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GST on judgments and out of court settlements: Is GSTR 2001/4 still relevant?
– *Christopher Sievers*

Questions frequently arise regarding the GST implications of court orders and settlement agreements. Often there is no easy answer, but most will include a reference to the Commissioner’s public ruling GSTR 2001/4. Twelve years have passed since the ruling was published and it is time to assess the continued relevance of the principles outlined in the ruling. A review of the cases shows that the principles stand up reasonably well in the context of court judgments. However, in light of the recent decision of the High Court in Commissioner of Taxation v Qantas Airways Ltd (2012) 86 ALJR 1243; 83 ATR 1; 291 ALR 653 and the way the Commissioner chose to argue his appeal, the goal posts may have shifted significantly in the context of out-of-court settlements entered into to resolve claims for damages. 16

Taxation of “the margin” – a different paradigm? – *Michael Evans*

Australia’s GST law follows the international value-added tax model, commonly described as “credit invoice” or “credit offset”. Under this model, for each tax period, a trader offsets credits for input tax on acquisitions against liabilities for GST on taxable supplies so that the net amount payable as GST is calculated as a proportion of the value added by the trader for the period. However, there are a number of circumstances where the credit invoice model does not achieve the objective of a uniform and neutral collection of GST on household consumption expenditure. Jessup J in the recent Sportsbet decision referred to the approach used under the credit invoice approach as paradigmatic and contrasted it with other mechanisms in the GST law that were unique to the particular transactions involved. This article explores four exceptions to the paradigmatic approach, evident in the treatment of used property and some risk intermediation services. The credit invoice value-added approach is ill-suited to these categories of transactions. However, the reasons for departing from the paradigm have not been well explained in the extrinsic material accompanying the legislation and the cases that have come before the courts. This article examines the four legislative mechanisms adopted to address the deficiencies in the credit invoice approach for used property and risk intermediation services and the similarities and differences of each mechanism. It seeks to explain the legislative policy of these special cases in the context of the broader policy of the uniform and neutral taxation of household consumption expenditure. 32

