

AUSTRALIAN TAX REVIEW

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ARTICLES

What is “taxable Australian real property”? – Michael Rigby

Capital gains earned by non-residents are generally subject to Australian income tax only if they arise in connection with an asset that has been used in carrying on business through a permanent establishment in Australia or that is a direct or indirect interest in Australian land or in certain natural resources. Interests of non-residents in Australian land or natural resources may potentially generate taxable capital gains if they represent a direct or indirect interest in “taxable Australian real property”. That expression is defined to comprise “real property”, a “lease of land”, and a “mining, quarrying or prospecting right”. By focusing on property in these categories, the scope of the capital gains provisions for non-resident investors was narrowed somewhat from December 2006. This article outlines the policy rationale for the narrowing of the capital gains tax base and then discusses the contours of the “taxable Australian real property” definition with a view to determining where the lines are drawn between assets that may give rise to taxable gains for non-residents and those that do not. From this, conclusions are drawn as to whether the general law concepts on which the “taxable Australian real property” definition draws achieve the policy objectives of the non-resident capital gains provisions.

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A re-evaluation of Murry’s Case (1998) from a valuation perspective – Dr Hung Chu

Despite its importance in shaping up judicial views on goodwill, the focal point of Federal Commissioner of Taxation v Murry (1998) 193 CLR 605; 39 ATR 129 (Murry) is interestingly not about goodwill value. Thus, there are unsurprisingly residual uncertainties and/or confusion in applying the valuation principles set out in Murry to cases where the focus is on the value of goodwill. This article applies the conceptual framework on goodwill value developed in Chu and Lonergan (2010) to address these uncertainties and/or confusion.

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