

AUSTRALIAN TAX REVIEW

Volume 49, Number 1

2020

EDITORIAL – *General Editors: Kerrie Sadiq and Dale Pinto*

Oh, What a Beginning to 2020 3

ARTICLES

Taxpayer Attitudinal Responses to Tax Audits – Strategic Implications of Recent Findings from the United States – *John Bevacqua*

The United States (US) National Taxpayer Advocate (NTA) recently released the results of a survey into the influence US Internal Revenue Service (IRS) audits have on taxpayer attitudes and perceptions. This work reveals many interesting insights into the effect of audits on taxpayer trust, confidence and voluntary compliance sentiments. This article discusses the potential implications of these insights for the IRS and other tax authorities in setting their future audit program strategies. The analysis extends to the knowledge gaps and complexities exposed by the NTA research. 5

Preventing Pension Double Taxation: The Treatment of Australian Superannuation Guarantee under the Existing Australia-US Tax Treaty – *KE Powell*

Dual Australian-US taxpayers face increasing concern about the United States (US) tax treatment of superannuation. Australian law requires all employers to contribute to complying superannuation funds on behalf of their employees as part of their retirement savings program. This mandatory contribution is tax advantaged in Australia, but proper characterisation of the contribution for US tax reporting is unclear. If the US taxes superannuation contributions as though they are current income rather than untaxable retirement savings, it significantly stunts the efficiency of Australia's retirement savings system, by either overtaxing superannuation investment or preventing dually affected citizens from confidently investing in superannuation. This article argues that the Australian Government has a vested interest in clarifying that, under a fair reading of the Australian-US tax treaty, contributions into superannuation are not taxable as individual income under US law. Without clarification, the Australian Government unnecessarily bears the financial burden of Australian retirees who are subject to both US and Australian tax systems and fail to fully fund their retirement. 32

When Is There an “Adventure or Concern in the Nature of Trade” for GST Purposes? – *Rami Hanegbi*

A taxpayer who is carrying on an “adventure or concern in the nature of trade” and has revenue over the Goods and Services Tax (GST) registration threshold is potentially subject to a substantial GST liability. While it is accepted that the reference to an “adventure or concern in the nature of trade” in the GST legislation is aimed at making the proceeds of certain isolated transactions subject to the GST regime, there is very limited Australian guidance regarding which isolated transactions will be affected. This article explores

the origins of the term, relevant Australian and United Kingdom authorities, as well as the potential impact of the neutrality principle, which some suggest is a principle of interpretation that is applicable to the GST legislation. In doing so, it clarifies this under-researched area of law by identifying the important principles that determine when a transaction is likely to constitute such an adventure or concern for GST purposes. 56