

Monthly Tax Update Notes

May 2003

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1. INCOME**TAX****1.1 POLITICIANS, BOARDS & STATUTORY AUTHORITIES****(a) Assessable & Deductible Items**

Nil

(b) Policy & Administration**(1) Trans-Tasman Imputation Breakthrough (Costello)**

Source (402437) Costello Press Release [2003/07] 19 February 2003

<http://www.treasurer.gov.au/tsr/content/pressreleases/2003/007.asp>

Breakthrough

The Australian and New Zealand governments expect to introduce legislation in May to relieve the double taxation of certain investments in Australian and New Zealand companies that operate in both countries".

Australia and New Zealand will extend their imputation systems to include companies resident in the other country.

The reforms are aimed at what is known as the 'triangular tax' problem, where Australian and New Zealand shareholders investing through a company resident in the other country that earns income and pays taxes in their own jurisdiction are unable to get imputation credits arising from the payment of such taxes.

Details of trans-Tasman imputation (triangular) reform as proposed by the Australian and New Zealand governments

- ◆ Australian companies will be able to elect to maintain a New Zealand imputation credit account, subject to full compliance with the New Zealand provisions relating to imputation credit accounts.
- ◆ Australian shareholders of New Zealand companies that have elected to maintain a franking account and earn Australian income will be able to access franking benefits on a pro rata basis (in proportion to their shareholding in the New Zealand company) arising from the payment of Australian tax on that income.
- ◆ Imputation credits will arise in Australian companies' imputation credit accounts for New Zealand taxes deducted from or paid by the Australian company. Such taxes include non-resident withholding taxes on interest, royalties and dividends and non-resident contractors' withholding tax.
- ◆ Mirror arrangements will apply to New Zealand companies and shareholders.

1.2 AUSTRALIAN PARLIAMENT

Source: Australian Parliament House Website (416301)

<http://www.aph.gov.au>

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(a) Acts Which Received Royal Assent

Nil

(b) Bills Awaiting Royal Assent**(1) Inspector-General of Taxation Bill 2002**

Introduced to the Senate and second reading speech 17 October 2002, passed Senate on 13 December 2002.

The Bill intends to establish a statutory office to review tax administration and to report to the Government with recommendations for improving tax administration for the benefit of all taxpayers. It provides for the appointment of an independent Inspector-General of Taxation by the Governor-General for a fixed term of up to five years, with explicit and strictly limited conditions for dismissal from office of the incumbent.

The Bill provides the Inspector-General with a broad range of powers to obtain comprehensive information on the administration of the tax laws. The Inspector-General will be able to invite submissions from the public or from particular groups of taxpayers or tax professionals, and may receive submissions in confidence. The Inspector-General will also be able to hold meetings with taxpayers, tax professionals or their representatives.

The Bill also endows the Inspector-General with investigative powers -- including the power to compel disclosure of documents and examine witnesses -- so that the Inspector-General is not reliant on voluntary disclosure of information required to complete a review.

The Bill does not impose any obligations on taxpayers and thus has no compliance costs for individuals or businesses. The compulsive investigative powers of the Inspector-General do not extend to taxpayers, since the Inspector-General will be reviewing systemic tax administration issues and not the tax affairs of individuals or groups.

(2) New Business Tax System (Consolidations and Other Measures) Bill 2003

Previously cited as New Business Tax System (Consolidations and Other Measures) Bill (No.2) 2002.

Introduced to the Senate and second reading speech on 3 March 2003, passed Senate on 6 March 2003.

This Bill proposes to make amendments to ensure the proper operation of the new consolidation regime established by the New Business Tax System (Consolidation) Act (No. 1) 2002 No. 68 (Cth), the New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002 No. 90 (Cth), and the New Business Tax System (Consolidation and Other Measures) Act (No. 1) 2002 No. 117 (Cth).

The Bill also proposes a number of technical and consequential amendments, in particular, amendments in relation to the "simplified imputation system" in certain areas of venture capital franking, cum-dividend sales and securities lending arrangements.

(3) New Business Tax System (Venture Capital Deficit Tax) Bill 2003

Previously cited as New Business Tax System (Venture Capital Deficit Tax) Bill 2002

Introduced to the Senate and second reading speech on 3 March 2003, passed second reading speech, passed Senate on 6 March 2003.

This Bill proposes to introduce the venture capital deficit tax, a tax intended to be levied in respect of venture capital sub-account deficits of pooled development funds. The Bill is intended to operate in conjunction with the New Business Tax System (Consolidation and Other Measures) Bill (No. 2) 2002 (Cth), which is expected to account for the process by which the venture capital deficit tax will be levied.

(4) Taxation Laws Amendment Bill (No. 1) 2003.

Previously cited Taxation Laws Amendment Bill (No.6) 2002.

Introduced to the Senate and second reading speech 5 February 2003, passed second reading speech, passed Senate on 4 March 2003.

This Bill proposes to amend the interest withholding tax provisions of the *Income Tax Assessment Act 1936* to:

- ◆ exclude certain associates from the associates prohibitions contained in section 128F;

- ◆ restore the concessional treatment under section 128F to certain securities by exempting from interest withholding tax gains deemed to be interest under section 128AA; and
- ◆ exempt from interest withholding tax interest derived by a non-resident on nostro accounts held by Authorised Deposit Taking Institutions.

This Bill also seeks to amend the CGT provisions of the *Income Tax Assessment Act 1997* to provide a CGT exemption for payments received by Australian residents under the German Forced Labour Compensation Program.

Finally, this Bill will amend the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* so that, from 1 January 2003, friendly societies will be allowed a deduction for investment income paid or credited to recipients of special purpose investment products (income bonds, scholarship plans and funeral policies) where that income has been included in the assessable income of the friendly society. It also clarifies the taxation treatment of distributions paid from these products.

(5) Taxation Laws Amendment Bill (No. 2) 2003

Previously cited as Taxation Laws Amendment Bill (No.7) 2002)

Introduced to the House and second reading speech 23 October 2002, passed Senate on 27 March 2003.

The measures contained in this Bill are directed at people who would normally be considered to be resident of Australia for tax purposes, but who qualify under the temporary resident exemption.

- ◆ Temporary residents will generally be first-time tax residents of Australia who are in Australia on temporary entry visas. However, also included are people in Australia on temporary entry visas who have not been a tax resident of Australia for at least the previous 10 years.
- ◆ Presently, a person who is a resident of Australia is taxable on income and gains from all sources whether they are Australian or not. This measure provides a tax exemption for all ordinary and statutory income from a foreign source, net capital gains generally without the necessary connection to Australia and for interest withholding tax obligations associated with overseas liabilities. The exemption applies to the individuals who are considered to be temporary residents, for a maximum period of 4 years. The exemption will not, however, apply to remuneration received for or associated with employment, or for services performed while a resident of Australia.
- ◆ In addition, this Bill removes the 4 year limitation on the Foreign Investment Fund exemption for all people considered to be exempt visitors for the purposes of the Foreign Investment Fund legislation.

(c) Bills Laid Aside or Removed from Notice Paper 2002

Nil

(d) Bills Before Parliament

(1) Taxation Laws Amendment Bill (No. 4) 2003

Introduced to the House 13 February 2003, passed the House on 6 March 2003, introduced to the Senate on 19 March 2003.

The Bill proposes to amend the 1997 Act by:

- ◆ making technical corrections and amendments that relate directly or indirectly to the uniform capital allowances system;
- ◆ amending the tax offset carry forward rules in Division 65 and amend the refundable tax offset rules in Division 67 of the Act to ensure the maximum benefit is received from refundable tax offsets;
- ◆ making consequential amendments to the refundable tax offset rules to reflect the simplified imputation system rules;
- ◆ eliminating the ability of taxpayers to double claim the private health insurance tax offset;

- ◆ repeal the definition of "carried on in Australia" in s. 995-1(1); and
- ◆ providing a CGT roll-over to a fund "that amends or replaces its trust deed in order to be approved as an approved worker entitlement fund".
- ◆ The Bill also proposes to make a number of amendments in relation to non-assessable non-exempt income amounts, and aims to clarify, standardise and rationalise the recognition and treatment of these amounts.
- ◆ Apart from making minor and technical amendments, the Bill proposes to insert Subdivision 11-B which outlines particular kinds of non-assessable non-exempt income.

Division 59, which would consist of numerous operative provisions in relation to non-assessable non-exempt income amounts, such as compensation under firearms surrender arrangements, mining payments and bonus payments made to certain older Australians, would also be inserted.

This Bill also proposes to amend the Administration by:

- ◆ prescribing new obligations that "will improve the compliance of foreign residents with their Australian tax obligations". Generally, the obligations relate to the withholding of payments to foreign residents and payments received for a foreign resident.
- ◆ amending the Fringe Benefits Tax Assessment Act 1986 No. 39 (Cth).
- ◆ providing a fringe benefit tax exemption for certain payments to approved worker entitlement funds.

This Bill also proposes to amend the Income Tax (Transitional Provisions) Act 1997 No. 40 (Cth), by making a number of technical corrections and amendments to the Act, relating indirectly or directly to the uniform capital allowances. The provisions that the Bill proposes to insert include:

- ◆ post-30 June 2001 mining expenditure;
- ◆ mining case bidding payments;
- ◆ post-30 June transport expenditure;
- ◆ accelerated depreciation for split or merged plant;
- ◆ disposal of pre-July 2001 mining depreciating and non-depreciating assets; and
- ◆ involuntary disposals.

This Bill also proposes to amend the 1936 Act in relation to rollovers to:

- ◆ "ensure that roll-over transactions which occur wholly within the one superannuation fund or annuity provider" are treated the same way as external roll-overs (roll-overs that occur between funds or providers) for reasonable benefit limit purposes ("RBL") and that double counting of any benefits associated with the RBL would be avoided.
- ◆ to amend the definitions of "eligible termination payment", "eligible service period" and "undeducted contributions" to ensure that internal roll-overs are treated as eligible termination payments for the income tax law purposes.

(2) Taxation Laws Amendment Bill (No.5) 2003

Introduced to the House on 27 March 2003.

The Bill makes a range of amendments in relation to:

- ◆ thin capitalisation;
- ◆ the same business test;
- ◆ FBT exemptions for public hospitals;
- ◆ utilising prior year tax losses where franked dividend income is received; and
- ◆ a reduction to the effective tax on the excessive component of an ETP paid by a superannuation fund.

(3) Taxation Laws Amendment Bill (No. 8) 2002

Introduced to the House on 5 December 2002.

The Bill proposes a number of reforms, including proposals to:

- ◆ include more organisations to be the subject of a tax deductible gift of \$2 or more;
- ◆ recognise capital gains or losses that arise while shares that are part of an employee share scheme are held in trust and where the employee elects to be taxed at the time they acquire the shares or the rights to the shares;
- ◆ ensure that the 12-month minimum qualifying period for the capital gains tax 50% discount for such shares begins from the time the trustee acquires the shares;
- ◆ enable co-operative companies to either frank distributions to shareholders or, alternatively, to claim the existing deduction for distributions of assessable income to shareholders.
- ◆ rectify an anomaly in the RBL provisions so that a reversionary pension benefit paid on the death of the original recipient will receive the same proportion of concessional taxation rebate as applied to the original pension.
- ◆ enable expenditures associated with closing down a former Petroleum Resource Rent Tax (PRRT) project facility (which is still used under an infrastructure licence) to be deductible against the project receipts;
- ◆ reform certain aspects of the PRRT relating to receipts and deductions;
- ◆ ensure that generally no taxation consequences will arise for any person under any Commonwealth taxation laws as a result of the corporate conversion of AGL or from its registration under the *Corporations Act 2001*; and
- ◆ make minor, technical amendments to provisions relating to capital gains tax, fringe benefits tax, gift deductions and other taxation provisions.

(e) Regulations Promulgated - Income Tax

Nil

1.3 COURTS & TRIBUNALS**(a) Courts****(1) Judge applies common sense in negating Commissioner's technical point! (McDermott Industries (Aust) Pty Ltd v C of T)**

Source 412729 McDermott Industries (Aust) Pty Ltd v C of T [2003] FCA 139 (31 March 2003)

http://www.austlii.edu.au/au/cases/cth/federal_ct/2003/139.html

What was the issue?

Could the taxpayer lodge a single appeal in respect the appealable objection decision relating to three separate assessments?

What were the facts?

On 8 March 1999 the Commissioner issued amended assessments in respect of three years of income for the taxpayer.

The taxpayer lodged a single notice of objection in respect of the three amended assessments.

In due course the Commissioner informed the taxpayer, by a single notice, that the taxpayer's objections to the amended assessments had been disallowed.

The taxpayer lodged a single application in the "appeal" against the single "appealable objection decision" of the Commissioner.

The Commissioner contended that the "single appeal" was incompetent.

What was the decision?

- (5) The first point to note is that s 14ZZ of the TAA does not purport to instruct the Court on the manner in which "appeal" proceedings are to be commenced or conducted in the Court. It follows, as may be expected in respect of the exercise of judicial power vested in the Court pursuant to the Constitution, that the procedure for commencing and carrying on an "appeal" is governed by the Federal Court Rules ("the Rules") and by orders made by the Court from time to time.
- (6) In common with the long-standing practice of like superior courts, the Rules, in O 29 r 5, provide for the Court to order that separate proceedings, even if involving different applicants, be consolidated as a single proceeding where a common question of law or fact is raised in those proceedings. Such a rule recognises a public interest in the elimination of the unnecessary multiplicity of legal proceedings. It may be noted that in O 6 r 1 the Rules also provide that an applicant may claim relief in respect of more than one cause of action in the one proceeding.
- (7) It follows that unless the TAA, in clear terms, provides otherwise, a proceeding in the original jurisdiction of this Court, albeit described by the TAA as an "appeal", may be commenced by an applicant in respect of several "objection decisions" of the Commissioner where common questions of law or fact are involved in those decisions. That is to say, if, implicitly, the TAA acknowledges that several "appeal" proceedings may be consolidated as a single "appeal" by order of the Court, it follows that the TAA also accepts that if the Rules so provide, a single "appeal" proceeding may be commenced by an applicant in respect of several "objection decisions" where appropriate. Furthermore, for the reasons stated by Ryan J in *Krampel Newman Partners Pty Ltd v Federal Commissioner of Taxation* [2001] ATC 4473, no contrary intention appears in O 52B of the Rules relating to the institution of "appeal" proceedings under the TAA, nor in the TAA, so as to exclude the operation of s 23 of the *Acts Interpretation Act 1901* (Cth) which would permit a single "appeal" proceeding to be commenced in respect of several "objection decisions".
- (9) The statement of facts, issues and contentions filed by the Commissioner in the instant case shows that the objections and "objection decisions" related to common facts and issues arising in the several assessments. It follows that a single "appeal" proceeding is appropriate for determining the validity of the Commissioner's "objection decisions" set out in the notice issued to the applicant by the Commissioner.
- (10) The "appeal" has been duly instituted by the application filed and is competent.

Could the taxpayer lodge a single appeal in respect of the appealable objection decision relating to three separate assessments?

(2) Extending the time to transfer group losses (Asiamet (No. 1) Resources Pty Ltd)

Source (402367) Asiamet (No. 1) Resources Pty Ltd [2003] FCA 35 (31 January 2003) (Emmet J)

http://www.austlii.edu.au/au/cases/cth/federal_ct/2003/35.html

What was the issue?

Could the time of claim group losses be extended?

What were the facts?

In the years of income ended 30 June 1992 to 30 June 1998 inclusive ('the years of income in question'), AFT made interest payments to CPF. The interest was paid in respect of loans made by CPF to AFT to enable AFT to subscribe for redeemable preference shares in Murray Leisure Group Pty Limited ('MLG'), which is an Australian resident.

MLG in turn applied the funds received from that subscription in subscribing for shares in a company incorporated in the United Kingdom ('CPL (UK)'). (Subsequently, MLG sold some of its shares in CPL (UK) to a company incorporated in the Bahamas ('CPL Bahamas')).

Because of the interest payments made by AFT to CPF, AFT incurred losses in respect of the years of income in question.

Subsequently, AFT entered into an agreement pursuant to s 80G(6A), in respect of each of those years, with one or more of the Taxpayer Companies to transfer the right to allowable deductions in respect of part of those losses.

Under Part IVA, the Commissioner disallowed deductions claimed by Australian Financial Times Pty Limited ('AFT').

The disallowance meant that AFT did not incur losses in various years of income as it had claimed.

Part of those losses had been transferred to seventeen companies (“the Taxpayer companies”).

The Taxpayer Companies accordingly claimed the amounts of the transferred losses as allowable deductions for certain of the years of income in question.

As a result of the Commissioner's making a determination under Part IVA, the interest payments made by AFT to CPF are not to be allowed as deductions.

AFT therefore did not have losses to transfer to the Taxpayer Companies. The Taxpayer Companies therefore sought an extension of time to transfer other losses, being losses incurred by Consolidated Press Finance Limited (CPF), (AFT, CPF and the Taxpayer Companies are all members of the Consolidated Press Holdings Limited group of companies ('the CPH Group')).

What was the decision?

114. The Taxpayer Companies contend that (the Commissioner by his delegate) Mr Bridge did not give real or genuine consideration to the merits of the question before him but, rather, blindly adopted the views and advice of other persons within the ATO to the effect that no extension should be allowed. They contend that, within the ATO, responsibility for determining requests under s 80G had been reposed in the Losses Network. Mr Bridge, however, who was the decision-maker, was not a member of the Losses Network.
115. The Taxpayer Companies contend that an inference should be drawn from the terms of the minute of 1996 concerning the Losses Network that determinations in relation to matters arising under s 80G should be made, either in fact or in effect, by the Losses Network. They say that an inference should be drawn that no independent or genuine discretion was exercised by Mr Bridge following receipt of the report of the Losses Network of 6 March 2000. They contend that the report of the Losses Network and of the Part IVA Panel were 'determinative of Mr Bridge's thinking'.
116. However, taking advice within the ATO would not, of itself, result in the decision-maker failing to give proper genuine or realistic consideration to the merits of the case. A decision-maker who takes into account the recommendations and advice of departmental officers, who are responsible for providing that advice, does not, on that account alone, fail to consider the merits of a particular case. Decision-makers who make a large number of decisions do not act unlawfully by acting on the basis of facts found by their advisors, rather than performing every step of the decision making process personally, provided they act on the basis of an accurate summary of the relevant evidence and submission that has been heard by their advisors. The fact that Mr Bridge had regard to the ATO Advice does not, of itself, give rise to an inference that he did not exercise his own judgment in relation to the decision that was required of him.
117. The Taxpayer Companies also say, in effect, that, by reason of all the other matters relied upon as vitiating the decisions not to allow an extension under s 80G(6A)(b), Mr Bridge's decision was an improper exercise of power, within the meaning of s 5(1)(e) of the ADJR Act, because it was an exercise of power that was so unreasonable that no reasonable person could have so exercised the power, as provided in s 5(2)(g). The Taxpayer Companies do not advance any basis upon which the establishment of one or more of the other grounds relied upon would also indicate that the strict test of s 5(2)(g) is satisfied. In any event, I have rejected their contentions in relation to a number of the grounds. It appears that they are cumulative and, accordingly, this ground is not made out.
118. Further, the contention is that Mr Bridge gave inappropriate weight to certain matters and gave insufficient weight to other matters. The basis for suggesting that Mr Bridge gave inappropriate weight to certain matters such as to render the decision one that no reasonable person could have made is not clear. Similarly, the basis upon which insufficiency of weight indicates unreasonableness is not apparent. So long as those matters are matters that were properly to be taken into account in making the decision, the weight to be accorded to them was a matter for Mr Bridge. This ground is not established.
119. I do not consider that the decisions were vitiated as being an improper exercise of power on any of the bases alleged.

The Commissioner, through his delegate Mr Bridge, applied an unlawful policy and, accordingly, his decision was infected by error of law. Further, it was vitiated by errors of law in the respects that I have identified above. I consider that the decisions of the Commissioner not to allow extension of time for the transfer of losses should be set aside and the matter should be remitted to the Commissioner for decision according to law.

(3) Journal entry loans statute barred! (VL Finance v Legudi)

Source 412758 VL Finance Pty Ltd v Legudi [2003] VSC 57 (13 March 2003) Nettle J.

<http://www.austlii.edu.au/au/cases/vic/VSC/2003/57.html>

What was the issue?

Did certain loans, evidenced only by journal entries and the general ledgers and financial statements of a company really exist? If the loans existed were they statute based?

What were the facts?

In 1972 the Legudi's business was structured as a corporate group consisting of:

- a non-trading holding company called Legudi Holdings Pty Ltd ("Holdings");
- an operating company, Legudi & Sons Pty Ltd ("Sons"); and
- a land holding company, Legudi Freehold Properties Pty Ltd ("Properties").

For operating reasons all group finance was channelled through Sons, but Properties provided security on an as and when needed basis.

During 1990 the group came under considerable financial pressure. Its principal banker, Australian and New Zealand Banking Group Ltd, greatly devalued its real property securities.

The group's other major financier was the plaintiff in the proceeding, VL Finance Pty Ltd, which had extended both loan and debt factoring facilities to the group.

It became apparent that Sons was approaching the point at which it would be deemed insolvent unless something were done to improve its balance sheet.

In 1990:

- ◆ Mr Curwood (the group's accountant) advised Charles and Ross Legudi that if the company were to continue it would be necessary to replace some of Sons' debt with equity by the issue of shares to family members.
- ◆ Sons was indebted to VL Finance Pty Ltd in an amount of approximately \$2 million and the indebtedness was secured by charge over the assets of Properties.

Mr Curwood devised a plan which involved:

- ◆ the assignment or novation of the VL Finance indebtedness from Sons to Properties;
- ◆ creating a debt in the same amount due from Sons to Properties;
- ◆ a loan of some \$2 million by Properties to family members;
- ◆ the use of that \$2 million by the family members to subscribe for \$2 million worth of 12% non-cumulative participating redeemable preference shares in Sons; and
- ◆ the use by Sons of the \$2 million so subscribed to repay its indebtedness to Properties.

In the result it was intended that:

- ◆ there would be an improvement of \$2 million in the net assets of Sons; and
- ◆ no decline in the net assets of Properties (because its new indebtedness of \$2 million to VL Finance would be matched by the new indebtedness of \$2 million of family members to Properties)

No formal loan agreements were ever brought into existence.

The only documentary evidence:

- ◆ of the loans was the journal entries and the annual general ledger and financial statements of the companies.
- ◆ of the terms of repayment of the loans was that the liabilities of the family members to Properties in respect of the loans were recorded in Properties' financial statements as current assets.

In evidence, Mr Curwood in the absence of agreement as to a fixed term, an accountant treats such loans as at call.

The receiver subsequently appointed to Sons sold Sons' assets and orders for \$160,000 to interests associated with Bradmill. That sale by the receiver in turn triggered the security which VL Finance held over Properties' assets, and they were later sold.

On 10 October 1994 a liquidator was appointed to Sons.

On 1 March 1995 a liquidator was appointed to Properties.

By deed made 5 June 2000, for consideration of \$9000, the liquidator of Properties purported to assign to VL Finance Pty Ltd the indebtedness of:

- ◆ Anthony Legudi (said in the deed to be \$735,321.00); and
- ◆ the indebtedness of Frank Legudi (said in the deed to be \$367,666.00).

The Legudis denied the existence of the debts but pleaded that in the alternative if they did incur the debts, the debts were statute barred.

What was the decision – the existence of the debts?

- (29) In the end, very little of the defendants' case at trial was devoted to the contention that the debts do not exist. ...
- (30) In the circumstances I think it suffices to say of the book entries point that, in the absence of any suggestion of sham, there is no reason why loans agreed to by made by a family company to members of the family cannot be created orally or by conduct and sufficiently evidenced by book entry[4], and that it is enough to dispose of the consequences of the lack of cash in hand contention to observe that it has been the law since *Spargo's* case that obligations may effectually be set off one against another, leaving a net balance due, without any money changing hands.

What was the decision – limitation of actions?

- (39) (The Legudis' contention is that) in the absence of any stipulation as to the date of repayment, it must be taken that the debts were repayable on demand; that it follows that time began to run when the debts were created; that the debts were created when the preference shares were issued and the interest accrued; and thus that all of the debts, except perhaps for one day's interest.
- (40) I think that argument is correct. In *Ogilvie v Adams*[11] Fullagar J expressed the principle in these terms:
- "The common law has always regarded the fact of indebtedness as a continuing detention by the debtor of the creditor's money, and this whether the creditor brought an action of debt or an action in *indebitatus assumpsit*. Therefore if A lends money to B, then instantly B is detaining A's money. In order to prevent a cause of action for recovery arising in A instantaneously on paying the money, the parties must expressly contract out of that situation by words clearly inconsistent with that situation."
- (41) In my opinion there is nothing in the evidence before me to suggest that any words were spoken before or at the time of the loans from Properties to Anthony and Frank Legudi to the effect that Properties' cause of action for recovery of the loans would not arise instantaneously on the making of the loans. It is true that in *Ogilvie v Adams* Fullagar J observed elsewhere in his judgment[12] that it is not always necessary that words be used to prevent the cause of action arising. Depending upon the contractual relationship between the parties it may be that it is an implied term of the relationship that the cause of action is not to arise until some period of notice is given. But if there is to be a departure from the prima facie position it may only be on the basis that an intent to change the prima facie position is necessarily implicit in the contract. It is not enough that there may be some purpose or motive by reason of which the loan was made but as to which the contract is not directed. Thus, as Fullagar J said of the implied terms of repayment which arise out of the banker/customer contractual relationship, [13]:
- "In the case of banker and customer, one has to investigate (usually) the implied contract or contracts between the parties created by the particular mercantile relationship, but if one finds something to alter what would otherwise be the effect ...*that something must (in order to effect the alteration) be found in the contractual relationship between the parties, not in some purpose or motive, real or supposed, by reason of which the loan was made and with respect to which the contract is silent.* " (Emphasis added.)
- (42) I see nothing in the contractual relationship between Properties and Anthony and Frank Legudi which necessarily implies that Properties' cause of action for recovery of the loans was not to arise upon the making of the loans

- (43) It was urged on behalf of VL Finance Pty Ltd that what was said in *Ogilvie v Adams* should no longer be regarded as representing all the law on the subject. Subsequent authorities, it was submitted, show that the test now is one of whether it is reasonably open to infer that the parties would have agreed that the cause of action to recover the loans should not accrue until some sort of reasonable notice was given, and reference was made to the decisions of Bryson J in *Gleeson v Gleeson*[14] and of the Full Court of South Australia in *Brooker v Pridham* [15].
- (44) In my opinion the subsequent authorities mentioned do not express a test different to that which Fullagar J enunciated in *Ogilvie v Adams*, and if they did they would be in error. A term may not be implied in a contract, except as a matter of law or custom, unless it is necessary to give business efficacy to the contract[16]. There is no room for implication simply on the basis that the term may be regarded as reasonable.

(4) Was the interest deductible? (Spassked Pty Limited v C of T)

Source: (412854) (*Spassked Pty Limited v C of T*)

<http://www.austlii.edu.au/au/cases/cth/aat/2003/58.html>

Issue

Was the interest expense of \$37.37 billion deductible?

Facts

Spassked Pty Limited (“the taxpayer”) was a wholly owned subsidiary of Industrial Equity Limited (“IEL”) and a member of the IEL Group (“the Group”)

As a means of expanding the group, IEL acquired companies. Each time it acquired a company, it would incorporate a subsidiary for that purpose.

The taxpayer borrowed funds from the “in-house finance provider” (“IEF”) to acquire the subsidiary company (“Subco”).

As the Group’s investment strategy was progressively implemented, some adverse tax consequences within the Group arose. These were:

- the prevention of dividends from flowing up to IEL and to its shareholders from wholly owned subsidiaries (“the First Subsidiary”) whose deductions by way of interest incurred on funds borrowed to acquire shares in further subsidiary companies exceeded the First Subsidiary’s income, creating losses. With no distributable profit, the First Subsidiary was prevented from declaring dividends in favour of IEL; and
- the loss of the section 46 rebate as the First Subsidiary’s would not have taxable income to be able to claim the intercorporate dividend rebate.

To overcome these adverse tax consequences, a new company (“GIH”) was interposed between the taxpayer and IEL and IEF.

The taxpayer:

- borrowed \$3.737 billion from IEF in 1990 and used the money to subscribe for A class shares in GIH. GIH then subscribed for shares in the Subco.
- incurred interest expenses totalling \$3.72 billion 1987 to 1994 income years. The total of these expenses was \$3.272 billion.
- \$888 million of interest expenses.

The Commissioner denied this deduction on the following grounds:

- the expense did not meet either the first or second positive limb of subsection 51(1) of the Income Tax Assessment Act (1936) (“the Act”); and
- if the expense was deductible, Part IVA applied on the basis that the restructuring of the Group was done for the dominant purpose of obtaining a tax benefit.

Decision - Section 51(1) - Lindgren J

As there was a disproportion between the interest expense and the dividends received by the taxpayer from GIH, his Honour inquired into the taxpayer's purpose in determining whether the expense was incurred for the purpose of producing assessable income and thereby an allowable deduction.

In taking evidence from the directors of the various Group companies, his Honour found that:

- there was no subjective purpose that the taxpayer would ever be in receipt of dividends from GIH; and
- the reason for the restructuring was to make the taxpayer the dividend trap and loss centre of the Group.

His Honour held that the time of determining the character of the interest expense must be determined at the time of its incurrence. It is at this time that purpose and expectation are determined. Accordingly, his Honour rejected the taxpayer's argument that GIH would have paid dividends to the taxpayer had the taxpayer not been a loss or dividend trap centre.

As there was no expectation of receiving dividends from its A class shares held in GIC and therefore no purpose of producing assessable income, his Honour held that the taxpayer's interest expense was not an allowable deduction because it did not satisfy the tests set out in either of the positive limbs of subsection 51(1) of the Act.

As the expense was not an allowable deduction, the taxpayer was denied from transferring losses to other Group members pursuant to section 80G of the Act.

Decision - Part IVA – Lindgren J

As his Honour found that the expense was not an allowable deduction, he did not address the application of Part IA.

(5) A limited partnership of s128B considered? (Unisys Corporation v C of T)

Source (385686) Unisys Corporation v Federal Commissioner Of Taxation [2002] NSWSC 1115 (4 December 2002)

http://www.austlii.edu.au/au/cases/nsw/supreme_ct/2002/1115.html

What was the issue?

Was Unisys liable to pay royalty withholding tax on receipts from a limited partnership resident of Australia?

Was ULP carrying on business through a permanent establishment in the USA so that any royalties were not royalties to which section 128B applied?

What was the legislative background?

s 94H provided that if a partnership was a corporate limited partnership, the income tax law had effect subject to the changes set out in Subdivision C of Division 5A of Part III.

A "limited partnership" was defined in s 94B to mean a partnership where the liability of at least one of the partners was limited.

A limited partnership formed after 18 August 1992 was a corporate limited partnership in terms of s 94D.

A royalty to which s 128B of the Income Tax Assessment Act 1936 (Cth) applied was defined in s 128B(2B). So far as is material, that provision was in the following terms:

"Subject to subsection (3), this section also applies to income that:

- (a) is derived by a non-resident:
 - (i) during the 1993-94 year of income of the non-resident; or
 - (ii) during a later year of income of the non-resident; and
- (b) consists of a royalty that:
 - (i) is paid to the non-resident by a person to whom this section applies and is not an outgoing wholly incurred by that person in carrying on business in a foreign country at or through a permanent establishment of that person in that country;..."

What were the facts?

A limited partnership agreement establishing the limited partnership called Unisys Licensing Partnership (“ULP”) was executed on behalf of both partners in the US on 23 November 1994.

ULP was:

- for the purposes of the income tax law, under s 94T, a resident of Australia because it was formed in Australia.
- a corporate limited partnership to which Subdivision C applied.
- a person to whom s128B(5A) applied.

The partners of the limited partnership were both were organised under the laws of the State of Delaware and were:

- Unisys Software, Inc (“USI”) -s the general partner.
- Unisys World Trade, Inc (“UWT”) the limited partner.

USI and UWT were registered in Australia as foreign companies. On 15 December 1994, ULP was registered under the New South Wales Partnership Act.

ULP paid royalty payments to Unisys, a corporation organised under the laws of the State of Delaware.

What was the decision?

- (15) The taxpayer and Unisys (Australia) Ltd, ("UAL") entered into an intellectual property licence agreement on 1 January 1993 whereunder UAL was granted a non-exclusive licence with respect to the taxpayer’s patents, copyrights, trade secrets, software, documentation and know-how to reproduce, translate, distribute and prepare derivative works of and use in its business the intellectual property in Australia and its territories which was subsequently terminated.
- (16) At the taxpayer’s offices at 7700 West Camino Real, Boca Raton on 21 December 1994.
- The taxpayer on behalf of the general partner of ULP (USI) entered into (an alternative) intellectual property licence agreement with ULP granting it a non-exclusive licence to reproduce, translate, distribute and prepare derivative works of and use in its business the taxpayer’s intellectual property throughout the world.
- Mr Thiede on behalf of ULP executed a sub-licence from ULP to UAL to utilise the intellectual property in Australia and its territories.
- (53) In my view, in light of the attitude taken to what constitutes a business for the purposes of the business profits article, from which the language of s 128(2B) of the *Income Tax Assessment Act 1936* emanates, ULP carried on business in the US for the purposes of that provision.
- (54) It follows that the royalty payments made to the plaintiff were wholly incurred by ULP in carrying on business in the US for the purposes of s 128B(2B) of the *Income Tax Assessment Act 1936* .
- (55) I prefer to base my decision on international tax law considerations because there are conflicting decisions in our domestic tax law as to what constitutes a business profit when it comes to investment type activities.
- (65) In international tax law, there is authority for the proposition that a general partner of a limited partnership can constitute a permanent establishment (*Donroy v US 301 F 2d 200 (1962)*. *No. 630 v Minister of National Revenue* (1959) 59 DTC 300). Translating those decisions into the Australian context, where USI carries on its business could constitute a permanent establishment.
- (66) The problem facing the plaintiff, however, is whether the requirement of habitual exercise of a power to conclude contracts excludes a permanent establishment. The limitation is explained in par 32 of the Official Commentary to art 5 of the 192 OECD model as follows.
- (70) The conclusion of one contract in the course of two years cannot be considered a habitually exercised authority, even if the business in question does not require more than one contract for this period of time. Thus an employee who concludes one contract on behalf of a consultancy firm or a construction enterprise is not an agent of the company in terms of the agency clause. To constitute a PE, this enterprise has to meet the conditions under the basic rule or the construction clause..."
- (74) In my view there was not a sufficient repetition of contractual activity to constitute the habitual exercise of a general authority to negotiate and conclude contracts and ULP is thrown back on establishing that it had a place at or through which it carried on business in the US.

- (76) With respect to the premises of USI, the plaintiff and the offices of LASSC, there was no evidence that any portion of these premises was placed at the disposal of ULP. As Professor Vogel points out at 286 a place of business must be more than merely temporarily at the enterprise's disposal (see also Skaar at 111-112). The plaintiff has failed to establish that ULPL had at its disposal in the US a place at or through which it carried on its business.

(b) Tribunals

(1) Clara Scott renews acquaintances with the AAT in Brisbane - Again! (Scott v C of T)

Source 412760 *Scott and Commissioner of Taxation* [2003] AATA 289 (28 March 2003) Mr McCabe

<http://www.austlii.edu.au/au/cases/cth/aat/2003/289.html>

What was the issue?

Were the following costs/expenses allowable deductions?

- overseas travel;
- computer depreciation;
- motor vehicle expenses.

What were the facts?

Mr Scott took his personal computer to, and left it at work.

Mr Scott's employer was pleased with the computer innovation and gave Mr Scott a pay rise of \$3500 just three months after he commenced work at – apparently in recognition of his sterling work.

Mr Scott's employer purchased a new and more powerful computer, which Mr Scott took over;

Mr Scott ceased to have possession of the old machine, and he did not use it at the office and it was passed to another employee.

There was no evidence about what happened to the machine after that.

The commissioner said the employer effectively bought the computer from Mr Scott.

What was the decision – computer depreciation?

- (15). (Mr Scott) and his employer entered into an agreement at the time of (Mr Scott's) performance review. Under that agreement (Mr Scott) apparently gave up his rights with respect to the machine, and it passed into his employer's care and control with no suggestion that it would be returned - and it was not returned. Property in the computer, including the ultimate right to its possession, passed to (Mr Scott's) employer. I think there was a transfer of property by way of sale. It is true (Mr Scott) (and his employer) might not have characterised the transaction in those terms, but it is a question of fact in each case as to whether a sale occurred. Having regard to all the circumstances, I think the definition in [section 4\(1\)](#) of the *Sale Goods Act 1896* is satisfied. If it was not a sale, it was a transfer of ownership by abandonment. (Mr Scott) abandoned the property to his employer, and made it clear by his conduct that he had no intention of reclaiming it: see *Moorhouse v Angus & Robertson (No 1) Pty Ltd* [1981] 1 NSWLR 700 at 706 per Samuels JA. In either case, (Mr Scott) is unable claim depreciation in respect of the computer by reason of section 54(1) of ITAA36.

What was the decision – motor vehicle expenses?

- (17) ... I am satisfied ((Mr Scott)) needed a four-wheel drive vehicle and that he used it primarily, if not exclusively, in connection with his work. (Mr Scott) said he was not happy with the state of the vehicles supplied by his employer, so he acquired his own. His first vehicle was a Nissan Patrol. It was written off following an accident in September 1993. He then purchased a Mitsubishi Pajero that was sold sometime prior to his trip overseas in June 1994. He also had the use of a Ford Falcon that has featured in other cases involving members of the Scott family:
- (18) ... (in the years of income ending on 30 June 1993 and 1994) as a general proposition, a taxpayer wishing to claim a deduction in respect of car expenses should maintain a logbook: sections 82KUB, 82KUC. (Mr Scott) did not keep a logbook because he took the view "*the vehicle was not a car*". He said he was under the

impression it was unnecessary to maintain a logbook because the vehicle was a four-wheel drive used exclusively for work purposes. He was wrong as to the first contention: four-wheel drive vehicles are clearly "cars" under section 82KT for the purposes of claiming car expenses: see also *Case 7/93* (1993) 93 ATC 135 at 142. But (Mr Scott's) claim that he was not required to maintain a log-book because the vehicle was used solely for work purposes requires closer consideration.

- (19) Section 82KV(4) provides that where a vehicle is used in an exempt manner the obligation to maintain a log-book may be waived. To qualify for the exemption, the taxpayer in this case must establish firstly that each of the vehicles was "*designed to carry a load of less than 1 tonne (other than a vehicle designed for the principal purpose of carrying passengers)*": section 82KV(4)(a)(ii). The taxpayer must also establish the vehicles were used exclusively in connection with the earning of assessable income: section 82KV(4)(2)(b)(i) and that they were not used for any other purpose: section 82KV(3)(a)(ii).
- (21) In any event, it was unclear to me whether the vehicles in question qualified for the exemption because ... they had other uses. The exemption from the obligation to maintain a log-book is therefore unavailable.
- (22) Where there is no log-book and no exemption available in respect of that log-book, the taxpayer may only claim under sections 82KW or 82KX.
- (23) Section 82KW is available where the vehicle has travelled more than 5000km. The section requires that the taxpayer make an election between:
- section 82KW(2) which provides for the taxpayer to obtain a deduction equal to 33 1/3% of the amount that would have been deductible if the car had been owned for a whole year and used exclusively for business purposes, and
 - section 82KW(3) which provides for a deduction equal to 12% of the cost of a car owned by the taxpayer.
- (24) The Commissioner noted the taxpayer may only rely on section 82KW(2) where he or she has maintained records of expenditure, including receipts. I agree. (The taxpayer) did not provide sufficient detail to satisfy the Commissioner that the claims were in order. (Mr Scott) is therefore restricted to making a claim under section 82KW(3).
- (25) (Mr Scott) faces the same obstacles with respect to any claim he might make in respect of motor vehicle expenses in the year of income ending 30 June 1995. (Mr Scott's) failure to keep a log-book prevents him from claiming a deduction under [section 6-1\(2\)](#) of the Schedule. The failure to keep proper records to substantiate the expenses prevents (Mr Scott) from claiming under the "*one third of actual expenses method*" set out in Division 5 of the Schedule: see section 5-4.
- (26) There was no evidence presented to confirm (Mr Scott) owned or leased the Ford Falcon vehicle. He is therefore unable to claim a deduction in respect of that vehicle since the legislation requires that he be the owner or leaseholder of the vehicle to make a claim.

What was the decision – overseas travel

- (27) (Mr Scott) claimed a deduction in respect of the costs of an extensive overseas trip undertaken between June 1994 and March 1995.
- (30) (Mr Scott) produced an endorsement from his former employer, but it was not as broad as that offered in *Finn*. There was no evidence that the data or experience obtained was likely to be of special value to any particular projects or work contemplated by the employer. I note in any case that (Mr Scott) resigned before going overseas.
- (31) (Mr Scott's) oral evidence made it clear he was interested in many of the sights he saw in North America like Niagara Falls. That makes sense. I have no doubt he would have derived more from the experience than the layperson without his background and experience. But after hearing his evidence and reviewing the diary notes he tendered and the decision in *Finn*, I formed the view that (Mr Scott) was sightseeing, not researching. At any rate, there was insufficient evidence for me to conclude that the expenses incurred in travelling throughout North America in particular bore the essential character of having been incurred in gaining or producing assessable income within the meaning of section 51(1): see Williams, Kitto and Taylor JJ in *Lunney and Hayley v Federal Commissioner of Taxation* (1958) 100 CLR 478 at 499.
- (34) To the extent that the trip was a job-search, the costs are not deductible.

1.4 ATO RELEASES

(a) Rulings & Draft Rulings

<http://law.ato.gov.au/atolaw/browse.htm?toc=03:RUL:Taxation>

Draft Taxation Rulings (DTRs) represent the preliminary, though considered, views of the Australian Taxation Office. DTRs may not be relied on by taxation officers, taxpayers and practitioners. It is only final Taxation Rulings that represent authoritative statements by the Australian Taxation Office of its stance on the particular matters covered in the Ruling.

(1) The arms' length debt test (TR 2003/1)

Source 412770

<http://law.ato.gov.au/atolaw/print.htm?docid=TXR/TR20031/NAT/ATO/00001>

What issue does the ruling consider

The ruling addresses the manner in which the arm's length debt test is to be applied and that in the context of the thin capitalisation rules.

The current thin capitalisation rules effect an Australian entity if it has an international operation (outward investing entity), even if it is not foreign controlled.

And when will an outward investing entity come within the thin capitalisation regime?

An outward investing entity will come within the thin cap regime if it has any of :

- An international operation; or
- An interest in an off shore entity; or
- Simply a permanent establishment off shore.

What is the background to the ruling?

The ruling seeks to provide a practical guide to determining an entity's arm's length debt amount

Under the current thin capitalisation regime interest and other debt deductions will be reduced or limited to the extent that an entity's adjusted average debt exceeds the entity's maximum allowable debt.

What is the entity's maximum allowable debt then?

The entity's maximum allowable debt is the greatest of three amounts:

- one of which is the arm's length debt amount;
- the other two of which are the "safe harbour debt amount" and "the worldwide gearing debt amount".

The arm's length debt amount for an entity will determine the entity's maximum allowable debt for the purposes of the thin capitalisation calculation regime?

The arm's length debt test for outward investing entities and inward investing entities is substantially the same in content and structure.

The arm's length debt test is based on two related questions:

- What amount of debt capital, attributable to its Australian business and that gives rise to debt deductions with the entity, would the entity reasonably be expected to have throughout the income year?
- What amount would independent commercial lending institutions reasonably be expected to lend, under terms and conditions that would reasonably be expected, if the lenders and the entity were dealing at arm's length with each other?

The ruling addresses the meaning to be attributed to expressions, not defined in the legislation, such as:

ATO Releases

- “commercial lending institution”
- “reasonably be expected”?

How is the arm’s length debt amount determined?

The “arm’s length debt amount” is to be determined from both the borrower’s perspective and the independent commercial lending institution’s perspective.

If the calculations under each perspective result in different figures only the lesser of the two amounts will satisfy both conditions.

(b) Determinations & Draft Determinations

Nil

(c) Class Rulings

<http://law.ato.gov.au/atolaw/browse.htm?toc=03:RUL:Class>

Status of a Class Ruling:

Certain parts of a Class Ruling constitute a 'public ruling' in terms of Part IVAAA of the Taxation Administration Act 1953. CR 2001/1 explains Class Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner

Source:ATO Assist (402385)

CR 2003/20	Income tax: Approved Early Retirement Scheme - Adult Multicultural Education Services - 19/03/2003
CR 2003/21	Income tax: Approved Early Retirement Scheme - Brisbane City Council - 19/03/2003
CR 2003/22	Income tax: Approved Early Retirement Scheme - Queensland Teachers' Union - 19/03/2003
CR 2003/23	Income tax: Employee Share Scheme: ABB Grain Limited - 19/03/2003
CR 2003/24	Income tax: assessable income: basketball referees: Western Australian Basketball Federation Inc. receipts - 19/03/2003
CR 2003/25	Income tax: assessable income: football umpires: North Western Football Association Inc receipts – 26/03/2003
CR 2003/26	Income tax: CSIRO funded Studentships and Scholarships – 26/03/2003
CR 2002/27	Income tax: Approved Early Retirement Scheme - Queensland Performing Arts Trust – 26/03/2003

CR 2003/28	Income tax: UNiTAB Limited Employee Share Bonus Plan – 26/03/2003
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(d) Product Rulings & Addenda**Source:ATO Assist (402386)**

<http://law.ato.gov.au/atolaw/browse.htm?toc=03:RUL:Product>

The number, subject heading, and the What this Product Ruling is about (including Tax laws, Class of persons and Qualifications sections), Date of effect, Withdrawal, Previous Ruling, Arrangement and Ruling parts of products rulings will generally constitute a 'public ruling' in terms of Part IVAAA of the Taxation Administration Act 1953.

Product Ruling PR 1999/95 explains Product Rulings and Taxation Rulings TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.

Source:ATO Assist (402386)

<http://law.ato.gov.au/atolaw/browse.htm?toc=03:RUL:Product>

PR 2003/1	Income tax: Rewards Group Tropical Fruits Project – 19/03/2003
PR 2003/7	Income tax: Sylvatech Tropical Timbers 2003 – 26/03/2003

(e) Interpretative Decisions*Source: Legal Database (402387)*<http://www.law.gov.au/law/browse.htm?toc=04:%20Interpretative%20Decisions>*Source: Legal Database (412828)***(1) Assessability**

ATO ID 2003/169	Self-Education Expenses: assessable scholarship income - 28/3/2003
ATO ID 2003/178	Assessability of arrears of pension received as a lump sum from the United Kingdom - 28/3/2003
ATO ID 2003/179	Assessability of Swiss superannuation pension received by Australian resident - 28/3/2003
ATO ID 2003/180	Assessability of Swiss government pension received by Australian resident - 28/3/2003
ATO ID 2003/181	Assessability of salary and wages earned by an Australian citizen working for an Australian government authority in Vietnam - 28/3/2003
ATO ID 2003/183	Assessability of remuneration earned by a non-resident from employment aboard an aircraft operated in international traffic by an Australian airline - 28/3/2003
ATO ID 2003/187	Assessability of employment income received by Australian resident for service aboard a ship operated in international waters - 28/3/2003
ATO ID 2003/188	Assessability of employment income received by Australian teacher in Korea - 28/3/2003
ATO ID 2003/202	Assessability of income derived from service in the Joint Petroleum Development Area - 4/4/2003
ATO ID 2003/245	Assessability of salary and wages earned by an Australian citizen employed as a locally engaged staff working for an Australian government organisation in France - 11.04.2003

(2) Capital Gains Tax

ATO ID 2003/147	Capital gains tax: small business roll-over - function of replacement asset - 21/3/2003
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ATO ID 2003/156	CGT: Compensation payments arising from the occupation of France during World War II - 28/3/2003
ATO ID 2003/163	Capital Gains Tax: main residence exemption - residence owned by company - 28/3/2003
ATO ID 2003/165	CGT small business concessions: active asset test - disposal by LPR after taxpayer's death - 28/3/2003
ATO ID 2003/166	CGT small business concessions: maximum net asset value test - Australian currency - 28/3/2003
ATO ID 2003/167	CGT small business concessions: active asset - bank accounts - 28/3/2003
ATO ID 2003/168	CGT small business concessions: active assets - Australian currency - 28/3/2003
ATO ID 2003/175	CGT small business roll-over: replacement asset acquired by different entity - 28/3/2003
ATO ID 2003/176	Capital gains tax: deceased estate - passing of an asset - 28/3/2003
ATO ID 2003/177	Capital gains tax: scrip for scrip roll-over - arrangement on substantially the same terms - 28/3/2003
ATO ID 2003/195	Capital gains tax: cost base of SingTel Shares - compulsory acquisition of Optus shares - 4/4/2003
ATO ID 2003/197	Capital gains tax: scrip for scrip roll-over - unit in a public trading trust exchanged for a share in a company - 4/4/2003
ATO ID 2003/198	Capital gains tax: reduced cost base - bad debt deducted - 4/4/2003
ATO ID 2003/199	Capital gains tax: CGT discount and small business concessions - disposal of active asset by non-resident - 4/4/2003
ATO ID 2003/209	Capital gains tax: small business roll-over - function of replacement asset - 4/4/2003
ATO ID 2003/212	Capital gains tax: main residence exemption - accidental destruction of dwelling used for income producing purposes - sale of vacant land - 4/4/2003
ATO ID 2003/213	Capital gains tax: main residence - absences - accidental destruction of dwelling - sale of vacant land - 4/4/2003
ATO ID 2003/214	Capital gains tax: main residence exemption - accidental destruction of dwelling - sale of vacant land - 4/4/2003

ATO Releases

ATO ID 2003/215	Capital gains tax: CGT event C2 – debtor bankrupted 4 April 2003 – 4/4/2003
ATO ID 2003/231	Capital gains tax: non-resident trust – calculation of net income of trust estate – 4/4/2003
ATO ID 2003/232	Capital gains tax: main residence exemption - demolition and reconstruction of dwelling - 11.04.2003
ATO ID 2003/235	Capital gains tax: capital contribution to insolvent company - cost base - market value substitution rule - 11.04.2003
ATO ID 2003/238	CGT small business retirement exemption: deceased estate - choice by executor - 11.04.2003

(3) Debt/Equity

ATO ID 2003/200	Debt/Equity: Redeemable Preference Share – 4/4/2003
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(4) Deductibility

ATO ID 2003/150	Trading stock - external costs - 21/3/2003
ATO ID 2003/210	Deductibility of legal expenses incurred after cessation of business – 4/4/2003
ATO ID 2003/222	Repairs: replacement of kitchen cupboards in a rental property – 4/4/2003
ATO ID 2003/223	Capital works: replacement of kitchen cupboards in a rental property – 4/4/2003
ATO ID 2003/229	Capital Works: deduction for common property - Australian Capital Territory – 4/4/2003
ATO ID 2003/240	Deferred capital loss or deduction: option granted by a company to acquire shares in it ends - 11.04.2003

(5) Employee Share Scheme

ATO ID 2003/189	Employee Share Scheme: employee loses rights for no valuable consideration – 4/4/2003
ATO ID 2003/190	Employee Share Scheme: shares or rights acquired by a non-resident of Australia – 4/4/2003
ATO ID 2003/191	Employee Share Scheme: late section 139E election - within a reasonable time – 4/4/2003

ATO ID 2003/192	Employee Share Scheme: issue of rights or shares because of the employment of an associate of the acquirer – 4/4/2003
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(6) Foreign Tax Credits

ATO ID 2003/246	Foreign Tax Credits: distributions from a USA Limited Liability Company - 11.04.2003
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(7) Retirement Income Entity

ATO ID 2003/170	Income: entry payment by retirement village resident - repayment within 12 months contingent on finding new resident - 28/3/2003
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(8) Simplified Tax System

ATO ID 2003/205	Simplified Tax System (STS): accounting method – timing of deductions for amounts paid by B-pay – 4/4/2003
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(9) Trusts

ATO ID 2003/164	Family trusts: interposed entity elections - entities owned by family members - 28/3/2003
ATO ID 2003/236	Interposed Entity Elections: trust in respect of which the relevant Family Trust Election was made ceases to exist - 11.04.2003
ATO ID 2003/161	Trusts: Exempt beneficiary and the application of section 99A - 28/3/2003
ATO ID 2003/162	Public Trading Trust - meaning of control - 28/3/2003
ATO ID 2003/174	Trust Losses: Pattern of distributions and prior year losses of non-fixed trust - 28/3/2003

(10) Trading Stock

ATO ID 2003/216	Trading stock: valuation at cost – GST and second-hand goods acquired from an unregistered entity – 4/4/2003
ATO ID 2003/217	Trading stock: valuation at market selling value – GST and second-hand goods acquired from an unregistered entity – 4/4/2003

(11) Uniform Capital Allowances

ATO ID 2003/148	Capital Allowances: 'reasonable to expect' to hold a depreciating asset - 21/3/2003
ATO ID 2003/149	Capital Allowances: second application of 'reasonable to expect' test to hold a depreciating asset - 21/3/2003
ATO ID 2003/151	Capital Allowances: business related costs - expenditure incurred to incorporate a company - establishing a business structure - 21/3/2003
ATO ID 2003/152	Capital Allowances: business related costs - professional advice about adopting a constitution for the purpose of forming a company - 21/3/2003
ATO ID 2003/153	Capital Allowances: business related costs - professional advice about modifying existing company constitution - establishing a business structure - 21/3/2003
ATO ID 2003/172	Capital allowances: non existence of the 'replacement basis' for claiming decline in value deductions - 28/3/2003
ATO ID 2003/184	Capital Allowances: Cost of non-cash benefit - 28/3/2003
ATO ID 2003/185	Capital Allowances: deductible balancing adjustment if a depreciating asset is not used - 28/3/2003
ATO ID 2003/186	Capital Allowances: assessable balancing adjustment if a depreciating asset is not used - 28/3/2003
ATO ID 2003/206	Capital Allowances: Project Pool - carry on a project for a taxable purpose - 4/4/2003
ATO ID 2003/207	Capital Allowances: Project Pool - obtaining information - 4/4/2003
ATO ID 2003/208	Capital Allowances: Project Pool - feasibility studies - 4/4/2003
ATO ID 2003/218	Capital Allowances: balancing adjustment event - amalgamation of incorporated associations - 4/4/2003
ATO ID 2003/219	Capital Allowances: termination value - amalgamation of incorporated associations - 4/4/2003
ATO ID 2003/220	Capital Allowances: first element of cost (no amount paid) - amalgamation of incorporated associations - 4/4/2003
ATO ID 2003/221	Capital Allowances: first element of cost (increase in liability) - amalgamation of incorporated associations - 4/4/2003

ATO ID 2003/224	Capital Allowances: cost of common property depreciating assets held before 6 October 2001 - Australian Capital Territory - 4/4/2003
ATO ID 2003/225	Capital Allowances: cost of common property depreciating assets held after 6 October 2001 - Australian Capital Territory - 4/4/2003
ATO ID 2003/226	Capital Allowances: balancing adjustment event for common property depreciating assets - Australian Capital Territory - 4/4/2003
ATO ID 2003/227	Capital Allowances: termination value of common property depreciating assets - Australian Capital Territory - 4/4/2003
ATO ID 2003/228	Capital Allowances: holder of common property depreciating assets - Australian Capital Territory - 4/4/2003
ATO ID 2003/234	Capital Allowances: Primary Production - Depreciating Assets - Water Facilities - 11.04.2003

(12) Other

ATO ID 2003/157	Remote area housing: reduction of taxable value - remote area housing loan interest - 28/3/2003
ATO ID 2003/158	Remote area housing: reduction of taxable value - residential property and employee's mortgage loan repayments - 28/3/2003
ATO ID 2003/159	Remote area housing: reduction of taxable value - remote area housing rent - 28/3/2003
ATO ID 2003/160	Remote area housing: reduction of taxable value - residential property and employee's purchase consideration - 28/3/2003
ATO ID 2003/173	Gifts or contributions of money made by an executor under the terms of a will - 28/3/2003
ATO ID 2003/182	Foreign Earnings - value for rent free accommodation provided in New Zealand - 28/3/2003
ATO ID 2003/203	Part IVA and disposal of trading stock where an election is made - 4/4/2003
ATO ID 2003/204	Assessability of a lump sum payment received under a mortgage protection policy. - 4/4/2003

ATO Releases

ATO ID 2003/237	Commercial Debt Forgiveness: Allocation of lump sum consideration where multiple debts forgiven - 11.04.2003
ATO ID 2003/201	Penalty tax and voluntary disclosure – 4/4/2003
ATO ID	Commercial debt forgiveness:

2003/239	consideration – property applied by debtor - 11.04.2003
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(f) Practice Statements & Taxpayer Alerts

Nil

(g) Fact Sheets

Nil

(h) Other Publications & Updates*Source ATO Assist (386538)*<http://www.ato.gov.au/whatsnew.asp?placement=>**(1) Deductions**

28 Mar 2003	Business News - Review of wholesalers and distributors with “related party” international dealings. In March 2003, the Tax Office will review SME wholesalers and distributors with related party international dealings.
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(4) PSI

18 Mar 2003	General anti-avoidance rules and how they may apply to a personal services business. This fact sheet contains information on how the general anti-avoidance rules in Part IVA may apply to a personal services business conducted through a company, trust, or partnership.
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(2) ETP's

15 Mar 2003	Eligible termination payment—a guide for tax agents on procedures for eligible termination payments. This guide is for tax agents and other intermediaries. It explains the eligible termination payment cash payment and roll-over process under the Income Tax laws. NAT 2733.
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(5) PAYG

27 Mar 2003	Reason codes for PAYG instalment variations. Provides access to the list of reason codes which have to be supplied when varying PAYG instalments on an activity statement.
26 Mar 2003	PAYG instalment variations - reason codes. This list provides the reason codes that must be supplied when varying a PAYG instalment on an activity statement.

(3) BAS

19 Mar 2003	Activity Statement Clients - Failure To Lodge Penalty. Important information about failure to lodge penalty for tax agents with activity statement clients.
28 Mar 2003	Error in the collation of quarter 3 (March) activity statements. Information for tax agents regarding system error for March 2003 monthly and quarterly activity statements.

May 2003

(6) Clubs

19 Mar 2003	Non-Profit News Service No. 0027 - Consideration for supplying club memberships Mar 2003. GST and monetary and non-monetary consideration for a supply of membership.
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(7) Bulletins

27 Mar 2003	Employee Benefit Trust Scheme: not tax effective. The Tax Office has welcomed the Federal Court decision in <i>Kajewski v Commissioner of Taxation</i> which held that an employee benefit trust scheme was not tax effective.
25 Mar 2003	TA 2003/2 - Investment into Foreign Life Insurance Policies This Alert is about borrowing money to invest in a life insurance policy from a tax haven based life insurance company and seeking to earn tax-free income outside Australia on the investment and claiming deductions for interest paid on the borrowings.
25 Mar 2003	Tax haven life insurance policies under scrutiny Investors thinking of purchasing life insurance policies from life insurance companies based in overseas tax havens need to be aware the Tax Office is concerned about the claimed tax effect of these arrangements.
20 Mar 2003	ATO eLink 09/2003 Bulletin to inform tax practitioners of the latest links that have been placed with ATOassist - 19 March 2003.
18 Mar 2003	Superannuation guarantee calculator—working out the minimum level of employer support Superannuation calculator to assist in working out the minimum level of employer support.
15 Mar 2003	List of superannuation brochures A list of superannuation brochures and their NAT numbers.

(8) Minutes

25 Mar 2003	Accounting Working Group Report - 9 December 2002. Minutes for the December 2002 meeting. (Last updated 25/3/03)
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(9) Jobs

25 Mar 2003	Assurance and Planning Team Member, International Strategy and Operations, Large Business and International, APS5 Deliver awareness and capability to ensure that business outcomes are optimised through flexible resource management and operational effectiveness. Sydney, Melbourne or Canberra. Closes 3 April 2003.
25 Mar 2003	Resource Co-ordinator, International Strategy and Operations, Large Business and International, APS5 Contribute to the development and maintenance of general administrative practices within ISO. Sydney, Melbourne or Canberra. Closes 3 April 2003
25 Mar 2003	Business Program Team Member, International Strategy and Operations, Large Business and International, APS5 As part of a team deliver a wide range of administrative and corporate functions, including assisting in the review and maintenance of the ISO sites on ATO Assist and ATO Connect. Sydney, Melbourne or Canberra. Closes 3 April 2003.
21 Mar 2003	Personal Advisor, International Strategy & Operations, Large Business & International, EL2.1 The occupant of this position will work closely with the SAC (and Executive) both as an advisor and assistant, and focussing on coordinating speeches and briefings, and undertaking research and enquiries. Canberra, Sydney or Melbourne. Closes 3 April 2003
21 Mar 2003	Business Manager, International Strategy & Operation, EL2.1 Provide high level support to the Senior Assistant Commissioner in the effective administration of International Strategy & Operations. Canberra or Melbourne. Closes 3 April 2003.
21 Mar 2003	Senior Data Analyst, Business Systems, Large Business & International, EL1 Perform a range of duties that contribute to the achievement of planned ATO, LB&I, and Business Systems outcomes. Parramatta. Closes 10 April 2003

ATO Releases

21 Mar 2003	Manager, Policy Administration, International Strategy & Operations, Large Business & International, EL1 Develop and maintain the general administration practice of ISO, to ensure day to day business is delivered efficiently as possible, using all modern capabilities to achieve operational effectiveness. Sydney, Melbourne or Canberra. Closes 3 April 2003
21 Mar 2003	Business Co-ordinator, International Strategy & Operations, Large Business & International, APS6 As part of a small team, the Business Program Coordinator will undertake work associated with the review and maintenance of international aspect of ATO Assist and ATO Connect. Sydney, Melbourne or Canberra. Closes 3 April 2003.
21 Mar 2003	Policy Administration, International Strategy & Operations, Large Business & International, EL1 Develop and maintain a communication framework that allows ISO to utilise all efficient media to deliver business, skilling, and HR administration and support. Sydney, Melbourne or Canberra. Closes 3 April 2003
20 Mar 2003	Financial Services Industry Group, Large Business & International, Box Hill - Victoria, APS6 Provide high level support to the Segment Leaders in the effective administration of the Financial Services Industry Group. Box Hill, Victoria. Closes 3 April 2003.

(10) Other

28 Mar 2003	Message implementation guidelines - payment variation advice Version 1.0 These guidelines have been developed for superannuation providers, administrators and tax agents lodging a payment variation advice (PVA) statement to reject member's co-contribution or superannuation guarantee allocation payments debit requests.
27 Mar 2003	Tax Help volunteers needed. The Tax Office is calling for more volunteers to help with its annual Tax Help program.
26 Mar 2003	Download the Tax Agents Portfolio. Downloadable version of the entire Tax Agents Portfolio, suitable for viewing if you do not have easy access to the Internet.
19 Mar 2003	SFSS repayment thresholds and rates These are the income thresholds and rates for the compulsory repayment of Financial Supplement debts.
17 Mar 2003	Executive Office Learn more about the executive office within the ATO.

2. GST

2.1 POLITICIANS, BOARDS & STATUTORY AUTHORITIES

Nil

2.2 AUSTRALIAN PARLIAMENT

Source: Australian Parliament House Website (402377)

<http://www.aph.gov.au>

These legislation notes were prepared by Marcus Duckett of Hall & Wilcox, Lawyers. Telephone: 9603 3555.

(a) Acts Which Received Royal Assent

Nil

(b) Awaiting Royal Assent

Nil

(c) Laid Aside or Removed from Notice Paper 2001

Nil

(d) Before Parliament

(1) Taxation Laws Amendment (A Simpler Business Activity Statement) Bill 2002.

Introduced to the House on 11 March 2002.

This Bill proposes to amend the A New Tax System (Goods and Services Tax) Act 1999 No. 55 (Cth) by providing small businesses with an alternative means of calculating tax payable rather than the existing formula found under s17-5 of the Act. It is proposed that taxpayers will be able to elect to use what is called the "ratio method" instead of the existing "net amount" calculation by multiplying the taxpayer's turnover by a ratio determined by the Commissioner of Taxation ("the Commissioner") and printed on the taxpayer's BAS (Business Activity Statement).

(e) Regulations Promulgated

Nil

(f) Notice of Bills to be Introduced to Parliament

Nil

2.3 COURTS & TRIBUNALS

(a) Courts

(1) Challenge to the Validity of the GST Legislation! (O'Meara v C of T)

Source 412711 O'Meara v Commissioner of Taxation [2003] FAC 217 (25 March 2003)

http://www.austlii.edu.au/au/cases/cth/federal_ct/2003/217.html

What was the issue?

Is the GST Act invalid because it contravenes s55 of the Constitution more specifically:

- ◆ is the GST Act a law imposing taxation?
- ◆ does the Imposition Act deal with more than one subject of taxation?

What were the facts

The taxpayer claims that the GST Act is invalid because it contravenes s55 of the Constitution. The taxpayer amended his application at the hearing to include a further claim that the *A New Tax System (Goods and Services Tax Imposition - General) Act 1999 (Cth)* ("the Imposition Act") is also invalid because it contravenes s55 of the Constitution.

What was the background?

Section 55 of the Constitution relevantly provides that:

"Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect."

What was the determination?

(6) The preamble to the Imposition Act describes the Act as follows:

*"An Act to implement a New Tax System by **imposing** the tax **payable** under the GST law, so far as that tax is neither a duty of customs nor a duty of excise."*

(14) The authorities (eg *Re Dymond* (supra) at 19) recognise that there is a distinction between:

- (i) a law imposing taxation;
- (ii) a law dealing with the imposition of taxation; and
- (iii) a law dealing with taxation generally.

A law which prescribes, for example, the persons who are to pay the tax and the classes of income in respect of which they are to be taxed, are not laws which impose taxation, but they are laws dealing with the imposition of taxation "because the specification of the persons who are to be liable to taxation and the definition of their liability is part of the denotation of the term "imposition of taxation". *Re Dymond* (supra) at 20. Laws within classes (i) and (ii) above could be included in the one taxing Act without offending against s 55 of the Constitution. However, "dealing with the imposition of taxation" is a different thing from "dealing with taxation", and the former expression does not mean or include "dealing with matters incidental to the imposition of taxation."

(21) The Court gives weight to the Parliament's understanding that its Tax Act deals with one subject of taxation only. That is because the application of the test involves what is in substance a question of fact or value judgment. The Court should not resolve such a question against the Parliament's understanding with the consequence that the statute is constitutionally invalid unless the answer is clear: *The Second Fringe Benefits Tax Case* (supra) at 344, *Austin v Commonwealth* (supra) at [191].

(24) In the present case, Parliament has according to "common understanding and general conceptions" imposed a tax on a single subject of taxation, namely on final private consumption in Australia. That is one subject of taxation for the purposes of s55 of the Constitution.

(b) Tribunals

Nil

2.4 ATO RELEASES**(a) Taxation Rulings & Draft Rulings**

<http://law.ato.gov.au/atolaw/browse.htm?toc=03:RUL:Taxation>

(1) Payment on Early Termination of a Lease of Goods (GSTR 2003/D2 & GSTR 2003/D2E)

Source: 412757

<http://law.ato.gov.au/atolaw/view.htm?basic=+GSTR%202003/d2&&docid=DGS/GST2003D2/NAT/ATO/00001>

What is the ruling about?

This Ruling considers the goods and services tax (GST) consequences resulting from a payment made on early termination of a lease of goods.

What is the background to the ruling?

This Ruling considers the goods and services tax (GST) consequences resulting from a payment made on early termination of a lease of goods:

- a mutual agreement;
- a default by the lessee; and
- a casualty occurrence.

What is the ruling?

A payment made on early termination of a lease of goods is consideration for a taxable supply where the requirements of section 9-5 of the GST Act are met.

In considering the GST consequences of payments made on early termination, the main issue is whether there is a 'supply for consideration'. This Ruling considers this requirement only.

In determining the GST consequences of a payment made on early termination of a lease, regard needs to be had to the true character of the transaction.

The ruling then examines each of the four scenarios identified at the outset.

(b) Taxation Determinations and Draft Determinations**(1) GST and private use of goods held as trading stock (GSTD 2003/2)**

Source (412771)(GSTD 2003/2) Formerly released as (GSTD 2002/D5)

<http://law.ato.gov.au/atolaw/view.htm?basic=+GSTD%20+2002/D5&&docid=DGD/GSTD2002D5/NAT/ATO/00001>

What issue does the determination consider?

If a partner in a partnership takes goods held as trading stock for the private or domestic use does Division 130 of the GST Act apply?

What are the reasons for the determination?

Goods that are acquired or imported as trading stock, by a partnership carrying on an enterprise, are acquired or imported solely for a creditable purpose - the resale of the stock by the partnership. Trading stock is not considered to be applied while it is awaiting resale by the enterprise.

If goods acquired or imported as trading stock are not applied to any creditable purpose but are instead applied to a private use by the partnership Division 130 will operate in respect of such goods.

If Division 130 operates in respect of goods held as trading stock by a partnership, an increasing adjustment must be made for the amount of the input tax credits to which the partnership was entitled for the acquisition or importation of the goods (taking account of any adjustments for the acquisition or importation).

Division 72 ensures that a supply to an associate without consideration will be a taxable supply if, except for the lack of consideration, the supply would otherwise be taxable.

(c) Interpretative Decisions

Nil

(d) Practice Statements

Nil

(e) Fact Sheets

Nil

(f) Other Publications & Updates

Nil

3. **FBT (See Separate 2003 FBT Annual Update)**

4. STATE TAXES

4.1 POLITICIANS, BOARDS & STATUTORY AUTHORITIES

Nil

4.2 STATE PARLIAMENT

Source: Australian Parliament House Website (411752)

<http://www.aph.gov.au>

These legislation notes were prepared by Gavin Macrae of Hall & Wilcox, Lawyers. Telephone: 9603 3555.

(a) Victoria

(1) Pay-roll Tax (Maternity and Adoption Leave Exemption) Bill 2002 (Vic)

Introduced into the Legislative Assembly and second reading speech 17 October 2002, passed the Legislative Assembly and introduced to the Legislative Council on 27 March 2003.

This Bill makes amendments to the *Pay-roll Tax Act 1971 (Vic)*, to grant a new exemption from pay-roll tax in respect of paid maternity leave and paid adoption leave. From 1 January 2003, employers providing paid maternity or adoption leave are entitled to an exemption for any wages paid to an employee, up to a maximum of 14 weeks maternity leave or adoption leave. The maternity leave exemption is available in respect of leave provided to female employees. The adoption leave exemption is available in respect of leave provided to both female and male employees.

(b) New South Wales

Nil

(c) Queensland

Nil

(d) Western Australia

(1) Business Tax Review (Assessment) Bill 2003

Introduced to the Legislative Assembly 12 March 2003.

This Bill proposes to amend the Land Tax Assessment Act 1976 No. 14 (WA) by amending cl. 9(a) of the Schedule to the Act. This allows an exemption from land tax for a private residential property which is owned by an executor or administrator as trustee, where an individual identified in a will has an equitable interest in the freehold as a life tenant and uses the property as their primary residence. The bill also makes other minor amendments.

(2) Business Tax Review (Taxing) Bill 2003

Introduced to the Legislative Assembly on 12 March 2003

This Bill proposes to simplify and restructure the land tax scale by reducing the number of threshold brackets from 10 to 6. It is anticipated that the revenue lost by the introduction of this measure (approximately \$6 million annually) will be partially offset by the abolition of the land developers' concession. The Bill also seeks to replace the current variable marginal payroll tax rate scale with a single marginal rate of 6.0% above an exemption threshold of \$750,000.

(3) Debits Tax Assessment Act 2002 No. 50 (WA)

Introduced to the Legislative Assembly 5 December 2001, second reading speech Legislative Council 19 June 2002, Royal Assent given on 20 March 2003.

This Act will replace the existing *Debits Tax Assessment Act 1990*. The administrative provisions of the *Debits Tax Assessment Act* have been relocated in the *Taxation Administration Act 2003*. This Act re-enacts the tax specific provisions applicable to debits tax.

(4) Debits Tax Act 2002 No. 49 (WA)

Introduced to the Legislative Assembly 5 December 2001 and second reading speech Legislative Council 19 June 2002, Royal Assent given on 20 March 2003.

This Act will replace the existing *Debits Tax Act 1990*. It combines the *Taxation Administration Act 2001*, the *Debits Tax Assessment Act 2001* and this Act so they can be read as one Act. The commencement date of the Act is specified as the commencement date of the *Taxation Administration Act 2003*.

(5) Land Tax Assessment Act 2002 No.52 (WA)

Introduced to the Legislative Assembly 5 December 2001 and second reading speech Legislative Council 19 June 2002, Royal Assent given on 20 March 2003.

This Act will replace the existing *Land Tax Assessment Act 1976*. The *Land Tax Assessment Act 1976* contains administrative provisions that are to be standardised to conform with other taxation legislation and relocated in the *Taxation Administration Act 2003*.

(6) Land Tax Act 2002 No.51 (WA)

Introduced to the Legislative Assembly 5 December 2001 and second reading speech Legislative Council 19 June 2002, Royal Assent given on 20 March 2003.

This Act will replace the existing *Land Tax Act 1976*. Many of the administrative provisions of the 1976 Act have not been reproduced in this Act. Common administrative provisions that apply to this Act and several other taxation Acts are located in the *Taxation Administration Act 2003*.

(7) Payroll Tax Assessment Act 2002 No.48 (WA)

Introduced to the Legislative Assembly 5 December 2001 and second reading speech Legislative Council 19 June 2002, Royal Assent given on 20 March 2003.

This Act will replace the existing *Payroll Tax Assessment Act 1971*. The 1971 Act is to be repealed by the *Taxation Administration (Consequential Provisions) Bill 2001*.

(8) Payroll Tax Act 2002 No. 47 (WA)

Introduced to the Legislative Assembly 5 December 2001 and second reading speech Legislative Council 19 June 2002, Royal Assent given on 20 March 2003.

This Act replaces the existing *Payroll Tax Act 1971*. The Act is to be repealed due to the large number of consequential changes necessary to amalgamate and standardise the administrative provisions of four taxation statutes in the *Taxation Administration Act*.

(9) Racing and Wagering Western Australia Tax Bill 2003

Introduced to the Legislative Assembly on 13 March 2003.

The purpose of this Act is to impose a tax on the money paid in respect of wagers made through or with the Racing and Wagering Western Australia (RWWA) Authority, set the rate of tax for off-course totalisator wagering at 5 percent of turnover, set the fixed odds race and sports betting turnover tax at two and one half percent respectively.

(10) Stamp Amendment Act 2003 No.2 (WA)

Introduced to the Legislative Assembly 5 December 2001 and second reading speech Legislative Council 28 November 2002, Royal Assent given on 20 March 2003.

The purpose of this Act is to delete the majority of the administration provisions of the *Stamp Act 1921*. In contrast to a number of other Acts in this package, the Act does not repeal the *Stamps Act 1921*.

(11) Taxation Administration Act 2003 No.1 (WA)

Introduced to the Legislative Assembly 5 December 2001 and second reading speech Legislative Council 11 April 2002 and consideration in detail 4 December 2002, Royal Assent given on 20 March 2003.

This Act provides for the administration and enforcement of legislation dealing with state taxation. It seeks to amalgamate and standardise the administrative provisions of the four major trading Acts, namely the *Pay-roll Tax Assessment Act 1971*; *Stamp Act 1921*; *Land Act Assessment Act 1971*; and *Debits Tax Assessment Act 1990*.

(12) Taxation Administration (Consequential Provisions) Act 2002 No. 45 (WA)

Introduced to the Legislative Assembly 5 December 2001 and second reading speech Legislative Council 11 April 2002, Royal Assent given on 20 March 2003.

This Act seeks to repeal six Acts which have been re-written as a consequence of the *Taxation Administration Act*. The Act also seeks to amend a number of Acts as a consequence of the changes to the *Taxation Administration Act*, the re-write of the debits tax, land tax and payroll legislation and amendments to the *Stamps Act*. Finally, the Act seeks to provide transitional and savings provisions to ensure a smooth changeover to the new arrangements proposed as part of this package of Bills.

(13) Unclaimed Money (Superannuation and RSA Providers) Bill 2002 (WA)

Introduced to the Legislative Assembly on 4 December 2002 and second reading speech Legislative Council 4 March 2003.

This Bill proposes to amend the Unclaimed Money Act 1990 No. 31 (WA) in order to clarify that the Act would not apply to "unclaimed money" as referred to in s. 12 or s. 14 of the Superannuation (Unclaimed Money and Lost Members) Act 1999 No. 127 (Cth).

(e) Australian Capital Territory**(1) Revenue Legislation Amendment Act 2002 No.48 (ACT)**

Introduced into the Legislative Assembly and second reading speech 14 November 2002, Royal Assent given on 20 December 2002.

The Act proposes to amend various principal acts, including the *Payroll Tax Act 1987*, *Rates and Land Tax Act 1926* and *First Home Owner Grant Act 2000*.

Payroll Tax Act 1987

The Bill seeks to amend the Act to reflect the Commonwealth's repeal of the requirement for unemployment registration with the Commonwealth Employment Service (CES).

Rates and Land Tax Act 1926

The Bill proposes to enable the determination of fees by a disallowable instrument for the issue of conveyancing certificates and statements of account. These fees are currently imposed by an Administrative Order.

First Home Owner Grant Act 2000

The Bill intends to correct an omission in the Act by precluding a person from receiving a grant if, after 1 July 2000, they have purchased and lived in a property prior to a subsequent acquisition of property for which for which they seek to apply for a grant.

(2) Taxation (Government Business Enterprises) Act 2003 No.12 (ACT)

Introduced to the House on 12 December 2002, Royal Assent given on 27 March 2003.

This Bill proposes to provide for the implementation of the national tax equivalent regime and for the application of Territory taxes to ACT government agencies by implementing the 2001 memorandum of understanding between the ACT, the Commonwealth, the States and the Commissioner of Taxation that imposes a liability to pay Commonwealth income tax equivalents on nominated government entities.

(f) South Australia

Nil

(g) Tasmania

Nil

4.3 COURTS & TRIBUNALS

(a) Courts

(1) A common sense solution! (Porter v Commissioner of State Revenue)

Source(412769) Porter v Chief Commissioner of State Revenue [2003] NSWSC 243 (25 March 2003)

http://www.austlii.edu.au/au/cases/nsw/supreme_ct/2003/243.html

What was the issue?

Could the liquidator of a company be appointed its administrator?

What were the facts?

A small debt owned to State Revenue, remained unpaid and a company was put into liquidation.

The company was able to pay its debts.

What was the decision?

- (2) ...The sensible course is for the assets to be realised, otherwise than on a fire sale basis, for all the creditors to be paid one hundred cents to the dollar and the surplus, after the costs of liquidation/administration, returned to the shareholders, or to the company to continue trading. To do that the company needs to move out of liquidation mode and for a deed of arrangement to be entered into.
- (3) Section 436B of the Corporations Act 2001 provides that the liquidator may appoint an administrator, if he or she thinks that the company is insolvent, or is likely to become insolvent at some future time, and with the leave of the court the liquidator may appoint himself or herself.
- (5) It seems to me that in order for the court to make an order under s 436B there must be evidence from the liquidator as to what his or her thoughts are, that is, that on the material before him, which he or she should refer to, he or she has formed the opinion referred to in s 436B(i).
- (6) In the present case, I will make the order, subject to that affidavit being filed. As I say, it is a very sensible arrangement that the liquidator has in mind.

(b) Tribunals

(1) Is "Nil" Consideration Nominal Consideration? (ISTP Nominees Pty Limited v Chief Commissioner of State Revenue)

Source 412759 ISTP Nominees Pty Limited v Chief Commissioner of State Revenue [2003] NSWSC 34 (7 February 2003)

http://www.austlii.edu.au/au/cases/nsw/supreme_ct/2003/34.html

What was the issue?

Where consideration is specified in a contract to be "nil" is that contractual arrangement made for "nominal consideration".

What were the facts?

After the evidence and submissions were completed (and the decision reserved in March last year), and after considering the relevant legislation, the Judge was of the view that there emerged from that legislation one matter that had been mentioned only fleetingly in the course of the hearing, but that he thought to be of significance to the proper determination of the issues between the parties. Through his associate the Judge wrote to the parties seeking their views.

What was the decision?

The proper course here is to allow what I have called the “nominal consideration” point to be fully agitated. To the extent that it involves a question of statutory interpretation or a question of law, then the parties can make their respective submissions.

4.4 STATE REVENUE OFFICE RELEASES**(a) Taxation Rulings & Draft Rulings**

<http://law.ato.gov.au/atolaw/browse.htm?toc=03:RUL:Taxation>

Nil

(b) Practice Directions

<http://law.ato.gov.au/atolaw/browse.htm?toc=03:Practice%20Statements:2001>

Nil

(c) Other Publications & Updates

Nil

5. SUPERANNUATION, ETP'S & PENSIONS

5.1 POLITICIANS, BOARDS & STATUTORY AUTHORITIES

Nil

5.2 AUSTRALIAN PARLIAMENT

Source: Australian Parliament House Website (411754)

<http://www.aph.gov.au>

These legislation notes were prepared by Marcus Duckett of Hall & Wilcox, Lawyers. Telephone: 9603 3555.

(a) Acts which Received Royal Assent

Nil

(b) Awaiting Royal Assent

Nil

(c) Laid Aside or Removed from Notice Paper 2001

Nil

(d) Before Parliament

(1) Superannuation (Financial Assistance Funding) Levy Amendment Bill 2002

Introduced to the House on 12 December 2002

This Bill proposes to amend the *Superannuation (Financial Assistance Funding) Levy Act 1993 No.79 (Cth)* by reforming the imposition of levies on regulated superannuation funds and approved deposit funds.

(2) Superannuation Guarantee (Administration) Amendment Bill 2002

Introduced to the House on 11 March 2002 as a Private Members Bill by Mark Latham.

This Bill proposes to amend the Superannuation Guarantee (Administration) Act 1992 No. 111 (Cth) by requiring employers to remit superannuation guarantee payments on a quarterly rather than annual basis.

(3) Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 2002

Introduced to the House 21 February 2002 and introduced to the Senate 19 June 2002

This Bill seeks to give greater flexibility to public servant superannuation arrangements and provides options for employees who leave public servant employment to move to private sector as a result of sale or outsourcing. The Bill also provides for retirees who wish to provide increased benefits for their families after their death for the public servant and makes it easier to consolidate their superannuation.

(4) Superannuation (Financial Assistance Funding) Levy Amendment Bill 2002.

Introduced to the House and second reading speech on 12 December 2002.

This Bill proposes to reform the imposition of levies under *the Superannuation (Financial Assistance Funding) Levy Act 1993 No. 79 (Cth)* on regulated superannuation funds and approved deposit funds, for the purposes of recouping financial assistance granted under Part 23 of the *Superannuation Industry (Supervision) Act 1993 No. 78 (Cth)*. In particular, the Bill proposes to simplify the payment of levies by allowing an amount of financial assistance to be recouped in a single levy each financial year rather than multiple levies throughout the financial year.

(5) Superannuation (Government Co-contribution for Low Income Earners) Bill 2002

Introduced to the House on 27 June 2002 and introduced to the Senate on 11 November 2002.

This Bill is intended to introduce a regime whereby the federal Government would be prepared to match qualifying personal superannuation contributions made after 30 June 2002 made by eligible low-income earners. To be eligible for the proposed government co-contributions, a person must: have earned less than \$32,500 for the income year and have filed an income tax return; have made an eligible personal superannuation contribution into a complying superannuation fund or a retirement savings account ("RSA"); have employer-supported superannuation; and be younger than 71 by the end of the relevant income year. The level of the government's co-contribution is capped at \$1000.

(6) Superannuation Industry (Supervision) Amendment Bill 2002

Introduced to the House and second reading speech on 12 December 2002.

This Bill proposes to amend the Superannuation Industry (Supervision) Act 1993 No. 78 (Cth) by making minor amendments to support amendments proposed to the Superannuation (Financial Assistance Funding) Levy Act 1993 No. 79 (Cth).

(7) Superannuation Legislation Amendment Bill 2002

Introduced to the House and second reading speech on 27 June 2002 and introduced to the Senate 11 November 2002.

This Bill will amend various acts as a consequence of the Superannuation (Government Co-contributions for Low Income Earners) Bill 2002.

The Bill will reduce the superannuation surcharge rates by one-tenth of their current level over 3 years.

(8) Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2002

Introduced to the House and second reading speech 27 June 2002.

This Bill proposes to amend the Superannuation Guarantee (Administration) Act 1992 No. 111 (Cth) by introducing a formal process by which employers must allow their employees to make a choice as to which complying superannuation fund, superannuation scheme or retirement savings account they wish to make contributions to. The Bill proposes to introduce penalties for the breach of those choice of fund requirements.

(9) Superannuation Legislation Amendment (Family Law) Bill 2002

Introduced to the House and second reading speech on 12 December 2002.

This Bill proposed to allow for superannuation interest to be apportioned between a couple that intends to file for divorce.

(e) Regulations Promulgated

Nil

5.3 COURTS & TRIBUNALS**(a) Courts**

Nil

(b) Tribunals

Nil

5.4 APRA, ASIC & ATO RELEASES**(a) Taxation Rulings & Draft Rulings**<http://law.ato.gov.au/atolaw/browse.htm?toc=03:RUL:Taxation>

Nil

(b) Determinations & Draft Determinations<http://law.ato.gov.au/atolaw/browse.htm?toc=04:DAB:Determinations:Taxation>

Nil

(c) Interpretative Decisions*Source: (412845)*<http://www.law.ato.gov.au/atolaw/browse.htm?toc=04:ATO%20Interpretative%20Decisions>

ATO ID 2003/193	Capital loss on withdrawal from a superannuation fund – 4/4/2003
ATO ID 2003/194	Deduction for loss on withdrawal from a superannuation fund – 4/4/2003
ATO ID 2003/230	Part IX taxation of superannuation entities: distribution from a related fixed trust to a self managed superannuation fund – 4/4/2003
ATO ID 2003/155	Retirement income entities - Fund investment in unit trust - loan to employer sponsored by the unit trust - 28/3/2003

(d) Practice Statements

Nil

(e) Fact Sheets

Nil

(f) Other Publications & Updates

12 Mar 2003	<p>Superannuation for life—child superannuation accounts</p> <p>From 1 July 2002, superannuation contributions can be made by parents, relatives and friends on behalf of children who are under the age of 18. NAT 7957.</p>
12 Mar 2003	<p>Errors on recent superannuation notices</p> <p>Broadcast sent to tax practitioners on 5 March 2003 advising them of a printing error that occurred in the production of some superannuation payment advices.</p>
08 Mar 2003	<p>SuperUpdate newsletter December 2002</p> <p>This issue includes information on amendments to superannuation regulations, super and divorce, overseas superannuation funds, changes to the PAYG withholding tax table and other superannuation information. NAT 7828</p>
08 Mar 2003	<p>Superannuation fund reporting—summary and checklist</p> <p>The information in this summary and checklist is intended to assist medium sized superannuation funds (those with</p>

	<p>more than 4 members) with their superannuation reporting obligations. NAT 3410</p>
07 Mar 2003	<p>SuperUpdate newsletter March 2003.</p> <p>This issue includes information on the new superannuation website, temporary residents accessing their superannuation, surcharge specifications and the small fund auditor project.</p>
10 Mar 2003	<p>Your superannuation website is changing.</p> <p>We are redesigning our superannuation website www.ato.gov.au/super to make it easier and quicker for you to find the information you need.</p>

6. OTHER IMPOSTS, OFFSETS & REBATES

6.1 POLITICIANS, BOARDS & STATUTORY AUTHORITIES

Nil

6.2 AUSTRALIAN PARLIAMENT

Source: Australian Parliament House Website (419908)

<http://www.aph.gov.au>

This Legislation notes were prepared by Marcus Duckett of Hall & Wilcox, Lawyers. Telephone: 9603 3555.

(a) Acts that Received Royal Assent

Nil

(b) Awaiting Royal Assent

Nil

(c) Laid Aside Or Removed From Notice Paper

Nil

(d) Before Parliament

(1) National Residue Survey (Excise) Levy Amendment Bill 2002

Introduced to the House and second reading speech 12 December 2002.

(2) Tobacco Excise Windfall Recovery (Assessment) Bill 2002

Introduced to the House on 16 September 2002.

This Bill proposes to introduce measures for the assessment of certain monetary windfalls, amounting to tobacco franchise fees that were paid to tobacco wholesalers but not passed on to a State or to the Commonwealth as excise.

(e) Regulations Promulgated

Nil

6.3 COURTS & TRIBUNALS

(a) Courts

(1) Did cancelling a tobacco licence protect the revenue? (Martino and ATO)

*Source (402445) Martino and Australian Taxation Office [2002] AATA 1242 (29 November 2002) S.A. Forgie (Deputy President)**

<http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/cth/aat/2002/1242.html?query=%7e+aata+1242>

What was the issue?

The first main issue centres on s. 39G(1)(f) of the Act and raises three sub-issues:

- the first sub-issue is whether or not Mr Martino is an associate of Mr Giuseppe Martino.
- the second whether Mr Giuseppe Martino is a fit and proper person, and
- the third whether cancellation is necessary to protect the revenue.

Regardless of the outcome of the first main issue, the second main issue is whether cancellation of the licence is necessary for the protection of the revenue.

These notes address only the third of the sub-issues.

What were the facts?

The TCV is a corporate body in which Victorian tobacco producers hold shares. On behalf of those producers, it arranges the sale of tobacco leaf to its customers. Provided producers have the appropriate permission to deliver their tobacco to the TCV, the TCV will accept it and offer it for sale to its customers.

At the relevant time, the TCV:

- had only two customers: Philip Morris Limited and BATA;
- owned a threshing machine and drying facilities; and
- threshed and re-dried tobacco leaf on behalf of Philip Morris Limited and BATA.

On 29 September, 1999, Mr Martino requested the National Director, Tobacco, Excise in the Commissioner's office, to register him under the Act as a producer for the production of tobacco on his farm, certificate of registration as a producer of Tobacco Leaf was issued to Mr Martino on 29 October, 1999. It was expressed to remain in force until cancelled.

On 11 April, 2000, Mr Martino's brother, Mr Giuseppe Antonio Martino:

- visited the farm.
- had previously been a tobacco farmer but was no longer engaged in the industry, and
- had no input into the manner in which Mr Martino operated his tobacco farm,
- had previously bought 2½ bales of tobacco from another man for \$500 per bale.

The man from whom he had purchased tobacco had given him cutting equipment used to process tobacco leaf and the name of a man in Albury who might be interested in buying the tobacco leaf once Mr Giuseppe Martino had cut the bales into one kilogramme lots.

The proceeds of the sale were expected to be in the order of \$2,500 and so net Mr Giuseppe Martino a profit of \$1,250. Trading in tobacco in this way is known as "chop chop" trade.

On 5 July, 2001, officers from the ATO visited Mr and Mrs Martino at their farm advised Mr Martino them that the ATO had rated producers according to their risk to the tax revenue and that they had been rated as a high risk due to Mr Martino's recent conviction and the farm's yield of 664 kilogrammes per acre being a low yield when compared with the Victorian average.

Decision

After considering all of the evidence and the legislation the Tribunal found that (Mr Franecso Martino) is not a fit and proper person within the meaning of s. 39G(f)(i) of the Act and that it continued on to consider the third issue in the following terms. That is not an end of the matter for I must now consider whether the Collector was entitled to suspend the licences under s. 39G and, if so, to cancel it. I will take first whether the Collector was entitled to suspend the licences. Even though I have found that Mr Martino is an associate of a person who is not a fit and proper person, a decision must not be made to suspend his producer licence unless it is necessary to do so to protect the revenue. The expression "protect the revenue" is not defined in the Act and I am not aware of any authorities that have considered it. The word "revenue" has been considered in *Stephens v Abrahams* (1902) 27 VLR 753 by Hodges J in the context of an appeal against a conviction for, in essence, presenting a false document with intent to defraud the revenue contrary to the Customs Act 1901 ("Customs Act").

Is suspension necessary to protect the revenue in this case? I will look first to the protection of the revenue that may be derived in the form of excise duty if Mr Martino were to sell tobacco on the domestic market. The TCV sells tobacco on behalf of Victorian producers but it has only Philip Morris Limited and BATA as its customers. On the basis of the evidence of Mr Edgerley and Mr Weston, I am satisfied that neither BATA nor Philip Morris will purchase tobacco from Mr Martino and have refused on the basis that they do not purchase tobacco from any producer who has been involved in the illegal sale of tobacco. They would not be moved from that position. The TCV does not purchase tobacco. I have no evidence that there is any other purchaser of tobacco grown in Victoria. In the absence of a sale of his tobacco, it will not be possible to realise the excise duty that could be expected upon its entry for home consumption.

Even though there is no market in Australia for Mr Martino's tobacco, is there an export market for it?

On the basis of his evidence, I find that Mr Martino has not yet found an overseas market for any tobacco that may be grown on his property.

Taking (all of) these matters into account, I am not satisfied that there is a market outside Australia for Mr Martino's tobacco. There may be a market but its existence is dependent upon Mr Martino's being able to get his crop to it in an appropriate condition. I am not satisfied that he has worked out how that can be achieved.

As there is no market in Australia or overseas, I am satisfied that suspension of his licence is necessary for the protection of the revenue. In the absence of a market, there is a continuing need to supervise the crop by the Commissioner. The continued storage of tobacco for which there is no market increases the risk that it will find its way to the illicit tobacco market. The revenue is penalised in that excise duty is not recovered from its sale. While Mr Martino carries the major responsibility for its safekeeping under the Act, there is no evidence that he has the means to meet the amount of excise duty that would be payable were he to fail to keep the goods safely or were he unable to account for those goods when requested by the Collector to do so under s. 60 of the Act. As the amount of excise duty stands at \$265.34 per kilogramme, the amount would be substantial and, in the normal course of events, is not an amount that a grower ever contemplates having to pay. Taking these matters into account, I am satisfied that suspension of Mr Martino's licence is necessary for the protection of the revenue.

(2) Transformer or Adaptor? (Distribution Group Pty Ltd v C of T)

Source 412709 Distribution Group Pty Ltd v C of T [2003] FCA 252 (26 March 2003)

http://www.austlii.edu.au/au/cases/cth/federal_ct/2003/252.html

What was the issue?

Is a 240v-12v transformer an adaptor?

Is the transformer or adaptor part of:

- a fixed electrical installation?;
- used in connection with a fixed installation?

What were the facts?

The ATCO device:

- transforms electrical current sourced from the 240 volt mains supply system in Australia in order to supply that current to an extra low voltage 12 volt halogen light (domestic downlights).

- has a flat underside which enables it to be affixed to the area in the ceiling above the halogen light to which it is supplying electricity or to merely rest on its own weight in that area and the light fitting is then able to be clamped or otherwise affixed to the ceiling.
- is plugged into a socket outlet in the 240 voltage mains supply system, which is part of the fixed electrical installations in consumers' premises, by a flexible lead cord with a two pin plug which plugs into the outlet.
- transforms electrical current sourced from the 240 volt mains supply system in Australia in order to supply that current to an extra low voltage 12 volt halogen light.

What was the decision?

- (13) If the ATCO devices are properly characterised as adaptors, rather than transformers, it may be of little significance whether they gain their exemption under Item 43(1) as electrical accessories that are not exempted by Item 43(2), or as adaptors that fall within subitem 43(3)(a). Nonetheless, it is appropriate to first consider whether the ATCO device is a device that is part of a fixed electrical installation and is governed by Items 43(1) and (2), or is used in connection with such an installation and is therefore governed by Item 43(3)
- (15) ...It appears to be common ground that the 240 volt mains supply system in consumers' premises is, or is part of, a fixed electrical installation. AS/NZS 3000 at 1.4.43 states that an electrical installation usually commences at the point of supply and finishes at a point (in wiring) but does not include portable or stationary electrical equipment connected by plug and socket outlets.
- (16) ...The device is portable and when used may rest on its own weight or be affixed. The above matters make it appropriate to state in ordinary parlance that the ATCO device is an item of a kind that is ordinarily used in connection with a fixed electrical installation, being the 240 volt power supply system. It is inappropriate to characterise the device as "part of" that fixed electrical installation.
- (18) ... It follows that the sales tax exemption of the ATCO devices depends on whether they are adaptors for the purposes of Item 43(3).
- (24) Mr Collins identified six technically important functions of the ATCO devices which he claimed were essential for their safe and reliable operation in connection with 12 volt halogen lighting.
- (28) The features described by Mr Collins and, in particular, the overcurrent protection and the adaptation to optimum lamp operation, make the device suitable for use in connection with halogen light fittings. While the primary function of the device is that of a safety isolating transformer it also incorporates other significant features that ensure its suitability for use in connection with halogen light fittings. Thus, the device does far more than merely transform 240 volt current to 12 volt current (or more precisely to 11.4 volt current).
- (29) In my view the features described above, cumulatively, result in the ATCO devices being properly characterised as "adaptors" in the ordinary usage sense described in Dick Smith Electronics.
- (32) In view of the above conclusions it is unnecessary to decide whether the device also falls within subitem 43(3)(c) as an electrical safety device for the protection of persons. However, I doubt that a device falls within that subitem merely because it incorporates some safety features. The inherently dangerous nature of electric current will inevitably require that devices using that current incorporate some safety features. The fact that those features exist does not have the consequence that the device is therefore to be characterised as an "electrical safety device", if safety is not a purpose of the device: cf Telstra Corporation at 569, 572, 587-589.

(b) Tribunals

Nil

6.4 ATO RELEASES

(a) Taxation Rulings & Draft Rulings

<http://law.ato.gov.au/atolaw/browse.htm?toc=03:RUL:Taxation>

Nil

ATO Releases

(b) Determinations & Draft Determinations

<http://law.ato.gov.au/atolaw/browse.htm?toc=04:DAB:Determinations:Taxation>

Nil

ATO ID 2003/244	Diesel fuel rebate scheme: recovery of feldspar - 11.04.2003
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(c) Interpretative Decisions

Source (412849)

<http://law.ato.gov.au/atolaw/browse.htm?toc=02:ATO%20Interpretative%20Decisions>

(1) Baby Bonus

ATO ID 2003/196	Baby Bonus: legally responsible 4 April 2003 – 4/4/2003
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(3) Medical

ATO ID 2003/171	Medical expenses: tax offset - the cost of transporting an artificial limb for repairs - 28/3/2003
ATO ID 2003/211	Private Health Insurance Tax Offset: taxpayer not living in Australia – 4/4/2003

(2) Fuel

ATO ID 2003/241	Diesel fuel rebate scheme: Eligible activity - vessels as residential premises - 11.04.2003
ATO ID 2003/242	Diesel fuel rebate scheme: Eligible activity - 'at' residential premises - 11.04.2003
ATO ID 2003/243	Diesel fuel rebate scheme: electricity generation for power to a vessel - 11.04.2003

(4) Pension

ATO ID 2003/154	Assessability of Veterans' Affairs pension paid to a Thai resident - 28/3/2003
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(d) Practice Statements

Nil

(e) Fact Sheets

Nil

(f) Other Publications & Updates

Source ATO Website (412848)

<http://www.ato.gov.au/whatsnew.asp?placement=>

(1) HECS

18 Mar 2003	Higher Education Contribution Scheme (HECS) repayment thresholds and rates These are the income thresholds and rates for the compulsory repayment of HECS debts.
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(2) Other

20 Mar 2003 Superannuation member contributions statement —version 6.1	This booklet replaces version 5.0 & 6.0 and contains information to assist in completing and lodging a Superannuation member contributions statement (MCS) on electronic media to the Tax Office. It is to be used for MCS lodgments from 1 July 2003.
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Appeals as at 3 April 2003 ***Source: Federal Court Website(402382)**http://www.fedcourt.gov.au/courtlists/lists_appeal.htm

These appeal notes were prepared by Marcus Duckett of Hall & Wilcox, Lawyers. Telephone: 9603 3555

- (1) **Ambulance Service of NSW v Deputy C of T [2002] FCA 1023**
Topic: FBT
Filed: N930/02, 06/09/2002
Status: Judgment Reserved
Next listing date: N/A
- (2) **Baxter v C of T [2002] FCA 1256**
Topic: Taxation
Filed: N1200/02, 13/11/2002
Status: Hearing
Next listing date: 22/05/2003
- (3) **C of T v La Rosa [2002] FCA 1036**
Topic: Income Tax
Filed: W267/02, 10/09/2002
Status: Judgment Reserved
Next listing date: 04/03/2003
- (4) **C of T v Pratt Holdings Pty Ltd [2003] FCA 6**
Topic: Taxation
Filed: V64/03, V65/03, 12/02/2003
Status: Full Court Callover
Next listing date: 23/04/2003
- (5) **Cooke v C of T [2002] FCA 1315**
Topic: Taxation
Filed: N1230/02, 19/11/2002
Status: Settling Index and Appeal Papers
Next listing date: 16/04/2003
- (6) **Dexcam Australia Pty Limited (in liquidation) v Deputy C of T [2002] FCA 820**
Topic: Taxation
Filed: V460/02, 18/07/2002
Status: Judgment reserved
Next listing date: N/A
- (7) **Electricity Supply Industry Superannuation (Qld) Ltd v Deputy C of T [2002] FCA 1274**
Topic: Taxation
Filed: Q172/02, 07/11/2002
Status: Hearing
Next listing date: 13/05/2003
- (8) **Electricity Supply Industry Superannuation (Qld) Ltd v Deputy C of T [2002] FCA 1417**
Topic: Taxation
Filed: Q189/02, 11/12/2002
Status: Orders – 12/02/2002
Next listing date: N/A
- (9) **Energy Resources of Australia Ltd v C of T [2003] FCA 26**
Topic: Taxation
Filed: N137/02, 18/02/2003
Status: Full Court Callover
Next listing date: 30/04/2003
- (10) **Hart v C of T [2002] FCA 1559**
Topic: Income Tax
Filed: Q199/02, 20/12/2002
Status: Hearing
Next listing date: 12/05/2003
- (11) **Linter Textiles Australia Limited (in liquidation) v C of T [2002] FCA 1089**
Topic: Income Tax
Filed: N1017/02, 27/09/2002
Status: Judgment Reserved
Next listing date: N/A
- (12) **Lui v C of T [2003] FCA 124**
Topic: Administrative Appeals Tribunal
Filed: N330/03
Status: Full Court Callover
Next listing date: 30/04/2003
- (13) **Prebble v C of T [2002] FCA 1434**
Topic: Income Tax
Filed: Q190/02, Q192/02, 13/12/2002
Status: Hearing
Next listing date: 14/05/2003
- (14) **Puzey v C of T [2002] FCA 1615**
Topic: Income Tax
Filed: W30/03 and W31/03, 04/02/2003
Status: Hearing
Next listing date: 26/05/2003
- (15) **Spassked Pty Ltd v C of T (No 5) [2003] FCA 84**
Topic: Income Tax
Filed: N194/03, N195/03, N196/03, 6/03/2003
Status: Full Court Callover
Next listing date: 30/04/2003
- (16) **Stone v C of T [2002] FCA 1492**
Topic: Taxation
Filed: N1371/02, 18/12/2002
Status: Hearing
Next listing date: 23/05/2003
- (17) **Sun Alliance Investments Pty Ltd (in liq) v C of T [2003] FCA 75**
Topic: Taxation
Filed: N184/03, N193/03, 04/03/2003, 06/03/2003
Status: Full Court Callover
Next listing date: 15/04/2003
- (18) **Trustees of the Indigenous Barristers' Trust v C of T [2002] FCA 1474**
Topic: Taxation
Filed: N1378/02, 19/12/2002
Status: Hearing
Next listing date: 19/05/2003

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