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The "Sufficiently Influenced" Benchmark for a Company to Be an Associate of Another Company: An Analysis of the BHP Case – *The Hon Richard Edmonds AM SC*

Apart from the observations at the backend of this article analysing the reasons of their Honours in the Full Court, the following observations were written prior to 29 January 2019 when the Full Court handed down judgment and published those reasons. As will be apparent to the reader, the author's views more closely align with the reasons of the dissenting judge in the Full Court than the majority but, in the absence of a successful appeal to the High Court of Australia, will not represent the legal position. The author understands that the taxpayer has recently filed an application for special leave to appeal to the High Court from the Full Court's judgment. 83

The Deductibility of Tax-related Expenses: Historical and Comparative Perspectives – *Ann Kayis-Kumar, Peter Mellor and Chris Evans*

The Australian income tax provisions currently permit a deduction for various items of tax-related expenses, including expenses incurred in managing tax affairs, interest charged by the Australian Taxation Office and the costs of tax litigation. The history of these provisions suggests that they were introduced with the principal objective of fostering improved tax compliance, although there are now suggestions that the provision may be more closely associated with enabling tax minimisation than fostering tax compliance. As a result, there have been recent calls for the deduction to be capped at a relatively low level. This article explores the development of the deductibility of tax-related expenses and compares and contrasts the Australian experience with that of broadly similar tax jurisdictions. It identifies a continuum of approaches that have been adopted elsewhere and suggests that the Australian experience places it at the more generous end of the spectrum. 100

Doing the BEPS We Can? Addressing Distortions in the Cross-border Intercompany Setting – *Ann Kayis-Kumar*

Thin capitalisation rules are widely perceived as anti-avoidance mechanisms limiting tax base erosion from cross-border intercompany activities. Despite this perception, the legal basis for these rules does not reconcile with the economic basis, because these rules present only imperfect solutions to the problem of the "debt bias". This article consists of a comparative analysis of rules specifically targeting the debt bias; namely, the Allowance for Corporate Equity as implemented in Belgium and Italy. A central premise of this article is that, wherever possible, tax-induced distortions ought to be minimised because such economic inefficiencies in the tax treatment of cross-border intercompany activities give rise to tax planning opportunities for multinational enterprises. As such, there is an urgent imperative for a strong conceptual basis in the tax treatment of cross-border intercompany financing activities. 117

Non-Competition Agreements and the Capital/Revenue Distinction: A Comparative Analysis – *Meena Hanna*

The absence of a legislative definition of the term "capital" has afforded little guidance to the courts in determining whether expenditure is revenue or capital in nature. The specific transaction of non-competition agreements demonstrates the uncertainty created by the present capital/revenue distinction and the inadequacy of the current tax framework to accurately and consistently classify non-competition agreements. In order to highlight these concerns, this article undertakes a comparative analysis of how other jurisdictions treat non-competition agreements, specifically the mechanisms used by the Australian Accounting Standards, the New Zealand tax framework and the US tax framework. It also highlights alternative methods of recognition for non-competition agreements, which Australia may adopt in order to reduce the current uncertainty. This article advocates legislative amendments that specifically address the taxation treatment of non-competition agreements by allowing a depreciation deduction in each tax period over the useful life of the non-competition agreement. Such an outcome could be simply achieved by inserting such a provision within the existing capital allowance regime. 139