

AUSTRALIAN TAX REVIEW

Volume 50, Number 1

2021

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

50 Years and Still Going Strong! 3

ARTICLES

The Taxation of Both Sides of Take-or-Pay Contracts – *Hon Richard Edmonds AM SC*

Long-term take-or-pay contracts increasingly provide a valuable mechanism in the development of major oil and gas projects both in Australia and overseas, particularly to producers and their financial backers, but also to buyers, such as public and private utilities, supplying gas or electricity to consumers. For the producers they assist in obtaining the substantial capital investment that is required to get these projects up and running by facilitating the forecasting of cash flows to meet debt servicing and operational costs. For buyers, such contracts provide them with long-term security of product supply. As in most commercial and business activities, it is vitally important that the tax consequences for both stakeholders be clear, certain and comprehensible, and not be left floating in the ether. 5

A Cautionary Application of the Myer Emporium Principle to Deductions – *Alexander Schatz*

In response to a case note published in a previous edition of the *Australian Tax Review*, this article argues that the recent Full Federal Court decision in *Greig v Commissioner of Taxation (Greig)* should be treated with some caution. *Greig* concerned a taxpayer’s deduction of losses made in respect of shares. The decision is a striking application of the earlier High Court decision of *Commissioner of Taxation v Myer Emporium Ltd* in two novel respects: first, the taxpayer was not generally in the business of share trading; and second, he sought to deduct losses in reliance on the *Myer* principle. This article examines the close consideration given in *Greig* to the meaning of “isolated business transaction” and argues that particular factual and legal difficulties make *Greig* an interesting case, but an inappropriate vehicle to make clear the *Myer* principle. 14

What Does It Take to Make a House New? – *Christine Peacock*

Australia’s Goods and Services Tax (GST), like many Value Added Tax (VAT) systems, distinguishes between new and used residential premises, treating new residential premises as taxable supply and used residential premises as input taxed supply or outside the scope of GST/VAT. The issue of when renovated premises cross the line from used to new in the eyes of GST/VAT law is contentious. This article examines the legal approaches taken in different jurisdictions to determine when renovations can yield new residential premises for GST/VAT purposes. It shows that sometimes these approaches have an unnecessarily restrictive effect, producing results that are inconsistent with the benchmark goal, and uncertainties as to when a new taxing point should be created. A statutory solution is

offered to this problem, based on whether the cost of the work to the property is under or over a certain percentage of its resale value. 22

BOOK REVIEW

Taxation of Charities and Not-for-profits, by Ann O’Connell – *Reviewed by Anne Robinson AM and Jae Yang* 43