

Taxation *in Australia*

VOL 55(11) JUN 2021



2021-22 Budget highlights

Robert Campbell, CTA

Cash flow boost: questions on interpretation

Bill Mavropoulos

Inbound interest-free loans: part 2

Ellen Thomas, ATI



THE TAX INSTITUTE

Contents



Cover article

601

2021-22 Budget highlights

Robert Campbell, CTA, Director, McLeod Campbell & Associates

Feature articles

607

Cash flow boost: questions on interpretation

Bill Mavropoulos, Partner, VT Advisory

610

Inbound interest-free loans: part 2

Ellen Thomas, ATI, Partner, PwC

Insights from the Institute

584 President's Report

585 CEO's Report

586 Tax Counsel's Report

Regular columns

583 Tax News – at a glance

588 Tax News – the details

593 Tax Tips

596 Mid Market Focus

599 Higher Education

614 Superannuation

616 Alternative Assets Insights

618 Events Calendar

619 Cumulative Index

Invitation to write



We welcome original contributions that are of interest to tax professionals, lawyers, academics and students.

For details about submitting articles, please see Guidelines for Publication on our website taxinstitute.com.au, or contact publisher@taxinstitute.com.au.

Tax News – at a glance

by TaxCounsel Pty Ltd

May – what happened in tax?

The following points highlight important federal tax developments that occurred during May 2021. A selection of the developments is considered in more detail in the “Tax News – the details” column on page 588 (at the item number indicated).

Budget highlights

The Treasurer announced a number of tax changes in the context of the 2021-22 federal Budget that was handed down on 11 May 2021 and the following gives brief details of the more significant of these changes. **See item 1.**

CGT and granny flats

An amending bill (the Treasury Laws Amendment (2021 Measures No 4) Bill 2021) which was introduced into parliament on 26 May 2021 contains the amendments to give effect to the proposed “granny flat” CGT changes that were announced in the context of the 2020-21 Budget. **See item 2.**

FBT: retraining and reskilling benefits

Also released by the government on 16 April 2021 was exposure draft legislation (and explanatory material) to give effect to the previously announced targeted fringe benefits tax exemption for employer-provided retraining and reskilling benefits. **See item 3.**

Miscellaneous proposed amendments

The Treasury has released an exposure draft Bill and Regulations (and supporting explanatory materials) that cover proposed minor and technical amendments to the Treasury portfolio laws. **See item 4.**

Identity fraud targeted

In a joint media release on 29 April 2021, the ATO and the Tax Practitioners Board (TPB) announced the release of draft guidance (by the ATO) and a draft practice note (by the TPB) relating to identity fraud. **See item 5.**

Apted: decision impact statement

The Commissioner has released a revised decision impact statement in relation to the recent decision of the Full Federal Court in *FCT v Apted* [2021] FCAFC 45. **See item 6.**

Discretion to retain tax refunds

The Commissioner has issued a practice statement that sets out the ATO’s administrative approach to the extension in 2020 of the Commissioner’s discretion to retain tax refunds (PS LA 2021/2). **See item 7.**

Imported hybrid mismatch rule

The Commissioner has issued a draft practical compliance guideline that contains practical guidance as to the ATO’s assessment of the relative levels of tax compliance risk associated with hybrid mismatches addressed by Subdiv 832-H of the *Income Tax Assessment Act 1997* (Cth) (PCG 2021/D3). **See item 8.**

Freezing order

On 26 April 2021, the Federal Court (Davies J), on the Commissioner’s application, issued an interim freezing order in relation to a taxpayer (a Mr Zou) who had failed to comply with a security bond notice to give security to the Commissioner for the due payment of a future tax-related liability (*FCT v Zou* [2021] FCA 433). **See item 9.**

Other decisions

There are several other recent decisions that have been handed down that should be briefly noted. **See item 10.**



President's Report

by Peter Godber, CTA

There's something for everyone

President Peter Godber on supporting a member community that spans across the tax world.

It's a busy time for our members as we approach the end of the financial year. You'll be busy working with clients and in your own business. I wish you good luck for this and the financial year to come.

The months of May and June are also when The Tax Institute conducts several state tax forums and local events. Many of these have different technical streams which showcase the breadth of knowledge and volunteer input that we attract to events at The Tax Institute. They are valuable opportunities to develop new skills and understanding in your own professional sphere.

Attendance at these events also highlights the range of members we have, from those starting out to seasoned experts, small practice owners, corporate tax heads and their employee teams, medium-sized practices, regulators, academics, and pretty much anyone with a desire to learn more about the changing tax world. It has been fabulous for these members to get back to face-to-face learning and delivery, and to mix with other members on a technical and social level.

The Tax Institute's current investment in our knowledge content systems, broader education offerings, and technical capabilities in the Tax Policy and Advocacy (TPA) team gives us the unprecedented ability to help members from this wide range of work environments. Wherever you fit into our community, we continue to improve and increase the ways in which you are able to learn through The Tax Institute.

Federal Budget 2021-22

Our *Federal Budget Report 2021-22* that issued in the early morning of 12 May is a wonderful example of the expertise held by our team and wider member network. Once again, it showed the coverage of issues that we have to deal with. While the Budget was not an exhausting one for tax changes, there were still many changes that members were interested in. These ranged across tax changes affecting individuals, growing businesses, larger corporates, superannuation,

innovation, globally mobile taxpayers, tax disputes and administration. On Budget night, we assembled all of our TPA team, and they were accompanied by several volunteer members, who I thank for their assistance.

What the Budget night exercise showed me again is that we have the technical capability to analyse and express meaningful content about the Budget changes to a wide-ranging audience. Well done to all involved. It was a pleasure for me to participate as well, and to be in the subsequent lunchtime webinars where we analysed the changes for you. Our Budget report once again set a new benchmark for its narration and analysis. I hope you all use it as a reference point.

I also look forward to applying the same expertise, vision and collaborative spirit to our developing resources. We are increasingly working with technical committees and other members to ensure that what we deliver to you during the next year is practical and relevant to your career in tax.

Be involved, be informed

At our recent events, I have received feedback from a range of members about the value that they are getting from The Tax Institute at present. I hear lots of good things about the delivery of events and webinars that make me proud of what we are able to achieve as an organisation. Thank you for your feedback, and please, keep talking to us about your experiences. Your input is highly regarded.

Whenever I have these opportunities to speak to members, I encourage them to look more closely at what is on offer and how they could better utilise the services of The Tax Institute. Take a deeper look at *Tax Knowledge eXchange*, consider more structured learning for your staff, and engage directly with members of our TPA team who are at the cutting edge of current issues and consultations. There may be more on offer than you realise, and you may discover something that changes the way you work for the better.

No matter who you are or how you are currently connecting with us, I encourage you to dive deep into the many opportunities afforded to you by being a part of The Tax Institute. There is plenty here for everyone.

Once again, have a great end to the financial year.



CEO's Report

by Giles Hurst

Opportunities for lifelong learning

CEO Giles Hurst talks about how we help members to learn something new every single day.

I make it a point to learn something new every day, big or small. Lately, there has been ample opportunity to reach that goal.

Last month, our team tackled the federal Budget. Not only did I learn from the technical analysis and conversation happening in the Institute that night, but I also had the privilege of seeing our Tax Policy and Advocacy team and some very generous volunteers from among our members put their heads together and collaborate on an excellent Budget report. I gained a little insight into what we can all achieve with a great team and a healthy dose of enthusiasm.

I'm also pleased to report that, within the last month, everyone at The Tax Institute took some time out to reconnect with each other and take a closer look at our goals as an organisation. Where do we want to be in a year, five years, or 10? How can we get there? It was a fantastic opportunity for us all to learn more about each other on both a personal and professional level. I left invigorated with the knowledge that my team are dedicated to the Institute and its members and that they have many bright ideas for our future. I learn something new every day. That's not by accident and it's not always facts and figures. But it is always a privilege.

Your learning at The Tax Institute

As tax professionals, our members understand the value of lifelong learning — perhaps better than most others. There is always something new to be discovered in tax. The Tax Institute has always held this commitment to knowledge and education as sacred. Our core purpose is to ensure that you enjoy as many opportunities to continue learning as you could want.

One of the key ways that we plan to do this during 2021 and into the future will be through our professional development events. Our committees always put on a wonderful program of technical expertise that you won't find anywhere else. Our wide network ensures that, no matter

your area of interest, there will always be something for you on our event calendar.

I would also encourage you to consider getting involved beyond attendance. Raising your hand as a speaker or as part of an organising committee is an excellent opportunity to learn new skills beyond the technical, and perhaps to learn something new about yourself along the way.

We have held several in-person events this year, which I know is a positive step for many of you. During a year of working from home, I think we came to realise all the small, casual opportunities for growth and development that we miss simply by not connecting face-to-face with colleagues. I, for one, am glad to make a return to unexpected insights over a glass of wine at networking dinners.

For those of you who work in sole practices and don't always have the chance to talk shop with colleagues, brainstorm and overhear interesting tidbits around the watercooler, seeking out those opportunities for new learnings is all the more important. I am immensely pleased we can make that possible for you.

Our structured education programs are also full steam ahead. Now under the banner of The Tax Institute Higher Education, these programs continue to offer tax professionals an in-depth and focused tax education experience.

We are also working to bring our new micro credential offering to life for you this year. As an advocate for continual learning, and learning with clear goals and applications in mind, I'm very excited about this. Not everyone can commit to a full course of study — we are all busy professionals, juggling multiple commitments at any given time. That we will soon be able to afford you further flexibility and control over how, when and what you learn couldn't make me more proud.

And finally, failing all that, there is yet more opportunity to keep learning with us. We continue to publish a range of useful, practical and high-quality resources to help you improve each single day. Whether it's sitting down to mull over tax technical analysis in our journals, *Taxation in Australia* and *The Tax Specialist*, gleaning insight from expert speakers in our blog articles, or delving into specialist tools like our *Federal Budget Report 2021-22*, there are so many ways to use your time valuably. In fact, with our vast *Tax Knowledge eXchange* database, the learning opportunities are probably close to endless!

As you embark on the busy period of end of financial year, I hope that you can find the time to learn more about something you love. And as a member of The Tax Institute, I hope you take full advantage of the different ways we can help you along your journey of lifelong learning. Whether you're learning more about tax, your colleagues, or yourself and what you're truly capable of, it's never time wasted.



Tax Counsel's Report

by Julie Abdalla, FTI

Federal Budget 2021-22: a missed opportunity for tax reform

The recent federal Budget contained some tax measures but, overall, it focused on spending for economic growth. The question remains: when will we see genuine, holistic tax reform?

Federal Budget announcements

On the evening of Tuesday 11 May, the federal Treasurer, the Hon. Josh Frydenberg, MP, handed down the federal Budget 2021-22. While quite a number of tax measures were announced, it was certainly not a "taxing" Budget, but rather one focused on spending to facilitate Australia's economic recovery.

The Budget saw infrastructure, health, aged care and national security as key recipients of targeted expenditure. Other focus areas included measures and funding to address housing affordability, gender equality issues, and workforce participation. A balance was struck between measures intended to have a longer-term impact and those which are relatively more immediate in their effect.

Extension after extension

But where does tax reform fit in? We know that to support this kind of expenditure and, indeed, Australia's economic growth, we need a simple, efficient and fair tax system. We had hoped that the government would announce at least an intention to put holistic tax reform on its agenda. My fellow tax counsel, Angie Ananda, wrote about this in the March issue of this journal.¹ Instead, the government has continued its habitual practice of extending temporary measures and announcing new rules in isolation. The extension of a number of temporary measures was announced, including the full expensing measures and the loss carry-back measures. The extensions are positive moves but, without permanency or long-term planning, simply push out the problem for another year.

The digital future

There was a strong emphasis on the government's Digital Economy Strategy and on encouraging innovation. Relevant tax measures that were announced included the digital games tax offset, a more favourable depreciation regime for intangible assets, and the introduction of a patent box

for medical and biotech innovation. These measures, and others announced outside of the digital landscape, are positive. However, bearing in mind the start dates and the arrangements and assets to which they will apply, their impact is overall generally limited and potentially a while away.

An announcement requiring further consideration

A change in the approach to determining individual tax residency was announced on Budget night. The Tax Institute supports reconsideration of the individual tax residency rules and their underlying complexities. However, we have some reservations about the proposed approach, particularly around the secondary tests and how they may apply. The announced approach finds its origins in the Board of Taxation's [*Reforming individual tax residency rules – a model for modernisation*](#) report of March 2019. We acknowledge the substantial work done in the preceding years which led to the publication of the Board's report. Given the significance of the proposed changes, we hope that a comprehensive period of consultation precedes the enactment of enabling legislation. This is necessary to ensure that concerns raised previously may be properly explored and addressed, and the policy position clarified and expressly articulated.

Where to next?

While, in principle, we welcome most of the tax and tax-related measures announced in the federal Budget 2021-22, we consider that there is much more to be done. We will continue to persevere and lead the way on tax reform, for the benefit of our members and the tax system as a whole. The potential areas of reform we identify in *The Case for Change* discussion paper require due consideration and will take some time to implement. They are not band-aid solutions or quick fixes. We know those kinds of measures are not sustainable and overcomplicate an already complex system.

The Case for Change is due to be published in the coming months and will present to the government some of the key issues that The Tax Institute and our members have identified in the current tax system, as well as potential options for reform. Some of the ideas that will be presented are radical and do not necessarily represent the views of each and every member. *The Case for Change* advocates for holistic reform and should be read as such: holistically. Issues and options for reform considered in isolation will only compound the problems in the current system.

The fundamental objective of *The Case for Change* is not to provide the government with a blueprint for the ideal tax system, but to spark the debate and put holistic tax reform on the agenda. We know there are pervasive issues in our tax system, and we want to initiate conversations which lead to action to address them.

Australia has emerged from the pandemic in a relatively strong economic position, stronger than most anticipated. We have a unique opportunity to pursue genuine tax reform to redesign a tax system that is simple, efficient and fair. We can only do so by starting the conversation and putting tax reform on the agenda.

Reference

1. A Ananda, "Will tax reform be delayed again?", (2021) 55(8) *Taxation in Australia* 392.



THE TAX INSTITUTE

MEMBER OF THE TAX INSTITUTE

WE ARE ONE

*EDUCATE
CONNECT
SUPPORT
ADVOCATE*



Stay connected to the home of tax.

Renew today

taxinstitute.com.au/renew

Tax News – the details

by TaxCounsel Pty Ltd

May – what happened in tax?

The following points highlight important federal tax developments that occurred during May 2021.

Government initiatives

1. Budget highlights

The following are brief details of the more significant tax changes announced by the Treasurer in the context of the 2021-22 federal Budget that was handed down on 11 May 2021.

Temporary full expensing extension

Temporary full expensing is to be extended in its current form for 12 months to 30 June 2023 to allow eligible businesses with an aggregated annual turnover or total income of less than \$5b to deduct the full cost of eligible depreciable assets of any value, acquired from 7:30 pm AEDT on 6 October 2020 and first used or installed ready for use by 30 June 2023. From 1 July 2023, normal depreciation arrangements will apply.

Temporary loss carry-back extension

The temporary loss carry-back measures that apply to eligible corporate tax entities are to be extended by one year. The extension will allow eligible entities to carry back (utilise) tax losses from the 2022-23 income year to offset previously taxed profits as far back as the 2018-19 income year when they lodge their 2022-23 tax return.

Intangible depreciating assets: tax-effective life

Taxpayers will be able to self-assess the tax-effective lives of eligible intangible depreciating assets, such as patents, registered designs, copyrights and in-house software. This measure will apply to assets acquired from 1 July 2023, after the temporary full expensing regime has concluded.

The tax-effective lives of such assets are currently set by statute and taxpayers will continue to have the option of applying the existing statutory tax-effective life to depreciate these assets.

Individual tax residency rules

The individual tax residency rules are to be replaced with a new, modernised framework. The primary test will be a simple “bright line” test — a person who is physically present in Australia for 183 days or more in any income year will be an Australian tax resident. Individuals who do not meet this primary test will be subject to secondary tests that depend on

a combination of physical presence and measurable, objective criteria. The measure will have effect from the first income year after the date of royal assent of the enabling legislation.

Patent box: medical and biotechnology innovations

A patent box tax regime is to be introduced to further encourage innovation in Australia by taxing corporate income derived from patents at a concessional effective corporate tax rate of 17%, with the concession applying from income years starting on or after 1 July 2022.

The patent box will apply to income derived from Australian medical and biotechnology patents. The government will also consult on whether a patent box would be an effective way of supporting the clean energy sector.

AAT: debt recovery of disputed tax debts

The AAT's powers are to be extended to pause or modify ATO debt recovery action in relation to disputed debts that are being reviewed by the Small Business Taxation Division of the AAT. This measure is to take effect from the date of royal assent of the enabling legislation.

When considering applications, the AAT will be required to consider the potential effect on the integrity of the tax system and ensure that applications are in relation to genuine disputes.

Medicare levy low-income thresholds

The Medicare levy low-income thresholds for singles, families, and seniors and pensioners are to be increased from 1 July 2020 to take account of recent movements in the CPI so that low-income taxpayers generally continue to be exempt from paying the Medicare levy.

Self-education expense deductions

The exclusion of the first \$250 of deductions for prescribed courses of education is to be removed with effect from the first income year after the date of royal assent of the enabling legislation.

Low and middle-income tax offset

The low and middle-income tax offset is to be retained for the 2021-22 income year.

Employee shares schemes

The cessation of the employment taxing point for the tax-deferred employee share schemes (ESSs) that are available for all companies is to be removed with effect in relation ESS interests issued from the first income year after the date of royal assent of the enabling legislation.

This change will result in tax being deferred until the earliest of the remaining taxing points (in the case of shares, when there is no risk of forfeiture and no restrictions on disposal, and in the case of options, when the employee exercises the option and there is no risk of forfeiting the resulting share and no restriction on disposal). There is a maximum period of deferral of 15 years.

Corporate collective investment vehicle

The corporate collective investment vehicle (CCIV) component of the measure titled “Ten Year Enterprise Tax Plan” — implementing a new suite of collective investment vehicles announced in the 2016-17 Budget — is to have a revised commencement date of 1 July 2022.

2. CGT and granny flats

An amending bill (the [Treasury Laws Amendment \(2021 Measures No 4\) Bill 2021](#)) which was introduced into parliament on 26 May 2021 contains the amendments to give effect to the proposed “granny flat” CGT changes that were announced in the context of the 2020-21 Budget.

Under the draft amendments, a CGT event would not happen on the entering into, varying or terminating of a granny flat arrangement if certain requirements are met. These requirements would include that the individual having the granny flat interest has reached pension age or has a disability, and that the arrangement is in writing and is not of a commercial nature. The CGT event would not happen only to the extent that it relates to the creation, variation or termination (as the case may be) of a granny flat interest.

A granny flat interest in a dwelling for this purpose is a right to occupy that dwelling for life.

The amendments are to apply from the first 1 July to occur after the day that the amending Act receives royal assent.

3. FBT: retraining and reskilling benefits

Also released by the government on 16 April 2021 was exposure draft legislation (and explanatory material) to give effect to the previously announced targeted fringe benefits tax (FBT) exemption for employer-provided retraining and reskilling benefits.

It was explained that the increased rate of globalisation and technological change, and the changing nature of work and the labour market, are among the forces driving the need for continued upgrading of skills throughout life. Retraining and reskilling play an important role in allowing Australia’s labour force to benefit from the ongoing transformation of jobs and workplaces. Against this background, the government is supporting employers to retrain and reskill individuals for future employment opportunities.

To incentivise employers to retrain and reskill redundant (or soon to be redundant) employees so that they are better prepared to transition to their next career, the proposed amendments will provide employers an exemption from FBT on benefits provided to these employees for the purpose of enabling them to gain new employment.

When passed by parliament, the amendments are to apply to benefits provided on or after 2 October 2020 (the date the measure was announced).

4. Miscellaneous proposed amendments

The Treasury has released an exposure draft Bill and Regulations (and supporting explanatory materials) that cover proposed minor and technical amendments to the Treasury portfolio laws.

The proposed amendments seek to ensure that the law operates as intended by correcting technical or drafting defects, removing anomalies and addressing unintended outcomes. The more significant of the proposed amendments that relate to the taxation laws are briefly noted below.

Corporate loss carry-back choice

A new section (s 160-16) is proposed to be inserted in Div 160 of the *Income Tax Assessment Act 1997* (Cth)

(ITAA97) to clarify the mechanism through which an entity may change its loss carry-back choice.

A change of a loss carry-back choice will need to be given to the Commissioner in the approved form within the limited amendment period (as defined in s 170 of the *Income Tax Assessment Act 1936* (Cth) (ITAA36)) for an assessment for an income year.

A changed loss carry-back choice applies as if it was always the entity’s choice. That is, it takes effect from the day the original choice was made.

Franking account balance

It is proposed to amend ss 205-15(1) and 219-15(2) ITAA97 to ensure that a franking credit arises in circumstances where:

- a franking debit arises because the entity or company receives a tax offset refund;
- the entity or company’s tax offset refund is subsequently reduced and the entity or company is liable to pay the Commonwealth the amount of the excess mentioned in s 172A(2) ITAA36; and
- the entity or company pays the amount of the excess.

In these circumstances, the amount of the franking credit is to be the amount of the excess, and the credit arises on the day on which the amount of the excess is paid.

The proposed changes would ensure that an entity or a company’s franking account balance is restored to appropriately reflect the actual amount of the entity or company’s tax offset refund.

Temporary full expensing

It is proposed to amend s 40-157 of the *Income Tax (Transitional Provisions) Act 1997* (Cth) to clarify that, when working out the cost of a depreciating asset that is capital works for the purpose of calculating an entity’s total cost of investment for the 2016-17 to 2018-19 income years, ss 40-45 and 40-215 ITAA97 are to be disregarded. This clarification will ensure that the investment test interacts appropriately with the existing provisions in Div 40 ITAA97.

The Commissioner’s perspective

5. Identity fraud targeted

In a joint media release on 29 April 2021, the ATO and the Tax Practitioners Board (TPB) announced the release of draft guidance (by the ATO) and a draft practice note (by the TPB) relating to identity fraud.

The media release states that the ATO and the TPB are focused on measures to intercept attempted identity fraud targeted at registered tax practitioners and their clients. The proposed new guidelines will strengthen and modernise the practices and controls that registered tax practitioners follow when verifying the identity of their clients.

The ATO has seen an increase in attempts by criminals to commit refund fraud by stealing the identities of taxpayers which has coincided with an increased reliance on technology and remote working practices. A lack of consistency to verifying the identity of clients has left individual tax practitioners vulnerable to attack. Practices that retain client identity documents insecurely are also at greater

risk of having these documents stolen through physical break-ins.

The ATO's draft guidance encourages tax practitioners to voluntarily adopt the new client verification standard immediately, with the view for the standards to become compulsory in the future following an initial transition period and further consultation with the tax profession.

The ATO is not expecting that tax practitioners will need to go back and verify the identity of their entire client base as part of the transitional approach. Rather, tax practitioners are being asked that they perform identity checks from this point on, at the next opportunity in their normal dealings with clients.

The TPB's guidance will apply to all registered tax practitioners regardless of whether they use the ATO's online services or not.

The TPB noted that the *Tax Agent Services Act 2009* (Cth) does not expressly set out minimum requirements for tax practitioners to verify a client's identity. However, there are implications under the Act if tax practitioners fail to take reasonable steps to ensure that the identity of their clients is established. The TPB's draft practice note provides practical guidance and examples so that tax practitioners do not fall foul of their obligations and put their registration and business at risk.

Tax practitioners who are unable to successfully verify a client's identity and suspect potential fraud should contact the ATO immediately on 1800 467 033.

The ATO's draft guidance is available on the ATO website and the TPB's draft practice note is available on its website. The ATO and TPB are seeking feedback.

6. Apted: decision impact statement

The Commissioner has released a revised decision impact statement in relation to the recent decision of the Full Federal Court in *FCT v Apted*.¹

In that case, which was an appeal from a decision of the AAT, the Full Court considered the operation of the requirement in s 11(6) of the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* (Cth) (the CERP Rules) that an entity have an active ABN on 12 March 2020 (or a later time allowed by the Commissioner) in order to be eligible for a JobKeeper payment.

The Full Court held that an applicant for a JobKeeper payment who did not in fact have an ABN on 12 March 2020 (if the ABN register were to have then been inspected) could not satisfy the having an ABN requirement, and that the AAT's decision to exercise the discretion to allow the JobKeeper applicant to have an ABN at a later time was legally correct.

The decision impact statement states that the holding of an ABN as at 12 March 2020 supported transparency that a business existed at 12 March 2020. The reporting of supplies or income to the Commissioner is concerned with engagement with the Commissioner prior to 12 March 2020 concerning the business in operation. The inclusion of these elements in the integrity rule in the CERP Rules indicated that the JobKeeper payments for eligible business participants were in the ordinary case to be directed to businesses

that were operating actively and doing so in view of the Commissioner as at 12 March 2020.

Having regard to that context, if the business was operating without visibility to the Commissioner as at 12 March 2020 (deliberately or otherwise), that would weigh against the exercise by the Commissioner of the discretion. Of course, in such cases it would also be relevant to understand the reasons why the business did not hold an ABN or had not reported supplies or income to the Commissioner by 12 March 2020. Where there is a reasonable explanation, in most cases the discretion would be exercised.

The Commissioner considers that the Full Court's decision and the Commissioner's view of the decision will apply equally to the identical requirements in ss 5 and 6 of the *Boosting Cash Flow for Employers (Coronavirus Economic Response Package) Act 2020* (Cth), having regard to the purpose and context of those rules. Similarly, the Commissioner accepts that those discretions can be reviewed, as part of a review of a decision on entitlement to cash flow boost payments, under Pt IVC of the *Taxation Administration Act 1953* (Cth) (TAA53).

The Commissioner considers that the court's decision applies to discretions contained in the integrity rules in the cash flow boost and JobKeeper legislation. It does not affect any other discretions that the Commissioner may exercise, including those relevant to determining ABN eligibility at a point in time, or deferral of lodgment due dates for tax returns or business activity statements (BASs).

In response to the court's decision, the Commissioner has also updated PS LA 2020/1 which is concerned with the exercise by the Commissioner of his discretion to allow further time for an entity to hold an ABN or to provide notice to the Commissioner of assessable income or supplies.

7. Discretion to retain tax refunds

The Commissioner has issued a practice statement that sets out the ATO's administrative approach to the extension in 2020 of the Commissioner's discretion to retain tax refunds (PS LA 2021/2).

The practice statement explains that, as part of the amendments made by the *Treasury Laws Amendment (Combating Illegal Phoenixing) Act 2020* (Cth) (the amending Act), changes were made to extend the Commissioner's discretion to retain a refund where a taxpayer has an outstanding notification (other than a notification under the BAS or petroleum resource rent tax (PRRT) provisions) that:

- is required to be given to the Commissioner under a taxation law (for example, an income tax return); and
- affects or may affect the amount of the refund.

The law does not limit the application of the extension to the discretion. However, PS LA 2021/2 recognises that the Commissioner's exercise of this extended discretion will not be taken lightly. In particular, the exercise of the discretion will be considered in circumstances where taxpayers are identified as engaged in high-risk behaviour (including those engaging in illegal phoenix activity).

PS LA 2021/2 provides ATO officers with guidance on when they may exercise the Commissioner's discretion to retain a taxpayer's refund. However, the practice statement does

not apply to the exercise of the Commissioner's discretion to retain a taxpayer's running balance account (RBA) surplus or credit where:

- a notification under the BAS provisions, the PRRT provisions or single touch payroll is outstanding; or
- the Commissioner requires verification of information contained in a notification.

The exercise of the discretion to retain a refund should be considered where there are reasonable grounds to believe that:

- the taxpayer has an RBA surplus or other credit that has not been applied against a tax debt of the taxpayer;
- the taxpayer has an outstanding notification that they are required to give under a taxation law (other than the BAS or PRRT provisions);
- the outstanding notification affects or may affect the amount of the refund; and
- the taxpayer (including associates or controllers) is engaged in phoenix behaviour (during the first year after commencement of the amending Act), or the taxpayer is engaged in high-risk behaviour (including phoenix behaviour) (after the first year following commencement of the amending Act).

PS LA 2021/2 explains what may be considered as "phoenix" or high-risk behaviour and the length of time that the Commissioner may retain a refund.

8. Imported hybrid mismatch rule

The Commissioner has issued a draft practical compliance guideline that contains practical guidance as to the ATO's assessment of the relative levels of tax compliance risk associated with hybrid mismatches addressed by Subdiv 832-H ITAA97 (PCG 2021/D3).

The draft guideline sets out the expectations regarding the Commissioner's assessment of risk in connection with the imported hybrid mismatch rules, including the Commissioner's approach to reviewing whether a taxpayer has undertaken reasonable enquiries in relation to the rules for non-structured arrangements. This includes the level of supporting information that the Commissioner requires in order to demonstrate compliance in connection with non-structured arrangements and will also assist taxpayer's in preparing for any compliance reviews.

PCG 2021/D3 does not limit the operation of the law, and it does not replace, alter or affect the Commissioner's interpretation of the law in any way. It does not relieve a taxpayer of the legal obligation to comply with all relevant taxation laws.

The draft guideline does not deal with the core hybrid mismatch rules (in Subdivs 832-C to 832-G ITAA97), which must be considered before the application of Subdiv 832-H.

Recent case decisions

9. Freezing order

On 26 April 2021, the Federal Court (Davies J), on the Commissioner's application, issued an interim freezing order in relation to a taxpayer (a Mr Zou) who had failed to comply with a security bond notice to give security to the

Commissioner in the amount of \$24,762,187 by 5:00 pm on 5 January 2021 for the due payment of a future tax-related liability (*FCT v Zou*²).

Davies J said that she was satisfied on a *prima facie* level that the Commissioner had a good arguable case that: (1) the security notice met the requirements of s 255-105(2) TAA53; (2) the notice was served on Mr Zou on 4 December 2020 at the address for service; and (3) there had been non-compliance with the security notice.

Her Honour said that there were a number of reasons for being satisfied that there was a real risk of dissipation. These included:

- the future tax-related liability in the amount of \$24,762,187 had since crystallised into an actual liability by the issue by the ATO of notices of amended assessment of income tax and penalties in March 2021, with due dates for payments variously of 22 March 2021, 29 March 2021 and 1 April 2021;
- Mr Zou had been assessed to tax on amounts of income which were undisclosed to the ATO, giving rise to the inference that Mr Zou had grossly understated his income over a number of years; and
- the significant amount of the tax liability, the failure to pay the tax debt, and the failure to comply with the security notice gave rise to an inference that there was a risk of asset dissipation.

The evidence was that: the property over which the security was required to be given was the only Australian real estate property of Mr Zou of which the Commissioner was aware; Mr Zou was now located in China; the property was presently not mortgaged; and it appeared that the property, at least at the time of the issue of the security notice, had been listed on the market for sale. Mr Zou appeared to have business interests in China and the ability and motive to sell the property and move funds offshore. He had also, on the evidence available, been uncooperative with the Commissioner in failing to respond to numerous requests for information and documents from the ATO and demonstrated a lack of willingness to comply with his obligations.

Taking all of those matters into account, there was a proper basis for concern of risk of dissipation of the property, either through the sale of the property or through that property being encumbered by Mr Zou to a third party, which would seriously compromise the ability of the Commissioner to enforce the security notice. Accordingly, orders should be made against him, restraining him from dealing with the property.

In aid of the freezing orders, her Honour said that it was also appropriate to make an order against the Registrar of Titles preventing dealings affecting the property.

Davies J also considered issues relating to the service of documents on Mr Zou.

10. Other decisions

There are several other recent decisions that have been handed down that should be briefly noted. These are:

- *KPTT v FCT*³ in which Jagot J held that the identity of a taxpayer should not be suppressed in proceedings before

the Federal Court on an appeal from a decision of the AAT in circumstances where there was a suppression order by the AAT and the AAT proceedings had not been finally disposed of. Her Honour referred to the relevant principles that apply when considering making suppression and non-publication orders under ss 37AF and 37AG of the *Federal Court of Australia Act 1976* (Cth);

- *Spencer and FCT*⁴ in which the AAT partially allowed a taxpayer's objection against the disallowance of work-related expenses;
- *Birdseye and Tax Practitioners Board*⁵ in which the AAT affirmed the decision of the TPB to cancel the tax agent registrations of an individual and a related company for breaches of the Code of Conduct but set aside the TPB's decision to the extent that it imposed a non-reapplication period on the agents; and
- *Norman and Tax Practitioners Board*⁶ in which the AAT affirmed the decision of the TPB to cancel the registration of an individual but reduced the non-reapplication period imposed by the TPB from four years to two years.

TaxCounsel Pty Ltd
ACN 117 651 420

References

- 1 [2021] FCAFC 45.
- 2 [2021] FCA 433.
- 3 [2021] FCA 464.
- 4 [2021] AATA 1106.
- 5 [2021] AATA 1011.
- 6 [2021] AATA 848.

The logo of The Tax Institute, featuring a stylized 'T' icon above the text 'THE TAX INSTITUTE'. The main title 'Your Federal Budget 2021–22 Report' is displayed prominently in large white font. Below the title, a subtitle in red text reads: 'Key insights and practical analysis of tax measures announced for the next financial year and beyond.' A section titled 'The report covers:' lists various tax topics. At the bottom, there is a call to action with the text 'Get the report at' and a website link, set against a background of a person pushing a large puzzle piece into place at sunset.

THE TAX INSTITUTE

Your Federal Budget 2021–22 Report

Key insights and practical analysis of tax measures announced for the next financial year and beyond.

The report covers:

- Financial outlook for 2021–22
- Start dates at a glance
- Personal tax and transfer
- Superannuation and retirement
- Tax issues for SMEs
- Corporate tax
- International tax
- Tax administration

Get the report at
info.taxinstitute.com.au/federalbudget2021

0116TPA_05/21

Tax Tips

by TaxCounsel Pty Ltd

Backdating

The backdating of a document can not only give rise to penalties, but it can also give rise to a range of issues much later.

Background

Practitioners are not infrequently confronted with the situation where some document that has taxation consequences has not been brought into existence in a timely manner.

In such a situation, there is a temptation to try to do things retrospectively. But, as will be seen, that course has quite a few drawbacks, ranging from legal ineffectiveness to the commission of an offence. And, as will also be seen, the backdating can come back many years later in a dispute with the ATO or a civil dispute between the parties.

This article briefly considers several points in relation to backdating.

The past cannot be altered

The most basic point from which the other points follow is the impossibility of altering the past by backdating a document. This has been referred to in numerous decisions of the courts.

Thus, for example, in *McDonald v FCT*,¹ Stone J (Beaumont ACJ agreeing) said, in the context of a contract for the sale and purchase of land, that the date of the formation of the contract is a matter of law and the parties cannot, by backdating the written document, rewrite history with the effect that a binding contract existed from the specified date.

By way of further example, in *Davis v FCT*,² Hill J said:

“The parties to an agreement cannot effect a change to an agreement retrospectively so that the agreement between them is altered as against the rest of the world. The parties can, no doubt, enter into an agreement, binding as between them, that a prior agreement they have entered into will be construed in a particular way from the moment the prior agreement was entered into. But the original agreement will, so far as the Commissioner is concerned, govern their relationship until the time of its amendment. For example A and B may enter into an agreement which provides, inter alia, that certain income will, for the term of the agreement, be held by A in trust for B. Later the parties may as between them agree to alter the arrangement ab initio to provide that that income will not be held in trust for B, but will always be treated as belonging to A beneficially. The agreement will be binding inter partes, but for income tax purposes the income will, until the date of the agreement, still be treated as beneficially the income of B.”

Hill J went on to say that the example he had given in the above passage was to be:

“... distinguished from the case where parties have entered into an agreement under the mutual mistake that the document they have executed records the terms of their bargain when it does not. In such a case an application could be made to a court for rectification of the written document. But even where an order of a court is obtained to rectify the written agreement, the court order does not operate to alter the past. The order of the court merely recognises what has always been the case, namely that the true agreement between the parties was not that which they have mistakenly executed, but what they in truth agreed upon.

As an alternative to an order of rectification the parties could execute a deed rectifying their prior writing. That deed, if truly operating to record that the parties were under a mutual mistake, and also setting out what the parties acknowledge to be the true agreement between them would not, any more than a court order, actually alter the position as between the parties. It would merely record that agreement as it always was. Whether by court order or by deed, rectification requires that there be a mutual mistake, that is to say what is required is that there be a common intention between the parties as to the effect that the instrument they signed would have had which was inconsistent with the effect which the instrument which they executed in fact had: cf *Commissioner of Stamp Duties (NSW) v Carlenka Pty Ltd* (1995) 95 ATC 4620. Mistake as to the revenue consequences of the agreement would not bring about the same result: *Baird v BCE Holdings Pty Ltd* (1996) 40 NSWLR 374 at 384.”

In *Malik v Hussain Jr*,³ a recent United Kingdom decision, Stephen Davies J said that a statement in a partnership agreement to the effect that a partnership has existed from a date preceding the execution of the agreement itself cannot in law operate retrospectively. At best, it may accurately reflect the past position but, if in fact there was no partnership during that period, such a statement in the agreement cannot retrospectively alter the situation.

And, importantly, an agreement such as is envisaged in the *Malik* case cannot be altered by the backdating of the partnership agreement.

Evidentiary issues

Clearly, if the date of the execution of a document had to be proved in all cases by a person relying on it, this would give rise to practical and time-consuming problems. The approach of the courts in relation to the date of a document was stated by Williams J in *Dillon v Gange*⁴ as follows:

“It is unnecessary to discuss the evidence with respect to the date on which the agreement was signed at any length. The document bears date 13th September 1939, and, in the absence of any proof to the contrary, there would be a presumption that it was executed on that date (*Anderson v. Weston* [1840] EngR 375).”

The usual acceptance, as a matter of course, of the date that a document bears as being the date on which it was signed was usefully explained by McPherson JA (Shepherdson J agreeing) in *Queensland Law Society Inc v Bax*⁵ as follows:

“... the act of falsely ‘backdating’ documents is plainly a serious matter. The ordinary presumption is that, unless there is affirmative evidence to the contrary, a document is taken to have been executed on the date it bears. Such evidence is often difficult to obtain particularly after a lapse of some time from the event. The presumption is therefore one on which business is habitually conducted and for that reason, among others, it is plainly important to maintain its integrity so

far as possible. The date on a document is often critical in a number of ways. In the case of insolvency, it is capable of determining whether the transaction recorded or given effect in the instrument is liable to be set aside. It may also, as the Statutory Committee in this case noticed, affect rights of creditors to priority in equity. Such a priority may impinge on the rights of creditors against each other, or it may, for reasons explained in *Burns v. Stapleton* [1959] HCA 34 ..., defeat, wholly or in part, the claim of a trustee in bankruptcy or a liquidator to invalidate a security asserted over the assets of the insolvent."

It needs to be kept in mind, however, that the date of a contract or other document may be put in issue. In *Re Gary Edwin Dowling and Catherine Maree Dowling Ex Parte: Richard Andrew Gagie v State Bank of New South Wales*,⁶ Morling J said that he agreed that the date shown on an agreement may be contradicted by extrinsic evidence.

What can the consequences be?

The consequences that may flow from a backdated document will depend on the circumstances.

The prime consequence is that the backdating of a document cannot retrospectively alter the position of the parties; it can only operate prospectively from the date it was in fact executed.

Registration issues

The backdating of a document or documents may well be a matter that a regulatory body, such as the Tax Practitioners Board, may take into account when considering the registration of a tax agent, including when considering whether there has been a breach of the Code of Professional Conduct and whether the fit and proper test is met.⁷ Principles of the Code of Professional Conduct that could potentially apply in relation to the registration of tax agents⁸ include:

- acting honestly and with integrity;
- acting lawfully in the best interests of a client;
- providing a tax agent service competently; and
- taking reasonable care in ascertaining a client's state of affairs, to the extent that ascertaining the state of those affairs is relevant to a statement that the agent is making or a thing that the agent is doing on behalf of a client.

Penalties

In the case of the backdating of a document that is relevant to taxation liabilities, potential issues may arise for the taxpayer not only in respect of what may be called primary tax, but also under the administrative penalties and offence provisions of the *Taxation Administration Act 1953* (Cth) (TAA53) relating to statements.

For example, it is an offence under s 8K TAA53 to make a statement to a taxation officer that is false or misleading in a material particular, and an administrative penalty is potentially attracted under s 284-75(1) Sch 1 TAA53 where a statement that is made to the Commissioner is false or misleading in a material particular, whether because of things in it or omitted from it.

An amount that is derived from a document that is of no force at the relevant time because it is backdated, and which is included in an income tax return made to the

Commissioner, could be a relevant false or misleading statement.

Also, the backdating of a document may, in certain circumstances, be an offence under the wider criminal law,⁹ and the fact that the actual backdating is done by, say, the client will not absolve the professional person involved if the professional person is an accessory. For example, by virtue of s 11.2 of the Schedule to the *Criminal Code Act 1995* (Cth), a person who aids, abets, counsels or procures the commission of an offence by another person is taken to have committed that offence and is punishable accordingly.

A recent example

A recent example where backdating was involved is provided by the decision of Davies J in *Advanced Holdings Pty Ltd as trustee for The Demian Trust v FCT*.¹⁰ In that case, it was conceded that:

- a document purporting to be a "unit certificate" of a trust called the Lewisham Estates Trust certifying that Demian Holdings Pty Ltd as trustee for the Demian Trust was the holder of the 100 units in the Lewisham Estates Trust and dated "15th May"; and
- a document purporting to be a transfer of 100 units in the Lewisham Estates Trust from Advanced Holdings Pty Ltd to Demian Holdings dated 15 May 2003,

which had been supplied to the Commissioner by the accountant and tax agent (a Mr Incollingo) of the relevant group of companies were actually created in 2015 and backdated to 15 May 2003. The Federal Court issued Mr Incollingo a certificate under s 128 of the *Evidence Act 1995* (Cth)¹¹ in respect of evidence that he gave under cross-examination and re-examination in relation to the issue of backdated documents and the provision of backdated documents to the ATO.

Other circumstances

The consequences that may arise in relation to the backdating of a document are not limited to taxation issues. For example, civil litigation may result from the beneficiaries of a discretionary trust becoming antagonistic among themselves (perhaps after the death of the original controller) and litigation may follow which exposes what has been done in the past. In such a case, if income distribution resolutions for an income year have, contrary to fact, been purportedly made on or before 30 June as required by the terms of the trust deed or, in practical terms, the income tax law, the income would belong to the default beneficiaries or, failing that, would be taxed to the trustee, usually under s 99A of the *Income Tax Assessment Act 1936* (Cth) (ITAA36).

Some observations

Tax practitioners must take care in relation to situations where there is the potential for a backdating issue to arise and have procedures in place that will overcome possible problems by ensuring that no backdating occurs.

It is also suggested that the government should consider the possibility of legislative amendments to overcome one situation where backdating issues can loom large. This situation is the annual distribution of the income of a non-fixed trust. The Commissioner previously had an

administrative practice which (subject to the terms of the particular trust deed) broadly allowed a trustee two months after the close of an income year within which to make a distribution resolution that he, the Commissioner, would treat as being effective for the income year (see IT 328 and IT 329, both of which were withdrawn in 2011).

If suitable legislative amendments were to be made then, subject to the terms of any amendment power conferred by a trust deed, the trust deed could be suitably amended if necessary.

In relation to the possibility of a legislative change along the lines suggested, it may be noted that the Commissioner's former administrative practice is, it seems, recognised in s 96C(1)(b) ITAA36 and in s 269-65 Sch 2F ITAA36. The practice is also recognised in the explanatory memorandum to the Tax Laws Amendment (2004 Measures No. 1) Bill 2004 (see para 3.20) and in TR 2010/3 (see para 111). The fact that the Commissioner's former administrative practice is so recognised does not have any relevance to the operation of the trust provisions in Div 6 ITAA36 but does give some basis to argue that legislative change is required.

It may be noted that another important tax issue affecting trusts has been outstanding for a number of years. This is the issue considered in TR 2012/D1 which was issued in March 2012 and has not been finalised. This draft ruling considers the meaning of the expression "income of the trust estate" as it is used in Div 6 ITAA36.

TaxCounsel Pty Ltd

References

- 1 [2001] FCA 305.
- 2 [2000] FCA 44.
- 3 [2020] EWHC 2334 (Ch). Reference should also be made to the recent decision of Colvin J in *Shell Energy Holdings Australia Ltd v FCT* [2021] FCA 496.
- 4 [1941] HCA 5.
- 5 [1998] QCA 89.
- 6 [1992] FCA 160.
- 7 See on the Tax Practitioners Board's website under 2019 Compliance case studies "Dishonest acts result in registration termination" (available at www.tpb.gov.au/dishonest-acts-result-registration-termination). See also *Migration Agents Registration Authority v Bebwawy* [2021] FCA 397.
- 8 See Div 30 of the *Tax Agent Services Act 2009* (Cth).
- 9 See, for example, s 137.2 of the Schedule to the *Commonwealth Criminal Code*.
- 10 [2020] FCA 1479. This case involved a number of issues and an appeal from the decision of Davies J has been heard by the Full Federal Court.
- 11 That section deals with privilege in respect of self-incrimination.



THE TAX INSTITUTE



2021 Death... & Taxes Conference

*The leading event on the
topic of estate administration*

Now in its 5th year, this conference is unlike any other and a "must" for all tax and legal practitioners involved in succession planning and estate administration.

Program highlights include:

- Re-emerging provisions of 99B and 100A
- Navigation of division 6 in an estate context
- How residency issues impact US estate taxes
- Administering an SMSF on death.



19–20 August 2021
Hilton, Brisbane | Online
12 CPD hours

Register now

taxinstitute.com.au/2021deathandtaxes

Mid Market Focus

by Jordan Phung, HLB Mann Judd

Foreign businesses in Australia: practical considerations

For foreign businesses looking at Australia as a potential market, there are usually several administrative, legal and tax hurdles to jump through before trading can commence.

Introduction

When setting up a business in Australia, in general, there are several key planning items that should be addressed. Many of these are not always front-of-mind but may result in costly mistakes if not planned for appropriately.

This article discusses some of the practical considerations that will need to be addressed before commencing business in Australia, such as choosing and setting up the appropriate structure, obtaining business and tax registrations, determining reporting obligations, and dealing with international tax obligations.

Choosing an appropriate structure

Generally, when a foreign business is looking to operate in Australia, it will either do so by setting up a branch office or by incorporating a subsidiary in Australia. As with most things in practice, choosing the right structure will depend on the relevant facts and circumstances of your client.

Some questions that practitioners should be raising with these foreign businesses include:

- What are the funding requirements for the Australian business?
- How will profits be repatriated to the foreign parent?
- How long are Australian operations intended to be carried on?
- What is the exit strategy?
- Where will the central management and control of the Australian business be located?

The main difference between the two structures is that an Australian company would be a separate entity for tax and legal purposes, whereas a branch is not. While the same Australian corporate tax rate may apply to a branch or subsidiary, having a corporate structure in place offers some important benefits, such as:

- asset protection for the foreign parent, as the creditors of the subsidiary would be limited to the assets of the subsidiary only;

- indemnity for directors of the foreign parent for the actions of the directors of the Australian subsidiary;
- it is easier to set up an Australian bank account;
- administrative benefits, particularly when dealing with Australian government bodies, financial institutions, other businesses and Australian employees;
- tax concessions that may only apply to, or would be easier for, Australian corporate entities, such as the R&D tax incentive scheme and the tax concessions for employee share schemes; and
- the ability to repatriate income to the foreign parent via dividends.

Choosing a branch will typically be desired where a foreign business is looking to do business in Australia for a short term, with minimal trading activity, and particularly when time is a critical factor. However, if this intention shifts, there is an option to convert a branch into an Australian subsidiary. A common approach is to transfer the branch assets to a newly incorporated company. While this may trigger a capital gains tax event, a roll-over may be available.

Setting up the structure

Once an appropriate structure is determined, the next step is to formally set up the structure with the Australian Securities and Investments Commission (ASIC). A foreign company must not carry on business in Australia unless it is registered with ASIC.

To set up a branch/permanent establishment, a foreign business must:

- determine if the foreign company needs to register with ASIC (ie whether the foreign company is actually carrying on a business in Australia);
- ensure that the desired name to be registered is available;
- prepare and lodge ASIC Form 402;
- appoint a public offer;
- apply for an Australian business number (ABN) with the Australian Business Register (ABR); and
- apply for tax registrations with the ATO and/or state revenue offices.

To set up an Australian subsidiary, a foreign business must:

- choose a name;
- decide on the type of company (eg private or public) and where it will be registered;
- decide on how the company will be governed (eg by a constitution);
- choose and get written consent for the company's registered office;
- choose and get written consent from officeholders;
- decide on a share structure;
- prepare and lodge ASIC Form 201;
- appoint a public officer;
- apply for an ABN with the ABR; and
- apply for tax registrations with the ATO and/or state revenue offices.

In either case, an individual who ordinarily resides in Australia will need to be appointed as the public officer for the branch/subsidiary.

Business and tax registrations

Regardless of whether a branch or a subsidiary is set up, a foreign business looking to conduct business in Australia must apply for an ABN and a tax file number (TFN). This can be done at the same time through the ABN application form on the ABR website.

However, foreign directors need to provide additional proof of identity if they are to be listed as directors of the Australian subsidiary, which may delay the processing of the ABN and TFN applications. Foreign directors also need to have their birth certificates, passports and/or driver's licence certified by a notary, which should be attached as part of the ABN application. From our experience, the additional verification required may add another one or two months to the ABN and TFN registration process.

Additional tax registrations (eg goods and services tax and fringe benefits tax) may also be required depending on the nature and scope of the Australian operations.

Tax reporting

A branch needs to lodge an annual Australian tax return with the ATO, in which it will be assessed on its income from Australian sources and can deduct costs incurred to generate that income. An Australian subsidiary would also need to lodge an Australian tax return, but it will be assessed on its income from worldwide sources.

As most foreign tax jurisdictions do not follow the standard June year-end in Australia, a substituted accounting period (SAP) may be obtained by lodging an SAP application form with the ATO to align the accounting period of the branch/subsidiary with that of the foreign parent.

While the ATO typically accepts SAP applications for an Australian entity to align its accounting period with its foreign parent, it is best to review PS LA 2007/21 to confirm the circumstances where an SAP will be granted.

Corporate tax rate

Another benefit of incorporating an Australian subsidiary is the potential to access the reduced corporate tax rate for "base rate entities". The standard corporate tax rate is 30%, but a reduced corporate tax rate of 26% applies for base rate entities for the 2021 income year.

The reduced corporate tax rate is only available if the Australian subsidiary:

- has an "aggregated turnover" of less than A\$50m; and
- does not derive more than 80% of its income from passive investments.

Under the aggregation rules, the turnover of any entity that the Australian subsidiary controls, or is controlled by, will need to be aggregated and assessed against the turnover threshold. Any interest to income, capital and/or voting rights of 40% or more is considered a controlling interest for these purposes.

Financial reporting

Generally, Australian companies that are controlled by a foreign parent will be required to prepare and lodge audited financial reports with ASIC. However, audit relief is available under *ASIC Corporations (Foreign-Controlled Company Reports) Instrument 2017/204* if the following requirements are met:

- the company must be a small proprietary company, which is any company that does not satisfy two or more of the following criteria: (1) the company has a consolidated revenue of \$50m or more; (2) it has consolidated gross assets of \$25m or more; (3) it has 100 or more employees;
- the company must be controlled by a foreign company for all or part of the financial year;
- the company must not be part of a large group (ie the large group must not exceed two or more thresholds specified in the first requirement above);
- the directors must have resolved to rely on the relief no earlier than three months before the commencement of each financial year for which relief under the ASIC instrument is relied on;
- for the first year of reliance on the ASIC instrument, ASIC Form 384 is lodged; and
- ASIC must not have notified the company that it may not rely on the exemption.

In order to rely on this audit relief, ASIC Form 384 must be lodged within three months prior to the start of the financial year and ending four months after the end of the relevant financial year. Failure to apply for audit relief using the form within the specified time frame may result in a costly audit, even if the subsidiary is eligible for relief.

If an overseas company is carrying on business in Australia, it will be required to lodge the foreign parent's financial statements with ASIC each year.

International tax considerations

This article will not address all of the international tax issues that could apply as, once again, this will vary depending on the size and scale of the Australian operations. However, as a general rule, a branch/subsidiary must prepare and lodge an international dealings schedule (IDS), along with the annual income tax return, if it has dealings (eg transactions or loans) with foreign related parties that exceed A\$2m. While this does not result in additional tax for the branch/subsidiary, the disclosures in the IDS may prompt the ATO to investigate its dealings with the foreign parent.

Depending on the degree of dealings that the Australian branch/subsidiary has with foreign related parties, it may be prudent to prepare transfer pricing documentation to support these dealings. Transfer pricing documentation typically requires a benchmarking analysis to be conducted to prove that the cross-charges between the branch/subsidiary and the foreign parent are at "arm's length" for tax purposes. This is a very specialised area of Australian tax law and a costly exercise to put in place.

Where the Australian branch/subsidiary is financed by a loan from a foreign related party, the thin capitalisation provisions also need to be considered where the interest expense

on the loan exceeds A\$2m. These provisions are complex to navigate and may effectively limit the interest expense deductible in Australia for entities that are heavily funded by debt relative to funding from equity.

Significant global entities

It is important to determine whether the Australian subsidiary is considered a “significant global entity” (SGE). Broadly, an SGE is any entity that is part of a group with annual global income of A\$1b or more.

In addition to being subject to the country-by-country reporting regime, SGEs are subject to significantly higher administrative penalties. For example, an SGE could be fined a failure-to-lodge penalty of at least \$111,000 for lodging an activity statement a few days late, whereas a large company that is not an SGE would only be fined \$1,110 in the same circumstances.

Conclusion

Clearly, an administrative obstacle course is to be navigated before deciding how to do business in Australia. While some of the issues discussed in this article are more relevant to foreign businesses that are on the larger end of the spectrum, the reporting requirements for foreign controlled branches/subsidiaries are generally onerous, regardless of size.

Jordan Phung
Senior Consultant
HLB Mann Judd



THE TAX INSTITUTE

Community Forum

*We've heard you,
let's talk tax together.*

Build a network.

Grow your understanding.

Join the conversation.

In just a few seconds, you'll be on your way to chatting with a community of like-minded tax professionals.

From routine legislation changes to sweeping tax reform, exciting new ideas to everyday technical advice, debate and discuss with passionate practitioners who speak your language.

Register now

community.taxinstitute.com.au



0321MEM_04/21

Higher Education

The foundation for providing holistic tax advice

The dux of CTA1 Foundations study period 3 explains the benefits of taking this core subject that covers the key components of the Australian tax system.



**Bryan Soepardi, Assistant Manager,
RSM Australia, NSW**

Please provide a brief background of your career in tax.

I provide R&D tax advice to a cross-section of Australian businesses. I have enjoyed presenting technical papers at conferences and advised listed companies on change management initiatives. As a UTS Finance Honours graduate, I have also worked on financial modelling and tax advice in relation to the interaction of R&D tax benefits with other areas of Australian and New Zealand income tax law.

What was the reason for undertaking CTA1 Foundations?

Despite the potential to obtain an exemption for this subject, I elected to undertake this subject to re-acquaint myself with the “foundations” of taxation law. I found the subject to have an optimal balance of depth and breadth, with a focus on the practical skills required in a day-to-day role as a tax adviser.

What skill or knowledge areas have you gained by undertaking this subject?

I have gained an understanding of several key components of the Australian tax system, including an introductory yet practical grasp of how to apply the capital gains tax, small business entity and goods and services tax provisions, the tax implications of various business structures, and the components and key provisions and precedents informing the determination of taxable income.

Have you applied this new knowledge in your role?

Yes, the Structures module in particular has already provided a foundation for understanding the tax and legal implications of different business structures across a range of our clients' circumstances.

How did you juggle study, work and other commitments?

Prudent time management and an understanding employer! Book out your study leave in advance, communicate with your team regularly about your workload, and be unfailingly diligent in sticking to your study schedule.

Where to now for you when it comes to continuing tax education?

Attaining my Chartered Tax Adviser qualification, then perhaps pursuing a Masters in Taxation!

What advice do you have for other tax professionals considering structured learning?

I view each of The Tax Institute's education programs as prerequisites for the contemporary tax professional. These programs provide a comprehensive and current review of all areas of tax law that together function as the foundation for providing good, holistic tax advice.

Graduate Diploma of Applied Tax Law

*Anticipating the needs of tomorrow's
tax professionals.*

This highly specialised and tailored academic qualification will give you the in-depth knowledge of our tax system that you need to succeed. The program consists of three core subjects and your choice of any three elective subjects. Recognition of prior learning could exempt you from certain subjects.

Core subjects:

CTA1 Foundations, CTA2A Advanced, CTA2B Advanced

Elective subjects: (select three)

- CommLaw1 Australian Legal Systems
- CommLaw2 Entities and Business Structures
- CommLaw3 Property Law
- Tax for Trusts in Estate Planning and Wealth Management
- Corporate Tax
- Advanced Superannuation

Take an important step now to advance your career in tax.

Contact our student advisory team on 1300 829 338 or visit our **website** to arrange a free consultation on eligibility, entry requirements and how the Graduate Diploma of Applied Tax Law can take your career to the next level.



2021-22 Budget highlights

by Robert Campbell, CTA, Director,
McLeod Campbell & Associates

Following on from the chaos of 2020, we take a look at measures proposed in the 2021-22 Budget which was handed down in the midst of a remarkable economic recovery, albeit with the shadows of COVID-19 still lurking. Australia's economy has rebounded strongly from shutdowns, border closures, international freight challenges and trade disputes. However, with the backdrop of the dreaded virus escaping quarantine and burgeoning government debt, the road to recovery will be bumpy and somewhat uncertain. The 2021-22 Budget attempts to further encourage the economic recovery by preserving with tried and trusted methods of cutting taxes and encouraging business capital expenditure. Unfortunately, this means that any hope of taxation reform will need to be stashed away for another day.

Personal tax

Medicare levy low-income thresholds

The Medicare levy low-income thresholds are set to increase from 1 July 2020, as follows:

- singles: from \$22,801 to \$23,226;
- families: from \$38,474 to \$39,167;
- single seniors: from \$36,056 to \$36,705; and
- family seniors: from \$50,191 to \$51,094.

Family income thresholds increase by \$3,597 (previously \$3,533) for each additional dependent child or student.

LMITO

The government announced that the temporary low and middle income tax offset (LMITO) is to be retained at least until the 2021-22 income year.

To recap, the LMITO is determined based on taxable income:

- \$37,000 or less: the offset is \$255;
- between \$37,000 and \$48,000: the value of the offset increases at a rate of 7.5 cents per dollar to the maximum offset of \$1,080;
- between \$48,000 and \$90,000: taxpayers are eligible for the maximum offset of \$1,080; and

- between \$90,000 to \$126,000: the offset phases out at a rate of 3 cents per dollar.

Given the difficult economic climate, the author is of the opinion that this is a positive decision which will assist with the economic recovery.

Child care subsidy

In an attempt to make child care more attractive and to encourage increased levels of workforce participation, the child care subsidy (CCS) will change as follows:

- 30 percentage points for the second child and subsequent children aged five years and under in care, up to a maximum CCS rate of 95% for these children, commencing on 1 July 2022; and
- the CCS annual cap of \$10,560 per child per year will be removed commencing on 1 July 2022.

While the author welcomes attempts to improve the accessibility of child care, he considers the proposal to be unnecessarily complex such that the goal of the proposal might be missed.

It is the author's view that holistic tax reform will offer up an opportunity to address underlying systemic issues which are limiting access to child care.

Self-education expenses

The non-deductibility of the first \$250 of self-education expenses is set to be removed. The author welcomes this measure as it cleans up legislation left behind by historical changes.

Exemption for pay under Operation Paladin

Australian Defence Force personnel will be entitled to a full tax exemption on pay and allowances derived while deployed to Operation Paladin.

Superannuation

Abolition of the work test for those under 75

The work test for superannuation contributions is set to be abolished for those aged between 67 and 74, effective 1 July 2022.

The work test requires a taxpayer to work at least 40 hours during a 30-day period to be able to make voluntary superannuation contributions during an income year.

This measure will enable those aged 67 and over to increase their superannuation balances without having to meet an arbitrary test.

The author lauds this announcement despite the curious one-year delay in implementation.

Downsizer extension

The downsizer concessions enable an eligible taxpayer to make contributions to superannuation over and above their contribution caps and their transfer balance cap on selling a home in which they have lived for at least 10 years.

The maximum downsizer contribution is \$300,000.

While these measures have been in place since 1 July 2018, it is estimated that only 22,000 households have taken advantage of this concession.

In order to assist with take-up of the concession, the minimum age will be lowered from 65 to 60, effective 1 July 2022.

The author supports measures which not only encourage the self-funding of retirement, but also encourage more housing stock to be available to growing families. However, with the proceeds under this measure counting towards the asset test for pension purposes, it remains to be seen if this change will increase the take-up rate of these rules.

Abolition of the superannuation guarantee \$450 threshold

The government announced that, effective 1 July 2022, the current \$450 monthly threshold in which superannuation contributions are mandated will be removed. The rationale behind this is that the \$450 minimum earnings threshold effectively penalises about 300,000 employees, of which 60% are female.

With increased casualisation of the workforce, there are risks that some with multiple casual employers are being left behind by the superannuation system.

One word of caution, however, is that of the protection of low member balances. The author would like to see more measures adopted to prevent low superannuation balances from being eroded or lost, such that employers are faced with a superannuation burden while employees ultimately fail to realise a benefit, creating a lose–lose situation.

Relaxation of superannuation residency rules

In what is a pleasing decision, the government announced that the residency rules for self-managed superannuation funds (SMSFs) will be relaxed.

In order to remain a complying fund, an SMSF must be a resident fund. A superannuation fund is a resident where:

- the fund is established in Australia or has an asset in Australia;
- central management and control (CMAC) of the fund is in Australia; and
- the fund's active members must be Australian residents and must hold at least half of the fund's assets.

Currently, the CMAC requirement is deemed as satisfied for absences outside Australia for up to two years. Under the proposal, this two-year exception will be increased to five years.

The author welcomes this decision to lessen some practical concerns of workforce globalisation and mobility.

Transfer to KiwiSaver

The government announced additional funding for the ATO to better administer a scheme for transferring unclaimed superannuation to KiwiSaver accounts, which is the New Zealand equivalent of superannuation.

Small-to-medium enterprise taxpayers

Temporary full expensing

The current temporary measure allowing businesses with turnovers of up to \$5b to fully deduct the cost of new depreciable assets will be extended by a further 12 months, such that it applies to new assets installed ready for use

by 30 June 2023. However, the ability to fully deduct second-hand assets is limited to businesses with turnovers of under \$50m, consistent with the current scheme.

While the author welcomes this measure in an attempt to further boost Australia's economic recovery, he cautions against the chasing of deductions at the expense of the financial position of a business.

Loss carry-back

The current loss carry-back rules will be extended by a further 12 months, with losses incurred up to the year ending 30 June 2023 being eligible to be carried back to the year ended 30 June 2019.

The current conditions will remain in place, that is:

- losses can only offset previously taxed profits; and
- a franking account deficit cannot be generated by the carry-back.

Employee share schemes

The government is proposing to remove the cessation of employment as a taxing event under an employee share scheme. As such, the taxing point will be deferred until the earliest of:

- in the case of shares, when any real risks of forfeiture are lifted and when disposal restrictions are lifted;
- in the case of options, when the option is exercised and any real risk of forfeiture over the resulting shares are lifted; or
- 15 years.

The government anticipates that this measure will make it easier for companies to offer employee share schemes.

SME recovery loans

Further to government announcements made during March 2021, the creation of SME recovery loans will continue on from the Coronavirus SME Guarantee Scheme.

Under the SME recovery loan scheme, the government will provide a guarantee for 80% of the loan, reducing the exposure of financial institutions to a mere 20% of the loan amount. However, to be eligible for a loan under this scheme, a business must:

- have a turnover of under \$250m; and
- have been entitled to JobKeeper from 4 January 2021 or otherwise impacted by the recent NSW floods.

Unlike the predecessor schemes, loans under this arrangement can be for a maximum term of 10 years, can be secured against non-residential property, and must not carry an interest rate above 7.5%.

In light of the poor uptake of loans under the original schemes, it is hoped that the 80% guarantee, increased loan term and ability to take security will assist lenders in extending credit to businesses which require further assistance.

However, the author feels that the requirement to have been eligible for the last round of JobKeeper severely limits the ability for businesses which are still in financial distress to obtain necessary funding.

Corporate tax

Digital games offset

The government announced a tax offset at a rate of 30% of eligible expenditure on approved digital games.

The minimum expenditure under the offset is to be set at \$500,000.

Industry consultation will take place during mid-2021 to further develop the detail around this proposal.

The aim of this measure is to provide support to other technology sectors by using gaming as a means to foster talent.

While the author welcomes this announcement, it is hoped that the government goes further to assist software development in Australia.

Effective life of intangible assets

The government announced that depreciable intangible assets acquired from 1 July 2023 will no longer be subject to the statutory effective lives.

From 1 July 2023, taxpayers will be able to self-assess the effective lives of new investments in patents, registered designs, copyrights and in-house software.

It is hoped that this measure will increase the attractiveness of using Australia as a hub to invest in and develop such intellectual property.

Patent box

The government announced the implementation of a patent box for medical and biotechnology patents. Under this proposed measure, income derived from qualifying medical and biotechnology patents will be taxed at the rate of 17%, compared with the corporate tax rate of 25% to 30%.

The government intends to consult closely with industry on the design of the patent box. The government will also explore whether expanding the patent box would be an effective way of supporting clean energy.

The author welcomes the announcement of a patent box and looks forward to participating in consultation with the government on its policy and design.

An internationally competitive patent box regime will support Australian businesses to undertake and commercialise their R&D and to continue to innovate. This will support the creation of skilled jobs in Australia. The design principles appear to be consistent with other regimes (albeit at a higher rate) and should not fall foul of OECD harmful practice regimes.

Corporate entity residency

The government announced amendments to clarify the corporate tax residency test. The amendments are in light of recommendations by the Board of Taxation and are intended to address uncertainty for foreign incorporated entities.

The government also announced that it will consult on broadening these amendments to extend to trusts and corporate limited partnerships (CLPs), which are subject to their own separate but similar residency tests.

The author welcomes the announcement that the government will consult on broadening the amendments

which were announced in the federal Budget 2020-21 to extend to trusts and CLPs.

Taxation of financial arrangements

Technical amendments will be made to the taxation of financial arrangement (TOFA) provisions to facilitate access to the hedging method on a portfolio hedging basis.

The intention of these amendments is to reduce compliance costs and correct unintended outcomes such that taxpayers are not taxed on unrealised foreign exchange gains and losses unless this is elected.

This is yet a further attempt to make the TOFA hedging rules work. These rules have been the subject of much criticism since inception because they have failed to address the financial sector's practices.

The fundamental problem is having implemented such specific rules when the normal assessing, deduction and capital gain and loss rules could easily be amended in a very straightforward way to deal with hedging.

These changes will take effect on a prospective basis, applicable to relevant transactions that are entered into from 1 July 2022.

Corporate collective investment vehicles

The government announced that legislation will be enacted to introduce corporate collective investment vehicles (CCIVs) from 1 July 2022 (CCIVs were first announced in the 2016-17 Budget's "Ten Year Enterprise Tax Plan" measures).

The CCIV is an investment vehicle that has a corporate structure but with a flow-through tax treatment, to be used in the managed funds industry.

The government's aim of the CCIV is to enhance Australia's international competitiveness by allowing fund managers to offer investment products through vehicles that are more familiar with foreign investors.

The government previously proposed a CCIV tax and regulatory framework in the Treasury Laws Amendment (Corporate Collective Investment Vehicle) Bill 2017 and the Corporate Collective Investment Vehicle Bill in 2019, which set out:

- how its establishment, operational and regulatory requirements would be governed by a new Ch 8B of the *Corporations Act 2001* (Cth);
- certain amendments to other legislation such as the *Personal Property Securities Act 2009* (Cth) to support its implementation; and
- the tax legislation to govern its tax treatment, including features of an attribution regime.

Broadly for tax, the flow-through tax treatment of CCIVs is intended to align with that of attribution managed investment trusts, and investors in CCIVs generally will be taxed based on the underlying nature of the investment assets.

This proposal finds its origin in Board of Taxation reports going back over a decade and a regime that has been promised by successive governments over a similar time frame. One suspects that it is not quite as important to those governments as they have made out. The author expects that there will be new focus on these Bills, or

least their content, as the government moves forward to implement CCIVs.

Other measures

Some other announcements include:

- \$10.7m in funding a pilot program for digital cadetships;
- funding for an overhaul of the MyGov and My Health Record systems; and
- a review of the venture capital tax concessions, which will be subject to public consultation during 2021.

International tax

Individual tax residency

The government has announced that it will adopt the recommendations of the Board of Taxation contained in its *Reforming individual tax residency rules – a model for modernisation* report.

The current individual tax residency test is based on principles around residency, domicile, permanent place of abode, and some clearer tests such as the 183-day rule. This is the same as many other jurisdictions, even those that have a primary citizenship test.

The proposed changes will adopt a set of rules that start with a two-step process. The first step is a “bright line test” — the 183-day test as is presently the case.

Failing this 183-day test, the individual will need to test whether they are a continuing resident or commencing residency pursuant to secondary rules. While the proposed rules claim to be more targeted and objective, residency will still depend on each individual's circumstances.

These secondary rules set out criteria as to when an individual, who is in Australia for less than 183 days in an income year, commences or ceases residency and these rules adopt a day-count test, together with a new “factor test”, that is, four objective factors of which any two need only be satisfied for an individual to commence to be resident. These are:

1. the right to reside permanently in Australia (including citizenship and permanent residency);
2. the ability to access Australian accommodation;
3. the presence in Australia of close family; and
4. the presence of Australian economic connections.

Some of these criteria are somewhat flexible concepts in themselves.

The author notes that the Board's report was not without controversy. What has been traded is a facts and circumstances test (criticised for uncertainty) with a set of tests that are considerably more complex.

The individual tax residency tests may lead to a more certain outcome once the complexities are worked through, and it is likely that more taxpayers will be treated as residents.

Removal of offshore banking unit concessions

The government announced the abolition of the current tax concessions enjoyed by offshore banking units (OBUs), which currently attract a 10% tax rate. This announcement is

in light of OECD concerns about the OBU concessions being a harmful tax regime.

The current concessions will remain available to existing OBUs until the 2022-23 income year.

Exchange of information

The government will increase the number of countries with which Australia shares information to include:

- Armenia;
- Cabo Verde;
- Kenya;
- Mongolia;
- Montenegro; and
- Oman.

Residents of these jurisdictions will also be able to access the 15% withholding tax on managed investment trusts.

“The 2021-22 Budget is a fair attempt at encouraging Australia’s economic recovery; however, it falls well short of reforming the tax system.”

Tax administration

Pausing debt recovery for small business

The author welcomes the move by the government to enable small businesses to apply to the Small Business Tax Division (SBTD) of the Administrative Appeals Tribunal (AAT) to pause or modify ATO debt recovery actions where the debt is being disputed within the AAT.

A small business for this purpose is defined as those with an aggregated turnover of less than \$10m.

Currently, businesses must apply through the courts to pause or modify ATO debt recovery actions.

These changes will allow the SBTD of the AAT to pause or modify any ATO debt recovery actions (such as garnishee notices and the recovery of the general interest charge or related penalties) until the underlying dispute is resolved by the AAT.

ATO early engagement service

The government has announced that the ATO will introduce a new early engagement service to encourage and support new foreign business investments in Australia.

The service is envisaged to provide assurance to foreign investors about the operation of Australian tax laws and support in relation to federal tax obligations.

The author welcomes the announcement of this initiative and looks forward to participating in consultation with the ATO.

Other measures

Excise refund cap for small brewers

Effective 1 July 2021, eligible brewers and distillers will be able to receive a full remission of any excise they pay, up to an annual cap of \$350,000.

Currently, eligible brewers and distillers are entitled to a refund of 60% of excise paid, up to an annual cap of \$100,000.

JobTrainer Fund extension

The government will extend the JobTrainer Fund by providing \$506.3m over two years from the 2021-22 income year.

The extended JobTrainer Fund will deliver a further 163,000 low fee and free training places, including 33,800 training places for existing and new aged care workers to upskill and 10,000 places for digital skills courses.

HomeBuilder Program

The HomeBuilder Program will be modified such that construction commencement will need to commence within 18 months of signing a building contract.

This measure provides further time for approved HomeBuilder participants as the original requirement was that construction had to commence within six months.

Home ownership for families

The government has several initiatives to support an individual's entry into the housing market by way of loan guarantees with eligible lenders.

Proposed to commence from 1 July 2021, the Family Home Guarantee will provide support to 10,000 single parents with dependants to enter or re-enter the housing market with a deposit of at least 2%.

The Family Home Guarantee is aimed at single parents with dependants, regardless of whether that single parent is a first home buyer or a previous owner-occupier.

Applicants must be Australian citizens of at least 18 years of age and have an annual taxable income of no more than \$125,000.

The government also announced an extension of the existing First Home Loan Deposit Scheme for an additional 10,000 eligible participants, which will be available between 1 July 2021 and 30 June 2022. This scheme guarantees up to 15% of the property purchase price for eligible first home buyers seeking to build or purchase a newly built home.

Not-for-profits

Currently, not-for-profits (NFPs) can self-assess their eligibility for income tax exemptions with no reporting requirements to the ATO. From 1 July 2023, the ATO will require income tax-exempt NFPs with an active ABN to submit an online confirmation of their eligibility for income tax exemptions.

This measure will ensure that only eligible NFPs are accessing the income tax exemptions.

Deductible gift recipients

The following organisations have been approved as deductible gift recipients (DGRs):

- Australian Associated Press Ltd;

- Virtual War Memorial Ltd;
- Scripture Union Queensland.

The DGR status of the following organisations has been extended for a further five years:

- Cambridge Australia Scholarships Ltd; and
- Foundation 1901 Ltd.

The East African Fund Ltd (operating as School of St Jude Ltd) has been removed from the listing at the request of the organisation.

Conclusion

The 2021-22 Budget is a fair attempt at encouraging Australia's economic recovery; however, it falls well short of reforming the tax system. In this sense, it could be concluded that this is an "election Budget", designed to maximise the government's re-election hopes.

Robert Campbell, CTA

Director
McLeod Campbell & Associates

AM I COVERED IF MY CLIENT MISINTERPRETS MY ADVICE?

not sure?

Talk to Aon, the small business insurance specialist.

Our industry and broking expertise helps you make more confident decisions when using us to arrange your insurance purchase.

Visit aon.com.au/taxinstitute or call 1300 836 028.

Aon is a preferred insurance partner of The Tax Institute

Don't just insure, **be sure.** 

Cash flow boost: questions on interpretation

by Bill Mavropoulos, Partner, VT Advisory

Tax practitioners can be forgiven for thinking that, if their clients have missed out on the cash flow boost, it is now too late to apply for this concession. Contrary to this assumption, a review of the cash flow boost arising in the quarterly business activity statement period 31 March 2020 can be instituted two years after the lodgment due date of that business activity statement. This article explores a different interpretation to that of the Australian Taxation Office of the eligibility criteria in the cash flow boost rules. The interpretation is relevant for taxpayers that are quarterly lodgers formed between 1 January 2020 and 12 March 2020. The interpretation uses established principles of statutory construction that have been reviewed by the Inspector-General of Taxation, and has been used as the basis for objection to the denial of the cash flow boost that was ultimately successful, albeit on a different basis.

The Australian Taxation Office has in recent times been challenged by the Inspector-General of Taxation (IGT) to review cash flow boost applications for taxpayers that may have commenced operations in January 2020 and are deemed ineligible by the ATO.

The principal argument that the IGT has levied is that the opening of a bank account in the December 2019 period may, in certain circumstances, be used to meet the requirement to have taxable supplies as modified by the cash flow boost legislation in a quarter ending before 12 March 2020 for quarterly lodgers.

Another potential pathway lays unexplored by tax practitioners as it relies on skills of statutory interpretation. The eligibility of any given business needs to be assessed by tax practitioners with reference to the underlying legislation and regulations, not ATO interpretations of these.

ATO decisions and interpretation

The ATO interpretation of eligibility in relation to "taxable supplies" is expressed as giving the ATO notice on or before 12 March 2020 that a taxpayer meets one of the following conditions:

- the taxpayer derived assessable income in relation to carrying on a business in 2018-19; or

- the taxpayer made a taxable, GST-free or input taxed supply (or a sale that would have been such a supply if you were registered for GST) for any tax period that started on or after 1 July 2018 and ended before 12 March 2020.

Relevantly, this is the ATO interpretation of a relevant provision of tax law. This is not the exact wording of the provision itself. A fundamental principle of statutory interpretation is to always distil meaning from the original text of the provision. To do the arduous work of going behind the ATO interpretation and critically evaluate whether the practitioner agrees with the ATO interpretation.

Importantly, before an ATO discretion can be requested, the meaning of the eligibility provision words should be reviewed. The discretion is typically requested when notification of the relevant taxable supplies as relevantly defined has been made to the ATO and is late.

Exact wording of provision

The eligibility criteria can be found in s 5(6) of the *Boosting Cash Flow for Employers (Coronavirus Economic Response Package) Act 2020* (Cth) (the cash flow boost law), which reads as follows:

"For the purposes of paragraph (1)(f), the requirement in this subsection is satisfied if:

- (a) the entity made a taxable supply in a tax period that applied to it that:
 - (i) started on or after 1 July 2018; and
 - (ii) ended before 12 March 2020; and
- (b) the Commissioner had notice on or before 12 March 2020 (or a later time allowed by the Commissioner) that the entity had made the taxable supply."

The key here is to read the words of the provision in their context in order to arrive at their meaning.

Two interpretations

On a close and careful reading of the provision, it is quite evident that two different interpretations may be applied depending on how one reads the words of the provision in their context.

The first interpretation is the one that the ATO makes: that the *taxable supply* and the *tax period* are the objects that must fall between 1 July 2018 and 12 March 2020 (the ATO interpretation).

However, on the face of the words used, another interpretation is open that can reasonably be made out. This other interpretation is that the sole object that must fall within the period started on or after 1 July 2018 and ending before 12 March 2020 is a taxable supply (the alternative interpretation).

Exploring the two interpretations

The guidance in correctly construing a legislative provision commences with an examination of the purpose of the provision. Guidance on this is set out as follows in s 15AA of the *Acts Interpretation Act 1901* (Cth):

"In interpreting a provision of an Act, the interpretation that would best achieve the purpose or object of the Act (whether or not that purpose

or object is expressly stated in the Act) is to be preferred to each other interpretation."

The leading case on statutory interpretation provides further guidance on construction. The case, *Project Blue Sky Inc v Australian Broadcasting Authority*,¹ relevantly provides:

"The primary object of statutory construction is to construe the relevant provision so that it is consistent with the language and purpose of all the provisions of the statute."

The purpose of the cash flow boost law self-evidently is to provide cash flow relief to employers that existed before 12 March 2020 and the onset of the COVID-19 pandemic. This can be gleaned from the explanatory memorandum provided with the Bill enacting the cash flow boost law and the words of the legislation as a whole.

As a matter of logic, a tax practitioner should keep in mind that s 5(6)(b) of the cash flow boost law provides for a discretion to report taxable supplies later but does not extend that discretion to tax periods ending late.

When one drills down into the relevant legislation, the purpose of the eligibility provision in the cash flow boost law is to act as a prerequisite that must be satisfied to meet the requirements of s 5(1)(f) of the cash flow boost law (the related provision). This related provision relevantly reads as follows:

"An entity is entitled to a payment (known as a **cash flow boost**) for a period covered by subsection (2) if:

...
(f) either:

- (i) the entity is an ACNC-registered charity at any time in the period; or
- (ii) the entity had an ABN on 12 March 2020 (or a later time allowed by the Commissioner), and the requirement in subsection (5) or (6) is satisfied; and"

This highlights two relevant considerations in respect of the related provision that are relevant to the construction of the eligibility provision. First, it appears that a registered charity (provided it is registered from 1 March 2020) will meet the related provision. Second, the implicit purpose of parliament when considering this related provision is undoubtedly that an entity with an ABN on 12 March 2020 (provided they met additional requirements) should meet this condition.

Based on the purpose for the eligibility provision gleaned from a close reading of the related provision, it would be reasonable to form the view that the additional requirements applying to entities that are not registered charities are meant to act as an integrity measures to ensure that only entities running legitimate businesses and making taxable supplies as at 1 March 2020 at the latest (being the same day that the charity requires registration) should be allowed to claim this concession.

The case for an alternative interpretation

To determine whether the ATO interpretation or the alternative interpretation should be preferred at tax law, reference should also be had to a specific tax law precedent on the constructional issue for a tax provision. Relevantly, Gibbs J in *Cooper Brookes (Wollongong) Pty Ltd v FCT*,² stated that:

"On the other hand, if two constructions are open, the court will obviously prefer that which will avoid what it considers to be inconvenience or injustice. Since language, read in its context, very often proves to be ambiguous, this last mentioned rule is one that not infrequently falls to be applied."

In light of this rule, on application of the ATO interpretation, a taxpayer with a business activity cycle that is monthly will be able to access the cash flow boost where their first taxable supplies are in January or February 2020, but quarterly cycle entities will not.

To put this another way, according to the ATO interpretation, taxpayers that commence business from 1 January 2020 and lodge quarterly (when they have formidable start-up costs and professional fees) will be ineligible for the cash flow boost regardless of making taxable supplies from inception until 12 March 2020. If these taxpayers were monthly lodgers, however, they would be eligible. A rejection of the ATO interpretation and acceptance of the alternative interpretation would cure this injustice.

If the alternative interpretation is accepted, a taxable supply would need to be made by an entity between 1 July 2018 and 12 March 2020. The supply would need to fall within a tax period but that tax period would not be constrained by any dates. The only thing constrained by dates would be the taxable supply itself. In this manner, monthly and quarterly lodgers would be treated in the same way for the purposes of the eligibility provision. All businesses commencing from 1 January 2020 would be able to receive much needed assistance in meeting start-up and professional costs that would have otherwise been met from normal trading revenue.

Application to a particular taxpayer's facts

Consider a particular taxpayer that made taxable supplies as required between 1 July 2018 and 12 March 2020. When considering the eligibility of this taxpayer, the only question arising is whether the ATO will apply a discretion to do away with the notification requirements for these taxable supplies.

The inability to apply discretion as to the tax period that a taxable supply falls into would no longer be relevant. Indeed, the way the provision is drafted hints that it was always parliament's intention to constrain when taxable supplies would meet the eligibility criteria but never to apply this second test of when a tax period itself would end.

Takeaway

The ability to question an ATO interpretation is a key skill of specialist tax practitioners. In this and other areas of the tax law, interpretation is critical in guiding clients and constructively engaging with the ATO on differing interpretations. This is because businesses that missed out on this concession deserve clarity in relation to their entitlements, as do all Australian taxpayers.

Bill Mavropoulos

Partner
VT Advisory

References

1 [1998] HCA 28 at [69].

2 [1981] HCA 26 at [6].



2021 National GST Conference

Australia's pre-eminent GST event

This year, the National GST Conference returns to Sydney in a brand new hybrid format. Leading GST experts from the tax profession, industry and government will present on all the topical issues relevant to GST practitioners and corporate advisory specialists in Australia.

- Brand new hybrid format – attend in person, or online
- Over 25 expert speakers
- A program covering topical issues, giving delegates practical takeaways
- Your chance to rub elbows with the best minds in GST.

Early bird
prices close on
16 July

12–13 August 2021
Sofitel Darling Harbour, Sydney | Online
13 CPD hours

Find out more
taxinstitute.com.au/2021gstconference



THE TAX INSTITUTE

Inbound interest-free loans: part 2

by Ellen Thomas, ATI, Partner, PwC

This is the second part of a two-part article that considers tax issues that can arise in relation to inbound interest-free loans. The first part focused on the varied circumstances in which an interest-free loan could be treated as an equity interest for tax purposes. This second part discusses other issues that can arise in relation to interest-free loans, such as s 45B of the *Income Tax Assessment Act 1936* (ITAA36) (if the loan is treated as an equity interest), whether an interest-free loan should be included in adjusted average debt for thin capitalisation purposes, cost base issues, Div 7A ITAA36, and the commercial debt forgiveness rules. While interest-free loans are relatively simple instruments that are commonly used in a company's capital structure, it is clear that significant complexity can arise if an interest-free loan is closely examined.

Section 45B

Application of s 45B if the IFL is an equity interest under Div 974

If the interest-free loan (IFL) were an equity interest under Div 974 of the *Income Tax Assessment Act 1997* (Cth) (ITAA97), s 45B of the *Income Tax Assessment Act 1936* (Cth) (ITAA36) would need to be considered in relation to repayments of the IFL. Section 45B is concerned with ensuring that companies do not distribute what are effectively profits to shareholders as preferentially-taxed capital rather than dividends.

If s 45B applies, repayments of principal under the IFL may be treated as unfranked dividends. As such, dividend withholding tax¹ would be payable on repayments made to non-resident lenders, and Australian resident lenders would be required to include the repayments in their assessable income.² It is also possible that the ATO could debit the borrower's franking account.

PS LA 2008/10 addresses returns of capital. The same analysis applicable to shares should apply to an IFL. If the IFL is treated as an equity interest, the s 45B analysis is complex.

Application of s 45B if the IFL is an equity interest under the transfer pricing rules

Section 45B ITAA36 can only apply if a person who entered into or carried out any part of the scheme did so for a purpose of enabling a taxpayer to obtain a tax benefit.

The significant difficulty in applying the purpose test in s 45B if the IFL is treated as an equity interest under the transfer pricing rules is that the equity interest arises due to a substitution of the arm's length conditions. There would be no relevant entity that had any purpose of providing a capital benefit under an equity interest and therefore it is likely that s 45B would not apply.

Thin capitalisation

Generally, the thin capitalisation rules only apply to the extent that the borrower's adjusted average debt (AAD) exceeds its maximum allowable debt (determined, for example, under the safe harbour debt test or the arm's length debt test). A key advantage of debt interest IFLs is that they are typically not included in the borrower's AAD for thin capitalisation purposes and so do not impact the borrower's thin capitalisation position. However, in some situations, a question arises as to whether the IFL should in fact be excluded from AAD (as discussed below).

Debt deductions: TD 2019/12

TD 2019/12 concerns the definition of "debt deduction" in s 820-40(1)(a)(iii) ITAA97. TD 2019/12 states that all deductible costs of raising finance through debt capital incurred directly in connection with the debt capital, and all deductible costs directly incurred in maintaining the financial benefit received in association with the debt capital, are debt deductions within the scope of s 820-40(1)(a)(iii). An example of such costs are the costs of tax advisory services giving rise to or in connection with the IFL, including drafting agreements and valuing or pricing the debt capital.

Notably, the TD 2019/12 contemplates (at para 20) that costs may be apportioned to various instruments. Therefore, a fee paid for advice in relation to a refinance (but not specifically to an IFL) may arguably be apportioned such that some of the costs are allocated to the IFL.

There is no monetary threshold in the definition of "debt deduction", so it is likely that even \$1 of costs that could be allocated to an IFL would be relevant. Further, the deduction does not need to actually be claimed; the deduction just needs to be available (s 820-40(1)(b)).

Given the broad approach in TD 2019/12, it is very likely that an entity that has put an IFL in place has either paid someone to draft the agreement, to value the instrument, or to provide tax advice in relation to the instrument.³ It is therefore expected that IFLs may be included in the taxpayer's AAD, at least according to the ATO.

Numerous concerns with TD 2019/12 have been raised.⁴ The question of how advisory or drafting costs relate to "obtaining or maintaining the financial benefits" under an IFL is especially perplexing. The ATO unsatisfactorily addresses this issue by stating that it is a factual enquiry as to whether the costs (relevantly apportioned) have a "close and direct

connection" with obtaining or maintaining the financial benefits received or to be received. However:

- s 820-40(1)(b)(iii) ITAA97 refers to amounts "directly incurred in obtaining or maintaining the financial benefits received" and do not refer to the debt interest itself. Therefore, costs that relate to the actual flow of finance (s 974-20(3) ITAA97) should arguably be distinguished from costs that relate to the instruments that create the legal obligations (s 974-55 ITAA97). This would mean that things like legal costs and the mere costs of accounting for an instrument and tax advisers or valuers etc would be irrelevant; and
- the relevant costs that are listed as examples in s 820-40(2) ITAA97 (especially in para (b), relating to the discount in respect of a security, and para (c), relating to fees and charges) are costs directly incurred in relation to securing the debt rather than obtaining advice on the terms, scope and consequences of default.

Assuming the IFL is included in thin capitalisation, a question then arises as to what amount is to be included in AAD. The starting point is generally the "average value" of the debt capital. From an accounting perspective, an IFL is recorded at its net present value, with the difference between face value and net present value recorded in equity (net of deferred tax). The discount is then "unwound" to profit and loss over its term. Assuming the IFL should be included in AAD for thin capitalisation purposes, the question arises as to what value should be picked, ie whether it should be the discounted accounting liability, or the discounted liability plus the portion recognised in equity.

The ATO appears to favour the conclusion that an IFL should be valued at face value. Paragraph 5 of TD 2020/2 provides that:

"An entity's debt capital must be valued in its entirety in the manner required by the accounting standards regardless of whether it comprises debt interests that are classified as financial liabilities, equity instruments or compound financial instruments under the accounting standards."

Cost-free debt capital

Where an IFL is "cost-free debt capital", it is added to an entity's AAD calculation (under s 820-85 ITAA97 for an outward investor (non-authorised deposit-taking institution) or under s 820-185 ITAA97 for an inward investor (non-authorised deposit-taking institution)). Once an IFL is cost-free debt capital and included in AAD, it will also be included in "average debt" for the purposes of determining the extent to which debt deductions are denied (under s 820-115 or 820-220 ITAA97).

Cost-free debt capital is only a relevant consideration if no debt deductions (under s 820-40(1)(a) ITAA97) are allocated to the IFL (ie the IFL is not otherwise included in AAD).

The cost-free debt capital rules were inserted as an integrity measure to ensure that there would not be an increase in the borrower's assets without any corresponding increase to its AAD. The concern of the legislature was that there would be an opportunity for the safe harbour debt amount calculations to be manipulated by providing an IFL and then repaying it shortly after the borrower's valuation day.⁵

An IFL will be treated as "cost-free debt capital" only where:

- the lender and the borrower use different valuation days or a different number of valuation days (assuming the lender is itself subject to the thin capitalisation rules) (s 820-946(3) ITAA97); or
- the loan is for less than 180 days (s 820-946(4)).

Where a borrower has non-resident lenders provide an IFL, cost-free debt capital is unlikely to be a material issue. However, where a resident lender provides the IFL, the borrower will require information regarding the lender's own approach to thin capitalisation in order to ensure that the IFL is not cost-free debt capital.

"The question of how advisory or drafting costs relate to 'obtaining or maintaining the financial benefits' under an IFL is especially perplexing."

Cost base issues

Valuation issues

An IFL will generally be worth less than the face value of the loan. In a market transaction, the market value of a debt instrument should be equal to its face value on issue. Since an IFL has no interest payable at inception, the market value will be lower than the face value.⁶ This is because the time value of money needs to be taken into account.

Dealing at arm's length

Given the difference between the face value and market value of an IFL, it becomes relevant whether the borrower and lender have dealt with each other at arm's length in relation to the IFL. If the answer is no, in some circumstances, for tax purposes the cost of the IFL will be its market value rather than its face value.

Generally, the question is whether the "dealing" was at arm's length, not whether the parties are arm's length parties. The case law on dealing at arm's length is well known and is not explored in this article.⁷

Typically, the borrower and the lender in relation to an IFL would not be dealing at arm's length. An IFL is an instrument that is not readily observable between unrelated parties and it is assumed, for the purposes of this discussion, that the IFL has not resulted from an arm's length dealing between the parties.

CGT

An IFL is a CGT asset from the lender's perspective. The CGT rules are not relevant to the borrower as the IFL is not an asset.

Assuming the parties did not deal at arm's length with respect to the IFL, the market value substitution rule in s 112-20 ITAA97 may apply to change the first element of the cost base of the loans⁸ as the lender paid more than the market value of the IFL to acquire it. When the IFL ends

(eg by being repaid), CGT event C2 would happen, and it would be expected that the lender would make a capital gain due to the amount received (ie the face value) exceeding the cost base.

A non-resident would generally disregard any such gain (under s 855-10 ITAA97), unless the IFL is held through a permanent establishment. The IFL would not be taxable Australian real property, nor would it be an indirect Australian real property interest, as the IFL would not be a “membership interest”¹⁰ in the company (even if the IFL is an equity interest for the purposes of Div 974 ITAA97).

Traditional securities

Section 26BB ITAA36 would similarly recognise a “gain” on redemption of the IFL, assuming the parties are not dealing with each other at arm’s length and the Commissioner makes a relevant determination.¹⁰ However, TR 96/14 provides (at paras 90 to 91) that an adjustment would not normally be made in relation to an IFL.

Qualifying securities

If parties are not dealing at arm’s length, the issue price of the security can be taken to be the consideration that might reasonably be expected for the issue of the security (s 159GP(2) ITAA36). However, this does require a Commissioner determination. As is the case for traditional securities, the Commissioner is unlikely to make a determination in relation to an IFL unless there are unusual circumstances.¹¹

Even if the Commissioner did make an adjustment to the IFL under s 159GP(2), this would be disregarded for the purposes of the withholding tax provisions (s 128AA(2) ITAA36).

TOFA

Division 230 ITAA97 contains an arm’s length dealing adjustment (s 230-510). However, this does not apply to the cessation of a debt interest or loan. The explanatory memorandum to the Bill that became the Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009 (at para 10.82) explains that the rationale for excluding debt interests and loans is that it would otherwise impute a time value of money compensation to the instrument.

Ordinary income

The face value acquisition price and redemption price of an IFL would be respected when considering whether the IFL gave rise to ordinary income and, as such, no profit or income would be recognised.¹²

Foreign exchange gains and losses

A foreign exchange gain in respect of an IFL made by a non-resident lender may be subject to tax in Australia if the gain has an Australian source, subject to the application of a double tax agreement or the investment manager regime in Div 842 ITAA97.¹³

Division 7A

An unusual consequence can potentially arise under Div 7A ITAA36 where the non-resident lender is a company that meets the definition of a “private company” (under s 103A ITAA36). There is no requirement for a “private company”

to be an Australian resident. It is therefore possible that arrangements entered into by a non-resident private company can have repercussions in Australia.

If the Australian borrower is an “associate” of the lender’s shareholder when the loan is made, Div 7A must be considered. As noted earlier in this article, the meaning of “associate” has arguably expanded since the High Court’s decision in *BHP Billiton Ltd v FCT*.¹⁴ It may be the case now that it could be concluded, depending on the circumstances, that a minority shareholder in the borrower is an associate of the borrower, with the result that the lender’s own shareholders may be associates of the borrower itself.

If Div 7A applies, the IFL could be treated as a dividend paid to the borrower if it is not fully repaid by the end of the lender’s year of income and the company has a distributable surplus.

Division 7A would not apply if the borrower itself is a company (s 109K ITAA36).

Commercial debt forgiveness

An IFL is a debt. It would be a “commercial debt” for the purposes of Div 245 ITAA97 if interest on the IFL were deductible, had it been paid (s 245-10 ITAA97).

The release, waiver or assignment of an IFL may cause the commercial debt forgiveness rules to apply. Likewise, a subscription of shares to enable a payment in, or towards discharge of, an IFL may cause a debt forgiveness.

There are time limitations under the *Limitation Act 1969* (NSW) (and equivalent legislation in other states and territories) on the rights of a creditor to bring an action for the recovery of debts. If an IFL is an at call loan and no action has been taken in the relevant period, or if the IFL has a term of greater than six years and no repayments are to be made until maturity of the loan, there may inadvertently be consequences under the debt forgiveness rules.

Anti-avoidance

The final way in which an IFL can cause unintended consequences is if Pt IVA ITAA36 applies. There may be a tax benefit in relation to an IFL, such as:

- the lender not being liable to include interest income in assessable income or pay interest withholding tax, if the IFL were interest-bearing; and
- the borrower having a deduction allowable in relation to its interest expense that would not be available if the IFL were interest-bearing and included in AAD.

Of the eight factors to be considered in relation to the sole or dominant purpose test, it is particularly important to establish why the IFL was entered into, and what the particular benefits of that instrument were over an interest-bearing debt instrument or equity. The likelihood of the company being able to pay unfranked dividends is also likely to be relevant, as well as the thin capitalisation capacity of the company if the IFL were included in AAD.

Conclusion

Inbound related-party IFLs can give rise to many complications. Some of the difficulties are well known (eg Div 974, s 45B and Pt IVA). However, in some cases,

there have been changes in the administration of IFLs (eg thin capitalisation), which means that it can be easy to underestimate the consequences of including an IFL in a company's debt capital structure.

This article concludes that the multitude of issues that need to be considered in relation to IFLs can be navigated. However, there is inherent risk, and some of the technical issues are difficult and tiresome to address if pressed, particularly having regard to the fact that, due to low interest rates, the "related scheme" analysis may result in schemes being aggregated into an equity interest.

Interest-free loans continue to be used because of their commercial benefits. However, the comfort level is being slowly eroded through tax law changes and changes in interpretation, and it would be prudent to approach IFLs with caution.

Ellen Thomas, ATI

Partner
PwC

References

- 1 The maximum rate of dividend withholding tax is 30%; this can be reduced under an applicable double tax agreement between Australia and the lender's country of residence.
- 2 Australian resident lenders would pay tax at their marginal tax rates.
- 3 It is noted that the "entity" must incur the costs, and TD 2019/12 may therefore not apply if the relevant costs were incurred by a separate entity (eg fees were issued to the offshore client).
- 4 See TD 2019/12EC.
- 5 See para 1.37 of the explanatory memorandum to the Bill that became the *Taxation Laws Amendment Act (No. 4) 2002*.
- 6 In order to assess the value of an IFL, a discounted cash flow approach is generally used. The discounted cash flow methodology takes the promised future cash flows of an IFL and discounts them at a rate reflecting the market rate of interest that would be payable on a debt instrument, with an equivalent credit and interest rate risk to the IFL.
- 7 See *Australian Trade Commission v WA Meat Exports Pty Ltd* (1987) 75 ALR 287 at 291 (cited in *Barnsdall v FCT* [1988] FCA 192 at [13]).
- 8 See ATO ID 2003/235. This interpretative decision has been withdrawn because it is a straightforward application of the law.
- 9 As defined in s 960-135 ITAA97. For there to be a membership interest, there must be a "member" as defined in s 960-130 ITAA97 (ie a member or stockholder in the company). While debt interests are specifically excluded from being membership interests (ie shares that are debt interests), there is no corresponding rule that deems a non-share equity interest to be a membership interest.
- 10 See s 26BB(3) ITAA36, and paras 78 to 83 of TR 96/14.
- 11 See para 70 of TR 96/14.
- 12 See the comments in *FCT v Myer Emporium* [1987] HCA 18 regarding economic equivalence.
- 13 For example, if a foreign exchange gain arises from the lender disposing of, ceasing to own or otherwise realising the investment (s 842-215(1)(a) ITAA97).
- 14 [2020] HCA 5.



THE TAX INSTITUTE



2021 WA Tax Forum

WA's premier event for tax professionals

This hybrid event includes a workshop, panel and technical sessions with an emphasis on real world application. Delegates will gain technical knowledge, as well as practical and commercial insights, all while earning valuable CPD points.

- Exceptional speaker line-up
- Flexible registration options
- Group bookings and employer tickets available.

Don't miss your chance to re-connect with the WA tax community.

17–18 June 2021

RAC Arena, Perth | Online
12 CPD hours

Register now
taxinstitute.com.au/watf

Superannuation

by Bryce Figot, CTA, and Daniel Butler, CTA,
DBA Lawyers

BDBNs: how long can they last in all Australian jurisdictions?

The Court of Appeal has held that it is possible for an SMSF's deed to be drafted to enable a BDBN to last for more than three years and that this is the position in all Australian jurisdictions.

The Court of Appeal of the Supreme Court of Western Australia recently handed down its decision in *Hill v Zuda Pty Ltd*.¹ It provides a strong answer to the question of how long a binding death benefit nomination (BDBN) can last in all Australian jurisdictions.

Facts

Ms Hill was the only child of Alec Kumar Sodhy (the deceased). The deceased was in a de facto relationship with Ms Murray.

In 2011, the deceased made a document purporting to be a BDBN. The BDBN was in favour of Ms Murray.

The deceased died in 2016. Importantly, the deceased died more than three years after making the BDBN.

Key issue

Ms Hill brought an action. She contended, among other things, that:

"[the binding death benefit nomination] was signed more than three years prior to the deceased's death, and so had ceased to have effect under reg 6.17A(7)(a) of the SIS Regulations."

Why is this still an issue?

Many people may be surprised to hear that there are still questions around whether the *Superannuation Industry (Supervision) Regulations 1994* (Cth) apply to BDBNs. After all, the ATO commented on this issue in SMSFD 2008/3:

"... the governing rules of an SMSF may permit members to make death benefit nominations that are binding on the trustee, whether or not in circumstances that accord with the rules in regulation 6.17A of the SISR."

In other words, the ATO confirmed that it is possible for an SMSF's deed to be drafted to enable a BDBN to last

for more than three years. However, the ATO is (broadly speaking) not a law-making body. All that SMSFD 2008/3 can really stand for is that the ATO will not treat a non-lapsing BDBN as causing a contravention of the *Superannuation Industry (Supervision) Act 1993* (Cth) or the *Superannuation Industry (Supervision) Regulations 1994* (Cth) (SISR94), from a regulatory compliance viewpoint.

A court, on the other hand, effectively is a law-making body. Certain Supreme Court decisions have held that it is possible for an SMSF's deed to be drafted to enable a BDBN to last for more than three years.²

That being said, Australia is a federation of states. What one judge decides in one state (eg in Queensland or South Australia) is not binding in other states (eg in Western Australia or Victoria). This is a very important point to bear in mind, especially in, for example, Victoria, where there is no Victorian case law directly on point.

What did the Court of Appeal decide?

The Court of Appeal pointed to the High Court decision of *Farah Constructions Pty Ltd v Say-Dee Pty Ltd*,³ where the High Court stated:

"Intermediate appellate courts and trial judges in Australia should not depart from decisions in intermediate appellate courts in another jurisdiction on the interpretation of Commonwealth legislation or uniform national legislation unless they are convinced that the interpretation is plainly wrong."

Therefore, the Court of Appeal stated that:

"... this court should accept the construction adopted in *Cantor Management* until such time as the decision is overruled by the High Court. On that basis, we regard ourselves as bound to construe reg 6.17A of the SIS Regulations as not applying to self managed superannuation funds."

In other words, the Court of Appeal held that it is possible for an SMSF's deed to be drafted to enable a BDBN to last for more than three years *and that this is the position in all Australian jurisdictions* (including, for example, Victoria).

Concluding thoughts

It is difficult to think of a situation where a client would want a three-year lapsing BDBN. Naturally though, a client should always regularly review and consider whether their BDBN is still appropriate for their current circumstances.

Therefore, it is important that an SMSF deed expressly and clearly allows for non-lapsing BDBNs. Further, SMSFs with BDBN provisions that rely on reg 6.17A SISR94 should be updated as a matter of urgency.

Bryce Figot, CTA
Special Counsel
DBA Lawyers

Daniel Butler, CTA
Director
DBA Lawyers

References

- [2021] WASCA 59.
- See, for example, the decisions of the Queensland Supreme Court in *Munro v Munro* [2015] QSC 61, and *Re Narumon Pty Ltd* [2018] QSC 185.
- [2007] HCA 22.



21st Annual States' Taxation Conference

The leading conference for the states' taxes community

With fantastic networking opportunities, this annual event remains the only all-encompassing national conference covering all state and territory taxes in one technical program.

- A mixture of plenary and breakout sessions focusing on topics of universal interest across all state and territory taxes
- 24 leading experts sharing their knowledge
- Fantastic networking opportunities, including a dinner on the Thursday evening
- A chance to connect with all state and territory Revenue Commissioners.

Early bird
prices close on
25 June

29–30 July 2021 | Adelaide Oval, Adelaide
12 CPD hours

Find out more

taxinstitute.com.au/21statestax



THE TAX INSTITUTE

Alternative Assets Insights

by Sach Pelpola and Peter Collins, FTI, PwC

Imported hybrid mismatches

Taxpayers need to consider PCG 2021/D3 in order to deduct payments made to offshore related parties.

On 21 April 2021, the ATO provided 19 pages of draft guidance in PCG 2021/D3 which sets out the Commissioner of Taxation's approach to assessing whether a taxpayer has undertaken reasonable enquiries in relation to the imported hybrid mismatch rules.

PCG 2021/D3 sets out the level of supporting information that the Commissioner expects taxpayers to obtain prior to filing their income tax returns, in order to claim deductions for payments made to offshore related parties. The practical compliance guideline is an important consideration, particularly for taxpayers preparing income tax returns for the second year of operation of the Australian hybrid mismatch rules (ie year ended 31 December 2020 or ending 30 June 2021).

PCG 2021/D3 provides welcome guidance for taxpayers grappling with these rules in a self-assessment environment but does set a high bar in terms of the information and documentation expected to be obtained by all taxpayers in relation to the global operations of a multinational company (MNC).

In detail

The Australian hybrid mismatch rules were released in draft form in late 2017, enacted in August 2018, and took effect for tax periods commencing on or after 1 January 2019. In the authors' experience, it continues to be the case that many subsidiaries of foreign MNCs are finding it challenging to interpret and apply this complex and novel legislation which can impact any related-party cross-border payments (and, in some cases, third-party payments) that are otherwise deductible for Australian income tax purposes.

A key element of difficulty is the imported hybrid mismatch rule which requires Australian taxpayers to make judgments about the operation of foreign tax laws, as well as the presumption that the Australian taxpayer has perfect knowledge of the overseas group structure, relevant foreign tax law, and the flow of payments through the global group structure. This "tracing" exercise arguably may involve payments that have no direct or commercial link to payments made by the Australian entity and can make it very difficult to apply in practice. In the authors' experience, this tracing rule

typically goes further than other countries that have adopted the hybrid mismatch rules designed by the Organisation of Economic Co-operation and Development (OECD) as part of the base erosion and profit shifting project.

Australia operates a self-assessment system which places the onus on taxpayers to ensure compliance with the tax laws. However, in many cases, the information required to fulfil this obligation in relation to imported hybrid mismatches may not be available in Australia.

PCG 2021/D3 is designed to explain the ATO's assessment of compliance risk associated with the imported hybrid mismatch rules, including the level of documentation that is expected. The practical compliance guideline is very detailed, but the key elements and takeaways are as follows:

- the Commissioner's view is that taxpayers should not claim a deduction for a payment to an offshore related party unless they are able to obtain sufficient information from the global group to support a conclusion that the deduction in respect of the payment is not disallowed under the imported hybrid mismatch rules. It is expected that the Australian entity will document its enquiries and obtain the information prior to lodgment of the income tax return, and this documentation would be capable of being provided to the Commissioner within a reasonable time of a request being made. Taxpayers that have not obtained information prior to lodgment, but later confirm entitlement to a deduction for that payment, can lodge an amendment request to claim the deduction;
- the Commissioner expects that, regardless of whether the hybrid mismatch is structured or not, the Australian taxpayer would readily have the necessary information to undertake the assessment or, failing that, its foreign affiliates will provide "full and complete disclosure" of "all relevant information" to the Australian entity;
- it is expected that members of the "Division 832 control group" will have robust processes in place to identify any relevant hybrid mismatch outcomes and inform the taxpayer accordingly;
- the ATO's recommended approach to undertaking enquiries involves the taxpayer making and documenting formal requests for information and the responses. Taxpayers need to make requests to the responsible individuals or suitably qualified representatives responsible for the group. The appropriately qualified responsible individuals must include the person who is primarily responsible for the group's tax obligations, such as the head of tax for the group;
- for Australian headquartered groups, PCG 2021/D3 indicates that an internal file note of the relevant information and positions adopted (including justification) will be sufficient and that the responsible individual may include the public officer;
- the ATO's recommended approach can be achieved by a "top-down" approach (identify whether the group has any hybrid mismatch outcomes) or a "bottom-up" approach (determine if payments made by Australia, directly or indirectly, fund an offshore hybrid mismatch). An appendix to PCG 2021/D3 sets out the information that the Commissioner considers relevant to demonstrating

compliance with each of these approaches, and this information may be requested when the ATO is assessing risk during any engagement or assurance activity;

- PCG 2021/D3 includes a complex risk rating involving eight categories based on a number of factors, including the materiality of related-party payments and compliance with the ATO's recommended approach to making reasonable enquiries. The situations where a taxpayer can disclose a "green" or "low risk" rating are limited to situations where taxpayers:
 - demonstrate that there are no offshore mismatches or that all offshore mismatches have been neutralised by either Australia or a foreign country's hybrid mismatch rules; or
 - where the Australian taxpayers have not sought to claim deductions for payments made to members of the Div 832 control group;
- some taxpayers may be required to report this practical compliance guideline risk rating on the reportable tax position schedule which is lodged with their annual income tax return. The impact of this will depend on various factors, including the timing of the final practical compliance guideline. Therefore, at this time, it is not clear if income tax returns for the year ended 31 December 2020 will be impacted;
- the Commissioner also makes it clear that any assessment must consider the nuances of the Australian hybrid mismatch rules and it is not sufficient for taxpayers to rely on any analysis undertaken based on the OECD principles or a foreign jurisdiction's equivalent of the imported hybrid mismatch rules;
- PCG 2021/D3 sets out the ATO's approach to penalties in relation to the imported hybrid mismatch rules, including where the Commissioner will consider that a taxpayer has taken "reasonable care". This will be relevant in any circumstance where it is determined that a taxpayer has not correctly applied the imported hybrid mismatch rules and a tax shortfall is identified;
- PCG 2021/D3 will apply both before and after its issue; and
- taxpayers are invited to comment on PCG 2021/D3, including the proposed date of effect, by 21 May 2021.

In December 2020, the New Zealand Inland Revenue released an exposure draft setting out the steps that taxpayers are expected to have undertaken before claiming deductions for payments to offshore related parties under the imported hybrid mismatch rules. In most scenarios, the Inland Revenue's expectation is that the New Zealand taxpayer will obtain a written statement from the group's head office tax function confirming the steps that have been taken to ensure that there are no imported hybrid mismatches that have been funded by the New Zealand payer. The approach adopted by the Commissioner in PCG 2021/D3 appears to require much more detailed work to be undertaken prior to filing the Australian income tax return.

Practical compliance guidelines are not prepared for the primary purpose of expressing a view on the way that a tax

law provision applies and are not public rulings. Therefore, PCG 2021/D3 does not provide guidance in relation to any of the challenging interpretative issues associated with the imported hybrid mismatch rules, and taxpayers are expected to adopt positions on these issues. For example, an important and potentially contentious issue is which countries may be considered to have corresponding foreign hybrid mismatch rules (including countries in the European Union and the United States) where these countries have adopted certain rules dealing with hybrid mismatches. This may impact the existence of an offshore hybrid mismatch under the top-down approach, as well as the tracing that may be required under the bottom-up approach. PCG 2021/D3 also hints at potential ATO views, for example, the practical compliance guideline expresses a concern about a view being taken that not all payments between entities must be traced.

The takeaway

All taxpayers making related-party cross-border payments will need to consider PCG 2021/D3 and what work may be required to meet the proposed ATO requirements prior to lodging their Australian income tax return. Although these ATO requirements are not required by law, it will be important to consider the consequences of not meeting the ATO's expectations, including the tax return disclosures that may be required (after PCG 2021/D3 is finalised) and the impact on penalties in the event that a tax shortfall is later identified.

Sach Pelpola

Partner
PwC

Peter Collins, FTI

Partner
PwC

Events Calendar

June 2021

STATE/EVENT	DATE	CPD
Online		
2021 Agribusiness Intensive	9/6/21	13
2021 WA Tax Forum	17/6/21	12
Queensland		
2021 Agribusiness Intensive – face-to-face	9/6/21	13
2021 Local Tax Club – Part 5: Property issues	23/6/21	1.5
Victoria		
2021 Yarra Valley Tax Retreat	1/7/21	12
Western Australia		
2021 WA Tax Forum – face-to-face	17/6/21	12

For more information on upcoming events, visit taxinstitute.com.au/professional-development.

Cumulative Index

The following cumulative index is for volume 55, issues (1) to (11). Listed below are the pages for each issue:

Vol 55(1): pages 1 to 46
Vol 55(2): pages 47 to 100
Vol 55(3): pages 101 to 156
Vol 55(4): pages 157 to 216
Vol 55(5): pages 217 to 274
Vol 55(6): pages 275 to 332

Vol 55(7): pages 333 to 388
Vol 55(8): pages 389 to 440
Vol 55(9): pages 441 to 504
Vol 55(10): pages 505 to 582
Vol 55(11): pages 583 to 634

10% test
 employee share schemes.....519–522
50–50 unit trusts.....481–483
50% CGT discount
 reform issues.....74, 307
 shareholder.....251
183-day test.....604
 Australians returning from
 overseas.....128, 130, 131
 Commissioner's discretion.....166

A
ABN requirements
 foreign businesses, branch
 offices.....595, 596
 JobKeeper339, 340, 512, 513, 589
Absolute entitlement.....19, 23
Accessions tax.....308
Accommodation
 employee expenses, FBT.....449
Accounting standards
 small-to-medium enterprises.....300
Accounting treatment
 COVID-19 cash flow boosts... 300, 301
Accumulation interest.....369, 370
Active asset test
 small business CGT
 concessions228–231, 451–453
Additional foreign acquirer duty
 (QdI).....263
Adjusted average debt
 interest-free loans610–612
Administrative Appeals Tribunal
 review of objection
 decision172, 224, 225, 284, 286
Administrative overpayments
 running balance accounts238–240
 tax offset refund511
Administrative penalties
 backdating documents594
 SMSFs.....279, 280, 318–320, 416–419
Admission of evidence
 unfair prejudice395
Affiliates
 aggregated turnover threshold322
 children61, 63
 definition61
 grouping rules61, 63, 64
 small business CGT
 concessions61–64
 spouses61, 63

Affordable housing
 ACT development works.....510
 build-to-rent
 developments.....260–264, 564–567
Aggregated turnover
 affiliates61
 calculation under new
 measures.....321, 322
 corporate tax issues81
 temporary full expensing
 deductions337, 485

Agricultural land
 fencing assets.....54
Allocation of income or profits
 COVID-19 cash flow boosts.....302
 individual professional
 practitioners446, 447
Amnesty
 superannuation guarantee
 shortfalls.....4, 84, 104, 107,
 122–126, 338, 339

Annual turnover
 definition.....321
Anti-avoidance provisions
 interest-free loans612
 minors, taxation of unearned
 income.....315, 316
Appointors
 discretionary trusts, identity and
 powers.....86, 87
Arm's length debt test
 interest-free loans611
 thin capitalisation.....162, 201, 202
Asprey report.....308, 309
Assessments
 application to review
 decisions224, 225
 GST, sale of land.....284–287

Asset protection
 appointor identity/powers,
 variation86, 87
 Div 7A loans244, 245, 248
 testamentary capacity205, 206
 trading trusts.....34
Assets
 depreciating
 – federal Budget 2021–22586, 588
 – full expensing220–222
 – primary production, fencing.....54
 – temporary full expensing.....337,
 484–486, 589, 602
 option for creation.....397

Assignment of rights
 options, property transfers (NSW)....32
Assumed controller test.....134
ASX-listed companies.....53
 junior exploration, tax losses ...116–119
At-risk rule
 JobKeeper, R&D entities107
Attributable income
 controlled foreign
 companies.....134–137
Attribution managed investment
trusts
 CGT discount for trusts.....52
 corporate collective investment
 vehicles.....603
Audits
 how to control234–236
Australia
 Australia–NZ DTA.....455, 456

Australia–Thailand DTA133, 225,
 226, 298, 299
 Australia–UK DTA.....166, 170
 Australia–US DTA.....251
 permanent establishments
 post-COVID-19.....455, 456
Australian Business Number —
 see ABN requirements
Australian Capital Territory
 land development, GST510
Australian Defence Force personnel
 federal Budget 2021–22601
Australian resident shareholders19
 foreign resident shareholders,
 advantage over.....81
Australian resident trusts
 foreign resident beneficiaries,
 capital gains17–23, 165, 166
Australian residents
 Australians returning from
 overseas128–132
Australian Securities and
Investments Commission596
Australian shares
 imputation benefits338
Australian Stock Exchange
 ASX-listed companies53
 junior exploration companies,
 tax losses116–119
Australian subsidiaries
 business and tax registrations597
 foreign business structure
 requirements596, 597
 imported hybrid
 mismatches616, 617
 tax reporting597
 whether a significant global
 entity598
Australian tax system159, 352–355
Australian Taxation Office
 50–50 unit trusts481–483
 administratively binding advice141
 audits, how to control234–236
 cash flow boost
 applications607, 608
 central management and
 control, split25–28
 CGT demerger relief189–193
 corporate tax residency290
 decision impact statements143
 early engagement service604
 fact sheets144
 high wealth private groups460–467
 identity fraud589
 individual professional
 practitioners446, 447
 interpretive decisions142
 justified trust336
 law administration practice
 statements142
 law companion rulings143
 media releases and speeches144
 National Tax Liaison Group
 meeting442
 Next 5,000 tax performance
 program460, 461
 non-concessional MIT
 income371, 372
 oral rulings144
 permanent establishment
 guidance455, 456
 practical compliance
 guidelines142, 143, 446, 447
 private binding rulings141, 142
 public rulings141
 safe harbour, LRBAs424
 SMSFs
 – administrative
 penalties318–320, 416–419
 – non-arm's length
 income425, 559–562
 – regulatory bulletins143, 144
 – specific advice143
 superannuation circulars143

tailored technical assistance144
 tax corporate governance410
 Tax risk management and
 governance review guide410
 taxable supplies607, 608
 taxation determinations142
 taxpayer alerts143
 transfer pricing, COVID-19
 implications426, 427
 website144

Australian testamentary trust
 surcharge land tax (NSW)58

Australian Treasury
 consultation on legislative
 amendments84
 instant asset write-off, alternative
 test321
 Tax Institute submission to84, 159
 technical amendments279

B

Backdating documents593–595

Backing business investment
 temporary full expensing337, 484

Backpacker tax
 appeal166

Bankruptcy
 appointor identity/powers,
 variation86, 87

Benchmark interest rate
 Div 7A52

Beneficiaries of trusts — see
 Discretionary trusts

Bequest taxes308, 309

Binding death benefit nominations
 incapacity of member361, 362
 lapsing/non-lapsing614
 large member SMSFs258
 superannuation fund
 issues548–553

Biotechnology patents588

Bitcoin53, 54

Blended families
 discretionary trust
 beneficiaries195, 197
 life interest trusts139, 140

Board of Taxation
 consolidation rights to future
 income73
 corporate tax
 residency290, 291, 603
 individual tax residency83, 586, 604
 personal services income84
 small business tax
 concessions82, 83

Branch offices
 business and tax registrations597
 business structure
 requirements596, 597
 foreign business structure
 requirements596, 597
 tax reporting597
 whether a significant global
 entity598

Breweries
 excise refund cap605

Bright line test
 federal Budget 2021–22588, 604

Build-to-rent developments
 barriers in Australia260–264
 NSW564–567

Building works
 GST, Australian Capital Territory510

Business continuity test
 ASX-listed junior exploration
 companies116–119

"Business operation or
commercial transaction"53, 194

Business registrations
 foreign businesses in Australia597

Business structures
 professional firms446, 447

Business tax	
reform issues.....	72–76
Tax Summit: Project Reform.....	160
Buy-back of hybrid securities	
market value substitution rule.....	394
C	
Call options — see Put and call options	
Calumny	94, 95
Capacity	
BDBNs	361, 362
wills, court-authorised	205–207
Capital account or revenue account	
share trading.....	250–253
Capital assets	
temporary full expensing	220–222, 484–486
Capital gains tax — see also CGT assets; CGT concessions; CGT discount; Main residence CGT concession; Small business CGT concessions	
Australian trusts	
– foreign beneficiaries	17–23, 165, 166
– residency	2
capital/revenue distinction	250
commencing day assets	137
deceased persons	306, 488, 489
demerger relief	105, 106, 189–193
discount, MITs.....	52
event A1	412, 413
event C2	401, 612
event D1	397, 398
event D2	397–400, 402
event E1	361
event E1 to E8	82
event E4	23
event E5	412–414
event E7	412–414
event K3	306, 308
exercise of call option	399, 400
exercise of put option	400
expiry or termination of option	401
foreign income tax offset	
limit	163, 164
foreign resident withholding rules	279
granny flats	222, 223, 589
grant of option	397
interest-free loans	611, 612
multiple entry consolidated groups	163
reform issues.....	73, 74
Capital notes	
market value substitution rule.....	394
Capital or income expenditure	
medical practices.....	280, 281
Capital raisings	
demergers	191, 192
Carrying on a business	
active asset test	228–231, 451–453
employee incentive scheme payments	448, 449
Cars — see Motor vehicles	
Cash flow boosts	
COVID-19 measures	300–303
statutory interpretation	607, 608
Central management and control	
corporate tax residency	289–291
dual residency	25–28
superannuation residency rules	602
trustee companies	294, 295
CGT assets	
active asset test	228–231, 451–453
commencing day assets	137
interest-free loans	611, 612
options	397–400
widowhood effect	488, 489
CGT concessions	
death rules	306
options, grant of	398
reform issues.....	73, 74
CGT discount	
MITs.....	52
reform issues.....	74, 81
shareholder	251
Charities	306
fundraising, restrictions during COVID-19	174, 175
testamentary gifts	374, 375
Charter of Tax Practitioner Governance	390
Child care subsidy	
federal Budget 2021–22	601
Children — see also Minors	
definition of “child”	196
superannuation death benefits	544
whether affiliates	62, 63
Class action fund	
allowable deductions	8, 9
Closely held payees	
superannuation guarantee	124
Closer personal and economic relations	
individual residency	298
Code of Professional Conduct	
tax professionals	592, 594
Collective investment vehicles	588
Commercial debt forgiveness	
interest-free loans	612
Commercial residential premises	
build-to-rent developments	263
Commissioner of Taxation	
administrative	
overpayments	238–240
CGT demerger relief	105, 106
COVID-19 initiatives	
– Div 7A loan	110–114
– working from home	
deductions	223
double tax agreements	223
environmental protection activities	
expenditure	107
foreign investment	
mischaracterisation	5
freezing order, security bond notice	591
imputation benefits	338
information-gathering powers, notice	394, 395
JobKeeper, R&D entities	107
override royalties	338
powers	
– discretionary powers,	
183-day test	169–173
– information-gathering	311–314
– remedial power for reform	76
practical compliance	
guidelines	142, 143, 446, 447
practical guidance updates	339, 340
risk, hybrid mismatches	591
superannuation guarantee charge, remission of additional	106, 107
tax refunds, discretion to retain	337, 338, 590, 591
transfer pricing disputes	364–367
Common law test	128
Community housing	
build-to-rent developments	263, 264
Companies	
COVID-19 cash flow boosts, effects	301
temporary loss	
carry-back	220, 221, 321, 322
Company losses	
ASX-listed junior exploration companies	116–119
tax reform issues	72, 73
Compensation	
disclosure of information	313
Concessional contributions	
unused, carrying forward	527, 528
Concessional duty (NSW)	
SMSFs	31
Confidentiality	406
Conflict of interest	
superannuation death benefits	546, 547
Connected entities	
aggregated turnover threshold	321, 322
interest-free loans	471
Consolidated financial statements	91
Consolidated groups	
multiple entry, CGT	163
reform issues	73
Consumption taxes	
reform	69, 71, 72, 352, 353, 355
Continuity of business test	
ASX-listed junior exploration companies	116–119
Contractors	
characterising, superannuation guarantee	123, 124
Contribution strategies	
superannuation	527–535
Controlled foreign companies	
assumed controller test	134
attributable income	134–137
– acquisition year	135
– CGT events before	
commencing day	136, 137
– commencing day asset	137
– control tests	134, 135
– functional currency election	136
– pre-acquisition dividends	135, 136
de facto control test	134
strict control test	134
Coronavirus — see COVID-19 measures	
Corporate collective investment vehicles	588, 603
Corporate groups	
CGT demerger	
relief	105, 106, 189–193
high wealth private groups	460–467
reform issues	73
Corporate tax entities	
country-by-country reporting	91, 92
fair share of tax	406, 407, 410
privacy erosion	406–411
temporary loss	
carry-back	220, 221, 321, 322
Corporate tax rate	
foreign businesses in Australia	597
reform issues	81, 352
Corporate tax residency	603
central management and control	25–28, 289–291
clarification of test	222
Cost base issues	
commencing day asset	137
interest-free loans	611, 612
Cost base setting rule	
residents of Australia	131, 132
Cost-free debt capital	
interest-free loans	611
Country-by-country reporting	
corporate tax entities	91, 92, 409
Court-authorised wills	205–207
COVID-19 measures	3, 4, 49, 104, 126, 158, 278, 392
Australians returning from overseas	128–132
build-to-rent developments	260–264
cars, FBT liability	162
cash flow boosts, effects	300–303
deeds, electronic execution	38–40
depreciating assets, full expensing	220–222, 484
Div 7A loan repayment extension	52, 110–114
FAQs	53
fundraising, GST obligations	174, 175
impetus for reform	79
JobKeeper	
– ABN issues	339, 340, 512, 513, 590
– Inspector-General and Ombudsman report	442
– payment turnover test	6, 53, 102
– R&D entities	107
land tax relief (Qld)	147
permanent establishments affected by	455, 456
R&D tax incentives	345–347
small business tax concessions	221
SME recovery loans	602
SMSFs, rental income deferral	105, 110
stimulus applications	442, 443
temporary loss carry-back	220, 221, 321, 322
The Tax Institute	508
transfer pricing implications	426, 427
working from home deductions	223, 339, 509, 510
Crisp order	140
Cross-border transactions	
hybrid mismatch rules	41–43, 591, 616, 617
mischaracterisation of structures	5
related-party financing arrangements	201–204, 339
Cross-staple arrangements	
non-concessional MIT income	371, 372
Crown leases	
GST, Australian Capital Territory	510
Cryptocurrencies	53, 54
D	
De facto control test	134
De facto relationships	
discretionary trust beneficiaries	195, 196
Death	
widowhood effect	488, 489
Death benefits — see Superannuation death benefits	
Death duties	305–310
Debt/equity rules	
interest-free loans	469–473
Debt forgiveness	
interest-free loans	612
Debt interests	
interest-free loans	469–473, 610, 611
Debt recovery	
pausing	604
tax disputes	588
Deceased employees	
superannuation, SG amnesty	125, 126
Deceased estates	
concessional tax rates	306
minors, taxation of unearned income	315, 316
Declarations of trust	
property transfers (NSW)	32
when dutiable	479, 480, 556–558
Deductible gift recipients	605
Deduction/deduction mismatches	41
Deductions for expenditure	
class action fund	8, 9
discretionary trust, beneficiary's interest on borrowings	108
Div 7A loan interest	246
employee allowances	448
environmental protection activities	107
imported hybrid mismatches	616, 617
payments to doctors	280, 281
release capital	107, 108
self-education	588
SMSFs, non-arm's length income	562

- temporary full
expensing 337, 484–486, 602
transport 447
work-related 54, 55, 80, 167, 168
working from
home 53, 55, 223, 339, 509, 510
- Deeds**
electronic execution 38–40
- Deeming provisions**
tax legislation 343, 344
- Demergers**
capital raisings 191, 192
CGT relief 105, 106, 189–193
- Depreciating assets**
federal Budget 2021–22 586, 588
full expensing 220–222
primary production, fencing 54
temporary full
expensing 337, 484–486, 589, 602
- Deregistration**
tax agents 6–8, 54, 55, 395, 396,
449, 513, 592
- Derivative instruments**
shares, imputation benefits 338
- Developers**
build-to-rent market
– barriers in Australia 260–264
– NSW 564–567
GST, Australian Capital Territory 510
- Digital Economy Strategy** 586
- Digital games tax offset** 586, 603
- Disclaimers**
discretionary
trusts 167, 223, 224, 420, 421
- Disclosure of information**
corporate tax entities 406–411
high wealth private groups 461–463
powers and remedies 311–314
- Discretion of trustee**
superannuation death
benefits 545, 546
- Discretionary powers**
Commissioner, 183-day test 169–173
- Discretionary trusts** — see also
Family trusts
- administration issues 11–15
appointors, identity and
powers 86, 87
beneficiaries
– deduction, interest on
borrowings 108
– definition 195–197
– foreign residents, capital
gains 17–23, 165, 166
definition 58
distribution of income,
disclaimers 167, 223, 224, 420, 421
joint venture agreement 281, 282
surcharge purchaser duty
(NSW) 56–59
- Discrimination**
residency of taxpayer 166, 170
- Disposal of CGT asset**
option 397, 398
- Disputes**
controlling tax audits 234–236
mistakes in trust deeds 254, 255
superannuation death
benefits 543–553
transfer pricing 364
- Distilleries**
excise refund cap 605
- Distribution statements**
Div 7A loan repayments 184, 185
- Diverted profits tax**
general anti-avoidance rules 5
- Dividend declarations**
Div 7A loan repayments 183–186
- Dividend imputation system**
reform proposed 70
- Division 7A**
benchmark interest rate 52
interest-free loans 612
- loan repayments 180–187, 242–248
– distribution statements 184, 185
– dividend declarations 183–186
– dividend set-off 181, 182
– extension 52, 110–114
– general anti-avoidance rules 248
– minimum annual repayment 181
– minutes filed late 183, 184, 244
– no dividend set-off 242–247
– non-trust shareholder 247, 248
purpose 180
reform issues 83
tax integrity measures 4, 242
ten-year enterprise tax plan 52
- Divorce** — see **Relationship breakdown**
- Documentation**
backdating documents 593–595
declaration of
trust 479, 480, 557, 558
high wealth private groups 466
imported hybrid mismatches 616
information notice 394, 395
tax audits 234–236
trust deeds, loss of 362
- Domestic relationships**
discretionary trust
beneficiaries 195, 196
- Double tax agreements**
Australia–NZ 455, 456
Australia–Thailand 133, 225, 226,
298, 299
Australia–UK 166, 170
Australia–US 251
dual residents 131
principal purpose test 223
tie-breaker rules 225, 226, 298, 299
- Downsizer contribution** 534, 601, 602
- Dual inclusion income**
hybrid mismatch rules 41, 42
- Dual residency**
Australians returning from
overseas 131
Australia–Thailand DTA 225, 226,
298, 299
central management and
control 25–28
- Dutiable transactions**
declaration of
trust 479, 480, 556–558
options (NSW) 30–33
- Dwelling**
definition 57
first income-producing rule 515–517
granny flat interest in 589
- E**
- Economic infrastructure facilities**
ATO guidance 372
- Education** — see also **Tax education**
GST reform issues 71, 72
knowledge access 506
professional development 506, 585
retraining and reskilling benefits,
FBT 589
skills training, FBT
exemption 221, 589
- Electricity industry**
ordinary income, non-cash
benefits 280
- Eligible assessable income**
minors 315
- Eligible investment business** 371
- Employee incentive schemes**
cancellation of payments,
deductibility 448, 449
- Employee share schemes**
federal Budget 2021–22 588, 602
tax liabilities 519–522
- Employees**
superannuation guarantee amnesty
– characterising workers 123, 124
– deceased 125, 126
- non-residents 125
– work test 125, 601
transport expense deductions 447
- travel and overtime meal
allowances 52, 53
travel/living at location, allowance
relating to 447, 448
- Employers**
superannuation guarantee
shortfalls 4, 84, 104, 107,
122–126, 338, 339
- Environmental protection activities**
deductions for expenditure 107
- Equity**
intergenerational 353
- Equity interests**
interest-free loans 469–473, 610
- Estate planning** — see **Succession and estate planning**
- Estate tax** 308
- Evidence**
backdating documents 593–595
disclosure of information 311
discretionary trust
indebtedness 11, 12
partnership, existence of 6
restructuring of demerger
groups 192
tax audits 234–236
transfer pricing disputes 364–368
unfair prejudice 395
wills 95
- Ex gratia relief**
land tax foreign surcharge
(Qld) 147–149, 262
- Excepted trust income**
estate planning 358, 359
- Excess concessional contributions**
SG amnesty contributions 124, 125
- Excess transfer balance tax**
minimising 198, 199
- Expenditure**
deductibility — see **Deductions for expenditure**
- Expenditure characterisation**
medical practices 280, 281
share trading 250–253
- Expense deductions** — see
Deductions for expenditure
- Exploration companies**
ASX-listed, tax losses 116–119
- Extrinsic material**
statutory construction 342–344
- F**
- Facilities**
ATO guidance 371, 372
- Fairness**
tax reform 69, 352
- Families**
blended
– discretionary trust
beneficiaries 195, 197
– life interest trusts 139, 140
build-to-rent developments for 260
SMSFs
– additional members 257–259
– superannuation splitting 88–90
- Family Home Guarantee** 605
- Family law**
testamentary trusts 360
- Family provision claims**
blended families 139, 140
- Family trusts** — see also
Discretionary trusts
international tax 293–296
- Federal Budget 2011–12** 470
- Federal Budget 2018–19** 236, 345
definition of “significant global
entities” 91–93
- Federal Budget 2019–20** 236
- Federal Budget 2020–21** 159,
218–220, 484
- aggregated turnover
threshold 321, 322
- corporate residency test 222
- corporate tax residency 290
- FBT, compliance and
record-keeping 223
- full expensing, depreciating
assets 220, 221
- personal income tax plan 222
- temporary loss
carry-back 220, 221, 321, 322, 485
- Federal Budget 2021–22** 442, 443
child care subsidy 601
- corporate tax 603, 604
- international tax 604
- low and middle income tax
offset 601
- Operation Paladin 601
- self-education expense
deductions 588, 601
- small-to-medium enterprise
taxpayers 602, 603
- superannuation 601, 602
- tax administration 604, 605
- tax changes 586, 588, 601–605
- Tax Institute Budget report 584, 585
- Tax Institute submission 392
- Federal Court**
appeal against objection
decision 172
- Fencing assets**
primary production land 54
- Fifty-fifty unit trusts**
SMSFs 481–483
- Fifty per cent CGT discount**
reform issues 74, 307
shareholder 251
- Financial arrangements**
interest-free loans 469–473
taxation of, reform issues 74, 75
- Financial reporting**
foreign businesses in Australia 597
- Financial services**
GST reform issues 72
- First aid course**
work-related deductions 168
- First Home Loan Deposit Scheme** 605
- First income-producing rule**
main residence CGT
concession 515–517
- Fixed trusts**
non-taxable Australian property,
capital gains 22, 23
- Food and drink**
expenses, FBT 446, 448
GST reform issues 72
- Foreign companies**
controlled — see **Controlled foreign companies**
permanent establishments
post-COVID-19 455, 456
setting up in Australia 596–598
- Foreign currency**
Bitcoin 53, 54
- Foreign exchange gains and losses**
interest-free loans 612
- Foreign income tax**
hybrid mismatch rules 42
offset rules 75, 76, 163, 164
- Foreign investment**
ATO early engagement service 604
build-to-rent developments 261–263
corporate collective investment
vehicles 603
- land tax surcharge, ex gratia
relief 147–149
- mischaracterisation of structures 5
- tax concessions 75
- Foreign Investment Review Board** 147, 148
build-to-rent developments 263

- Foreign-owned entities**
land tax foreign surcharge
(Qld).....147–149
- Foreign persons**
definition.....57
surcharge purchaser
duty32, 56–59, 565, 566
- Foreign residents**
CGT withholding rules.....279
death duties306, 309
discretionary trust beneficiaries,
capital gains17–23, 165, 166
foreign shareholder advantages.....81
interest-free loans612
override royalties338
permanent establishments
post-COVID-19455, 456
presently entitled beneficiaries19
superannuation, SG amnesty125
withholding tax
– interest expenses163
– mortgagee land sales.....279
- Foreign surcharge stamp duty**
build-to-rent developments262, 263
- Franking account balance**.....589
- Fraud**
identity fraud589, 590
- Fraudulent calumny**.....94, 95
- Freezing order**.....591
- Fringe benefits tax**
cars
– cents per kilometre rates446
– COVID-19 impact162
compliance and record-keeping....223
employees
– accommodation expenses.....449
– food and drink
expenses446, 448
– living at location448
– transport expense
deductions447
inequities69
reform issues.....77
skills training exemption.....221, 589
small business tax concessions....221
- Functional currency election**.....136
- Fundraising**
GST, restrictions during
COVID-19.....174, 175
- Future tax liabilities**
freezing order, security bond
notice.....591
- G**
- Gains and losses**
share trading250–253
- Gamblers**
gains and losses,
characterisation.....250, 251
- Gaming tax offset**.....586, 603
- Gender equity**.....353
- General anti-avoidance rules**
Div 7A loan repayments248
diverted profits tax benefits.....5
multiple entry consolidated
groups, CGT163
- General expenses**
SMSFs, non-arm's length
income.....562
- General purpose financial
statements**.....91, 92
tax information409
- General transfer balance cap** –
see **Transfer balance cap**
- Generational wealth**
transfer305, 357, 457
- Gifts**
deductible gift recipients605
presumption of
advancement.....511, 512
taxation308, 309
testamentary374, 375
- Global tax environment** – see
International tax
- Goods and services tax**
administrative
overpayments.....238, 239
build-to-rent developments261
education71, 72
exercise of call option400
exercise of put option401
financial services.....72
food72
fundraising, restrictions during
COVID-19174, 175
grant of option399
health72
incapacitated entities282, 283
JobKeeper, payment turnover test6
land development, ACT510
reform issues69, 71, 72, 352
Tax Summit: Project Reform160
vacant land, sale284–287
- Goods taken from stock for
private use**.....394
- Goodwill**.....73
- Governance**
high wealth private groups464–466
temporary full expensing
deductions486
- Granny flats**
CGT222, 223, 589
- Grouping rules**
affiliates61, 63, 64
- Groups of companies** – see
Consolidated groups
- H**
- Harmonisation**
state/territory/federal tax system70
- Health**
GST reform issues72
- Henry review**.....51, 68, 71, 74, 76,
308, 309
lessons from80, 84
- High wealth private groups**
Next 5,000 tax performance
program460, 461
streamlined assurance
review460–464
tax governance464–466
tax risk management
framework466, 467
- Higher education** – see **Tax
education**
- Home first used to produce
income rule**.....515–517
- Home office expenses**.....55
- Home ownership**
for women and families605
- HomeBuilder Program**.....605
- Horizontal equity**.....353
- Housing affordability**
ACT development works510
build-to-rent
developments260–264, 564–567
women and families605
- Hybrid mismatch rules**
Commissioner's risk assessment591
imported hybrid
mismatches591, 616, 617
proposed amendments41–43
- Hybrid securities**
market value substitution rule394
- I**
- Identity fraud**589, 590
- Illegal phoenixing**.....337, 338, 590, 591
- Imported hybrid mismatch rules**
tax compliance591, 616, 617
- Imputation benefits**
taxpayer alert338
- In-house assets**
50-50 unit trusts481–483
SMSFs, rental income deferral105
- "In the course of carrying on
a business"**228, 229
- Inbound interest-free
loans**.....469–473, 610–613
- Incapacitated entities**
BDBNs361, 362
GST input tax credits282, 283
- Incentive schemes**
employee options, cancellation
of payments448, 449
- Income allocation**
COVID-19 cash flow boosts302
individual professional
practitioners446, 447
- Income or capital expenditure**
medical practices280, 281
- Income-splitting**
personal services businesses509
- Indexation**
general transfer balance
cap536–541
- Indirect imports**
hybrid mismatches43
- Indirect taxation**
Tax Summit: Project Reform160
- Individual professional practitioners**
profit allocation446, 447
- Individual tax residency**
federal Budget
2021–22586, 588, 604
reform issues83
tie-breaker rules225, 226
- Information disclosure**
corporate tax entities406–411
- Information exchange**.....604
- Information-gathering**
Commissioner of Taxation,
notice394, 395
high wealth private groups461, 462
powers and remedies311–314
- Inheritance tax**.....305, 308, 309
- Inheritances** – see **Succession
and estate planning**
- Innovation** – see **R&D**
- Innovation and Science**
Australia345
- Input tax credits**
GST, incapacitated entities282, 283
- Insolvency**
lump sum paid by director,
deductibility107, 108
- Inspector-General of Taxation**
ATO JobKeeper report442
cash flow boost applications607
- Instant asset write-off**
aggregated turnover
threshold222, 321, 322
alternative test321
- Insurance**
taxation of, reform issues75
- Intangible depreciating assets**
federal Budget
2021–22586, 588, 603
- Integrity measures** – see **Tax
integrity measures**
- Interest-free loans**
cross-border related-party
arrangements202, 203
debt/equity rules469–473
thin capitalisation610, 611
- Interest withholding tax**
interposed offshore entities163
- Intergenerational equity**.....353
- Intergenerational wealth**
transfer305, 357, 457
- International agreements** – see
also **Double tax agreements**
transfer pricing364, 365, 367
- International dealings schedule**597
- International Monetary Fund**
income from55
- International tax**
Australians returning from
overseas128–132
- corporate tax residency289–291
family trusts293–296
foreign businesses in
Australia597, 598
hybrid mismatch rules41–43
reform issues75, 76
trusts2, 19
- Interposed offshore entities**
interest withholding tax163
- Investment**
build-to-rent developments260
share trading250–253
temporary full expensing
deductions337, 484–486
- Investment properties**
leasing, active assets451–453
- J**
- JobKeeper**
ABN issues339, 340, 512, 513, 590
Inspector-General and
Ombudsman report442
payment turnover test6, 53, 102
R&D entities107
SME recovery loan eligibility602
- JobTrainer Fund extension**.....605
- Joint tenancy**
partnership assets361
- Joint venture agreements**281, 282
- Junior exploration companies**
ASX-listed, losses116–119
- Justified trust**.....336, 409
- K**
- Kerr Commission**.....71
- KiwiSaver**602
- L**
- Labour force requirements**
build-to-rent developments,
NSW565
- Land**
active asset test228–231
investing in to derive rent371
options
– CGT and GST issues397–402
– NSW duty30–33
vacant, GST on sale284–287
- Land development**
GST, Australian Capital Territory510
- Land tax (NSW)**
build-to-rent
developments260, 261, 564–567
proposed transition from transfer
tax51
surcharge purchaser duty,
discretionary trusts56–59
- Land tax (Qld)**
foreign surcharge147–149
- Land tax concession**
build-to-rent developments,
NSW565
- Land transactions**
declaration of trust479, 480
options30–33, 397–402
- Landholder duty (NSW)**
put and call options, uncompleted
contracts33
- Later time discretion**.....512, 513
- "Leaked" tax information**410
- Leases**
investment properties, active
assets451–453
- Legal capacity**
wills, court-authorised205–207
- Legal personal representatives**
appointment, superannuation
funds553, 554
deceased employees,
SG shortfalls125, 126
- Legal professional privilege**
information notice394, 395
- Legislation**
statutory construction342–344

- Life insurance**
taxation of, reform issues.....75
- Life interest trusts**
blended families.....139, 140
- Life interests**
surrender, CGT main residence
exemption.....412–414
- Ligertwood Commission**72
- Limited recourse borrowing arrangements**
interest-free loans472
SMSFs.....423–425, 559–562
- Listed country trusts**295
- Living-away-from-home allowance**
employees.....447, 448
FBT, food and drink expenses.....446
- Loan accounts**
discretionary trusts11, 12
- Loan interest**
discretionary trust beneficiary108
- Loans** — see also **Limited recourse borrowing arrangements**
COVID-19 measures602
Div 7A, repayments
– distribution statements.....184, 185
– dividend declarations.....183–186
– dividend set-off181, 182
– extension52, 110–114
– general anti-avoidance rules.....248
– lodgment day180, 181
– minimum annual repayment.....181
– minutes filed late183, 184, 244
– no dividend set-off242–247
– non-trust shareholder247, 248
interest-free
– cross-border related-party
arrangements.....202, 203
– debt/equity rules469–473
– thin capitalisation610, 611
- Lodgment day**
Div 7A loan repayments180, 181
- Lodgment deferrals**4
- Long-term investors**
gains and losses,
characterisation.....251
- Loss carry-back**
aggregated turnover
threshold321, 322
corporate choice589
eligibility220, 221
- Loss of trust deeds**362
- Losses**
ASX-listed junior exploration
companies.....116–119
in previous years of income171
non-commercial loss rules.....53
share trading250–253
temporary full expensing
deductions485, 602
temporary loss
carry-back220, 221, 321, 322, 602
- Low and middle income tax offset**222
federal Budget 2021–22588, 601
- Low-income thresholds**
Medicare levy588, 601
- Low tax contributed amounts**
SG amnesty contributions124
- Low tax lender rule**
hybrid mismatches.....42
- M**
- Main residence CGT concession**
death rules306, 307
first income-producing rule.....515–517
testamentary charitable
gifts374, 375
testamentary life interests,
surrender.....412–414
- Managed investment trusts**
CGT discount for trusts.....52
corporate collective investment
vehicles.....603
non-concessional income.....371, 372
- Margin scheme**
vacant land, GST on sale.....287
- Marginal tax rate**
reform issues.....81, 353
- Market-linked pensions**
excess transfer balance tax199
- Market value substitution rule**
hybrid securities394
superannuation
contributions560, 561
- Marriage breakdown** — see
Relationship breakdown
- Meal allowances**
employees52, 53
- Medical and biotechnology**
patents586, 588, 603
- Medical practices**
capital or income
expenditure280, 281
- Medicare levy**69, 80
low-income thresholds588, 601
- Member Profile**
Donovan Castelyn67
Lauren Jones526
Amy Liu350
Kim Reynolds459
Fiona Stapleton178
Nick Wilkins405
- Membership interests**
interest-free loans612
- Mining companies**
ASX-listed, tax losses116–119
transfer pricing dispute364–367
- Mining rights**
override royalties338
- Minors** — see also **Children**
eligible assessable income315
excepted income concession306
unearned income, taxation315, 316
- Miscarriage of justice**
information disclosure311–314
- Mistakes**
administrative
overpayments238–240, 511
trust deeds, rectification254, 255
- Mortgagee land sales**
foreign resident CGT
withholding279
- Motor vehicles**
cents per kilometre rate53, 446
COVID-19 impact, FBT liability162
work-related deductions167, 168
- Multi-family housing**260
- Multinational corporations**
fair share of tax407, 410
imported hybrid
mismatches616, 617
significant global entities
– Australian subsidiaries598
– definition91, 92
tax residency289–291
- Multiple entry consolidated groups**
CGT163
reform issues73
- N**
- Natural resources income**
override royalties338
- Net asset value test**
affiliates61
- New South Wales**
build-to-rent
developments260, 261, 564–567
deeds, electronic execution38–40
real estate transactions,
options30–33
surcharge purchaser duty,
discretionary trusts56–59
transfer tax51
- New South Wales Law Reform Commission**
oppression remedies35, 36
- New Zealand**
Australia–NZ DTA455, 456
imported hybrid mismatch rules617
KiwiSaver602
- Next 5,000 tax performance program**460, 461
- Nexus requirement**
SMSFs, non-arm's length
income559
- Nominal interest component**122
- Non-arm's length income**
SMSFs559–562
– limited recourse
borrowing423–425
superannuation entities5
- Non-cash benefits**
ordinary income280
- Non-commercial loss rules**53
- Non-concessional contributions**528–532
- Non-concessional income**
MTIs371, 372
- Non-disclosure provisions**
powers and remedies311–314
- Non-discrimination clause**
residency of taxpayer166, 170
- Non-publication orders**
identity of applicant591, 592
- Non-residents** — see **Foreign persons; Foreign residents**
- Non-taxable Australian property**
capital gains, fixed trusts22, 23
- Not-for-profit organisations**605
- O**
- Objection decisions**171, 172, 224,
225, 228–231, 284, 285
- OECD**
transfer pricing, COVID-19
implications426, 427
- Office equipment**
working from home
deductions509, 510
- Offshore banking unit**
concessions604
- Offshore trusts**293–296, 474–477
- One-hundred-and-eighty-three-day test**604
Australians returning from
overseas128, 130, 131
Commissioner, discretionary
powers169–173
- Online auctions**
GST, restrictions during
COVID-19175
- Online fundraising**
GST, restrictions during
COVID-19175
- Operation Paladin**
federal Budget 2021–22601
- Oppression remedies**
trading trusts34–36
- Options**
land, CGT and GST issues397–402
NSW duty30–33
- Ordinary concepts**
residence based on166, 170, 298
- Ordinary income**
non-cash benefits280
- Overpayments**
administrative overpayments511
running balance accounts238–240
- Overtime meal allowances**
employees52, 53
- P**
- Partial main residence exemption**
first income-producing rule515–517
- Partnerships**
estate planning, joint tenancy361
existence of6
hybrid mismatch rules41
- Patent box**
medical and biotechnology
innovations586, 588, 603
- PAYG instalments**
small business tax concessions221
- Payment turnover test**
JobKeeper6, 53, 102
- Penalties**
backdating documents593–595
SMSFs279, 280, 318–320, 416–419
superannuation guarantee
system104, 106, 107, 122–126,
338, 339
tax scheme promoter provisions449
unregistered entities providing
services340
- Pension funds**
transfer balance cap198, 199
withdrawal and retribution
strategy532–534
- Pension interest**369, 370
- Pensions**
transfer balance cap198, 199
– death benefit income
streams538–541
– Indexation536
– personal536–538
- Permanent establishments**
COVID-19 effects455, 456
- Personal services businesses**509
- Personal services income**
rules81, 84, 509
unrelated clients test165
- Personal tax**
federal Budget 2021–22601
Personal Income Tax Plan222
Tax Summit: Project Reform160
- Petroleum resource rent tax**52
- Phoenixing**337, 338, 590, 591
- Place of abode** — see **Residency**
- Practice and procedure**
identity of applicant589, 590
- Pre-paid expenditure**
small business tax concessions221
- Preference shares**
market value substitution rule394
- Presently entitled beneficiaries**
foreign residents19
- Presumption of advancement**511, 512
- Primary production land**
fencing assets54
foreign-owned (Qld)147
- Privacy**
erosion, corporate tax
entities406–411
- Private companies**
benchmark interest rate52
Div 7A loan repayments180–187
– extension52, 110
high wealth groups460–467
- Private rulings**
objection decisions and228–231
- Professional firms**
allocation of profits446, 447
- Property developments**
venue borrowings, trusts282
- Proportioning rule**
superannuation benefits369, 370
- Protected information**
powers and remedies311–314
- Public companies**
capital raisings191, 192
justified trust336
- Public disclosure**
tax information407
- Public interest**
tax agent deregistration7, 55, 396
taxpayer privacy406
- Public reporting**
corporate tax407

Publicly listed shares	602	Self-assessment	239
gains and losses,		tax refunds, overpayment	
characterisation.....250–253			
Put and call options	219	Spouses	195
land, CGT and GST issues ....397–401		definition of "spouse"	
landholder duty (NSW).....33		discretionary trust	
transfer duty (NSW).....32		beneficiaries	195, 196
Q		spousal transfer exemption	309
Queensland		superannuation death	
build-to-rent developments	263	benefits	543, 544
land tax foreign		surviving, life interest trusts	139, 140
surcharge	147–149, 263	whether affiliates	62, 63
R		widowhood effect	488, 489
Ralph review	189	Stamp duty	
R&D		build-to-rent developments ...261–263	
JobKeeper payments.....107		– NSW	564–567
medical and biotechnology		declaration of	
innovations.....586, 588, 603		trust	479, 480, 556–558
tax incentives 4, 222, 345–347		options, real estate	397
tax schemes.....164, 165, 396		proposed transition to land tax	
Real estate transactions		(NSW)	51
options	30–33, 397–402	reform	80
Record-keeping		Start-up expenses	
FBT compliance.....223		small business tax concessions....221	
GST assessment.....287		Statement of facts	
transfer pricing, simplified.....339		tax audits	235
trust deeds.....362		Statutory construction	
Recovery loans		tax legislation	342–344
COVID-19 measures	602	Statutory interpretation	
Reform — see also Tax reform		cash flow boost	
transfer balance cap		applications	607, 608
system	198, 199	Statutory wills	205–207
trust law	35	Stay of proceedings	
Refunds		tax agent deregistration..... 6–8, 54,	
Commissioner's discretion to		55, 395, 396	
retain.....337, 338		Stepchild	196, 197
running balance account		Streamlined assurance review	
errors	238–240	high wealth private groups....460–464	
surcharge land tax, NSW.....565		Strict control test	134
surcharge purchaser duty, NSW	566	Subsidiaries — see Australian	
tax offset, administrative		subsidiaries	
overpayments.....511		Substituted accounting	
temporary loss carry-back.....220, 221		period	135, 597
Related-party financing arrangements		Succession and estate planning	
cross-border		BDBNs	361, 362
transactions.....201–204, 339		blended families.....139, 140	
interest-free loans	469–473	death duties	305
Relationship breakdown		excepted trust income	358, 359
SMSFs		fraudulent calumny	94, 95
– additional members	258	partnership assets, joint tenancy....361	
– superannuation splitting.....88–90		SMSFs, additional members...257–259	
Release capital		superannuation death	
lump sum paid by director,		benefits.....359, 360, 543–554	
deductibility	107, 108	testamentary charitable	
Remedies		gifts	374, 375
disclosure of information.....311–314		testamentary life interests	412–414
Rent		testamentary trusts	360
investing in land to derive	371	trading trusts	34
investment properties, active		trust deeds, loss of	362
assets	451–453	trust splitting	357, 358
Rental accommodation		widowhood effect	488, 489
build-to-rent		wills, court-authorised	205–207
developments.....260–264, 564–567		Sufficient influence test	481, 482
Rental income deferral		Superannuation	
SMSFs, COVID-19 impact.....105, 110		50–50 unit trusts	481–483
Reporting obligations		ATO, SMSF-specific advice	143, 144
corporate tax entities.....409		deeds, electronic execution.....38–40	
significant global entities.....91, 92		federal Budget 2021–22	601
Reputational risk		proportioning rule	369, 370
corporate tax entities.....406, 408, 410		residency rules	602
Residency	169–171	splitting, relationship	
Australians returning from		breakdown	88–90
overseas	128–132	taxation	354
backpacker tax	166	Superannuation death benefits	
central management and control		BDBNs	
– corporate tax residency...289–291		– incapacity of member	361, 362
– split residency	25–28	– lapsing/non-lapsing.....614	
corporate entities	603	– large member SMSFs	258
individuals		– superannuation fund	
– federal Budget		issues	548–553
2021–22	586, 588, 604	conflict of interest.....546, 547	
– tax reform issues.....83		dependants	126, 543, 544
		discretion of trustee	545, 546
		disputes	543–553
		estate planning.....359, 360, 543–554	
		payment	543, 544

- retirement phase income streams 538–541
reversionary pensions 544, 545
- Superannuation funds** — see also **Self-managed superannuation funds**
appointment of LPR 553, 554
control after death 553
downsizer contribution 534, 601, 602
mistakes in trust deeds 254, 255
non-arm's length income 5
non-concessional contributions 528–532
number of allowable members 52
reducing red tape for 52
taxation of 74
total superannuation balance 529, 530
transfer balance cap 198, 199
unused concessional contributions 527, 528
withdrawal and retribution strategy 532–534
work test 527
- Superannuation guarantee**
amnesty for shortfalls 4, 84, 104, 107, 122–126
– excess concessional contributions 124, 125
– low tax contributed amounts 124
– nominal interest component 122
– remission of additional charge 106, 107, 338, 339
– Tax Summit: Project Reform 160
reform issues 83, 84
threshold 602
- Suppression orders**
identity of applicant 591, 592
- Surcharge land tax**
foreign-owned entities (Qld) 147–149, 263
NSW 56, 57, 262, 565
- Surcharge purchaser duty (NSW)**
build-to-rent developments 565–567
discretionary trusts 56–59
foreign persons 32, 565, 566
- T**
- Tax administration**
ATO early engagement service 604
pausing debt recovery 604
reform issues 76
- Tax advisers**
controlling tax audits 234–236
- Tax agents**
backdating documents 593–595
deregistration 6–8, 54, 55, 395, 396, 449, 513, 592
Div 7A loan agreements 181
registration issues 594
running balance account overpayments 238–240
Tax Practitioners Board review 337
unregistered entities providing services 108, 109, 340
- Tax audits**
how to control 234–236
work-related expenses 449, 450
- Tax collection**
high wealth private groups 461
- Tax compliance**
FBT 223
imported hybrid mismatch rules 591, 616, 617
- Tax concessions**
small businesses 221
temporary full expensing 337, 484–486
- Tax consolidation provisions**
temporary full expensing deductions 485
- Tax disputes**
controlling tax audits 234–236
debt recovery 588
federal Budget 2021–22 588
- mistakes in trust deeds 254, 255
transfer pricing 364
- Tax education** — see also **Education**
Advanced Superannuation Dux Award, study period 1, 2020
– Natalie Talbot 232
Advanced Superannuation Dux Award, study period 3, 2019
– Melissa Leisavniens 65
CommLaw1 Dux Award, study period 3, 2019
– Pearl Weinberger 120
CommLaw2 Dux Award, study period 1, 2020
– Lee-Ming Au 232
Corporate Tax Dux Award, study period 2, 2020
– Matt Coombes 524
CTA1 Foundations Dux Award, study period 3, 2020
– Bryan Soepardi 599
CTA2A Advanced Dux Award, study period 2, 2020
– Paula Bennett 349
CTA2B Advanced Dux Award, study period 1, 2020
– Andrew Fernandes 177
CTA2B Advanced Dux Award, study period 2, 2020
– Ross Heard 403
CTA2B Advanced Dux Award, study period 3, 2019
– Anthony Kazamias 65
HEPCO: TTI Higher Education 391
Tax for Trusts in Estate Planning and Wealth Management Dux Award, study period 2, 2020
– Mariana Khuszana-Knight 457
- Tax-exempt entities**
testamentary charitable gifts 374, 375
- Tax file numbers**
foreign businesses in Australia 597
- Tax gap**
high wealth private groups 461
- Tax governance**
high wealth private groups 464–466
temporary full expensing deductions 486
- Tax incentives**
employee options, cancellation of payments 448, 449
R&D 4, 164, 165, 222, 345–347, 396
- Tax information**
asymmetry, ATO and taxpayers 408, 409
country-by-country reporting 409
general purpose financial statements 409
justified trust 409, 410
leaks 408
public disclosure 407, 408
reportable tax position schedule 409
tax transparency code 406, 408
- Tax integrity measures**
ABN requirements 339, 340, 512, 513, 589
cost-free debt capital rules 611
demergers 190
Div 7A 4, 242
minors, taxation of unearned income 315, 316
MITs, capital gains discount for trusts 52
- Tax legislation**
statutory construction 342–344
- Tax liabilities**
employee share schemes 519–522
freezing order, security bond notice 591
- Tax losses** — see **Losses**
- Tax offset**
digital games expenditure 586, 603
low and middle income 222, 588
- refund, administrative overpayment 511
- Tax Practitioner Governance and Standards Forum** 390
- Tax Practitioner Stewardship Group** 442
- Tax Practitioners Board**
deregistration 6–8, 54, 55, 395, 396, 449, 513, 592
Forum 158
identity fraud 589, 590
review 334, 337, 390
tax agent deregistration 513
- Tax professionals**
backdating documents 593–595
Charter of Tax Practitioner Governance 390
client identity verification 589, 590
COVID-19 responses 4
knowledge access 506
Tax Institute advocacy 2, 102, 103, 277, 334, 390
Tax Practitioners Board review 337
unregistered entities providing services 108, 109, 340
- Tax reform**
build-to-rent land tax/stamp duty 564–567
business tax 72–76
CGT 73
CGT concessions 73, 74
Commissioner's remedial power 76
company losses 72, 73
complexity 76, 77
consolidated groups 73
consultation on legislative amendments 84
consumption taxes 69, 71, 72
corporate tax rate 81
death duties 305–310
Div 7A 83
efficiency of tax system 352, 354
equity 352, 353
FBT 77, 80, 81
financial arrangements, taxation of 74, 75
GST 71, 72, 79
history 71, 79
insurance tax 75
international tax 75, 76
lower taxes 69
marginal tax rate 81
personal services income rules 84
simplicity of tax system 353–355
small business CGT concessions 82, 83
superannuation funds, taxation of 74
superannuation guarantee 83, 84
Tax Institute project 102, 103, 158–160, 218, 219, 276–278, 335
Tax Institute submissions on 69, 335, 352, 356, 390–392
top marginal tax rate 81
trust losses 72, 73
trusts 81, 82
- Tax refunds**
Commissioner's discretion to retain 337, 338, 589, 590
running balance account errors 238–240
surcharge land tax, NSW 565
surcharge purchaser duty, NSW 566
temporary loss carry-back 220, 221
- Tax registrations**
foreign businesses in Australia 597
- Tax reporting**
foreign businesses in Australia 597
- Tax returns**
lodgment deferrals 4
- Tax risk management framework**
high wealth private groups 466, 467
- Tax schemes**
individual professional practitioners 446, 447
- R&D claims 164, 165, 396
scheme promoter provisions 449
- Tax transparency code** 406
- Tax treaties** — see **Double tax agreements**
- Taxable supplies**
ATO interpretation 607, 608
- Taxation of financial arrangements**
interest-free loans 612
reform issues 74, 75
- Taxpayer alert**
imputation benefits 338
- Telephone expenses**
work-related deductions 168
- Temporary full expensing concessions** 337, 484–486, 589, 602
- Temporary loss carry-back** 220, 221, 321, 322
federal Budget 2021–22 588
- Ten per cent test**
employee share schemes 519–522
- Ten-year enterprise tax plan** 52
corporate collective investment vehicles 588, 603
- Tenants**
build-to-rent developments 260
rental income deferral, COVID-19 impact 105
- Testamentary capacity**
wills, court-authorised 205–207
- Testamentary charitable gifts** 374, 375
- Testamentary trusts**
Australian, surcharge land tax (NSW) 58
estate planning 360
minors, taxation of unearned income 315, 316
surrender of life interests 412–414
- Thailand**
Australia–Thailand DTA 133, 225, 226, 298, 299
- The Tax Institute**
Abdalla, Julie 102
Australia's tax system, reform of 68
Caredes, Stephanie 102
Chartered Tax Adviser of the Year
– Dr Julianne Jaques 443
Community platform 507
COVID-19 responses 3, 49, 126, 508
education — see **Tax education**
Federal Budget 2021–22 392, 584
health and wellbeing seminars 3
HEPCO: TTI Higher Education 391
Jacobson, Robyn 3
Knowledge and Learning team 2, 391
knowledge sharing 48
membership renewal 507
Mills, Andrew 3
National Tax Liaison Group meeting 442
submissions
– federal Budget 2021–22 392
– to ATO 559
– to Treasury 84, 103, 159
superannuation guarantee amnesty 104, 126
- Tax Policy and Advocacy**
team 2, 102, 103, 277, 334, 390, 442, 444, 506, 508, 584, 585
- Tax Practitioners Board**
review 334, 390
- Tax Summit: Project Reform** 102, 103, 158–160, 218, 219, 276–278, 335, 355, 391
- The Case for Change: tax reform submission** 335, 352, 356, 390–392, 586
- Treasury, submission to 84, 103, 159
volunteers 103
website rebuild 277
- Thin capitalisation** 76
arm's length debt test 162, 201

CUMULATIVE INDEX

- | | | |
|---|--|---------------|
| foreign businesses in Australia |597 | |
| interest-free loans |610, 611 | |
| Thodey report |352 | |
| Tie-breaker rules | | |
| Australia–Thailand DTA |225, 226, 298, 299 | |
| dual residents |131 | |
| Timing issues | | |
| application to review decisions |224, 225 | |
| debt/equity rules |469 | |
| later time discretion |512, 513 | |
| restructuring of demerger groups |191 | |
| superannuation interest |369, 370 | |
| trust distributions |14, 15 | |
| Tools of trade |509 | |
| Top 500 private groups tax performance program |461 | |
| Top marginal tax rate | | |
| reform issues |81 | |
| Total superannuation balance |529, 530 | |
| Trading stock | | |
| goods taken for private use |394 | |
| Trading trusts | | |
| mistakes in trust deeds |254, 255 | |
| oppression remedies |34–36 | |
| Training | | |
| retraining and reskilling benefits, FBT |589 | |
| Transfer balance cap |198, 199 | |
| death benefit income streams |538–541 | |
| excess transfer balance tax |198, 199 | |
| indexation |536–541 | |
| personal |536–538 | |
| total superannuation balance |529 | |
| Transfer duty (NSW) | | |
| certain transactions treated as transfers |32 | |
| proposed transition to land tax |51 | |
| put and call options |32 | |
| real estate transactions |30–33 | |
| Transfer pricing |5 | |
| COVID-19 implications |426, 427 | |
| cross-border related-party arrangements |201, 597 | |
| dispute avoidance |364 | |
| interest-free loans | <ul style="list-style-type: none"> – recharacterised as equity– treated as equity interest |472, 610 |
| simplified, record-keeping |339 | |
| Transferor trust regime |295, 296 | |
| Transparency | | |
| corporate tax entities |406–411 | |
| Transport expense deductions | | |
| employees, FBT |447 | |
| Travel | | |
| employee allowances |52, 53, 447, 448 | |
| work-related deductions |167, 168 | |
| Trust deeds | | |
| loss of |362 | |
| mistakes, rectification |254, 255 | |
| superannuation death benefits |544 | |
| Trust income | | |
| distribution resolutions, disclaimers |167, 223, 224, 420, 421 | |
| distributions |12–14 | |
| Trust losses | | |
| tax reform issues |72, 73 | |
| Trust splitting | | |
| estate planning |357, 358 | |
| Trustees | | |
| appointee identity/powers, variation |86, 87 | |
| Australian discretionary trusts, foreign capital gains |17–23, 165, 166 | |
| declaration of trust |479, 480 | |
| definition |295 | |
| foreign persons |57 | |
| power to remove or appoint |482 | |
| SMSFs, administrative penalties |318–320, 416–419 | |
| surrender of life interests |412–414 | |
| Trusts | | |
| COVID-19 cash flow boosts, effects |300–303 | |
| declarations of |32, 479, 480, 556–558 | |
| hybrid mismatch rules |41 | |
| international tax law principles |19 | |
| international tax treatment |2 | |
| life interest trusts |139, 140, 412–414 | |
| mistakes in trust deeds |254, 255 | |
| offshore |293–296, 474–477 | |
| reform |35 | |
| residence |294, 295 | |
| taxation, reform issues |81, 82 | |
| trading trusts, oppression remedies |34–36 | |
| Turnover test | | |
| JobKeeper |6 | |
| U | | |
| Ultimate facility |371, 372 | |
| Uncompleted contracts |33 | |
| Unearned income | | |
| minors, taxation |315, 316 | |
| Unfair prejudice | | |
| evidence |395 | |
| Unit trusts | | |
| 50–50 unit trusts |481–483 | |
| United Kingdom | | |
| Australia–UK DTA |166, 170 | |
| death duties |307 | |
| United States | | |
| Australia–US DTA |251 | |
| death duties |307 | |
| Unrelated clients test | | |
| personal services income |165 | |
| Unused concessional contributions |527, 528 | |
| V | | |
| Vacant land | | |
| sale, GST |284–287 | |
| Valuation | | |
| goods taken from stock for private use |394 | |
| hybrid securities |394 | |
| interest-free loans |611 | |
| Victoria | | |
| build-to-rent developments |262, 263 | |
| deeds, electronic execution |38–40 | |
| Victorian Law Reform Commission | | |
| oppression remedies |35 | |
| Voluntary disclosure | | |
| high wealth private groups |461–463 | |
| tax information |319, 406–408, 410, 416–419 | |
| W | | |
| Wealth taxes |305, 307, 309, 310 | |
| Wealthy private groups — see High wealth private groups | | |
| Widowhood effect |488, 489 | |
| Wills | | |
| blended families |139, 140 | |
| court-authorised |205–207 | |
| fraudulent calumny |94, 95 | |
| testamentary gifts |374, 375 | |
| testamentary life interests |412–414 | |
| Withdrawal and recontribution strategy |532–534 | |
| Withholding tax | | |
| foreign residents | <ul style="list-style-type: none"> – interest expenses– mortgagee land sales |163, 279 |
| transfer pricing benefit, interest-free loan |472 | |
| Witnesses | | |
| tax audits |235 | |
| transfer pricing disputes |364, 365, 367 | |
| Witnessing deeds | | |
| electronic |38, 39 | |
| Women and families | | |
| home ownership for |605 | |
| Work-related expenses | | |
| construction worker |167, 168 | |
| deductions — see Deductions for expenditure | | |
| disallowance |592 | |
| tax audit |449, 450 | |
| Work test | | |
| federal Budget 2021–22 |601 | |
| SG amnesty |125 | |
| superannuation contribution rules |527 | |
| Workers | | |
| characterising, superannuation guarantee |123, 124 | |
| Working from home deductions | | |
| COVID-19 measures |53, 55, 223, 339, 509, 510 | |
| Working holiday |55, 166, 170 | |
| Working parents |353 | |
| Work-life balance |508 | |
| Legislation | | |
| A New Tax System (Australian Business Number) Act 1999 |339 | |
| A New Tax System (Goods and Services Tax) Act 1999 |239, 263, 284 | |
| Div 75 |287 | |
| Div 81 |510 | |
| Div 82 |510 | |
| Div 126 |226 | |
| s 9–5 |510 | |
| s 9–5(b) |286, 287 | |
| s 9–10 |399 | |
| s 9–17 |401 | |
| s 9–17(1) |400 | |
| s 9–20(1) |287 | |
| s 9–20(1)(a) |287 | |
| s 9–20(1)(b) |287 | |
| s 9–30(1)(b) |399 | |
| s 9–30(2)(b) |399 | |
| s 9–30(3) |399 | |
| s 29–70(2) |287 | |
| s 35–5 |239 | |
| s 35–5(1) |241 | |
| s 35–10 |241 | |
| s 38–270 |174 | |
| s 40–160 |174, 175 | |
| s 40–165 |174 | |
| s 40–165(1)(a) |175 | |
| s 40–165(1)(b) |175 | |
| s 40–165(1)(c) |175 | |
| s 58–10 |282, 283 | |
| s 75–5(1A) |287 | |
| s 75–10 |287 | |
| s 195–1 |399 | |
| Acts Interpretation Act 1901 |196 | |
| Pt 8 |344 | |
| s 2(2) |173, 344 | |
| s 2CA |195 | |
| s 2E |543 | |
| s 2F |195 | |
| s 2F(2) |195, 543 | |
| s 12 |343 | |
| s 13 |343 | |
| s 15A |343 | |
| s 15AA |342, 343, 607 | |
| s 15AB |343 | |
| s 15AC |343 | |
| s 15AD |343 | |
| s 18A |344 | |
| s 23 |344 | |
| s 33 |344 | |
| s 33(2A) |173 | |
| s 33(3A) |110 | |
| Administration Act 1903 (WA) | | |
| s 47A |197 | |
| Administration and Probate Act 1935 (Tas) | | |
| s 40 |376 | |
| Administration and Probate Act 1958 (Vic) | | |
| Pt IV |196 | |
| s 46 |376 | |
| Administration and Probate Act 1969 (NT) | | |
| s 81 |376 | |
| Administrative Appeals Tribunal Act 1975 | | |
| s 28 |172 | |
| s 29(7) |224 | |
| s 35 |7 | |
| s 43 |172 | |
| s 43(1) |513 | |
| s 44 |171, 172 | |
| Administrative Decisions (Judicial Review) Act 1977 | | |
| s 13 |395 | |
| Adoption Act 1984 (Vic) | | |
| s 53(1) |197 | |
| Adoption Act 1994 (WA) | | |
| s 75(1)(a) |197 | |
| Adoption Act 2000 (NSW) | | |
| s 95 |197 | |
| Adoption Act 2009 (Qld) | | |
| s 214(3) |197 | |
| Adoption of Children Act 1994 (NT) | | |
| s 45(1)(a) |197 | |
| ASIC Corporations (Foreign-Controlled Company Reports) Instrument 2017/204 |597 | |
| Banking Act 1959 | | |
| s 5 |279 | |
| Bankruptcy Act 1966 |86 | |
| Boosting Cash Flow for Employers (Coronavirus Economic Response Package) | | |
| Act 2020 |302 | |
| s 5 |590 | |
| s 5(1)(f) |608 | |
| s 5(6) |607 | |
| s 5(6)(b) |608 | |
| s 6 |590 | |
| Charities Act 2013 |374 | |
| Companies Act 1961 | | |
| s 344(3) |473 | |
| Companies (New South Wales) Code | | |
| s 510(3) |473 | |
| Conveyancing Act 1919 (NSW) | | |
| s 38A |38 | |
| Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 |107 | |
| s 11(1) |512 | |
| s 11(6) |339, 340, 512, 513, 590 | |
| Corporate Collective Investment Vehicle Bill 2019 |603 | |
| Corporations Act 2001 | | |
| Pt 1 |86, 183, 262, 420, 543 | |
| Pt 5.1 |106, 192 | |
| Ch 2F |34 | |
| Ch 8B |603 | |
| s 21(3) |473 | |
| s 53 |34, 35 | |
| s 127 |40 | |
| s 180 to 184 |107 | |
| s 232 |34 | |
| s 233 |34–36 | |
| s 251A |183, 184 | |
| s 251A(5A) |183 | |
| s 251A(6) |184 | |
| s 439A(4) |108 | |
| s 1305 |11, 12, 15 | |
| s 1305(1) |420, 421 | |
| s 1322 |13 | |
| s 1322(1)(b) |13 | |
| s 1322(2) |13 | |
| Sch 2 | <ul style="list-style-type: none"> – s 100–5 |108 |
| Sch 3 |183 | |
| Corporations (Coronavirus Economic Response) Determination (No. 1) 2020 |40 | |

COVID-19 Omnibus (Emergency Measures) (Electronic Signing and Witnessing) Regulations 2020 (Vic)	38 reg 12(4)	39
Crimes Act 1914		
s 4AA	318	
Criminal Code Act 1995		
Schedule		
– s 11.2	594	
– s 137.2	595	
Currency Act 1965	54	
De Facto Relationships Act 1991 (NT)		
s 3A	197	
Domestic Partners Property Act 1996 (SA)		
s 3	197	
Domestic Relationships Act 1994 (ACT)		
s 3	197	
Duties Act 1997 (NSW)	30, 56, 480, 564	
Ch 2	30, 33	
Ch 2A	567	
Ch 3	32	
– Pt 2	32, 60	
Ch 4	33	
– Pt 2B	567	
Div 2A	60	
s 8	30, 479, 480, 556, 558	
s 8(3)	556	
s 9B	31	
s 9B(1)(c)	31	
s 11(1)(a)	33	
s 11(1)(k)	33	
s 16(1)	33	
s 18(2)	31, 32	
s 18(3)	31–33	
s 21	31	
s 32A	33	
s 55(1)(a)(ii)	480	
s 58(1)	33	
s 65(12)	480	
s 104(1)	56, 57	
s 104(2)	57	
s 104J	57, 567	
s 104J(1)	33	
s 104JA	58	
s 104K	56, 567	
s 104L	56	
s 104L(1)(b)	566	
s 104S	56	
s 104ZJB(1)	567	
s 104ZJB(2)	567	
s 104ZJB(3)	567	
s 104ZJB(4)	567	
s 104ZJB(6)	567	
s 104ZJB(7)	567	
s 104ZJB(8)	567	
s 104ZJB(10)	567	
s 104ZJB(11)	567	
s 106 to 111	33	
s 108(1)	32, 33	
s 108(3)	33	
s 108(4)	33	
s 108A(3)	33	
s 146	33	
s 148	33	
s 158A	33	
s 160(1)	33	
s 160(3)	33	
s 160(3A)	33	
s 163H	567	
Sch 1		
– Pt 51	60	
Duties Act 1999 (ACT)		
s 7	558	
Duties Act 2000 (Vic)	111	
s 7	558	
Duties Act 2001 (Qld)		
s 8	558	
Duties Act 2001 (Tas)		
s 6	558	
Duties Act 2008 (WA)		
s 9	556	
s 11	556, 558	
s 45	33	
s 78	558	
Electricity Industry Act 2000 (Vic)		280
Electronic Transactions Amendment (COVID-19 Witnessing of Documents)		
Regulation 2020 (NSW)	38	
Electronic Transactions Regulation 2017 (NSW)		
Sch 1	38	
Electronic Transactions (Victoria) Act 2000 (Vic)		38, 39
s 9(1)	38	
s 9(1A)	39	
Environmental Planning and Assessment Act 1979 (NSW)	565	
Evidence Act 1995		
s 128	594	
Evidence Act 2001 (Tas)		
s 68	12	
Family Court Act 1997 (WA)		
Div 11		
– Subdiv 3	197	
Family Law Act 1975		88, 544
s 60EA	197	
s 90XD	88	
Family Law Rules 2004		90
Family Law (Superannuation) Regulations 2001		
reg 72	90	
Family Relationships Act 1975 (SA)		
Pt 2A	197	
s 6	197	
s 7	197	
s 8	197	
Federal Court of Australia Act 1976		
s 37AF	592	
s 37AG	592	
Foreign Account Tax Compliance Act (US)		74
Foreign Acquisitions and Takeovers Act 1975		57
s 4	57	
s 5	57	
s 18	57	
Fringe Benefits Tax Assessment Act 1986		80, 447, 448
s 30	448	
s 31G	446	
s 31G(1)(b)	446	
s 31G(2)	446	
Goods and Services Tax: Frequency of Fund-raising Events Determination (No. 31) 2016	174	
Income Tax Act 1924 (Qld)		172
Income Tax Assessment (1936 Act) Regulation 2015		
reg 17	296	
Income Tax Assessment (1997 Act) Regulations 2021		
Subdiv 83A-C	519, 521	
Subdiv 83A-E	521	
s 83A-315.02	522	
s 83A-315.03	522	
s 83A-315.05 to 83A-315.09	522	
s 83A-315.08	522	
s 83A-315.09	522	
Income Tax Assessment Act 1915		
s 16	169	
Income Tax Assessment Act 1922		170
Income Tax Assessment Act 1930		170
Income Tax Assessment Amendment Bill (No. 6) 1979		315
Income Tax Assessment Bill 1996		169
Income Tax Assessment Bill 1999(2)		302
Income Tax Assessment Bill 2008 (WA)		
s 99B(2)(b)	477	
s 100	21	
s 100A	81, 82, 244, 245, 249, 302	
s 100A(13)	81	
s 101	82	
s 102AAE	295	
s 102AAAT(1)	296	
s 102AAZD	296	
s 102AAZE	296	
s 102AAZF	296	
s 102AC	315	
s 102AE	315	
s 102AG	315	
s 102AG(1)	315	
s 102AG(2)	358	
s 102AG(2)(a)	316	
s 102AG(2)(a)(i)	315	
s 102AG(2AA)	358	
s 102AG(4)	315, 316	
s 102AG(5)	315, 316	
s 102P	254	
s 103A	612	
s 108	248	
s 109D	180, 181	
s 109E	113, 181, 182, 184, 243, 244	
s 109E(6)	113, 181, 182	
s 109K	612	
s 109N	52, 113, 181, 185	
s 109N(2)	187	
s 109N(3)	187	
s 109Q	52, 112, 114	
s 109R	187	
s 109RB	187	
s 109RD	52, 110–113, 169	
s 109RD(1)	111, 114	
s 109RD(1)(b)	110, 111	
s 109RD(2)	114	
s 109RD(3)(b)	114	
s 109T	249	
s 109V	249	
s 109W	249	
s 109Y	187	
s 128AA(2)	612	
s 139G	522	
s 159GP(2)	612	
s 160ZZQ(20D)	515	
s 160ZZQ(20D)(f)	517	
s 166	241	
s 170	589	
s 172A	241	
– Div 1A	342, 599	
Pt IV A	5, 82, 84, 163, 169, 234, 236, 248, 249, 366, 446, 509, 612	
Pt X	133, 134, 291	
s 6(1)	25, 29, 132, 133, 169, 170, 289, 290, 294, 295, 303	
s 6CA(1)	338	
s 16	406	
s 21A	280	
s 21A(2)(a)	280	
s 21A(5)	280	
s 23AG	83	
s 23AH	456	
s 26(a)	193	
s 26BB	612	
s 26BB(3)	613	
s 44	180	
s 44(1)	163, 303	
s 45B	469	
s 45B(1)	469	
s 45B(8)(i)	190	
s 46(3)	173, 344	
s 47A	132, 133	
s 51(1)	452	
s 70E(2)(b)	482	
s 95 to 100	476	
s 95(1)	20	
s 95(2)	294	
s 96C(1)(b)	595	
s 97	15, 82, 224, 302, 303, 421	
s 98	19–21, 23, 82	
s 98(3)	17	
s 98A	21	
s 99	82, 306	
s 99A	8, 15, 21, 82, 306, 594	
s 99B	82, 132, 133, 302, 474–477	
s 99B(2)	164, 449	

CUMULATIVE INDEX

Div 770	251	s 109-5(2)	399	s 292-85(4)	528	Justice Legislation (COVID-19 Emergency Response — Wills and Enduring Documents) Regulation 2020 (Qld)	38
Div 775	53, 75, 133	s 110-25	399	s 292-102	534		
Div 815	163	s 110-35	399	s 294-35(3)(a)	541		
Div 820	162, 163	s 110-38	399	s 294-130	542		
Div 832	616, 617	s 112-20	561, 611	s 294-140	542		
Div 842	612	s 115-10	253	s 295-550	5, 559		
Div 855	17-20, 23, 166	s 115-25	253	s 295-550(1)	423, 559		
Div 974	74, 75, 163, 203, 469, 471, 472, 612	s 115-25(3)	398	s 295-550(1)(b)	424, 561		
Subdiv 32-A	76	s 115-30	522	s 295-550(1)(c)	561		
Subdiv 40-F	54	s 115-40	398	s 302-10	126		
Subdiv 115-C	17, 19-23, 82, 166, 342, 375, 376, 412, 413	s 115-215	18	s 302-195(1)	126		
Subdiv 118-B	133, 413, 414	s 115-215(3)	17, 21, 166, 376	s 307-5	126		
Subdiv 130-D	82	s 115-220	17, 21, 166	s 307-80	198		
Subdiv 165-CC	119	s 115-220(2)	21, 22	s 307-125	369, 532		
Subdiv 165-F	82	s 115-225	376	s 307-230	529		
Subdiv 166-E	119	s 115-225(1)	21, 22	s 328-110	61, 452, 454		
Subdiv 202-E	184	s 115-227	376	s 328-115	61		
Subdiv 207-B	82, 187, 248	s 115-228	375	s 328-125	61, 82, 321		
Subdiv 235-I	82	s 116-20(1)	397	s 328-130	61, 322		
Subdiv 328-C	321	s 116-30	561	s 328-130(1)	61		
Subdiv 328-G	357	s 116-30(3)	401	s 328-130(2)	61, 62		
Subdiv 768-A	478	s 116-65	399	s 355-25(2)	346		
Subdiv 815-A	364, 365	s 116-70	398	s 355-25(2)(b)	346		
Subdiv 815-B	204, 364, 365, 367, 472	s 118-37(1)(c)	253	s 355-25(2)(f)	346		
Subdiv 815-E	408	s 118-110(2)	402, 413	s 355-100	107		
Subdiv 832-C to 832-G	591	s 118-110(2)(a)	414	s 355-405	107		
Subdiv 832-H	591	s 118-115(1)	376	s 770-75	164		
Subdiv 900-B	52	s 118-120	376	s 770-75(4)(a)(i)	164		
Subdiv 960-S	522	s 118-180	82	s 770-75(4)(a)(ii)	163, 164		
s 1-3	343, 344, 517	s 118-185	515, 516	s 815-115	472, 473		
s 6-5	54, 289	s 118-190	516	s 815-115(1)	472		
s 6-5(3)	19	s 118-190(1)(b)	516	s 815-115(2)	472		
s 6-10(5)	19	s 118-192	515, 516	s 815-120	472		
s 6-23	304	s 118-192(1)(a)	516	s 815-120(1)(c)(i)	472		
s 8-1	8, 54, 108, 246, 253, 281, 447, 448, 454	s 118-192(1)(b)	516	s 815-120(1)(c)(iv)	472		
s 8-1(1)(a)	8, 53	s 118-192(2)	517	s 815-130	203		
s 8-1(1)(b)	303	s 118-195	139	s 815-140	472, 473		
s 26-95	123	s 118-195(1)	376	s 815-145	472		
s 26-95(2)	127	s 118-200	413	s 820-40(1)(a)	611		
s 28-25(5)	53	s 125-70(1)	106, 189-191, 193	s 820-40(1)(a)(iii)	610		
s 30-15	374	s 125-70(1)(a)	190, 193	s 820-40(1)(b)(iii)	611		
s 40-551	54	s 125-70(1)(b)	106, 193	s 820-40(2)	611		
s 40-755(1)	107	s 125-70(1)(c)	190	s 820-85	611		
s 40-880	449	s 125-70(1)(h)	193	s 820-105	162		
s 59-90	302	s 125-70(2)	106, 190, 191, 193	s 820-115	611		
s 83A-10	520, 521	s 126-15	82	s 820-185	611		
s 83A-20	521	s 128-10	306, 307, 489	s 820-215	162		
s 83A-25(1)	519	s 128-15	306, 307, 489	s 820-220	611		
s 83A-33	521	s 128-15(1) to (3)	489	s 820-946(3)	611		
s 83A-33(1)	519, 522	s 128-15(3)	412, 488	s 820-946(4)	611		
s 83A-35(1)	519	s 128-15(4)	376, 413	s 820-980	162		
s 83A-45(6)	519	s 128-20	489	s 842-215(1)(a)	613		
s 83A-315	520	s 134-1(1)	400	s 855-10	17, 19, 22, 166, 612		
s 83A-315.01	520	s 134-1(4)	400	s 855-10(1)	17, 22		
s 83A-315.02 to 83A-315.09	520	s 152-10	451	s 855-15	18		
s 83A-325	520, 521	s 152-10(1)(c)(i)	452	s 855-40	17, 18, 23		
s 83A-340	521	s 152-10(1)(d)	452	s 855-40(1) to (4)	22		
s 83A-340(1)	522	s 152-15	63	s 855-45	131, 132		
s 86-15(3)	165	s 152-35	452	s 900-30(3)	448		
s 87-20	165	s 152-40	226, 228, 229, 452	s 960-130	613		
s 87-20(1)(a)	165	s 152-40(1)	63	s 960-135	613		
s 87-20(1)(b)	165	s 152-40(1)(a)	229, 230, 343, 452	s 960-265	541		
s 87-20(2)	165	s 152-40(1)(b)	230	s 960-285	541		
s 102-25	397	s 152-40(4)(e)	452, 453	s 974-10(2)	471		
s 103-25	169	s 152-40(4)(A)	453	s 974-10(3)	470		
s 104-10	413, 489	s 152-40(4)(A)(b)	452, 453	s 974-20(3)	611		
s 104-10(3)	399	s 152-47	63	s 974-70(1)	470		
s 104-25	401	s 152-47(1)	63	s 974-70(2)	470		
s 104-35(2)	399	s 165-210(2)(a)	119	s 974-75	471		
s 104-40(1)	397	s 165-210(2)(b)	119	s 974-75(6)	471, 472		
s 104-40(2)	397	s 202-80	184	s 974-80	470, 471		
s 104-40(3)	397	s 205-15(1)	589	s 974-80(1)	471		
s 104-40(4)	397	s 219-15(2)	589	s 974-80(1)(d)	471		
s 104-40(5)	399, 400	s 230-510	612	s 974-80(2)	471		
s 104-70	302	s 245-10	612	s 974-110	469		
s 104-71(1)	302	s 290-50(5)	449	s 974-155(1)	470		
s 104-75	412-414	s 291-20	527	s 974-155(3)	470		
s 104-85	412	s 291-465	125	s 974-160	375		
s 104-85(3)	413	s 292-20(2)	528	s 995-1	53, 294		
s 106-50	82	s 292-85(2)(b)	529	s 995-1(1)	53		
s 108-5	397	s 292-85(3)	528	Justice Legislation (COVID-19 Emergency Response — Wills and Enduring Documents) Amendment Regulation 2020 (Qld)	38		
s 108-7	363	s 292-85(3) to (7)	529	Land Tax Act 1956 (NSW)	56, 564		
				s 2A	57, 60, 567		
				s 5A	56		
				s 5A(2)(b)	567		
				s 5CA	567		
				s 5CA(2)	567		
				s 5CA(3)	567		
				s 5CA(4)	567		
				s 5CA(7)	567		
				s 5CA(8)	567		
				s 5CA(9)	567		
				s 5CA(10)	567		
				s 5D	57		
				s 5D(3)(b)	58		
				s 5D(7)	60		
				Sch 13			
				— Pt 1	567		
				Land Tax Act 2005 (Vic)			
				s 67	453		
				s 67(2)(c)(i)	452		
				Land Tax Management Act 1956 (NSW)			
				Pt 34	58		
				s 5CA(4)	567		
				s 7	567		
				s 9E	564-567		
				s 9E(2)(d)	567		
				s 9E(2)(e)	567		
				s 9E(3)	567		
				s 9E(7)	567		
				s 9E(8)	567		
				s 9E(9)	565, 567		
				s 9E(10)	567		
				s 9E(11)	567		
				s 66	58		
				s 66(1)	59		
				s 66(3)	59		
				Limitation Act 1969 (NSW)	612		
				New Business Tax System (Capital Gains Tax) Bill 1999	229, 343		
				New International Tax Arrangements (Managed Funds and Other Measures) Bill 2004	22		
				Parentage Act 2004 (ACT)			
				Div 2.2	197		
				s 11	197		
				s 39	197		
				Partnership Act 1891 (Qld)			
				s 24	363		
				Partnership Act 1891 (SA)			
				s 21	363		
				Partnership Act 1892 (NSW)			
				s 21	363		
				Partnership Act 1895 (WA)	557		
				s 31	363		
				s 50	558		
				Partnership Act 1958 (Vic)			
				s 25	363		
				Partnership Act 1963 (ACT)			
				s 26	363		
				Partnership Act 1997 (NT)			
				s 25	363		
				Personal Property Securities Act 2009	603		
				Probate and Administration Act 1898 (NSW)			
				s 44	480, 558		
				Property (Relationships) Act 1984 (NSW)			
				s 5	197		
				Relationships Act 2003 (Tas)			
				s 4	197		
				Relationships Act 2008 (Vic)	196		
				s 35	195		
				Stamp Duties Act 1920 (NSW)	480		
				Stamp Duties Act 1923 (SA)	558		

Stamp Duty Act 1978 (NT)	
s 5	558
State Revenue Legislation	
Amendment (Budget Measures) Act 2016 (NSW)	56
s 104S	56, 57
State Revenue Legislation	
Amendment (COVID-19 Housing Response) Bill 2020 (NSW)	260, 564
State Revenue Legislation Further	
Amendment Act 2020 (NSW)	56
Status of Children Act 1974 (Tas)	
Pt III	197
s 3	197
s 7	197
s 8	197
Status of Children Act 1974 (Vic)	196
s 3(1)	197
s 7	196
s 8	196
s 13	197
s 15	197
Status of Children Act 1978 (NT)	
Pt IIIA	197
s 4	197
s 5	197
Status of Children Act 1978 (Qld)	
Div 2	197
s 6	197
s 8	197
Status of Children Act 1996 (NSW)	
s 5	197
s 10	197
s 14	197
Succession Act 1981 (Qld)	
s 18	95
s 21	207
Succession Act 2006 (NSW)	
s 8	95
s 18	207
Superannuation (Excess Transfer Balance Tax) Imposition Act 2016	
s 5	199
Superannuation (Excess Transfer Balance Tax) Imposition Bill 2016	
.....	541
Superannuation Guarantee (Administration) Act 1992	122, 144
Pt 7	104, 106, 107, 123, 338, 339
s 12(1)	123
s 12(3)	123
s 15B	125
s 19	122
s 23(9A)	125, 126
s 23A	123, 125
s 59(1)	106, 338
s 62(4)	123
s 65A	125
s 65AA	125
s 67	125, 126
Superannuation Industry (Supervision) Act 1993	143, 162, 196, 257, 361, 423, 614
Pt 21	419
s 10	197, 543
s 10(1)	105
s 10A	544
s 10A(2)	544
s 17A	257, 548, 554
s 17A(3)(a)	554
s 34	416
s 34(1)	417, 418
s 35B(1)	417
s 40(1)	419
s 42A	417
s 58	549
s 59	549
s 59(1A)	549, 550
s 65(1)	318, 417, 418
s 65(1)(a)	417, 418
s 65(1)(b)	417, 418
s 66	416
s 67(1)	318, 417
s 67A	560
s 70E(2)(a)	481, 482
s 70E(2)(b)	481, 482
s 70E(2)(c)	481, 482
s 71(1)	105
s 71(1)(j)	105
s 71(4)	482
s 82	105
s 83	105
s 84(1)	318, 417, 418
s 103(1)	318, 417
s 103(2)	417
s 103(2)(a)	419
s 103(2A)	417
s 104(1)	318, 417
s 104A(2)	417, 419
s 105(1)	417
s 106(1)	417
s 106A(1)	417
s 124(1)	417
s 126A	419
s 159	419
s 160	419
s 160(4)	417, 419
s 166	279, 318, 416, 417, 419
s 166(1)	279
s 168	419
s 169	419
s 254(1)	417
s 262A	419
s 264	419
s 347A(5)	417
Superannuation Industry (Supervision) Regulations 1994	143, 416, 543, 614
Pt 7A	88
reg 4.09A	417
reg 5.01	125
reg 6.17	417
reg 6.17A	549, 550, 614
reg 6.17A(6)	550
reg 6.17A(7)	549
reg 6.17A(7)(a)	614
reg 6.17B	549
reg 6.21	544
reg 6.21(1)	543
reg 6.21(2A)	544
reg 6.22	196, 543
reg 7.01(3)	527
reg 7.04(1)	527
reg 7A.10	90
reg 13.22B	105
reg 13.22C	105
reg 13.22D	105
Superannuation (Unclaimed Money and Lost Members) Act 1999	125
Tax Agent Services Act 2009	248, 311, 337, 590
Pt 3	244
Div 30	449, 595
s 20-5	513
s 30-20(1)(b)	7
s 50-5	108, 340
s 50-5(1)	108, 109, 340
Tax and Superannuation Laws Amendment (debt and equity scheme integrity rules) Bill	473
Tax Law Improvement Act (No. 1) 1998	515
Tax Laws Amendment (2004 Measures No. 1) Bill 2004	595
Tax Laws Amendment (2006 Measures No. 4) Act 2006	18, 22
Tax Laws Amendment (2009 Budget Measures No. 2) Bill 2009	521
Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2010	411
Tax Laws Amendment (Countering Tax Avoidance and Multinational Profit Shifting) Act 2013	236
Tax Laws Amendment (Counteracting Tax Avoidance and Multinational Profit Shifting) Bill 2013	236
Tax Laws Amendment (Small Business) Bill 2007	64
Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009	612
Taxation Administration Act 1953	107, 169, 342, 472
Pt IIA	240
Pt IIB	238–240
Pt III	184
Pt IVC	199, 418, 590
s 3C	407, 408
s 3CA	409
s 3E	407, 408
s 8AAZLF(1)	238, 239, 241
s 8AAZLH	238, 239, 241
s 8AAZLH(2)	238, 239
s 8AAZLH(2A)	238
s 8AAZLH(3)	239
s 8AAZLH(5)	238, 239
s 8AAZN	238–241, 342, 511
s 8AAZN(1)	240
s 8AAZN(3)	239, 511
s 8C(1)(a)	184
s 8E	184
s 8K	594
s 8Y	184
s 8ZA(4)	187
s 8ZJ	187
s 14ZZ	171
s 14ZZO	172, 365
s 14ZZO(b)(i)	171
s 14ZZP	172
Sch 1	
– Div 268	123, 124
– Div 269	124
– Div 290	164
– Div 355	311, 406
– s 12-175	82
– s 12-180	82
– s 12-325	338
– s 14-200	279
– s 105-5	241
– s 155-15(1)	241
– s 255-105(2)	591
– s 284-75(1)	594
– s 284-75(3)	123
– s 284-90	123
– s 290-50(1)	164, 449
– s 298-20	279, 416, 418
– s 298-20(3)	419
– s 353-10	311, 394, 395
– s 355-25	311, 312
– s 355-30	311, 407
– s 355-50	312, 407
– s 357-105(1)	231
– s 388-70	241
– s 388-75	241
Taxation Administration Act 1996 (NSW)	
Pt 5	566
s 9(3)(c)	567
Taxation Laws Amendment Act (No. 3) 1999	240
Taxation Laws Amendment Act (No. 4) 2002	613
Taxation Laws Amendment Bill (No. 3) 1997	517
Trade Marks Act 1995	
s 131	111
Treasury Laws Amendment (2017 Enterprise Incentives No. 1) Bill 2017	119
Treasury Laws Amendment (2018 Enterprise Incentives No. 1) Act 2019	5, 559
Treasury Laws Amendment (2018 Superannuation Measures No. 1) Bill 2018	122
Treasury Laws Amendment (2019 Measures No. 3) Act 2020	316, 359, 363
Sch 3	
– Pt 2	85
Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Act 2019	127
Treasury Laws Amendment (2020 Measures No. 1) Act 2020	91
Treasury Laws Amendment (2020 Measures No. 2) Bill 2020	41
Treasury Laws Amendment (2020 Measures No. 6) Act 2020	337
Treasury Laws Amendment (A Tax Plan for the COVID-19 Economic Recovery) Bill 2020	221, 222, 345
Treasury Laws Amendment (Combating Illegal Phoenixing) Act 2020	337, 590
Treasury Laws Amendment (Corporate Collective Investment Vehicle) Bill 2017	603
Treasury Laws Amendment (Fair and Sustainable Superannuation) Bill 2016	541
Treasury Laws Amendment (Income Tax Assessment Repeal and Consequential Amendments) Regulations 2021	522
Treasury Laws Amendment (Making Sure Foreign Investors Pay Their Fair Share of Tax in Australia and Other Measures) Act 2019	407
Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2018	347
Treasury Laws Amendment (Recovering Unpaid Superannuation) Bill 2019	122
Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures) Bill 2019	310
Treasury Laws Amendment (Research and Development Tax Incentive) Bill 2019	4, 347
Treasury Laws Amendment (Self Managed Superannuation Funds) Bill 2020	162
Trust Law of the People's Republic of China, 2001	296
Trustee Act 1898 (Tas)	
s 47 .....	.87
Trustee Act 1925 (ACT)	
s 46 .....	.376
s 81 .....	.87
Trustee Act 1925 (NSW)	
s 46 .....	.376
s 81 .....	.87
Trustee Act 1936 (SA)	
s 59B .....	.87
s 59C .....	.87
Trustee Act 1958 (Vic) .....	.35
s 48 .....	.87
s 63 .....	.86, .87
s 63A .....	.86, .87
Trustee Act 2007 (NT)	
s 50A .....	.87
Trustees Act 1962 (WA)	
s 30 .....	.376
s 89 .....	.87
s 90 .....	.87
Trusts Act 1973 (Qld)	
s 33 .....	.376
s 94 .....	.87

s 95	87		American Leaf Blending Co Sdn Bhd v Director-General of Inland Revenue (Malaysia) [1979] AC 676	287
s 96	255		Anderson v Weston [1840]	
Valuation of Land Act 1916 (NSW)			EngR 375	593
s 35(1)(b)	567		Angus; FCT v [1961] HCA 18	23
Variation of Trusts Act 1994 (Tas)			Apted; FCT v [2021] FCAFC 45	511, 590
s 13	87		Apted and FCT [2020] AATA 5139	339
s 14	87		Archer Brothers Pty Ltd v FCT [1953]	
Wills Act 1936 (SA)			HCA 23	301
s 7	205, 207		Armco (Australia) Pty Ltd; FCT v [1954]	
s 7(7)	207		HCA 49	473
s 7(12)	207		Armitage v Nurse [1997] EWCA Civ 1279	293
s 12	95		Atomic Skifabrik Alois Rohrmoser v Registrar of Trade Marks [1987]	
Wills Act 1968 (ACT)			FCA 22	111
s 11A	95		Auctus Resources Pty Ltd; FCT v [2021] FCAFC 39	511
s 16A	207		Auctus Resources Pty Ltd v FCT [2020] FCA 1096	328–241, 342, 344
Wills Act 1970 (WA)			Aussiegolfa Pty Ltd as trustee of the Benson Family Superannuation Fund and FCT [2017] AATA 3013	482
s 32	95		Aussiegolfa v FCT [2018]	
s 40	207		FCAFC 122	482
Wills Act 1997 (Vic)			Australasian Scale Co Ltd v Commr of Taxes (Qld) [1935] HCA 23	173
s 9	95		Australia and New Zealand Banking Group Ltd v Westpac Banking Corporation [1988] HCA 17	240
s 21	207		Australian Air Express Pty Ltd v Langford [2005] NSWCA 9	124
Wills Act 2000 (NT)			Australian Securities and Investments Commission (In the matter of Richstar Enterprises Pty Ltd) v Carey (No. 6) [2006] FCA 814	86
s 10	95		Australian Securities Commission v Multiple Sclerosis Society (Tas) [1993] 10 ASCR 489	36
s 19	207		Australian Trade Commission v WA Meat Exports Pty Ltd (1987) 75 ALR 287	613
Wills Act 2008 (Tas)			Avon Downs Pty Ltd v FCT [1949]	
s 10	95		HCA 26	171, 172, 511
s 22	207			
Rulings and other materials			B	
Australian Accounting Standards Board			Bailey v FCT [1977] HCA 11	254
AASB 2	520		Baird v BCE Holdings Pty Ltd (1996) 40 NSWLR 374	593
AASB 10	91, 92		Bamford; FCT v [2010]	
AASB 120	303		HCA 10	17, 23, 81, 302
IFRIC 23	409, 410		Banks v Goodfellow (1870) LR 5 QB 549	205
Australian Taxation Office			Barnsdall v FCT [1988] FCA 192	613
CR 2008/74	193		Barry R Liggins Pty Ltd v Comptroller-General of Customs (1991) 32 FCR 112	344
CR 2010/4	193		Beeson & Spence [2007]	
CR 2010/33	193		FamCA 200	87
CR 2010/55	193		Belford; FCT v [1952] HCA 73	23
CR 2011/28	193		Bell and FCT [2020] AATA 3194	167
CR 2013/23	193		Beneficiary (The) and FCT [2020]	
ESS 2015/1	522		AATA 3136	167
GSTD 2021/1	510		Benidorm Pty Ltd v Chief Commr of State Revenue [2020] NSWSC 471	480
GSTR 2006/8	287		Bernard & Bernard [2019]	
ID 2003/235	613		FamCA 421	360
ID 2003/870	471		BHP Billiton Finance Ltd; FCT v [2010]	
ID 2003/1112	517		FCA 25; [2010] FCAFC 25	344
ID 2005/182	399		BHP Billiton Ltd v FCT [2020]	
ID 2005/183	399		HCA 5	471, 482, 612
ID 2005/184	399		Bird v Perpetual Executors and Trustees Association of Australia Ltd [1946] HCA 52	552
ID 2009/68	401		Birdseye and Tax Practitioners Board [2020] AATA 1250	6
ID 2010/85	421		Birdseye and Tax Practitioners Board [2021] AATA 1011	592
ID 2011/77	196		Bogiatto; FCT v [2020]	
ID 2015/10	142		FCA 1139	164, 449
IT 328	15, 595		Bogiatto (No. 2); FCT v [2021]	
IT 329	595		FCA 98	449
IT 347	16		Bosanac (No. 7); FCT v [2021]	
LCR 2015/1	143		FCA 249	511
LCR 2018/D10	560		Boulton v Sanders [2003] VSC 405	207
LCR 2019/1	117, 118		Boulton v Sanders [2004] VSCA 112	206
LCR 2019/D2	371, 372			
LCR 2019/D3	5, 143, 559–562			
LCR 2020/1	6, 53			
LCR 2020/2	371, 372			
MT 2006/1	287			
MT 2050	187			
MVE 2020/1	53			
PBR 1051726288196	473			
PCG 2016/5	143, 423, 424			
PCG 2017/2	339			
PCG 2017/4	163, 201–203, 339			
PCG 2018/9	25–29, 291			
PCG 2019/1	427			
PCG 2019/D3	201			
PCG 2019/D6	559			
PCG 2020/3	53, 223, 339			
PCG 2020/4	53			
PCG 2020/5	5, 559, 560, 562			
PCG 2020/7	162, 201, 202			
PCG 2021/1	394			
PCG 2021/D1	447, 448			
PCG 2021/D2	446, 447			
PCG 2021/D3	591, 616, 617			
PS LA 1998/1	142			
PS LA 2003/3	141			
PS LA 2003/12	306, 413			
PS LA 2004/14	410			
PS LA 2005/21	190			
PS LA 2007/10	122, 127			
PS LA 2007/21	597			
PS LA 2008/3	144			
PS LA 2008/10	610			
PS LA 2010/4	185, 187			
PS LA 2011/22	338			
PS LA 2012/6	338			
PS LA 2019/1	339			
PS LA 2019/D1	127			
PS LA 2020/1	590			
PS LA 2020/2	223			
PS LA 2020/3	279, 280, 318, 416–419			
PS LA 2020/4	338, 339			
PS LA 2020/D1	106			
PS LA 2020/D2	338			
PS LA 2021/2	590, 591			
QC 16509	359, 360			
QC 23916	522			
QC 24169	125			
QC 25098	522			
QC 26343	145			
SMSFD 2008/3	549, 554, 614			
SMSFRB 2020/1	144			
SPG 270	527			
SPR 2020/D2	105			
Superannuation Circular 2003/1	143			
Superannuation Circular I.A.1	527			
TA 2019/1	163			
TA 2020/2	5			
TA 2020/3	163			
TA 2020/4	163			
TA 2020/5	338			
TD 1999/67	376			
TD 2004/1	253			
TD 2004/D25	412, 413			
TD 2006/78	454			
TD 2011/16	249			
TD 2013/12	126			
TD 2013/22	142			
TD 2015/2	471			
TD 2016/16	561, 562			
TD 2016/17	522			
TD 2017/24	476–478			
TD 2018/D3	357, 358			
TD 2019/7	20, 21			
TD 2019/10	203, 473			
TD 2019/12	469, 472, 610			
TD 2019/12EC	613			
TD 2019/14	357, 358			
TD 2019/D1	189–193			
TD 2019/D6	17–19			
TD 2019/D7	19, 21			
TD 2020/2	611			
TD 2020/5	52			
TD 2020/6	106, 189–193			
TD 2020/6EC	189, 193			
TD 2020/7	163			
TD 2020/D1	107			
TD 2021/1	394, 452			
TD 2021/2	451–453			
TD 2021/2EC	451, 453			
TD 2021/3	446			
TD 2021/4	446			
TR 92/3	53, 193			
TR 92/4	193			
TR 92/11	203			
TR 93/4	53			
TR 96/4	253			
TR 96/14	612, 613			
TR 98/17	129			
TR 1999/9	118			
TR 2001/14	53			
TR 2003/1	162, 201, 202			
TR 2004/15	26–28, 222, 289–291			
TR 2004/15W	289			
TR 2005/5	471			
TR 2005/15	250, 253			
TR 2005/16	509			
TR 2006/10	141			
TR 2006/14	413			
TR 2010/1	127, 561, 562			
TR 2010/3	185, 187, 595			
TR 2010/7	472			
TR 2012/D1	595			
TR 2014/6	203			
TR 2014/15	291			
TR 2018/5	25–28, 290			
TR 2018/9	25			
TR 2019/1	451, 452			
TR 2019/D2	201			
TR 2020/2	107			
TR 2020/4	162, 201			
TR 2020/5	338			
TR 2021/1	447			
TR 2021/D1	448			
TR 2021/D2	446, 447			
TR 2021/D3	591, 616, 617			
TR 2021/D4	591, 616, 617			
TR 2021/D5	591, 616, 617			
TR 2021/D6	591, 616, 617			
TR 2021/D7	591, 616, 617			
TR 2021/D8	591, 616, 617			
TR 2021/D9	591, 616, 617			
TR 2021/D10	591, 616, 617			
TR 2021/D11	591, 616, 617			
TR 2021/D12	591, 616, 617			
TR 2021/D13	591, 616, 617			
TR 2021/D14	591, 616, 617			
TR 2021/D15	591, 616, 617			
TR 2021/D16	591, 616, 617			
TR 2021/D17	591, 616, 617			
TR 2021/D18	591, 616, 617			
TR 2021/D19	591, 616, 617			
TR 2021/D20	591, 616, 617			
TR 2021/D21	591, 616, 617			
TR 2021/D22	591, 616, 617			
TR 2021/D23	591, 616, 617			
TR 2021/D24	591, 616, 617			
TR 2021/D25	591, 616, 617			
TR 2021/D26	591, 616, 617			
TR 2021/D27	591, 616, 617			
TR 2021/D28	591, 616, 617			
TR 2021/D29	591, 616, 617			
TR 2021/D30	591, 616, 617			
TR 2021/D31	591, 616, 617			
TR 2021/D32	591, 616, 617			
TR 2021/D33	591, 616, 617			
TR 2021/D34	591, 616, 617			
TR 2021/D35	591, 616, 617			
TR 2021/D36	591, 616, 617			
TR 2021/D37	591, 616, 617			
TR 2021/D38	591, 616, 617			
TR 2021/D39	591, 616, 617			
TR 2021/D40	591, 616, 617			
TR 2021/D41	591, 616, 617			
TR 2021/D42	591, 616, 617			
TR 2021/D43	591, 616, 617			
TR 2021/D44	591, 616, 617			
TR 2021/D45	591, 616, 617			
TR 2021/D46	591, 616, 617			
TR 2021/D47	591, 616, 617			
TR 2021/D48	591, 616, 617			
TR 2021/D49	591, 616, 617			
TR 2021/D50	591, 616, 617			
TR 2021/D51	591, 616, 617			
TR 2021/D52	591, 616, 617			
TR 2021/D53	591, 616, 617			
TR 2021/D54	591, 616, 617			
TR 2021/D55	591, 616, 617			
TR 2021/D56	591, 616, 617			
TR 2021/D57	591, 616, 617			
TR 2021/D58	591, 616, 617			
TR 2021				

- Boulton v Sanders (No. 2) [2003] VSC 409207
 Braham v Walker (1961) 104 CLR 36633
 Brakovich v FCT [1989] FCA 454253
 Brine v Carter [2015]
 SASC 205546, 547, 554
 Brown v FCT [1999] FCA 563225
 Bubnich, Re; Marian v Bubnich [1965] WAR 138552
 Builders Workers' Industrial Union of Australia v Odco Pty Ltd [1991] FCA 87124
 Burgess v Burgess [2018] WASC 279546–548, 554
 Burns v Stapleton [1959] HCA 34594
 Burton v FCT [2019] FCAFC 14176, 251, 356
 Bywater Investments Ltd v FCT [2015] FCAFC 176289
 Bywater Investments Ltd v FCT [2016] HCA 4525, 222, 289, 290
- C**
 Californian Copper Syndicate v Harris (1904) 5 TC 159253
 Campbell v BackOffice Investments Pty Ltd (2009) 238 CLR 30436
 Cantor Management Services P/L v Booth [2017] SASCFC 20549, 550, 552
 Carlill v Carbolic SmokeBall Co [1892] 2 QB 484; [1893] 1 QB 256250
 Carter v FCT [2020] FCAFC 150223, 420, 421
 Case 104, 10 TBRD 299130
 Case 5770 (1990) 21 ATR 3291253
 Case 6297 (1990) 21 ATR 3747253
 Case E47, 73 ATC 38516
 Case X31, 90 ATC 296253
 Case X85, 90 ATC 615250, 252
 Casimati v FCT [1997] 37 ATR 358287
 Cassaniti; FCT v [2018] FCAFC 212421
 Cassaniti and FCT [2020] AATA 3447224
 Certain Lloyd's Underwriters v Cross (2012) 248 CLR 37818
 Chadbourne and FCT [2020] AATA 2441108
 Chevron Australia Holdings Pty Ltd v FCT [2017] FCAFC 62365
 Chief Commissioner of State Revenue v Benidorm Pty Ltd [2020] NSWCA 285479, 480, 556–558
 Chief Commissioner of State Revenue v Platinum Investment Management Ltd [2011] NSWCA 4833
 Chief Commissioner of State Revenue (WA) v Rojoda Pty Ltd [2020] HCA 7556, 557
 Christodoulides v Markou [2017] EWHC 263695
 Clark; FCT v [2011] FCAFC 5294, 357
 Clough Ltd v FCT [2021] FCA 108448
 Coal of Queensland Pty Ltd and Innovation and Science Australia (Taxation) [2020] AATA 126345, 346
 Colonial First State Investments Ltd v FCT [2011] FCA 1616
 Commercial Nominees of Australia Ltd; FCT v [2001] HCA 33357
 Commissioner of Inland Revenue v Ward 69 ATC 605015
 Commissioner of Stamp Duties (NSW) v Carlenka Pty Ltd 95 ATC 4620593
 Commissioner of State Revenue (WA) v Rojoda Pty Ltd [2020] HCA 7361, 479
 Commonwealth Director of Public Prosecutions v Leach (No. 3) [2020] QDC 42314
 Consolidated Media Holdings Ltd; FCT v [2012] HCA 5517, 18, 342
 Consolidated Press Holding Ltd, Cph Property Ltd, Murray Leisure Group Ltd and Kerry Francis Bulmore Packer v FCT and Australian Government Solicitor [1995] FCA 1214406
- Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd [2020] FCAFC 122124
 Cook v Benson [2003] HCA 36561
 Cooper Brookes (Wollongong) Pty Ltd v FCT [1981] HCA 26608
 CPT Custodian Pty Ltd v Commr of State Revenue [2005] HCA 53481
 Crisp v Burns Philp Trustee Co Ltd (unreported, Supreme Court of NSW, 18 December 1979)140
 Cross and Tax Practitioners Board [2020] AATA 14717
 Crown Melbourne Ltd v FCT [2020] FCA 1295226
 CUB Australia Holding Pty Ltd v FCT [2021] FCA 43394
 Cvek and Tax Practitioners Board [2020] AATA 14227
- D**
 Davis v FCT [2000] FCA 44255, 593
 Day; FCT v [2008] HCA 53108
 DCC Holdings (UK) Ltd v Revenue and Customs Commr [2011] 1 WLR 44343
 De Beers Consolidated Mines Ltd v Howe [1906] AC 45525
 De Beers Consolidated Mines Ltd v Howe [1907] UKHL 626295
 Dental Corporation Pty Ltd v Moffet [2020] FCAFC 118124
 Dillon v Gange [1941] HCA 5593
 Dixon as Trustee for the Dixon Holdsworth Superannuation Fund v FCT [2008] FCAFC 54419
 Donovan v Donovan [2009] QSC 26550, 554
 Doughan v Straguzi [2013] QSC 295207
 Duncan and FCT [2020] AATA 2540107
- E**
 East End Dwellings Co Ltd v Finsbury Borough Council [1952] AC 109343
 Edwards, Re [2007] EWHC 111994
 Eichmann; FCT v [2019] FCA 2155228, 229
 Eichmann and FCT [2019] AATA 162228
 Eichmann v FCT [2020] FCAFC 155226, 228–231, 343, 453
 Esquire Nominees Ltd v FCT [1973] HCA 67289, 295
 Evans and Tax Practitioners Board [2019] AAT 1408396
 Executor Trustee and Agency of South Australia Ltd v DCT (SA) [1939] HCA 35255
- F**
 Farah Constructions Pty Ltd v Say-Dee Pty Ltd [2007] HCA 22614
 Farah Custodians Pty Ltd v FCT (No. 2) [2019] FCA 1076314
 Fenwick, Re; Application of JR Fenwick & Re Charles [2009] NSWSC 530207
 Ferguson v FCT [1979] FCA 29253
 Finance Facilities Pty Ltd v FCT [1971] HCA 12114, 173, 344
 Finch v Telstra Super Pty Ltd [2010] HCA 36554
 Fletcher v FCT [1991] HCA 42253
 Fordyce v Ryan; Fordyce v Quinn [2016] QSC 30786
 Fortunatow; FCT v [2020] FCAFC 139165
 Fowler v Commr of Her Majesty's Revenue and Customs [2020] UKSC 22343
- G**
 Gary Edwin Dowling and Catherine Maree Dowling, Re; Ex parte Richard Andrew Gagie v State Bank of New South Wales [1992] FCA 160594
- Gebo Investments (Labuan) Ltd v Signatory Investments Pty Ltd; Application of Campbell [2005] NSWSC 544473
 George Wimpey & Co Ltd v IR Commr [1975] 2 All ER 45402
 Glencore Investment Pty Ltd; FCT v [2020] FCAFC 187364–367
 Grant v Commr of Patents [2006] FCAFC 120363
 Greenhatch; FCT v [2012] FCAFC 84303
 Greig v FCT [2020] FCAFC 2553, 143, 194, 250–253
 Gulbenkian's Settlements (No. 2), Re [1970] Ch 40816
 Gurney and FCT [2020] AATA 3813226
 Guy; FCT v [1996] FCA 438397
- H**
 H2O Exchange Pty Ltd v Innovation and Science Australia [2021] FCA 11396
 Hafza v Director-General of Social Security [1985] FCA 164129
 Hamilton and FCT [2020] AATA 181255
 Harding v FCT [2018] FCA 837129, 130, 299
 Harding v FCT [2019] FCAFC 2983, 132
 Harmer v FCT [1991] HCA 51421
 Harris v Harris [2011] FamCAFC 24587
 Harris v Knight [1890] 15 PD 170363
 Hartley and FCT [2013] AATA 601253
 Havilah Resources Ltd and Innovation and Science Australia (Taxation) [2020] AATA 933345–347
 Hawkins v Perpetual Trustee Co Ltd [1960] HCA 5159
 Hayim v Citibank NA [1987] AC 730293
 Hayward, Re [2016] EWHC 319994
 Healius Ltd; FCT v [2020] FCAFC 173280
 Healius Ltd v FCT [2019] FCA 2011281
 Hepples v FCT [1991] HCA 39342
 Hepples v FCT (No. 2) [1992] HCA 3344
 H.E.S.T. Australia Ltd v Inkley [2018] SASC 127554
 Hill and FCT [2019] AATA 1723253
 Hill v Zuda Pty Ltd [2021] WASCA 59614
 Hirsch, In the Will of [1896] NSWLawRp 6376
 Hiremani and FCT [2020] AATA 165355
 Hollis v Vabu Pty Ltd [2001] HCA 44124
 Holman and FCT [2020] AATA 13756
 Hua Wang Bank Berhad v FCT [2014] FCA 1392291
 Hunter Valley Developments Pty Ltd v Cohen [1984] FCA 176225
- I**
 Inland Revenue Commissioners v Lysaght [1928] AC 234129
 Inland Revenue Commissioners v Metrolands (Property Finance) Ltd [1981] 1 WLR 637344
 Ioppolo & Hesford v Conti [2013] WASC 389547, 548, 554
 Ioppolo v Conti [2015] WASCA 45547, 549, 554
- J**
 Jamsek v ZG Operations Australia Pty Ltd [2020] FCAFC 119124
 Jenks v Dickinson [1997] STC 853344
 Jiang Shen Cai trading as French Accent v Do Rozario [2011] FWAFB 8307124
- K**
 Kafataris v DCT [2008] FCA 1454259
 Kais and FCT [2021] AATA 16395
 Karger v Paul [1984] VR 161554
 Kaseris v Rasier Pacific VOF [2017] FWC 6610124
 Katz v Grossman [2005] NSWSC 934547, 548, 553
 Kennedy Holdings and Property Management Pty Ltd v FCT [1992] FCA 645452
- Kennon v Spry [2008] HCA 56360
 Kent v SS 'Maria Luisa' (No. 2) [2003] FCAFC 98481
 Keycorp Ltd v FCT [2007] FCA 41344
 Khouri v Government Insurance Office of New South Wales [1984] HCA 55231, 344, 453
 Koitaki Para Rubber Estates Ltd v FCT [1940] HCA 3326–28, 289
 Kolotex Hosiery (Australia) Pty Ltd v FCT [1975] HCA 5171, 173
 Kowalski v Kowalski [2012] QCA 234140
 KPTT v FCT [2021] FCA 464591
 Kyriacou and Tax Practitioners Board [2020] AATA 14667
- L**
 Lake v Craddock [1732] EngR 132361
 Lake Victoria v Commr of Stamp Duties [1949] 49 SR (NSW) 26231
 Lau; FCT v [1984] FCA 401253
 Lawrie v Hwang [2013] QSC 289207
 Laybut v Amoco Australia Pty Ltd [1974] HCA 4930
 Leach; R v [2018] QCA 131311–314
 Levene v Inland Revenue Commr [1928] UKHL 1132
 Lewski v FCT [2017] FCAFC 145421
 Liquidator, Rhodesia Metals Ltd v Taxes Commr [1940] AC 77423
 Livingspring Pty Ltd v Kliger Partners [2008] VSCA 9311
 Lockyer's Settlement, Re [1977] 1 WLR 132314
 London Australia Investment Co Ltd v FCT [1977] HCA 50251, 252
- M**
 Mack, In the Estate of [1956] 73 WN (NSW) 218376
 MacKinnon and FCT [2020] AATA 164755
 Malayan Shipping Co Ltd v FCT [1946] HCA 726, 295
 Malik v Hussain Jr [2020] EWHC 2334593
 Marsella, Re; Marsella v Wareham (No. 2) [2019] VSC 65545, 547, 548
 Marshall v Kerr [1995] 1 AC 148344
 Matisi, Re; Charalambous v Charalambous [2012] QSC 349206
 Mavrokokki and Tax Practitioners Board [2020] AATA 15177
 McAtee and FCT [2020] AATA 179555
 McCarthy and Tax Practitioners Board [2021] AATA 641511
 McCarthy v Saltwood Pty Ltd [2020] TASSC 1911, 15
 McDonald v FCT [2001] FCA 305593
 McFadden v Public Trustee for Victoria [1981] 1 NSWLR 15362, 552
 McGuid and Tax Practitioners Board [2021] AATA 64395
 McIntosh v McIntosh [2014] QSC 99546, 547
 McKay v McKay [2011] QSC 230207
 McLelland v FCT [1970] 120 CLR 487253
 McMahon; FCT v [1997] FCA 1087231
 McNee v Lachlan McNee Family Maintenance Pty Ltd [2020] VSC 27387
 Melbourne Apartment Project Pty Ltd (as Trustee for Melbourne Apartment Project) v FCT [2019] FCA 2118342
 Migration Agents Registration Authority v Bebawy [2021] FCA 397595
 Millio v Konnecke [2009] NSWCA 109140
 Miller; FCT v [1946] HCA 23128, 129, 132, 133
 Miranda; FCT v 76 ATC 4180402
 Mitchell v Egyptian Hotels Ltd [1915] AC 1022289
 Montgomery; FCT v [1999] HCA 34250, 253

Mordecai v Mordecai (1988) 12 NSWLR 58 .....547	Richard Albarran, Brent Kijurina and Cameron Shaw as Joint Administrators of Cooper & Oxley Builders Pty Ltd as trustee for the Cooper & Oxley Builders Unit Trust and FCT [2020] AATA 4325 .....282	Travelex Ltd; FCT v [2020] FCAFC 10 .....239, 240	Ananda, A
Morgan v 45 Flers Avenue Pty Ltd (1986) 10 ACLR 692 .....36	Trust Co Ltd v Noosa Venture 1 Pty Ltd (2010) 80 ACSR 485 .....34, 36	Tax Counsel's Report	
Morton & Morton [2012] FamCA 30 .....87	Trust Co of Australia Ltd v Commr of State Revenue [2006] VSC 64 .....111	– A year no one will forget ... .....278	
Moss Super Pty Ltd v Hayne [2008] VSC 158 .....551	Trustee for the Estate of the late AW Furse (No. 5) Will Trust v FCT [1990] FCA 470 .....315	– Committee engagement and participation .....444	
Mould v Commr of State Revenue [1992] FCA 645 .....452	Trustee for the Michael Hayes Family Trust; FCT v [2019] FCAFC 226 .....254	– Let logic prevail – extend the amnesty .....104	
Mulligan (dec'd), Re [1998] 1 NZLR 481 .....140	Trustee for the Salvation Army (NSW) Property Trust v Becker [2007] NSWCA 136 .....95	– Will tax reform be delayed again? .....392	
Multiflex Pty Ltd; FCT v [2011] FCAFC 142 .....239	Trustees of the Estate Mortgage Fighting Fund Trust v FCT [2000] FCA 981 .....16	Arblaster, K	
Munro v Munro [2015] QSC 61 .....549–551, 554, 614	B		
Murrindindi Bushfire Class Action Settlement Fund v FCT [2020]	Union Corporation Ltd v Commsr of Inland Revenue (1952) 1 All ER 646 .....26–28	Backhaus, S	
FCAFC 92 .....8	V		
MWB Accountants Pty Ltd; DCT v [2019] VCC 1516 .....238–241	Superannuation		
Myer Emporium Ltd; FCT v [1987] HCA 18 .....53, 194, 252, 613	– Electronic execution of deeds by individuals .....38		
N	– Proportioning rule: key to many super strategies .....369		
N & M Martin Holdings Pty Ltd v FCT [2020] FCA 1186 .....165, 342	– SMSFs – can all income be NALI? .....559		
Narumon Pty Ltd, Re [2018] QSC 185 .....259, 361, 362, 552, 614	Baghdasaryan, E		
Nathan v FCT [1918] HCA 45 .....19	Alternative Assets Insights		
Nesbitt v Nicholson; Re Boyes [2013] EWHC 4027 .....95	– The ALDT and cross-border related-party interest-free loans .....201		
Norman and Tax Practitioners Board [2021] AATA 848 .....592	Bearman, M		
North West Melbourne Recycling Pty Ltd v Commr of State Revenue [2017]	Fifty shades of Greig: the spectrum of taxpayers in share trading .....250		
VSC 647 .....342	Bembrix, P		
O	Mid Market Focus		
Olsson v Dyson [1969] HCA 3 .....33	– What is an affiliate, and why is it important? .....61		
On Call Interpreters and Translators Agency Pty Ltd v FCT (No. 3) [2011] FCA 366 .....124	Blackwood, C		
Owners of Shin Kobe Maru v Empire Shipping Co Inc [1994] HCA 54 .....231	Demerger relief rules: what constitutes a “restructuring”? .....189		
P	Bourke, D		
Pacific Fair Shopping Centres Pty Ltd v Commr of Stamp Duties (Qld) [1979] Qd R 410 .....33	High wealth private groups: risk reviews .....460		
Pagano v Ruello [2001] NSWSC 63 .....140	Brandon, G		
Paule v FCT [2019] FCA 394 .....342	Mid Market Focus		
Pearson v FCT [2006] FCAFC 111 .....16	– ASX-listed junior exploration companies and tax losses: part 2 .....116		
Perry v Nicholson [2017] QSC 163 .....259, 551	– Division 83A: employee share schemes .....519		
Peter Greensill Family Co Pty Ltd (trustee) v FCT [2020] FCA 559 .....2, 17–23, 77, 166, 356	Brumm, L		
Pike; FCT v [2020] FCAFC 158 .....225, 226, 298, 299	Alternative Assets Insights		
Pike v FCT [2019] FCA 2185 .....130, 131	– Expansion of the definition of significant global entity .....91		
Police Association of South Australia, Re Application by [2008] SASC 299 .....362, 552	Burgess, M		
Project Blue Sky Inc v Australian Broadcasting Authority [1998] HCA 28 .....241, 342, 608	Tax and estate planning in 2021: where are we at? .....357		
Public Trustee v Mullane (unreported, Supreme Court of NSW, 12 June 1992) .....95	Burns, A		
Puzey v FCT [2003] FCAFC 197 .....253	Mid Market Focus		
Q	– GST and fundraising during the pandemic .....174		
Queensland Law Society Inc v Bax [1998] QCA 89 .....593	– Permanent establishments: COVID-19 and beyond .....455		
R	Butler, D		
Racing Queensland Board; FCT v [2019] FCAFC 224 .....124	Superannuation		
Rak, Re [2009] SASC 288 .....206	– A guide to family law superannuation splitting in an SMSF .....88		
Ramsden; FCT v [2005] FCAFC 39 .....16, 421	– BDBNs: how long can they last in all Australian jurisdictions? .....614		
Rea v Rea [2019] EWHC 2434 .....95	– Electronic execution of deeds by individuals .....38		
Registrar of the Accident Compensation Tribunal v FCT [1993] HCA 1 .....294	– How administrative penalties are applied to SMSFs .....318		
Retail Employees Superannuation Pty Ltd v Pain [2016] SASC 121 .....554	– Managing the TBC and minimising excess transfer balance tax .....198		
	– Proportioning rule: key to many super strategies .....369		
	– Six-member SMSFs: the pros and cons .....257		
	– SMSFs, LRBA and NALI .....423		
	– SMSFs and 50–50 unit trusts .....481		

<p>- SMSFs – can all income be NALI? 559</p> <p>- What ATO publications can be relied on? 141</p> <p>C</p> <p>Campbell, R 2021-22 Budget highlights 601</p> <p>Campbell, S A Matter of Trusts – Rectifying mistakes in trust deeds 254</p> <p>Caredes, S Reform of Australia's tax system – Foreword 68</p> <p>Tax Counsel's Report – A united front from the tax profession 4</p> <p>Castelyn, D Member Profile 67</p> <p>Colcutt, T A Matter of Trusts – Trading trusts and the oppression remedy 34</p> <p>Collins, P Alternative Assets Insights – Expansion of the definition of significant global entity 91</p> <p>– Hybrid mismatch rules: proposed changes 41</p> <p>– Imported hybrid mismatches 616</p> <p>Coyne, C A Matter of Trusts – Life interest trusts and their use among blended families 139</p> <p>Craig, A Controlling a tax audit 234</p> <p>D</p> <p>Day, C Pensions, SMSFs and the transfer balance cap 536</p> <p>DeBellis, S Alternative Assets Insights – Queensland land tax foreign surcharge: ex gratia relief 147</p> <p>Deutsch, R Individual residency: the cases just keep coming! 298</p> <p>Senior Tax Counsel's Report – Justifying "justified trust" 336</p> <p>Tax reform in the roaring 20s: some ideas from The Tax Institute 69</p> <p>Donlan, T Successful Succession – Court-authorised wills 205</p> <p>– Fraudulent calumny: recognition of a growing reality? 94</p> <p>– Tax on dying of a broken heart 488</p> <p>– Testamentary gifts and specific entitlements of tax-exempt entities 374</p> <p>F</p> <p>Fantin, J Alternative Assets Insights – Queensland land tax foreign surcharge: ex gratia relief 147</p> <p>Fettes, W Superannuation – A guide to family law superannuation splitting in an SMSF 88</p> <p>– Six-member SMSFs: the pros and cons 257</p> <p>Figot, B Superannuation – BDBNs: how long can they last in all Australian jurisdictions? 614</p> <p>– How administrative penalties are applied to SMSFs 318</p> <p>Freshwater, L Death duties again? Really? 305</p> <p>G</p> <p>Galloway, Z Superannuation – Electronic execution of deeds by individuals 38</p> <p>Glover, J Tax agents: beware of "administrative overpayments" added to your RBA 238</p> <p>Godber, P President's Report – 2021 – a year to be a leader for the tax profession 390</p> <p>– 2021 – new norms and opportunities 334</p> <p>– Accepting and embracing change 102</p> <p>– Closing on one of the most challenging years 276</p> <p>– Engaging in the tax reform community discussion 218</p> <p>– New delivery models for our trusted events 158</p> <p>– Our consulting and advocacy efforts on your behalf 442</p> <p>– The home of leading tax knowledge 506</p> <p>– The new normal and our hope to get there soon 2</p> <p>– There's something for everyone 584</p> <p>– Unlocking value from the knowledge available to you 48</p> <p>H</p> <p>Hartanti, W Acquiring an interest in a CFC during an income year 134</p> <p>Haskett, A Demerger relief rules: what constitutes a "restructuring"? 189</p> <p>Hay-Bartlem, S Estate planning and superannuation: current issues 543</p> <p>Hennebry, E A Matter of Trusts – Documentary protocols and disclaimers 420</p> <p>Houseman, N Alternative Assets Insights – Transfer pricing implications of COVID-19 426</p> <p>Hurst, G CEO's Report – Charting a course to tax reform 159</p> <p>– Creating connection from change 443</p> <p>– Exciting growth in education and advocacy 391</p> <p>– Full steam ahead on tax reform 219</p> <p>– Looking to the future with confidence 49</p> <p>– Make your voice heard as a member 507</p> <p>– Opportunities for lifelong learning 585</p> <p>– Our membership: a force to be reckoned with 103</p> <p>– Revitalisation and rebirth: looking ahead 277</p> <p>– Starting 2021 on a positive note 335</p> <p>– We are your biggest fan: advocacy "sans frontières" 3</p> <p>Hurst, M Case Note – Considerations from Greig v FCT 194</p> <p>J</p> <p>Jackson, C Estate planning and superannuation: current issues 543</p> <p>Jacobson, R SG amnesty unpacked 122</p> <p>Tax reform: taking stock and next steps 352</p> <p>Tax reform: with 2020 vision 79</p> <p>Jones, D Mid Market Focus – Capital gains and foreign resident beneficiaries 17</p> <p>– Corporate tax residency in a global context 289</p> <p>Jones, L Member Profile 526</p> <p>K</p> <p>Klank, P Fifty shades of Greig: the spectrum of taxpayers in share trading 250</p> <p>L</p> <p>Lam, D Imposing administrative penalties on SMSFs 416</p> <p>Lavender, S Alternative Assets Insights – Transfer pricing implications of COVID-19 426</p> <p>Liu, A Member Profile 350</p> <p>M</p> <p>Ma, M Tax Counsel's Report – Greater appetite for more 220</p> <p>– My experience at The Tax Institute 508</p> <p>Malone, J Alternative Assets Insights – Aggregated turnover threshold 321</p> <p>Malouf, W Case Note – Considerations from Greig v FCT 194</p> <p>Marcarian, M Residency in a global pandemic: advising the returning Australian 128</p> <p>Mavropoulos, B Cash flow boost: questions on interpretation 607</p> <p>McKenzie, T Foreign beneficiaries beware of discretionary trusts following Greensill 19</p> <p>Mills, A Tax reform: selected issues 71</p> <p>Tax reform: taking stock and next steps 352</p> <p>Monotti, W A Matter of Trusts – Defining the beneficiaries of a discretionary trust 195</p> <p>Montani, D Division 7A loan repayments: part 1 180</p> <p>Division 7A loan repayments: part 2 242</p> <p>Moore, F Corporate tax and the erosion of privacy 406</p> <p>Morcombe, E A Matter of Trusts – When a declaration of trust is dutiable: part 1 479</p> <p>– When a declaration of trust is dutiable: part 2 556</p> <p>Morris, M Death duties again? Really? 305</p> <p>Mulyono, C Alternative Assets Insights – NSW build-to-rent land tax and stamp duty reforms 564</p> <p>Murray, J Alternative Assets Insights – Aggregated turnover threshold 321</p> <p>Muscat, P Alternative Assets Insights – Expansion of the definition of significant global entity 91</p> <p>– Temporary full expensing of depreciating assets 484</p> <p>N</p> <p>Nguyen, V Corporate tax and the erosion of privacy 406</p> <p>Nickless, J Alternative Assets Insights – The ALDT and cross-border related-party interest-free loans 201</p> <p>Njokos, M A Matter of Trusts – Changes to the taxation of testamentary trusts 315</p> <p>P</p> <p>Page, S Tax effects of COVID-19 cash flow boosts 300</p> <p>Pasternacki, A Case Note – Considerations from Greig v FCT 194</p> <p>Peiros, K Successful Succession – Court-authorised wills 205</p> <p>– Fraudulent calumny: recognition of a growing reality? 94</p> <p>– Tax on dying of a broken heart 488</p> <p>– Testamentary gifts and specific entitlements of tax-exempt entities 374</p> <p>Pelopas, S Alternative Assets Insights – Hybrid mismatch rules: proposed changes 41</p> <p>– Imported hybrid mismatches 616</p> <p>Phung, J Mid Market Focus – Foreign businesses in Australia: practical considerations 596</p> <p>Polovineo, M Mid Market Focus – R&D: a year in review 345</p> <p>Q</p> <p>Quigley, B Senior Adviser's Report – Transfer duty or land tax? 51</p> <p>R</p> <p>Raspin, I Death duties again? Really? 305</p> <p>Reynolds, K Member Profile 459</p> <p>Rogaris, N Alternative Assets Insights – Continuing the build-to-rent conversation in Australia 260</p> <p>S</p> <p>Sahyoun, C Alternative Assets Insights – Non-concessional MIT income 371</p> <p>Sanderson, J Contributions: the latest and greatest 527</p>

CUMULATIVE INDEX

Saverimuttu, N	
Surrender of life interest and the CGT main residence exemption	412
Saville, S	
Alternative Assets Insights	
– Aggregated turnover threshold	321
– Temporary full expensing of depreciating assets	484
Sharkey, N	
Obtuse s 99B and offshore trusts	474
When international tax meets the family trust	293
Skilton, E	
A Matter of Trusts	
– Court variations to the appointor identity and powers	86
Smythe, C	
Options and NSW duty: practical considerations	30
Stapleton, F	
Member Profile	178
T	
TaxCounsel Pty Ltd	
Tax News – what happened in tax?	
– June 2020	5
– July 2020	52
– August 2020	105
– September 2020	162
– October 2020	221
– November 2020	279
– December 2020	337
– February 2021	394
– March 2021	446
– April 2021	509
– May 2021	588
Tax Tips	
– Active asset test	228
– Backdating	593
– CGT: first income-producing use of main residence	515
– CGT small business reliefs: active asset	451
– Construction issues	342
– Discretionary trusts: NSW surcharge changes	56
– Discretionary trusts: some practical issues	11
– Division 7A and COVID-19	110
– Options and land: CGT and GST	397
– Proving your case	284
– The Commissioner's discretions: the court's role	169
Thomas, E	
Inbound interest-free loans:	
part 1	469
Inbound interest-free loans:	
part 2	610
Thring, G	
Split central management and control and dual residency	25
W	
Waterhouse, T	
Section 353 notices: powers to obtain information	311
Wilkins, N	
Member Profile	405
Williamson, S	
Commissioner's appeal in FCT v Glencore Investment Pty Ltd	364
High wealth private groups: risk reviews	460
Y	
Young, A	
Alternative Assets Insights	
– Continuing the build-to-rent conversation in Australia	260
Z	
Zappia, P	
Section 353 notices: powers to obtain information	311

TAXATION in Australia®
ISSN 0494-8343

Publishing House

The Tax Institute
ABN 45 008 392 372

Level 37, 100 Miller Street
North Sydney, NSW 2060

General Manager – Commercial Transformation & Special Projects
James Paterson

**Content Delivery Manager,
Knowledge & Learning**
Carla Reddy

Managing Editor
Deborah Powell

Content Consultant

Bob Deutsch

Graphic Designers

Mei Lam
Claus Hüttenrauch

Typesetter

Midland Typesetters, Australia

Advertising

Business Relationship Manager
Brian Martin 08 6165 6600

© 2021 The Tax Institute

This journal is copyright.
Apart from any fair dealing for the purpose of private study, research, criticism or review, as permitted under the Copyright Act, no part may be reproduced by any process without written permission.

Disclaimer

Unless otherwise stated, the opinions published in this journal do not express the official opinion of The Tax Institute. The Tax Institute accepts no responsibility for accuracy of information contained herein. Readers should rely on their own inquiries before making decisions that touch on their own interests.

Giving back to the profession

The Tax Institute would like to thank the following presenters from our May CPD sessions. All of our presenters are volunteers, and we recognise the time that they have taken to prepare for the paper and/or presentation, and greatly appreciate their contribution to educating tax professionals around Australia.

Nick Allen-Waters	Annelise Jeromela, FTI	Andrew Sallway
Chris Ardagna, CTA	Andrew Jone, CTA	Sarah Saville
Adrian Bailey, CTA	Tim Keeling	Ken Schurgott, CTA (Life)
Chris Balalovski, CTA	Kristian Kolding	Andrew Sharp
Shelley Banton	Dung Lam, CTA	Sian Sinclair, CTA
Jennifer Batrouney, AM, QC	Sarah Lancaster	David Smith
Sandie Boswell	Victoria Lanyon	Richard Son
Phil Broderick, CTA	Evan Last, CTA	Steve Southon, ATI
Nicole Brown	Rebecca Lawrence, CTA	Geoff Stein, CTA
Steve Brown	Leigh Mansell	Chris Stewart
Adrian Cartland	Paul Marino	Keith Swan
Michael Chang, CTA	Scott McGill, CTA	Linda Tapiolas, CTA
Vivek Chaudhary	Matthew McKee, FTI	Amelia Teng
Danielle Constantine	Andrew Mills, CTA (Life)	Jacques van Rhyn, ATI
Kamlee Coorey, CTA	Paul Mills	Kaajri Vaughan
Matthew Cridland, CTA	Dominic Moon, ATI	Ronen Vexler
Aaron Dahl	Fiona Moore, CTA	Rachel Vijayaraj, CTA
Justin Dearness	Judy Morris	Mariana von Lucken, CTA
Tom Delany, CTA	David Morrison, CTA	Scott Walker
Bob Deutsch, CTA	Emma Munro, CTA	Todd Want, CTA
Julie Dolan	Sushma Narayanan	Grant Wardell-Johnson, CTA
Amanda Donald, FTI	Paul Nghi	Mark West, CTA
Tim Dyce	Adam Nicholas	Tony Windle, ATI
Dudley Elliott, CTA	Andrew Noolan, CTA	Robin Woellner, CTA
Emily Falcke, CTA	Ali Noroozi, FTI	Robert Zalud, CTA
Alison Feather, CTA	Greg O'Mahoney	
Chris Ferguson	Chanmony Om	
Peter Feros, CTA	Helena Papapostolou	
Jeremy Geale, CTA	Michael Parker, CTA	
Kevin Griffiths	Catherine Parkinson	
Steve Healey, CTA (Life)	Neil Pereira, CTA	
Tim Heberden	Melinda Peters, CTA	
Fletch Heinemann, CTA	Julian Pinson, FTI	
Geoff Hoffman	Katrina Piva	
Andrew Howe, CTA	Karen Price, CTA	
John Ioannou, CTA	Vanessa Priest, FTI	
Bec Iwanuscha	Mark Richmond, SC, CTA	
Robyn Jacobson, CTA	Andrew Rider, CTA	
Amy James-Velagic, FTI	Rebecca Roberts	
Simon Jenner, CTA	Mark Robertson, QC, CTA	

Contacts

National Council

President
Peter Godber, CTA

Vice President
Jerome Tse, CTA

Treasurer
Stuart Glasgow, CTA

National Councillors
Paul Banister, CTA
Leanne Connor, CTA
David Earl, FTI
Len Hertzman, CTA
Marg Marshall, CTA
Eddy Moussa, CTA
Tim Sandow, CTA
Todd Want, CTA

National Office

CEO: Giles Hurst
Level 37, 100 Miller Street
North Sydney, NSW 2060
Tel: 02 8223 0000
Email: ceo@taxinstitute.com.au

State Offices

New South Wales and ACT
Chair: Glen Hutchings, FTI
Level 37, 100 Miller Street
North Sydney, NSW 2060
Tel: 02 8223 0031
Email: nsw@taxinstitute.com.au

Victoria

Chair: Fiona Knight, CTA
Level 15, 350 Collins Street
Melbourne, VIC 3000
Tel: 03 9603 2000
Email: vic@taxinstitute.com.au

Queensland

Chair: John Ioannou, CTA
Level 11, Emirates Building
167 Eagle Street
Brisbane, QLD 4000
Tel: 07 3225 5200
Email: qld@taxinstitute.com.au

Western Australia

Chair: Bill Keays, CTA
Level 32, Central Park
152 St Georges Terrace
Perth, WA 6000
Tel: 08 6165 6600
Email: wa@taxinstitute.com.au

South Australia and Northern Territory

Chair: Nick Wilkins, CTA
The Tax Institute, WOTSO Adelaide
217/219 Flinders Street
Adelaide, SA 5000
Tel: 08 8463 9444
Email: sa@taxinstitute.com.au

Tasmania

Chair: Ian Heywood, CTA
The Tax Institute, WOTSO Adelaide
217/219 Flinders Street
Adelaide, SA 5000
Tel: 1800 620 222
Email: tas@taxinstitute.com.au



taxinstitute.com.au