutory formula method 147		
Foreign exchange gains and losses	GAAR Panel see also United Kingdom Advisor		
forgiveness of debts 95-97	Panel		
Forgiveness of debts	composition 240, 269, 288-289		
borrowers/debtors 95	consistency of approach 270-271		
capital gains tax 98	independence of review 268-271		
foreign exchange gains and losses 95-97	main focus 269		
ordinary income 95-97	operation of Panel 269-270, 288-292		
private companies 98	consistency of approach 270		
qualifying securities 98	overview 267-268, 288-292		

publication of guidance 276	just and reasonable approach 154
purpose 269	proposed rule 154
reporting of outcomes 271-272	safeguards 272
role 240-241, 268-269, 271, 288-292	United States 150, 154
scope of advice 270	business purpose test 154-155
Garnishee notices	economic substance approach 155-156
service of notices 174	Germany
superannuation interests 148, 160, 163-164,	anti-avoidance rules 151-152
179-181	Global economy
alteration of interests 180, 181	international tax 78, 81
amounts owing, due or payable 165-166, 174-175	Goods and services tax
ATO's considerations 165-166	extra statutory concession powers 55
death benefit beneficiary interests 176-179	farmout arrangements 5
effect of notice 164- 165	Impaired debt see also Bad debt; Debt for equity swaps; Forgiveness of debts
exemptions from compliance 164	debt defeasance arrangements 108-109
higher conditions of release 175	limited recourse debt 108-109
intention to defeat creditors 180	overview 78, 85
large non-SMSFs 174	related party financing 113-114
multiple member interests 176	forgiveness gains 114
trust law 170	timing issues 114-115
trustees' right of indemnity 175-176	taxation of financial arrangements 110-111
General anti-avoidance rules see also GAAR Panel: Tax avoidance schemes	bad debts 111-113
,	balancing adjustment 112
aim of rules 220, 233, 235, 283-286	debt for equity swaps 113
Canada 150-151, 158-159, 243, 251, 265	re-assessment provisions 111
civil law jurisdictions 150-151	re-estimation provisions 111
destruction step 253	variations 109-110
effectiveness of rules 150, 220	Imputation system
European Union 153	overview 36
France 152-153	Inspector General of Taxation
Germany 151-152	ATO dispute resolution 82
historical background 150	International tax
New Zealand 150-151, 156-157	global economy, and 78, 81
forestry arrangements 156-157	International tax avoidance
interpretation 156	overview 3, 81
timing mismatch 156-157	Interpretation see Statutory interpretation
overview 149, 159	Joint ventures
reconstruction step 265-266	farmout arrangements 7-8, 15, 29-32
scope of rules 149-150	Large corporate entities
Singapore 157-158 United Kingdom 150, 153-154, 265, 279-293	disclosure of tax payable 77
	concerns by affected parties 77-78
Aaronson Report 154, 272-273, 279-280	

Lawyers see also Client legal privilege;	Ordinary income
Confidentiality	debt waivers 97
anti-money laundering 117-119	forgiveness of debts 95
Australia 128	foreign exchange gains and losses 95-97
Canada 135-138	overview 92
European response 122-124	recoupment of bad debts 92
risk-based approach guidance 121-122	Partnerships see also Limited partnerships
United States 132, 134	choice of business form 35
Limited partnerships	reasons for choice 43, 44
choice of business form 35-36	suitability of form 40-41
tax return data 38-39	tax benefits 51
partner's liability 35-36	tax return data 38-39
Limited recourse debt	overview 35
definition 109	partner's liability 35
forgiveness of debts 108-109	Private binding rulings
overview 108	overview 252
Loss companies	Private companies
definition 94	forgiveness of debts 98
forgiveness of debts 94-95	Privilege against self-incrimination
Money laundering see also Anti-money	United Kingdom 140
laundering	Pt IVA see Tax avoidance schemes
detection 116-117	Public unit trusts
overview 116, 143	choice of business form 44-45
tax advisors 116	Qualifying securities
Money-lending business	forgiveness of debts 93, 98
bad debts 88-90	Recapitalisation see Debt for equity swaps
carrying on a business 88-89	Recovery of tax debts see also Garnishee notice
Multinational corporations	superannuation interests 160
ATO approach 81-82	third parties 164
disclosure of tax payable 77	Related party financing
concerns by affected parties 77-78	bad debts 113-114
profit shifting 78, 81-82	timing issues 114-115
United Kingdom 3, 81	forgiveness gains 114
New Zealand	related party, proposed definition 114
anti-avoidance rules 150-151, 156-157	Resources industry see Farmout arrangements
forestry arrangements 156-157	Rule of law
interpretation 156	discretionary powers 54
timing mismatch 156-157	extra statutory concession powers 54, 61-63, 66
anti-money laundering 135, 142	overview 61-62
tax policy 81	Separation of powers
Ombudsman	discretionary powers 54
flexibility in legislation 57	Share capital tainting
	debt for equity swaps 107

Singapore	post-conditions of release 173-174
anti-avoidance rules 157-158	pre-conditions of release 172-173
Sole proprietors	requests for payment 171-172
choice of business form 33-34	bankruptcy, and 148, 160, 181
reasons for choice 43-44	current protection 163
suitability of form 41	historical background 160-163
tax benefits 51	intention to defeat creditors 163, 180
tax return data 38-39	pre-conditions of release 172-173
overview 34	reasonable benefit limits 161-162
tax treatment 34	rollovers 162-163
State taxation	transfer of entitlements 161
extra statutory concession powers 55	garnishee notices 148, 160, 163-164, 179-181
Statutory income	alteration of interests 180-181
recoupment of bad debts 92-93	amounts owing, due or payable 165-166
Statutory interpretation	174-175
anti-avoidance rules 156	ATO's considerations 165-166
dividend stripping schemes 214-215	death benefit beneficiary interests 176-179
literal meaning 213	effect of notice 164-165
purposive approach 213-214	exemptions from compliance 164
tax avoidance schemes 211-213, 218, 279-293	higher conditions of release 175
extrinsic materials 214-215	intention to defeat creditors 180
"muffled echoes of old arguments" 212, 215	large non-SMSFs 174
Superannuation benefits	multiple member interests 176
conditions of release 171-173	trust law 170
death benefit beneficiary interests 178-179	trustees' right of indemnity 175-176
employer-sponsored arrangements 169	nature of interest 166-167
industrial awards 169	death benefit beneficiary interests 177-179
minimum benefit standards 170	relationship of parties 168-169
payment of benefits 172, 174	right to payment 170-171
form of payment 174	superannuation benefits 169-172
higher conditions of release 174-175	trust law 166-170
personal contributions 169	underlying assets 167-168
right to payment 170-171	overview 160, 166
superannuation guarantee 169-170	Superannuation trust deeds
trust law 170	bankruptcy, and 161-163
Superannuation funds	overview 166
members 167	payment of benefits 172, 174
overview 166	higher conditions of release 174-175
relationship of parties 168-169	SIS Act provisions 170-171
Superannuation interests	underlying assets 168
amounts owing, due or payable 165-166, 171	Tax advisors
conditions of release 171-173	anti-money laundering 119, 139
higher conditions of release 174-175	Australia 142-143

```
client legal privilege ... 139-143
                                                                 nexus requirement ... 253-254
     confidentiality ... 127-128
                                                                 when "this Part applies" ... 253
    New Zealand ... 142
                                                            ATO administrative treatment ... 251-252
federal budget, and ... 77
                                                            ATO approach ... 238-240
impact of proposed changes ... 77-78
                                                                 tax revenue ... 240
money laundering ... 116
                                                            ATO litigation strategy ... 234-235
overview ... 139
                                                            ATO procedure ... 240
Tax avoidance see also International tax
                                                                 GAAR Panel ... 240-241, 289-290
avoidance
                                                                 relevant questions ... 230-231
overview ... 233
                                                            courts' role ... 242-243
tax evasion, distinction ... 233
                                                            deduction cases ... 237, 256-257
tax planning, distinction ... 233
                                                            dividend stripping schemes ... 214-215
Tax avoidance schemes see also GAAR Panel
                                                            dominant purpose ... 218, 220-221, 229, 231, 243,
alternative approaches ... 260
                                                                 250-251, 254, 279-293
    adjusted events model ... 261-262
                                                                 ATO approach, and ... 239-240
    commercial resemblance model ... 263-264
                                                                 explanatory memorandum ... 218, 229, 244
    constrained speculation ... 260-261
                                                                 primacy of purpose ... 229-231, 244-245
     self-revelatory model ... 264-265
                                                                 re-wording of provision ... 218, 230, 244-245
alternative postulate ... 216, 222-223, 228, 236-237,
                                                            effect of Part ... 234-235
    254-256, 260
                                                            effectiveness of provisions ... 149-151, 219, 220,
     "do nothing" postulate ... 223-225, 237, 239,
                                                                 223
          241, 248-249, 252, 258-259
                                                            forestry arrangements ... 157
     "do something else" postulate ... 237-238
                                                            historical background ... 232
    explanatory memorandum ... 217-218, 223,
                                                                 introduction of Part ... 211, 233-234
          248-249
                                                                 original drafting ... 149-150, 219-220
     number of alternatives ... 228-229
                                                                 predecessor provision ... 232, 235, 254-255
     Ralph Report ... 248, 258
                                                            international comparison ... 148-151, 159, 265-266,
    reasonable alternative ... 217-218, 223-225,
                                                                      279-293
          247-251, 261, 263
                                                                 Canada ... 158-159, 243, 251, 265
amendments ... 215-216, 231, 243, 251-252, 260,
                                                                 France ... 152-153
         266, 279-293
                                                                 Germany ... 152
    background to changes ... 219-220, 241-242,
                                                                 New Zealand ... 156-157
    explanatory memorandum ... 215, 217-218,
                                                                 Singapore ... 158
          223, 229-230, 241-242, 244-249
                                                                 United Kingdom ... 153-154, 265, 279-293
     focus of amendments ... 220-221
                                                            mutual leases ... 152
     object of amendments ... 243-244, 284-285
                                                            original drafting ... 149-150, 219-220
    potential consequences ... 217, 251-252
                                                            overview ... 149, 159, 211, 232
    rationale for change ... 220-221, 257-260,
                                                            private binding rulings ... 252
          273-292
                                                            reasonable alternative ... 217-218, 223, 247-248,
annihilation step ... 217, 225, 245-247, 253-255
                                                                 261, 263
application of Part ... 211-212, 234-235, 242, 253
                                                                 double economic taxation ... 249-251
     "blatant, artificial or contrived" ... 211,
                                                                 explanatory memorandum ... 217-218, 223,
          233-235
                                                                      248-249
     identification of scheme ... 235-236
                                                                 policy intent ... 223-225
```

qualification 224-225	tax avoidance, distinction 233		
substance of scheme 217-218, 223-224,	Tax Institute		
248-249, 264	overview 79		
reconstruction step 217, 225, 245, 247-248, 254,	Tax issues entry system		
260	overview 58		
alternative approaches 260-265	Tax law design		
international comparison 265-266, 279-293	ATO, and 80-81		
scheme 212	flexibility 54		
Commissioner's approach 215-216	review panel recommendations 55		
definition 212-213, 215, 235-236	Tax legislation see also Extra statutory		
identification of scheme 235-236, 262	concession powers		
scope of Part 235	amendment process 53		
knowledge of scope 235	drafting 53		
statutory interpretation 211-213, 218	principles-based approach 59-60, 63		
extrinsic materials 214-215	flexibility 53, 57, 59-60, 62, 64-65		
"muffled echoes of old arguments" 212, 215	Tax planning		
New Zealand 156	tax avoidance, distinction 233		
successful taxpayer challenges 220-221, 223, 238, 241-242, 252	Tax rulings see Farmout arrangements		
alternative postulate 222-223, 239, 256	Taxation of financial arrangements		
ATO approach, and 238-240	bad debts 111-112		
Axa Asia Pacific 221, 256, 262	balancing adjustment 112		
Futuris 221-222, 256	subsequent recovery of debt 112-113		
News Australia Holdings 222	consolidated groups 110-111		
RCI 222, 224, 239-240, 256	debt for equity swaps 113		
tax benefit 149, 216, 218, 221, 228, 253-254, 257	overview 110		
alternative approaches 260-265	re-assessment provisions 111		
	re-estimation provisions 111		
alternative postulate 216-217, 222-225, 228-229, 236-241, 247-260	tax-timing methods 110		
annihilation approach 217, 225, 245-247,	variation to terms 113		
254-255 categories of benefits 225-227	Terrorism financing see also Anti-money laundering		
Commissioner's approach 216-217, 245-246	Australia 128-129, 131		
definition 66-67, 227-228, 255, 260	auditing of reporting entities 129		
	proposed second tranche 130-131		
explanatory memorandum 217, 245-248 focus of amendments 220-221	risk-based approach 129		
quantification of size 236-237	Canada 135, 138-139		
•	Financial Action Task Force 118, 120-121		
reconstruction approach 217, 225, 245, 247-248, 254-255	European Union 124		
Tax compliance costs	overview 120, 129		
choice of business form 47-49, 52	United States 132-133		
rankings of forms 51	Thin capitalisation		
Tax evasion	commercial debt forgiveness 99		
overview 233	TOFA see Taxation of financial arrangements		

```
Traditional securities
                                                                    reasons for incorporating ... 43
forgiveness of debts ... 93, 97
                                                               extra statutory concession powers ... 56
Trust law
                                                               fiscal nullity doctrine ... 150, 153
superannuation entitlements ... 170
                                                               international tax avoidance ... 3
superannuation interests ... 166-168, 170
                                                               multinational corporations ... 3, 81
                                                               privilege against self-incrimination ... 140
Trusts see also Public unit trusts
choice of business form ... 36-38
                                                               United Kingdom Advisory Panel
     tax benefits ... 51
                                                               background to introduction ... 272-273
     tax return data ... 38-39
                                                               composition of panel ... 267, 275
limitation of liability ... 37
                                                               guidance function ... 274-276
overview ... 36
                                                               lack of resources ... 275
rule against perpetuities ... 37
                                                               noteworthy features ... 275-276
taxation treatment ... 37-38
                                                               opinion notices ... 274
types of trusts ... 37
                                                               overview ... 273
United Kingdom
                                                               procedure for opinions ... 274
anti-avoidance rules ... 150, 153-154, 265, 279-293
                                                               role ... 273-274
     Aaronson Report ... 154, 272-273, 279-280
                                                               United States
     introduction of rule ... 267, 272
                                                               anti-avoidance rules ... 150, 154
     just and reasonable approach ... 154
                                                                    business purpose test ... 154-155
     proposed rule ... 154
                                                                    economic substance approach ... 155-156
     safeguards ... 272
                                                               anti-money laundering ... 118, 131
anti-money laundering ... 117, 122, 126, 143
                                                                    accountants ... 133-134
     accountants ... 139-140
                                                                    auditors ... 132-134
     client legal privilege ... 126-127, 139-140
                                                                    client legal privilege ... 140-141
     confidentiality ... 127-128
                                                                    "gatekeeper" initiative ... 133-134
     exemptions from disclosure ... 127
                                                                    lawyers ... 132, 134
     failure to report offence ... 126
                                                               choice of business form ... 43
     privilege against self-incrimination ... 140
                                                               Enron case ... 117
     reporting threshold ... 126
                                                               money laundering ... 116
     tax advisors ... 139
                                                               terrorism financing ... 132, 133
choice of business form ... 40-41
                                                               Value shifting see Direct value shifting
```