



The April 2011 MTUN

~ tax education for the thinking tax professional

The MTUN can be stored on your server for distribution throughout your firm.

Each summary contains a direct link to the underlying source document.

Links to electronic resources

Taxmap™ resources

Legislation enacted

Bills in Parliament

MTUN Archive

Full Court Appeals

HCA Special Leave

BENCHMARKING REJECTED

Last week a number of the Commissioner's benchmarks were withdrawn. The reason given was technical issues. All of us suspect the reason offered amounts to "spin".

Too many clients have made similar comments for the Commissioner to be comfortable denying that there is a problem. Client comments have the same common theme:

- too many ATO officers lack understanding of what benchmarks represent;
- not enough ATO officers involved in benchmark audits have adequate training in the use of benchmarks and lack any understanding of their obligations under the Taxpayer's Charter;
- on occasions ATO officers have deceived agents with requests to include a client in a survey but then proceeded to undertake audit activity;
- on at least one occasion an ATO officer, having agreed to a meeting with the client and his agent, at 0830 attended the client's business at 0805 and had left by 0825 having interviewed the client without the agent being present;
- some ATO officers involved in benchmark audits act in a manner reminiscent of [Inspector Cyril Blake from the British Comedy "On the Buses"](#).

Gen Y can use Google or Wikipedia for a description of the Inspector's character.

ATTACKING BENCHMARKS

We will never know the impact of our March 2011 comments addressing the use of benchmarks (See March 2011 MTUN) in which we pointed out that the issue is not

with the benchmarks themselves but rather the manner in which the ATO was using the benchmarks. Typically the ATO officer assumes the agent has something to hide.

95% of agents (approximately 35,000 registered agents) represent 23,000 people who operate outside benchmarks. On average that is a little over one person per agent.

Why should the same benchmark apply, as it does according to one ATO auditor, to a Subway franchise, a fish and chip shop and a pizza restaurant?

Many of those outside the benchmarks are in that position because the relevant industry codes are out of date and inaccurate.

For the 5% of agents representing 23,000 businesses operating outside benchmarks a different approach, but still one that complies with the Charter, might be warranted.

Why won't the ATO identify the percentage of agents who no clients outside the benchmarks. It is time ATO officers engaged in benchmark audits extended basic courtesies to the agents. That cause would be helped if the ATO's focus changed ever so slightly.

The old road signage "Slow cars keep left" was never effective. The replacement signage is much more effective.

TABLE of CONTENTS

1- Income Tax	3
100 Politicians, Boards & Statutory Authorities	3
1. Providing Certainty for Trusts [Shorten]	3

2	Tax [except GST] Forum in October to Build on Reform Agenda [Swan]	3	(a) Courts	25
3	Government Accepts Resource Tax Recommendations [Swan & Ferguson]	3	1. ** Did the Tribunal have jurisdiction to review the Commissioner's non decision? (C of T v Administrative Appeals Tribunals)	25
4	Tax Office Implementing Inspector-General's Recommendations [Shorten]	4	(b) Tribunals	26
5	Tax Deductibility - Japan Earthquake and Tsunami [Shorten]	4	1. ** Excess contributions – a comedy of errors (The Taxpayer and C of T)	26
6	Australians Can Now Donate Directly to the Christchurch Earthquake Appeal [Shorten]	4	6- Other Imposts, Offsets & Rebates	28
7	More super spin – 8.4 Million Australians to Benefit from More Super [Shorten]	5	200 Courts & Tribunals	28
	200 Courts & Tribunals	5	(b) Tribunals	28
	(a) Courts	5	1. ** Did the taxpayer keep the required records for the fuel rebate? (O'Brien and C of T)	28
	1. ** Was the Commonwealth bank involved a scheme to obtain an imputation benefit? (Mills v C of T)	5	7- Listed ATO Publications for the MONTH	31
	(b) Tribunals	8	100 ATO Publications that you can rely upon	31
	1. ** Conversion of bonuses to shares led to assessable income but no Part IVA issues (Sent and C of T)	8	(b) TD Series - including TD Series in draft form	31
	(c) Practice and Procedure	10	(c) Product Rulings	31
	1. Reinstatement of company (DC of T v ASIC)	10	(d) Class Rulings	31
	2. (Brandon v C of T)	10	(e) Taxpayer Alerts	31
	2- GST 13		(f) Practice Statements	31
	200 Courts & Tribunals	13	200 Addenda & Errata & Withdrawals to documents intended to be relied upon	32
	(a) Courts	13	(a) Addenda	32
	1. ** Single supply of multiple things each with different GST characteristics (C of T v Luxottica Retail Australia)	13	(c) Withdrawals	32
	(b) Tribunals	16	300 ATO Publications that you are not entitled to rely upon	32
	1. ** "going concern" issues and pre 17 March 2008 Margin Scheme issues (Cyonara Snowfox and C of T)	16	(b) ATO ID's	33
	2. ** What is a fair and reasonable Division 129 adjustment method? (A Taxpayer and C of T)	21	400 Addenda & Errata & Withdrawals to documents not intended to be relied upon	33
	3- FBT ~ update material is accessed on line through taxmap™	23	(c) Withdrawals	33
	4- State Taxes ~ update material is accessed on line through taxmap™	24	(d) Decision Impact Statements	34
	5- Superannuation, ETP's & Pensions	25	8- Legislation - update material is accessed on line through taxmap™	35
	200 Courts & Tribunals	25	9- Appeals to the Full Court of the Federal Court - update material is accessed on line through taxmap™	35

1- Income Tax

100 Politicians, Boards & Statutory Authorities

1. Providing Certainty for Trusts [Shorten]

Source: Month 03-2011-81 ~ 1-1 – Providing Certainty for Trusts (Shorten), Media Release No. 040, 4 March 2011

In his [speech](#) to the 26th annual Taxation Institute of Australia's National Convention, Assistant Treasurer Bill Shorten announced the Government will adopt two recommendations to clarify the tax law for over 600,000 trusts in Australia.

The Government has released a discussion paper for public consultation about two recommendations from the Board of Taxation that addresses two key areas of uncertainty for trusts:

- ◆ Better align the concept of 'income of the trust estate' with 'net income of the trust estate'
- ◆ Enable the streaming of capital gains and franked distributions.

The changes will apply for the 2010-11 and later income years.

The Government is aware that these interim changes will not resolve all of the issues with the current operation of the trust income tax provisions as highlighted by the High Court's decision in *Commissioner of Taxation v Bamford*. However, the Government understands there is urgent need for certainty on the key issues recommended by the Board.

Following this, a further round of public consultation on exposure draft legislation and associated explanatory materials will be released as soon as possible. It is expected that legislation will be introduced into the winter sittings of Parliament.

Editor: A submission was lodged with Treasury addressing certain aspects of the proposal. That submission is able to be downloaded at www.taxmatrix.com.au/trustsub.asp. Our submission focused on the impact on accounting practices of aspects of the proposal.

2 Tax [except GST] Forum in October to Build on Reform Agenda [Swan]

Source: Month 03-2011-83 ~ 1-1 – Tax Forum in October to Build on Reform Agenda (Swan), Media Release No. 020, 20 March 2011

Over two days in October, the Gillard Government looks forward to hosting approximately 150 representatives of community groups, businesses, unions, and governments, as well as academics and tax practitioners, at a forum to discuss ways to build on our ambitious tax reform agenda.

The Tax Forum will be held at Parliament House in Canberra on Tuesday October 4 and Wednesday October 5. More details will be announced and invitations will be issued in the coming months, and I'll also release a discussion paper in the middle of the year to help foster the debate.

We've made it very clear there are parts of the AFTS Review we won't be implementing, and that we won't increase the GST, but we still expect and welcome a broad and constructive discussion.

Enquiries in relation to the Tax Forum can be directed to taxforum@treasury.gov.au.

Editor: A Clayton's Forum.

3 Government Accepts Resource Tax Recommendations [Swan & Ferguson]

Source: Month 03-2011-86 ~ 1-1 – Government Accepts Resource Tax Recommendations (Swan & Ferguson), Media Release No. 024, 24 March 2011

The Government accepted all 98 recommendations of the Policy Transition Group (PTG) including:

- ◆ the 94 recommendations relating to Australia's new resource taxation arrangements;
- ◆ 4 recommendations relating to promoting exploration.

The Government:

- ◆ supports the recommendation that all current and future royalties be credited, and that all levels of government should ensure the taxation of Australia's resources preserves our international competitiveness;
- ◆ agrees with the PTG that the Mineral Resource Rent Tax is a more efficient way to provide Australians with a return on their mineral wealth and that it shouldn't give a green light to the states to increase their royalties.
- ◆ will consider advice provided beyond the terms of reference to amend the Petroleum Resource Rent Tax legislation as fiscal circumstances permit, aspect of the report that was not consistent with the requirement for recommendations to be revenue neutral.

The resource tax recommendations will have no net impact on the Budget over the forward estimates.

4. Tax Office Implementing Inspector-General's Recommendations [Shorten]

Source: [Month 03-2011-84 ~ 1-1 – Tax Office Implementing Inspector-General's Recommendations \(Shorten\), Media Release No. 042, 21 March 2011](#)

The Tax Office previously agreed to implement (either in part or in whole) 41 of the 45 recommendations made in the six Inspector-General reports this review analysed. In this latest report, the Inspector-General acknowledges the Tax Office has implemented or made significant progress towards implementing 38 of the 41 agreed recommendations.

The Inspector-General notes the Tax Office's progress represents a positive outcome.

The report, which also contains the Tax Office's response, is available at www.igt.gov.au.

5. Tax Deductibility - Japan Earthquake and Tsunami [Shorten]

Source: [Month 03-2011-82 ~ 1-1 – Declaration of a Disaster for the Purpose of Tax Deductibility - Japan Earthquake and Tsunami \(Shorten\), Media Release No. 041, 14 March 2011](#)

The Assistant Treasurer, the Hon Bill Shorten MP, declared that the earthquake and tsunami that hit North-Eastern Japan on 11 March 2011 a disaster for tax purposes.

This declaration allows Australian taxpayers to claim an income tax deduction for donations made to the relief effort.

Funds still need to apply to the Australian Taxation Office (ATO) for formal endorsement, and the ATO has established a fast track process for this purpose.

Donations to funds are tax deductible for a period of two years from 11 March 2011. Taxpayers should ensure that they retain a receipt for their donation.

Further information on establishing a developed country disaster relief fund is available at the ATO website www.ato.gov.au/nonprofit.

6. Australians Can Now Donate Directly to the Christchurch Earthquake Appeal [Shorten]

Source: [Month 03-2011-85 ~ 1-1 – Australians Can Now Donate Directly to the Christchurch Earthquake Appeal \(Shorten\), Media Release No. 043, 22 March 2011](#)

Australians can make tax deductible donations of \$2 or more directly to the New Zealand Government's Christchurch Earthquake Appeal.

7. More super spin – 8.4 Million Australians to Benefit from More Super [Shorten]

Source: Month 03-2011-87 ~ 5-1 – 8.4 Million Australians to Benefit from More Super (Shorten), Media Release No. 44, 24 March 2011

Assistant Treasurer and Minister for Financial Services and Superannuation, Bill Shorten, said "The Government's Stronger, Fairer, Simpler reforms, announced on 2 May 2010, will deliver substantial improvements in retirement savings and a fairer distribution of taxation concessions, ensuring more Australians can enjoy a comfortable retirement."

The Government will also contribute to the super savings of low income earners from 1 July 2012.

More information on the Government's superannuation reforms is available at www.futuretax.gov.au.

200 Courts & Tribunals

(a) Courts

1. ** Was the Commonwealth bank involved a scheme to obtain an imputation benefit? (Mills v C of T)

Source: Month 03-2011-38 ~ 1-2(a) – Mills v C of T [2011] FCA 205 (11 March 2011), Emmett J

What is the issue?

Was a purpose of the Commonwealth Bank of Australia (the Bank), not being an incidental purpose, in issuing certain securities (the Relevant Securities), to enable holders of the Relevant Securities to obtain an imputation benefit.

Was the Commissioner's determination properly made?

What was the outcome?

The Court found that:

- ◆ after examining all ten relevant factors that overall they pointed towards the bank having a purpose of enabling holders of Relevant Securities, such as the Taxpayer, to obtain an imputation benefit;
- ◆ the Commissioner's determination was properly made.

What was the decision?

THE STATUTORY PROVISIONS IN QUESTION

- 2 Section 177EA, which is in Part IVA of the 1936 Act, deals with the creation of franking debits and the cancellation of franking credits. Section 177EA applies if five prerequisites are satisfied. The first four prerequisites may be summarised relevantly as follows:
 - (a) There is a scheme for a disposition of membership interests in a corporate tax entity.
 - (b) A frankable distribution has been paid to a person in respect of the membership interests.
 - (c) The distribution was a franked distribution.
 - (d) The person (the relevant taxpayer) would, but for the operation of s 177EA, receive imputation benefits as a result of the distribution.
3. Under s 177EA(14), a scheme for the disposition of membership interests includes a scheme that involves issuing the membership interests. It is common ground that:
 - ~ the Bank is a corporate tax entity for the purpose of s 177EA;
 - ~ the Relevant Securities are membership interests in the Bank;
 - ~ the Bank issued Relevant Securities to the applicant, Mr Andrew Mills (the Taxpayer);
 - ~ a frankable distribution has been made to the Taxpayer in respect of those Relevant Securities;
 - ~ that distribution was a franked distribution; and
 - ~ but for the operation of s 177EA, the Taxpayer would receive imputation benefits as a result of the distribution.

Accordingly, the first four prerequisites have been satisfied. The principal question in the proceeding is whether the fifth prerequisite has been satisfied.

4. The fifth prerequisite is as follows:
 - (e) *Having regard to the relevant circumstances of the scheme, it would be concluded that one of the persons who entered into or carried out the scheme did so for a purpose (whether or not the dominant purpose, but not including an incidental purpose) of enabling the relevant taxpayer to obtain an imputation benefit.*

Under s 177EA(1), relevant circumstances of a scheme include the ten matters referred to in s 177EA(17)(a) to s 177EA(17)(i) and the eight matters referred to in s 177D(b)(i) to s 177D(b)(viii), which is also in Part IVA of the 1936 Act. It will be necessary to examine each of these matters in detail below.
5. Where s 177EA applies, the Commissioner of Taxation (the Commissioner) may, under s 177EA(5), make either of the following determinations:
 - (a) if the corporate tax entity is a party to the scheme, a determination that a franking debit of the entity arises in respect of each distribution made to the relevant taxpayer, or
 - (b) a determination that no imputation benefit is to arise in respect of a distribution that is made to the relevant taxpayer.
18. The Commissioner made a determination, in accordance with s 177EA(5)(b), that no imputation benefit was to arise in respect of the distribution made to the Taxpayer. The second question in the proceeding is whether, if s 177EA(3)(e) was satisfied, the Commissioner properly made the determination under s 177EA(5)(b).

THE RELEVANT SECURITIES

- 19 The Taxpayer subscribed for Relevant Securities in accordance with the Terms of an offer made in a prospectus issued by the Bank and dated 7 September 2009 (the Prospectus). It is necessary to describe the Relevant Securities in more detail, and to refer to relevant parts of the Prospectus.
20. The Relevant Securities are described in the Prospectus as Perpetual Exchangeable Resalable Listed Securities. They consist of:
 - ~ An unsecured subordinated note issued by the New Zealand branch of the Bank (the Notes), and
 - ~ A preference share issued by the Bank (the Preference Shares).

The Notes and the Preference Shares cannot normally be traded separately, and so are described as stapled.

- 21 The Prospectus begins with a number of important notices, including a reference to restrictions on foreign jurisdictions, which is repeated in the body of the Prospectus. That notice states that the offer made by the Prospectus was available to persons receiving the Prospectus in Australia, and that the invitation to apply for the Relevant Interests was not extended to investors located or resident outside Australia, other than certain institutional investors at the discretion of the Bank. The offer made by the Prospectus was to three classes as follows:
 - ~ holders of Ordinary Shares in the Bank, or of certain earlier issues of Perpetual Exchangeable Resalable Listed Securities, who are registered with an Australian address;
 - ~ Australian residents who are clients of the broker to the offer; and
 - ~ institutional investors in Australia and in certain overseas jurisdictions.

The notice also states that distribution of the Prospectus in jurisdictions outside Australia may be restricted by law, and that a potential investor in a jurisdiction outside Australia who came into possession of the Prospectus should seek advice on and observe any such restrictions. The offer was to be available to persons within Australia and no action was to be taken to register the Prospectus or otherwise permit a public offering of the Relevant Securities in any jurisdiction outside Australia. The offer was not made to any person in any jurisdiction where the laws of that jurisdiction would require the Prospectus to be registered or other action to be taken by the Bank. Those provisions hold some significance in relation to the relevant circumstances under s 177EA(17).

ROCEDURAL BACKGROUND

- 33 The Prospectus makes reference to the dispute between the Bank and the Commissioner that gives rise to this proceeding. The Prospectus states that the Bank understands that the Commissioner may form the view that the benefits of the franking credits should be denied to holders of Relevant Securities, even if the Bank has franked the relevant distributions and that, if the Commissioner forms that view, the Bank intends to have that view tested in Court. The Prospectus says that the Bank and the Commissioner had agreed to certain arrangements that will ensure that holders of Relevant Securities will not be impacted by that process.

34. The arrangements consist of a deed dated 27 August 2009 between the Bank and the Commissioner (the Compromise Deed). By clause 1(b) of the Compromise Deed, the Commissioner agreed not to make a determination under s 177EA(5)(b) of the 1936 Act in respect of frankable distributions on Relevant Securities that are paid, payable or expected to be payable, to any investor other than the Nominated Investor. The Taxpayer is the Nominated Investor for the purposes of the Compromise Deed. Clause 1 further provided that the Bank would procure that any objection by the Taxpayer against any determination by the Commissioner under s 177EA(5)(b) would be made within 14 days of receipt of the determination and that, within 14 days of receipt of the objection, the Commissioner would either allow or disallow the objection.
35. By clause 2(a) of the Compromise Deed, the parties agreed that, if the Commissioner disallows the objection, the Taxpayer would commence a proceeding under Part IVC of the Administration Act in respect of the objection decision within 14 days of receipt of notice of the objection decision. The parties agreed to do everything in their power to prosecute the litigation expeditiously and to limit disputes about the facts in evidence. By clause 2(a)(3), the Bank agreed to procure that the Taxpayer would not challenge the objection decision on any basis other than that the Commissioner was not entitled to make, or ought not as a matter of discretion to have made, the relevant determination under s 177EA(5)(b).

The Bank's Actual Purpose

- 75 The Taxpayer contends that, because the relevant circumstances for the purpose of s 177EA(3)(e) are said to include the matters set out in s 177EA(17), regard may be had to the actual decision-making processes of the person whose purpose is in question. While he accepts that the purpose of the Bank is to be deduced objectively, in light of the relevant matters, the Taxpayer contends that one of the relevant matters, since s 177EA(17) is not exhaustive, is the actual purpose of the Bank.
- 76 The subjective state of mind of a person is not a matter listed in s 177EA(17) to which regard may be had. Rather, s 177EA(17) requires consideration of a number of matters that, together with other matters, constitute relevant circumstances, regard to which must be had in reaching a conclusion as to the purpose of a person by reference to objective factors. While the relevant circumstances are not limited to the matters enumerated in s 177EA(17), a distinction must be drawn between a person's actual purpose, on the one hand, and the purpose to be imputed from the consideration of the relevant circumstances, on the other. Thus, s 177EA(3)(e) requires a conclusion to be drawn about a person's purpose, which itself involves the question of whether a purpose should be imputed to that person, by reference to the matters specified in s 177EA(17), irrespective of what the actual purpose might have been. Section 177EA, like the balance of Part IVA, is concerned with the imputed purpose, worked out objectively, without regard to the actual or subjective motives of the relevant person.

The Object of Section 177EA

- 80 The explanatory memorandum for the Bill that inserted s 177EA described the provision as a general anti-avoidance provision, which was to target franking credit trading and dividend streaming schemes, where one of the non-incidental purposes of the scheme was to obtain a franking credit benefit.
- 90 The Taxpayer contends that the only non-incidental purpose for which the Relevant Securities were issued by the Bank was to raise Tier 1 capital, in circumstances where the Bank had a need for such capital. ...
- 92 The Commissioner accepts that the raising of Tier 1 capital was a significant purpose of the Bank in issuing the Relevant Securities. However, the Commissioner says, that purpose of the Bank must be put in the right perspective. The cost of achieving that purpose was significantly reduced by the fact that the Notes would be franked, notwithstanding that they were a deductible interest expense for the New Zealand branch of the Bank. The imputation system seeks to avoid double taxation by providing a mechanism for the tax paid by companies to be credited to their resident members.
- 134 Having regard to all the relevant matters and circumstances, some of which do not point towards the relevant purpose, I consider, on balance, that overall they point towards the purpose of enabling holders of Relevant Securities, such as the Taxpayer, to obtain an imputation benefit. That is a basic and fundamentally important aspect of the terms of the Notes. The characteristics of the Relevant Securities are much more like those of debt than of equity. By issuing the Relevant Securities in New Zealand, the Bank was able to achieve the result that it obtained a deduction in New Zealand in respect of the Distributions on the Relevant Securities, but had the advantage, in terms of cost, of offering Australian residents the imputation benefit.

THE COMMISSIONER'S DETERMINATION

- 135 The second question only arises if the relevant purpose is found. For the reasons indicated above, I have concluded that a purpose of the Bank in carrying out the scheme involving the issue of the Relevant Securities, not being merely an incidental purpose, was to enable the holders, including the Taxpayer, to obtain an imputation benefit. Accordingly, it is necessary to consider the determination made by the Commissioner under s 177EA(5).

143. Once the preconditions to the making of a determination under s 177EA(5) are found to exist, the Commissioner may make a determination either under s 177EA(5)(a) or under s 177EA(5)(b) as he sees fit. A taxpayer's remedy, if dissatisfied with that determination, is to show that the preconditions did not exist, namely, in the present case, that the purpose referred to in s 177EA(3)(e) was not present. However, once such a purpose is found, a taxpayer cannot escape the consequences by showing that the Bank had some other purpose that the Commissioner failed to take into account or that the Commissioner failed to take some other consideration, such as the policy of the 1997 Act or the 1936 Act, into account when making a determination.

147 I am not persuaded that there was any error on the part of the Commissioner in choosing to exercise the discretion conferred by s 177EA(5)(b) rather than that conferred by s 177EA(5)(a), once it was established that the prerequisites for the exercise of the discretion under s 177EA(5) had been established. That prerequisite was established once a conclusion was reached that the purpose referred to in s 177EA(3)(e) was present.

(b) Tribunals

1. ** Conversion of bonuses to shares led to assessable income but no Part IVA issues (Sent and C of T)

Source: Month 03-2011-49a ~ 1-2(b) – Sent and C of T [2011] AATA 198 (25 March 2011), Mr Frank O'Loughlin, Senior Member

What is the issue?

The issues are:

- (a) whether the \$11,600,000 payment, or the market value of the Primelife shares, are assessable in the 2002 Year as either:
 - (i) ordinary income, pursuant to s 6-5 of the 1997 Assessment Act; [6] or
 - (ii) statutory income, pursuant to s 6-10 of the 1997 Assessment Act and s 26(e) of the 1936 Assessment Act;
- (b) whether the whole or any part of the \$11,600,000 was a fringe benefit within the FBT Assessment Act and hence was not assessable to the Applicant by reason of s 23L or s 26(e) of the 1936 Assessment Act;
- (c) whether Part IVA of the 1936 Assessment Act applies to include any part of the \$11,600,000 in the Applicant's assessable income in the 2002 Year;
- (d) whether any administrative penalty remains a liability; and if so, which penalty and whether 50% is the appropriate level; and
- (e) whether any remaining administrative penalty ought be remitted. What was the outcome?

What were the facts?

In November 2001 the taxpayer's employment arrangements were changed:

- ◆ His accrued, emerging and future bonus entitlements were extinguished; and
- ◆ Primelife, his employer, paid \$11,600,000 to the Trust in December 2001 to buy 5 million Primelife shares.

In two, alternate, assessments the Commissioner assessed the \$11,600,000 as taxable income:

- ◆ the primary assessment assessed the \$11,600,000 as either income derived or assessable statutory income;
- ◆ the secondary assessment gave effect to a determination made pursuant to Part IVA of the 1936 Assessment Act and cancelled a tax benefit of the same amount.

THE COMPETING CONTENTIONS

10. The Commissioner contends that:

- (a) the \$11,600,000 payment is assessable pursuant to either ss 6-5(1) or 6-5(4) of the 1997 Assessment Act;
- (b) alternatively, the \$11,600,000 payment is assessable pursuant to s 26(e) of the 1936 Assessment Act and s 6-10(3) of the 1997 Assessment Act;
- (c) alternatively, the market value of 5 million Primelife ordinary shares is assessable on the same footing as (a) and (b) above;
- (d) s 23L does not apply to render any income derived by the Applicant exempt income;

- (e) alternatively, Part IVA of the 1936 Assessment Act applies so as to include \$11,600,000 or the market value of 5 million Primelife ordinary shares in the Applicant's assessable income;
 - (f) each of the penalties assessed remains an outstanding imposition and each of the penalties was correctly assessed at the 50% level; and
 - (g) there ought not be any remission.
11. The Applicant contends to the contrary.

What was the decision?

14. Shortly before 1 July 1998 the Applicant and Primelife entered into the Employment Agreement, pursuant to which the Applicant was:
- (a) engaged as the Managing Director and Chief Executive Officer of Primelife for a five-year term commencing on 1 July 1998; and
 - (b) entitled to:
 - (i) a base salary of \$300,000;
 - (ii) an annual bonus of up to \$300,000; and
 - (iii) three additional bonuses, calculated by reference to Primelife's accounting profit for each financial year ending 30 June from 1999 to 2003, less any losses in those years.
 - (A) The first additional bonus was to be calculated by reference to Primelife's financial performance for the three financial years to 30 June 2001.
 - (B) The second additional bonus was to be calculated by reference to Primelife's financial performance for the four years to 30 June 2002, with the amount calculated reduced by the first additional bonus.
 - (C) The third additional bonus was to be calculated by reference to Primelife's financial performance for the five years to 30 June 2003, with the amount calculated reduced by the first and second additional bonuses.
15. The structure of the additional bonus arrangements provided a claw back of entitlements to bonuses that had not fallen due for payment and of bonuses that had been paid.
16. On 1 October 2000 the Applicant and Primelife recorded an earlier agreement made in July 1999 to vary the Employment Agreement. Upon the variation becoming effective, the Applicant's:
- (a) base salary was increased to \$600,000 per annum; and
 - (b) entitlement to payment of the annual bonuses was terminated.
17. For the three years to 30 June 2001 the Applicant had accrued and accruing bonuses of \$7,246,572.
18. One third of these bonuses (\$2,415,524) was said to be due and payable and the remaining two thirds (\$4,831,048) were subject to final calculation after the close of the 2002 and 2003 Years and were subject to reduction if Primelife sustained losses in those Years.
19. The Primelife Board of Directors perceived a lack of understanding and criticism of the Applicant's bonus arrangements and transactions between Primelife and parties connected to the Applicant by financial and investment markets.
20. In 2001 Primelife had liquidity difficulties and paying the Applicant's bonus entitlements in cash would have exacerbated those difficulties.
21. Discharging the Applicant's bonus entitlements by way of a share issue would have been problematic for the Applicant and Primelife. Whether it had any basis for the assumption, Primelife assumed that the Applicant would have been forced to sell a significant proportion of the shares to fund his income tax liability. Primelife did not want to have a large parcel of shares coming on to the market, with the inevitable effect on the share price. Nor did it want its managing director and CEO being seen to be selling shares for similar reasons.
22. While the Applicant claimed to have been unable to meet any tax liability without selling a substantial part of the proposed share issue, he did not lead any evidence in support of that claim. Self-serving statements of this kind are to be tested closely, and received with the greatest caution. In circumstances where supporting evidence of personal financial capacity would be expected to be within the knowledge and/or possession of the Applicant, and that evidence is not led, the conclusion to be reached is that there is insufficient evidence to find that there was such an inability.

CONCLUSIONS

118. For the foregoing reasons:

- (a) \$7,246,572 of the \$11,600,000 payment was properly assessable in the 2002 Year as either:
 - (i) ordinary income, pursuant to s 6-5 of the 1997 Assessment Act; or
 - (ii) statutory income, pursuant to s 6-10 of the 1997 Assessment Act and s 26(e) of the 1936 Assessment Act;
 and questions of the exemptions in ss 23L and 26(e) do not arise;
- (b) the remaining \$4,353,428 of the \$11,600,000 payment was not assessable;
- (c) Part IVA of the 1936 Assessment Act does not apply to include any part of the \$11,600,000 in the Applicant's assessable income in the 2002 Year;
- (d) neither imposition of administrative penalty has been remitted by the Commissioner and penalty is properly assessed at the 25% level for failure to adopt a reasonably arguable position by reference to the reduced tax shortfall amount in respect of the \$7,246,572 part of the \$11,600,000 payment; and
- (e) no further remission is appropriate in the circumstances.

DECISION

119. The Tribunal sets aside the objection decisions and directs that assessments be amended in accordance with these reasons.

(c) Practice and Procedure

1. Reinstatement of company (DC of T v ASIC)

[Source: Month 03-2011-37 ~ 1-2\(a\) – DC of T v ASIC, in the matter of Anttila Enterprises Pty Ltd \[2011\] FCA 203 \(9 March 2011\)](#)

What is the issue?

Was it just to reinstate a deregistered company?

What was the outcome?

The Commissioner sought orders that:

- ◆ ASIC reinstate Anttila Enterprises Pty Ltd (**Anttila**) as a registered company under the provisions of the [Corporations Act 2001](#) (Cth) (**CA**);
- ◆ a liquidator be appointed to Anttila; and
- ◆ the Commissioner's costs be paid out of the assets of Anttila.

The Court reinstated the company and made orders the terms sought by the Commissioner

2. (Brandon v C of T)

[Source: Month 03-2011-49 ~ 1-2\(a\) – Brandon v C of T \[2011\] FCA 264 \(24 March 2011\), Besanko J](#)

What is the issue?

Was the Commissioner entitled to have the taxpayer's appeal against an adverse Tribunal decision struck out?

What was the decision?

10 The [Commissioner]'s contention is simple and straightforward. It contends that the [Taxpayer] cannot succeed unless he establishes that he transported his DP1 from his home to the army base. That is a question of fact and the [Commissioner] submits that the Tribunal decided that question of fact against the [Taxpayer]. In other words, the Tribunal found that the [Taxpayer] did not transport his DP1 from his home to the army base. The [Commissioner] contends that there is no error of law in relation to the finding of fact and that none is alleged by the [Taxpayer]. The [Commissioner] submits that in those circumstances the existing notice of appeal should be struck out.

20. The Tribunal accepted the [Taxpayer]'s submission that he could succeed either by bringing himself within the respondent's binding public taxation ruling TR 95/17 or within the relevant expense deductibility provisions in the ITAA 1997, in particular, s 8-1(1)(a).
21. The Tribunal also accepted the [Taxpayer]'s submission that the relevant paragraphs of TR 95/17 (that is, paragraphs 24, 229 and 230) contained three requirements, viz:
- (1) that the [Taxpayer]'s DP1 was 'bulky';
 - (2) that there was no secure area for the storage of the [Taxpayer]'s DP1; and
 - (3) that the [Taxpayer]'s motor vehicle expenses were attributed to the transportation of bulky equipment, rather than to private transport between home and work.³⁴ The existing notice of appeal is discursive and argumentative and it quotes from the evidence given to the Tribunal. In so far as any particular matter is identified as a ground of complaint it appears to be a question of fact not a question of law. Furthermore, it contains serious allegations of blackmail and the harassment of witnesses. Counsel for the [Taxpayer] said that the [Taxpayer] did not seek to pursue those particular allegations.
40. In the context of considering whether the [Taxpayer]'s claim fell within the TR 95/17 the Tribunal appears to make a clear finding that the [Taxpayer] did not transport his DP1 daily to Woodside Barracks and Steele Barracks or at least that it could not be satisfied that he did. However, when it comes to consider deductibility under the ITAA 1997 it does not mention this finding, which as I understand it, would have been an answer to that claim. Clearly, the Tribunal is entitled to consider all arguments and it may be that all the Tribunal was doing was considering the arguments on the assumption that its factual finding was wrong. That may be the ultimate conclusion reached by the Court but I do not think it is sufficiently clear at this stage. I should mention in this context that my hesitation in embracing the [Commissioner]'s submission is supported by the fact that at one point in its reasons the Tribunal states that there is no need to decide whether the storage at the Woodside Barracks was secure and at another point it states that it was secure (see [23] and [31] above).

CONCLUSION

43. I will make an order striking out the existing notice of appeal. I will grant leave to the [Taxpayer] to amend his notice of appeal in the form of the proposed Amended Notice of Appeal dated 7 December 2010.

2- GST

200 Courts & Tribunals

(a) Courts

1. ** Single supply of multiple things each with different GST characteristics (C of T v Luxottica Retail Australia)

Source: Commissioner of Taxation v Luxottica Retail Australia Pty Ltd [2011] FCAFC 20 (23 February 2011), Ryan, Stone and Jagot JJ

What is the issue?

How is the price of the supply of a pair of prescription spectacles to be apportioned between the taxable supply and the GST fee supply?

What was the outcome?

The Court concluded that:

- ◆ a single supply was made comprising components with different tax characteristics;
- ◆ how a promotion is structured is a matter for the commercial judgment of the seller;
- ◆ in the present case it has clearly been decided that the discount offered should be applied to the price of the frames rather than the lenses.

What were the facts?

The Taxpayer is registered for GST and is the representative member of a GST group formed with its ten subsidiaries.

The companies in the group are retailers of spectacles, and operate under trading names including OPSM, Laubman & Pank, Kays Optical and Sunglass Hut.

The GST group members supplied spectacles, which in each case comprised prescription lenses fitted into frames for glasses and sunglasses. ...

During promotions spectacle frames were offered at a discount from the normal selling price (and the discounts offered took various forms), but on condition that the customers acquired not only the frames but also lenses for those frames (that is, an entire pair of spectacles).

The discount offered in respect of the frames was sometimes a percentage of up to 50 percent off the normal selling price of the frames and sometimes a specific monetary amount.

No discount was offered for the lenses.

What was held out to a customer who wished to take advantage of one of these promotions was that:

- ◆ the frame was being sold to the customer at a discount;
- ◆ the lenses were sold without any discount;
- ◆ the price of the complete pair of spectacles was the aggregate of these two amounts as there was no additional charge for fitting the lenses into the frame.

What is the impact of the decision on your firm's practices?

The Court came to the conclusion that s 9-80 recognises that a single supply may be comprised of components that are classified differently for GST purposes; the sale of spectacles is just such a case. Where the classification for GST purposes includes a taxable supply it will be necessary to ascertain the apportionment by the time the tax invoice is delivered.

What was the decision?

One supply or two supplies?

13. An initial question is whether the sale of spectacles (comprising a frame with the lenses fitted) is a single supply (as the Commissioner contends) or two supplies, being a supply of the frame and a supply of the lenses. The Tribunal at [34] had this to say:
- We are inclined to the view that the [Taxpayer] made one supply, which could perhaps be described as a pair of spectacles, comprising two components, the frame and a pair of lenses. That seems to us to be the more commonsense outcome, and one which sits more comfortably with the “practical business tax” approach to GST which has been favoured by the Federal Court: Sterling Guardian Pty Limited v Commissioner of Taxation [2005] FCA 1166; (2005) 220 ALR 550 and Saga provide but two examples of this approach. The alternative characterisation of the transaction as two supplies – a frame, on the one hand, and a pair of lenses, on the other – must necessarily require there to be a third supply (although one without consideration), being the service of fitting the lenses to the frame. Why a commonplace transaction such as this would need to be disaggregated in this way is not readily apparent.*
14. Despite finding that the sale of spectacles was a single supply the Tribunal observed that this was not a particularly critical issue and that “the same result would be reached on the alternative scenario involving two supplies, and valuation under s 9-75”.
15. We agree with the Tribunal that the sale of the spectacles was a single supply. While “Supply” is defined broadly, it nevertheless invites a commonsense, practical approach to characterisation. An automobile has many parts which are fitted together to make a single vehicle. Although, for instance, the motor, or indeed the tyres, might be purchased separately there can be little doubt that the sale of the completed vehicle is a single supply. Like a motor vehicle, spectacles are customarily bought as a completed article and in such circumstances are treated as such by the purchaser. The fact that either the frame or the lenses may be purchased separately is not to the point. Similarly the fact that one component, the lenses, is GST-free or that one component is subject to a discount, does not alter the characterisation.
16. In providing for the valuation of an actual supply that is “partly a taxable supply” and “partly a supply that is GST-free ...” s 9-80 recognises that a single supply may be comprised of components that are classified differently for GST purposes; the sale of spectacles is just such a case. For that distinction to be meaningful the amount of GST payable in respect of that supply (actual supply) must reflect the proportion that the taxable component bears to the whole of the supply.
17. Section 9-80(2) addresses the problem of determining the amount of GST payable in respect of the actual supply. The section requires one to determine first, the value of the taxable supply that is incorporated in the actual supply (taxable value), second, the proportion of the value of the actual supply that the taxable value represents (Proportion), and third, the value of the actual supply by applying the formula in s 9-80. The amount of GST is then to be determined in accordance with s 9-70. 37. The value of a thing (including a supply) is generally a matter of fact not of law. Where a statutory method of calculating the value is prescribed, as in s 9-75 or s 9-80, then it would be an error of law for the Tribunal to determine value other than in accordance with that method. For reasons given above an element of the formula in s 9-80, the proportion, must be determined by the decision maker taking into account the relevant circumstances of the particular case. In doing so the decision maker must reach a conclusion as to value and the relationship it has to the price of the supply in question.
18. Section 9-80(2) addresses the problem of determining the amount of GST payable in respect of the actual supply. The section requires one to determine first, the value of the taxable supply that is incorporated in the actual supply (taxable value), second, the proportion of the value of the actual supply that the taxable value represents (Proportion), and third, the value of the actual supply by applying the formula in s 9-80. The amount of GST is then to be determined in accordance with s 9-70.
19. As both parties recognised, the difficulty with the equation in s 9-80 is that it uses the concept of the “value of the actual supply” on both sides of the equation. It is this value that the formula is designed to yield. However, to determine the Proportion one needs to know the value of the actual supply. Prima facie, the equation is circular and therefore not solvable. The Commissioner submitted that the difficulty, apparent when the section is read in isolation, is overcome if the section is read contextually with subsection (1) and in the light of the history of the enactment.
20. The problem that s 9-80 is designed to solve is tolerably clear. It is necessary to ascertain the value of a taxable supply in order to calculate the GST payable in respect of that supply. This is comparatively simple in the case of a pure taxable supply. However, in calculating the value of a bundled supply of taxable and non-taxable supplies (whether GST-free or input taxed) it is necessary to ensure that the non-taxable component of the bundled supply does not contribute to the value. It is for this purpose that the concept of Proportion is utilised.

21. When the GST Act was originally enacted in 1999, s 9-80 did not contain a second subsection and was in the following form:

If a supply (the actual supply) is:

- (a) *partly a taxable supply; and*
 (b) *partly a supply that is GST-free or input taxed;*

the value of the part of the actual supply that is a taxable supply is the proportion of the value of the actual supply (worked out as if it were solely a taxable supply) that the taxable supply represents.

[Underlining added]

24. There is no avoiding the fact that “Proportion” is a mathematical concept referring to the fraction that the relevant component is of the whole, the whole in this case being the value of the actual supply. The equation in s 9-80 contains three elements, the price of the actual supply, the taxable proportion and the value of the actual supply. Given any two of these elements it is straightforward to determine the third but one cannot solve a single equation in two unknowns. In this case both the taxable proportion and the value of the actual supply are unknown. The taxable proportion being a fraction of the value of the actual supply cannot be determined with reference to the value of the actual supply as that element is also unknown. Recasting the equation in s 9-80 illustrates the problem:

If: v = value of the actual supply

t = Taxable proportion

P = price of the actual supply, then:

25. In most cases P will be known, but neither v nor t is known. The equation therefore cannot be solved. It is tempting to think that t (Taxable proportion) is known because it is defined in s 9-80; but the definition only says that it is an unspecified proportion of the value of the actual supply. Once again, the mathematical notation is illuminating. If t is some unknown proportion of v , it may be written:

$t = k \times v$ where $0 \leq k \leq 1$, which gives:

$$v = \frac{P \times 10}{10 + kv}$$

26. Stripping away the verbiage in the Act, this restatement shows that, even after applying the definition of taxable proportion, there remain two unknowns: v and k . This leads one back to the basic problem: one cannot solve an equation in two unknowns. It follows that the formula in s 9-80(2) cannot be made to work. It justifies the Tribunal’s reference to it as “impenetrably circular”.
27. If, however, a value could be ascribed to the proportion then the formula would be comparatively simple to apply. ...
30. As noted above the object of s 9-80 is tolerably clear. It is also not in contention that the GST payable in respect of an actual supply is calculated with reference to the value of that supply. However, that value cannot be determined by application of the formula in s 9-80(2). Similarly the value of the taxable part of the actual supply is, pursuant to s 9-80(1), a proportion of the value of the actual supply.
37. The Indirect Tax Legislation Amendment Act 2000 (Cth), item 4A of Schedule 11 omitted the clause in parentheses (which we have underlined) and, by item 4B added subsection 2. As is pointed out in the Commissioner’s written submissions, the approach of s 9-80, as originally enacted, “was to ‘strip out’ GST from the total consideration for the bundled supply (“price” as defined) in ascertaining the value of the actual supply for GST purposes”. The problem with this approach is that failing to differentiate between the taxable element of the actual supply and the non-taxable element distorts the value.
38. The price of a pair of prescription spectacles is an aggregate of the price of the lenses and the price of the frame and will vary as each component varies. Presumably the price of lenses varies with the complexity of the optical prescription rather than by the choice of the consumer although the Tribunal does not refer to any evidence to this effect. In any event, the evidence before the Tribunal showed that the frames have increasingly become fashion accessories and not just the means of holding lenses in place. They may vary considerably in price and the ultimate cost of the spectacles will depend on the consumer’s choice of frame.
39. Promotions that offer lower prices or greater value subject to conditions are common practice in many, if not every, arena of retail sale. The offer may be “two for the price of one”, or “buy one, get one free”, or, as here, a reduction in the price of the frame on condition that the lenses are purchased at the same time. How a

promotion is structured is a matter for the commercial judgment of the seller. In the present case it has clearly been decided that the discount offered should be applied to the price of the frames rather than the lenses.

40. As Hely J commented in *Kmart Australia Ltd v Commissioner of Taxation of the Commonwealth of Australia* [2001] FCA 1540; (2001) 114 FCR 353 at 357, where that which is to be valued is one of two elements which form an integrated whole, “apportionment must be undertaken as a matter of practical common sense”. Justice Hely’s comment was made in the context of s 45 of the Sales Tax Assessment Act 1992 (Cth) which, as Downes J remarked in *Re Food Supplier and Commissioner of Taxation* [2007] AATA 1550 at [23], is a “not dissimilar section”. The Tribunal here has adopted a similar approach and, in the absence of any other measure of value, regarded value as commensurate with price. It said:

In the context of this case, commonsense dictates that the taxable proportion is to be calculated by dividing the discounted frame price (less GST) by the actual selling price of the complete pair of spectacles (less GST). ... We reject the Commissioner’s submission that the undiscounted frame price (sometimes referred to in the hearing as “yesterday’s price”) has any role to play in the calculation of the taxable proportion. This is because the undiscounted frame price, yesterday’s price, is just that; a price which would have been applicable but for the promotion and it would no doubt be the price if the customer purchased the frame alone. But the customer does not on our example purchase the frame alone and the fact that he could do so is not relevant.

41. We come to this view, as to the method of calculating the taxable proportion, on the basis of the following findings, derived from the unchallenged evidence given on behalf of the [Taxpayer]:
- (a) there are sound commercial reasons for the discounting of frames;
 - (b) there is no commercial imperative for the discounting of lenses;
 - (c) there is nothing contrived or artificial about the pricing methodology adopted by the [Taxpayer] in its promotional arrangements.
42. The Tribunal added that the fact that the discounted price was conditional on the purchase of the lenses “does not undermine the reasonableness of the calculation of the taxable proportion in this way”.
43. The above shows that the Tribunal made a considered decision as to the value of the taxable supply based on findings of fact that it was entitled to make. Any error made by the Tribunal in determining the value would be an error of fact, not of law, and as such does not give rise to a question of law enlivening the jurisdiction of this Court. The Commissioner’s position amounts to a disagreement with the factual basis of the Tribunal’s decision. As a matter of fact the Commissioner would prefer that the price of the frames sold as a separate item be the basis for determining value. There is no error of law in the Tribunal adopting a different approach to this factual question. The Commissioner’s appeal must be dismissed.

(b) Tribunals

1. ** “going concern” issues and pre 17 March 2008 Margin Scheme issues (Cyonara Snowfox and C of T)

[Source: Month 03-2011-32 ~ 2-2\(b\) – Cyonara Snowfox Pty Ltd and C of T \[2011\] AATA 124 \(25 February 2011\), Deputy President PE Hack SC](#)

What is the issue?

When must the choice to apply the pre 17 march 2008 Margin Scheme be made?

Can the choice to apply the in the course of thre review proceedings?

Was the supply of Lot 8 with a leaseback to the vendor arrangement the supply of a going concern?

What was the outcome?

The Tribunal found the vendor did not make a supply of a going concern.

The Tribunal did not explore the impact of the recipient of the supply in respect of which the going concern exemption was sought not being registered for GST at the time of the supply.

What were the facts?

Cyonara Snowfox Pty Ltd (Cyonara) is a property developer.

It fell into dispute with the Commissioner over the proper treatment of GST in respect of certain transactions entered into by it between September 2004 and February 2007.

Cyonaara did not put all of the relevant contracts before the Tribunal.

The various transactions are summarised below.

Property	Purch'r	Purch'r reg'd GST	Contract date	Doc	Purchase price	Paid on Set'ment	GST Paid on Set'ment	Set'ment date	BAS /12	Report GST	Adjustment	Penalty
Lot 1	Handii P/L	Registered at Set'ment	N/A	Set'ment S'ment	1,500,000	1,655,981	150,543.76	16 Sep 04	09/04	No	150,543	50%
Lot 9	Springwood Properties P/L	Registered at Set'ment	N/A	Set'ment S'ment	1,500,000 plus GST later adjusted		150,000	1 Nov 04	11/04	150,000	151,778	Nil
Lot 6*	Norstrom P/L		Jan 06		2,206,611 excl GST					Yes		
Lot 10	Trade Tools Direct P/L.		29 Sep 06	Contract contained 4 GST options	1,075,000 excl GST		107,966.86	31 Oct 06	09/06	No	102.481	50% reduced by 20% remitted by 50%
Lot 8*	Pacific Hwy P/L	First registered 1 Jan 06	18 Oct 05	Contract	3,700,00		"going concern" bit issued a tax invoice on 31 March 2007	7 Dec 05		March 07 on promise of payment	370,299	25% later remitted in full
Lot 202*	Taxpayer		16 Dec 05		3,400,000			23 Dec 05		claimed input tax credits 313,892	(313,892)	

* Subjected to initial Audit

What is the impact of the decision on your firm's practices?

The decision highlights how easy it is to fail to meet the technical requirements of the going concern exemption. Unfortunately the tribunal never considered the impact of the recipient of the supply not being registered for GST at the date of the supply.

What was the decision?

Given that the margin scheme issues related to the margin scheme as it applied to pre 17 March 2008 supplies the summary does not deal with the reasoning in relation to those supplies.

46. Lot 8 was part of a much larger development undertaken by Cyonara adjacent to the Pacific Highway at Springwood. It was one of nine lots within the development. It has an area of 3,894 m². A retail showroom, partitioned into three units, was constructed on Lot 8 in 2003. Cyonara engaged real estate agents to find a lessee of the premises.
47. According to Mr Smits, the premises were first leased "to three different lessees nominated and controlled by Swiss Group of Entities" for a term of seven years commencing on 1 January 2004. Mr Smits says that three leases were executed on or about 5 December 2003. The lessees, according to Mr Smits, entered into possession however "they defaulted entirely upon the monetary covenants included in the leases and were ejected from the premises." There is no evidence that the leases were registered. One only of the three leases has been produced. I have a poorly copied document[9], unstamped and unregistered, which appears to be a lease by Cyonara to Austrubbertech Pty Ltd of "Shop 2/B" within Lot 8 for a term of nine years commencing 1 January 2004. Whilst Mr Smits statement does not refer to this document, referring instead[10] to a creditor's statutory demand (and supporting affidavit of Mr Smits) issued in May 2008 and directed to Austrubbertech, I propose to assume that this is one of the three leases. Mr Smits' affidavit in support of the statutory demand describes the debt in these terms:

“4. The Debtor Company in accordance with the Lease dated 5 December 2003 between the Debtor Company and the Creditor, has unpaid rents, GST and interest due in respect of part of the premises located at 3435 Pacific Highway, Springwood in the State of Queensland, comprised in Lot 8 on SP 131663, Title Reference 50363235, for the period 1 January 2004 to 7 December 2005.”[11]

48. It transpired, according to Mr Smits, that Cyonara was the victim of an elaborate fraud. The Swiss group, he said, was controlled by a fraudster who not only prevailed upon Cyonara to lease the premises but also executed an agreement to purchase Lot 8. The idea was, apparently, that the fraudster would seek to on sell Lot 8 using the leases to evidence a much higher value, and thus sale price, before either Cyonara or the purchaser realised that the leases were worthless. In any event, said Mr Smits, “those people didn’t come in and trade from the premises; it was a scam”[12]. It did not emerge when Mr Smits established that the whole exercise was a fraud or when the tenants were “ejected from the premises”.
49. Mr Smits has produced a valuation undertaken in April 2004 by R.V. Dimond (Properties) Pty Ltd[13] in which this passage appears:

“We are advised that there is an agreement, in principle (copy attached) [[14]], for the property to be leased for a term of seven (7) years, at an initial rental of \$420,000 net per annum, plus GST, with 4% annual rent reviews ...”

It was never made clear to me what use Mr Smits sought to make of the Dimond valuation. A footnote to his submissions suggests that the Dimond valuation corroborates that Lot 8 was leased.

50. Cyonara continued in the search for a lessee of Lot 8. The next attempt at a lease was to Solartech Solutions Pty Ltd whose controlling mind was a Mr Hastings. Mr Smits said that Solartech executed a lease in registerable form for a term of seven years commencing on 1 July 2004 at an initial rent of \$420,000 per annum. Mr Hastings, it was said, executed a guarantee of Solartech’s obligations in favour of Cyonara. Solartech went into possession, and remained in possession until December 2005. It paid no rent whatsoever and nothing was forthcoming from Mr Hastings as guarantor. He apparently became a bankrupt.
51. This lease was not registered and no executed copy has been produced because Mr Smits’ former solicitor has “retained [the lease] unlawfully”. Its existence was said to be verified by an email[15] from that solicitor to a property valuer in which reference is made to the solicitor holding the lease “duly executed by both Lessor & lessee”. The valuation letter subsequently produced by that valuer[16] refers to the firm having been provided with a copy of the Solartech lease, however it is not clear whether that was an executed copy.
52. Solartech was, on any view, a poor tenant, yet Cyonara did little to enforce the obligations which it says were owed to it under the lease. On 30 September 2004 Mr Smits sent an email to Mr Hastings asking that the premises be vacated and all outstanding rent and outgoings be paid. Then in early December 2004 a statutory notice to remedy breach was prepared and “issued” to Solartech. Mr Smits said of this[17]:

“Default Notices, including a Notice to Remedy Breach of Covenant under Section 124 of the Property Law Act 1974 (Qld.), dated 2 December 2004 ... were issued by the applicant to Solartech and I called upon Ross Hastings, the principal of Solartech to vacate the Lot 8 premises and he agreed verbally that Solartech would do so. As a result of those actions, Solartech released possession of the demised premises voluntarily to the applicant by 6 December 2005.”

53. According to Mr Smits, Solartech used the premises to store materials for its business. He was prepared to put up with a defaulting tenant, he said, because he hoped eventually to get some money from Mr Hastings under the guarantee, because having a tenant provided security for the premises and because he had no other tenant.
54. Lot 8 was eventually sold to 3435 Pacific Highway Pty Ltd (in its capacity as trustee) pursuant to a contract of sale bearing the date 18 October 2005. The copy of the contract in evidence[18] shows that the contract was due for completion on 7 December 2005. The contract noted that the sale was of a going concern. That being so, Clause 34.7 of the standard conditions provided as follows:

“If this clause 34.7 applies:

- (a) the Purchase Price does not include any amount for GST;*
- (b) the parties agree the Supply of the Property is a Supply (or part of a Supply) of a Going Concern;*
- (c) the Vendor warrants that:*
 - (i) between the date of the Contract and the Date for Completion the Vendor will carry on the Enterprise; and*

- (ii) *the Property (together with any other things that must be provided by the Vendor to the Purchaser at the Date for Completion under a related agreement for the same Supply) is all of the things necessary for the continued operation of the Enterprise;*
- (d) *the Purchaser warrants that at the Date for Completion it is Registered or Required to be Registered under the GST Act;*
- ...”

Clause 34.7 went on to make provision for the consequences of breach of those warranties. It is unnecessary to have regard to those matters.

55. The contract had special conditions as follows:

- “1. *This contract is subject to and conditional upon the Vendor as Lessee delivering the Lease Annexure A hereto signed by the Lessee and the Guarantor named therein together with a cheque in payment of any stamp duty payable thereon and the unconditional bank guarantee referred to in the Lease to the Purchaser’s Solicitors by not later 5 December 2005.*
2. *The Vendor as Lessee acknowledges that the Purchaser as Lessor is entitled to lease the premises on such terms as she in her absolute discretion sees fit in which circumstance the Vendor as Lessee shall be released from its obligations given by the Lease the Guarantee and the Bank Guarantee in respect of any area so leased on a pro rate basis based on the area leased (and without regard to the income received by the Lessor under such Lease).*

[irrelevant]”

The document which Mr Smits identifies as the lease annexed to the contract of sale is an unexecuted lease between Lyndall Eve Smouha as lessor and Zonebar Pty Ltd as lessee, commencing on 6 December 2005 and expiring on 7 December 2007[19]. Ms Smouha was the controlling mind of 3435 Pacific Highway Pty Ltd. The lease schedule, which formed part of the contract of sale, disclosed a lease to Zonebar Pty Ltd in similar terms.

56. No lease from 3435 Pacific Highway Pty Ltd has been produced and none was ever registered. The Commissioner asked Cyonara to provide an executed copy as long ago as November 2007[20]. Mr Smits said, in his reply of 19 December 2007[21], that he was “trying to get a copy of it sent to [the Commissioner] through the current solicitors for the Lessor.”
57. The draft lease, apparently attached to the contract of sale, contemplated that the lessee (Cyonara) would provide a bank guarantee equal to two years rent plus GST. There is a further document, executed by the parties, including Ms Smouha (as guarantor of the obligations of 3435 Pacific Highway Pty Ltd), and bearing the date 10 November 2005[22]. That document recites the fact of a contract of sale of Lot 8 by Cyonara to 3435 Pacific Highway Pty Ltd dated 18 October 2005 with Ms Smouha guaranteeing the performance of the obligations of 3435 Pacific Highway Pty Ltd. Clause 5 of that document deals with the question of the bank guarantee to be provided by Cyonara. The effect of the clause is that the parties agreed to replace the bank guarantee with an arrangement whereby 3435 Pacific Highway Pty Ltd was irrevocably directed to deduct from the purchase price the sum required for the bank guarantee and to deposit that sum into a bank account in its name. Clause 5.1 recites that special condition 1 of the contract of sale requires the delivery by Cyonara of an unconditional bank guarantee. That is not the content of special condition 1 of the contract in the material before me. That contract, so far as I can tell, contains no requirement for the provision of a bank guarantee; that obligation arises from clause 18 of the draft lease attached to the contract of sale.
58. It is not clear whether clause 5.1 of the 10 November 2005 deed is wrongly worded, whether the contract of sale in evidence is not the operative document or whether there is some other explanation for the inconsistency. It seems not to matter in a particular sense although, in a general sense, it is illustrative of the deficiencies in Cyonara’s evidence. It is the case that the contract was completed, seemingly on 7 December 2005, and a stamped transfer[23] is included within the documents. Also included with the documents is the settlement statement[24] of the conveyance to 3435 Pacific Highway Pty Ltd which shows an amount of \$575,160 deducted from the purchase price as “rental set off account”. That sum was deposited to a bank account in the name of Zonebar[25] and monthly thereafter from January 2006 to December 2007 an amount of \$23,965 is shown as a withdrawal on the bank statements.
65. A critical element of the case for Cyonara is that it leased the premises to Solartech. I am not satisfied that it did so. I appreciate that Mr Smits said that there was a lease and that his evidence was not directly contradicted. But I do not accept his evidence for two reasons. First, and most importantly, the words and

actions of Mr Smits and Cyonara at the time, as demonstrated by contemporaneous documents, are quite inconsistent with the notion that there was a lease in place between 1 July 2004 and 6 December 2005.

66. Additionally, no executed copy of the lease was produced and its absence was not adequately explained.
67. As to the first of these, it is apparent that there were negotiations between Cyonara (by Mr Smits) and Solartech (by Mr Hastings) in the first half of 2004. The material that Cyonara has produced demonstrates quite adequately that there were attempts being made to reach agreement on terms for a contract of sale[31]. It is also apparent that there was an arrangement of some sort between, at least, Mr Smits and Mr Hastings. So much is evident from an email sent on 23 October 2004[32] by the former to the latter. Omitting formal parts (and correcting typographical errors), it reads:

“I urgently need the keys for Lot 8 to go to Jon McLaren at Napier & Blakeley[[33]] ... Please confirm you can do it and when.”

68. The email demonstrates that Mr Hastings had keys to the Lot 8 premises in October 2004. That is consistent with Solartech having possession of the premises, however the language of the email is not, to my mind, the language of lessor to lessee. Had there been a lease on foot in the terms claimed by Mr Smits, Solartech was entitled, fundamentally, to quiet possession. The lease reserved a right of entry to effect works and to view[34] but the inspection contemplated by the email did not come within either of those reservations.
69. In the material is an email from Mr Smits to a prospective tenant dated 23 August 2004[35]. That correspondence asks the prospective tenant,

“Do you want a direct Lease from Zonebar P/L or a Sub-lease from SolarTech [sic]”.

The notion of a sub-lease from Solartech lends support to the notion of a head lease from Cyonara, however the email demonstrates that Mr Smits was apparently of the belief that Cyonara was in a position to lease the entire area without regard to any existing lease.

70. It is also apparent from the material that throughout the period when, on Cyonara’s case, Solartech had a lease of Lot 8, Cyonara, through Mr Smits, was seeking to find other tenants. There is an email from Mr Smits to a Mr Selby dated 30 October 2004[36] in which Mr Smits refers to two entities “negotiating long term leases with me”. And in that same month, Mr Smits gave detailed instructions[37] to a real estate agent for the preparation of a brochure advertising the virtues of Lot 8 as a site available for leasing. The brochure spoke of the building as being “complete and ready for fit-out to the requirements of the client”[38]. It made reference to the uses being made of adjoining premises but said nothing about the occupancy of Solartech, much less any reference to a lease in registerable form for a term of seven years which, on Mr Smits account, was then in existence.

71. In January 2005 Mr Smits emailed another real estate agent saying[39],

“Lot 8 is still available ... Negotiations are in progress with BHP who also want similar area.”

- Further negotiations with other prospective tenants took place in May 2005[40]. In July 2005, at a time when one real estate agent was seeking to show Lot 8 to a prospective tenant, the keys to the premises were held by another real estate agent[41].
72. Finally, I note that in May 2008 Mr Smits said on oath (or affirmation), in his affidavit supporting the creditor’s statutory demand directed to Austrubbertech, that that company was liable to pay rent for part of Lot 8 from 1 January 2004 to 7 December 2005. That latter date was, of course, the date on which Lot 8 was conveyed to 3435 Pacific Highway Pty Ltd. The existence of the liability affirmed or sworn to by Mr Smits is quite inconsistent with the existence of any lease to Solartech from 1 July 2004.

73. The circumstances surrounding the sale of Lot 8 became part of the focus of the Commissioner’s audit in March 2007. The Commissioner’s view that the sale did not satisfy the requirements for a GST free sale were conveyed in a letter dated 16 March 2007[42]. Mr Smits’ reply[43] argued why he had a different view. It included the following:

“Full particulars of the enterprise to be transferred to the Purchaser by the Vendor as an integral, essential and inalienable component of the relevant Supply were set out in the lease Schedule and indeed the actual Lease Agreement was attached to the Sale Contract. In other words, there was a legally enforceable agreement to lease in existence as from 18 October, 2005, being the date of the Sale Contract and it operated as a business transaction from 6 December 2005.”

The reply, as Mr Smits pointed out, was sent without the benefit of advice and it would be wrong to limit Mr Smits to arguments formulated at first blush and I would not seek to do so. However it does seem to me that

Mr Smits might have been expected to have made some reference in this letter to the existence of the Solartech lease had there been such a lease in place from 1 July 2004 to 7 December 2005.

74. It remains the case that no executed copy of a lease to Solartech has been produced. No summons to produce documents was ever sought to be served on the former solicitor or Mr Hastings who might be expected to have a copy of the executed lease. Neither of them was called to give evidence of the fact of execution. Mr Smits may well have had a falling out with his former solicitor but on Cyonara's case the solicitor was, at one time, in possession of an executed copy of that lease. The same is true of the real valuer whose valuation made reference to the lease. There was no suggestion, otherwise, that any of these people were prevented from giving evidence in the proceedings. The absence of all of them tells against there being a lease to Solartech.
75. I have not overlooked the existence of an email in which the former solicitor refers to holding an executed copy of the lease or the reference in the valuation to the lease. But each statement constitutes a hearsay assertion in circumstances where the maker of the statement is not called to give evidence. The existence of this lease has long been in controversy. It would be wrong to use those statements to demonstrate the existence of the lease when Cyonara did not call either author to give evidence.
76. I am then not satisfied of two of the factual elements of the case for Cyonara, that it leased Lot 8 to Solartech in July 2004 and that Solartech occupied Lot 8 as tenant until 6 December 2005 when it surrendered possession.
77. There is, as well, some considerable doubt about the transaction between Cyonara and 3435 Pacific Highway Pty Ltd. There was, undoubtedly, a sale and there was, equally undoubtedly, some arrangement whereby Cyonara paid money on a monthly basis to 3435 Pacific Highway Pty Ltd. But the draft lease attached to the contract of sale shows Ms Smouha as the proposed lessor. If it be assumed, favourably to Cyonara, that there was a contract of sale executed by the parties which attached a draft lease between 3435 Pacific Highway Pty Ltd as lessor and Cyonara as lessee a question arises about the consequences of an agreement to grant and take a lease expressed to take effect on the day prior to completion of the conveyance.
78. I find it impossible to conclude that there could be a valid lease granted from 6 December 2005 and no authority was cited to me for such a proposition. At best for Cyonara, I would have thought that a lease in such terms would operate as a lease commencing from the time when the lessor first became able to grant a lease, that is, when the legal title was conveyed to it.
79. Ultimately, it is not necessary to answer the interesting questions posed by this part of the transaction. That is so, in my view, because Cyonara fails to satisfy each of the requirements for the supply of a going concern. If the enterprise be regarded as being the leasing of Lot 8 (and no other enterprise was suggested), I am not satisfied that Cyonara carried on that enterprise until the day of supply. I am, indeed, not satisfied that it carried on the enterprise of leasing at any time within the period of many months prior to the day of supply. It was, at various times, attempting to obtain a tenant to take a lease but Cyonara did not suggest that the enterprise of leasing could be carried on merely by seeking to obtain a tenant.
80. Additionally, no things necessary for the continued operation of the enterprise were supplied to the purchaser.
81. I am not satisfied that the sale of Lot 8 was a supply of a going concern.

PENALTIES

93. The Commissioner's original decision on penalties has already been noticed[52]. The Commissioner has made a further concession which is that the base penalty amounts imposed for the September 2004 and October 2006 tax periods be reduced by 80% in lieu of the 20% reduction in the original penalty assessment. I did not understand Cyonara to raise any further issue regarding the appropriateness of the penalties following that concession nor did I understand that it contended that further remission of the penalties was warranted.

2 ** What is a fair and reasonable Division 129 adjustment method? (A Taxpayer and C of T)

Source: Month 03-2011-41 ~ 2-2(b) – A Taxpayer and C of T [2011] AATA 160 (10 March 2011), Dr G. Hughes, Member

What is the issue?

What is a fair and reasonable adjustment method for the purposes of Division 129?

What was the outcome?

The Tribunal:

- ◆ did not accept that GST Ruling 2009/4 failed to reflect the intention of Division 129;
- ◆ concluded that GST 2009/4 contains a cogent explanation as to why an apportionment method based on the effective life of the premises is not considered fair and reasonable and adopted the reasoning of the ruling.

What were the facts?

In June 2007 the taxpayer completed the construction of a complex, with the intention of sale on completion, comprising:

- ◆ retail shops;
- ◆ a commercial car park; and
- ◆ residential apartments (and associated car parks).

During construction the taxpayer claimed input tax credits totalling \$4,800,000 in its monthly BAS, most GST payments made to suppliers in respect of construction costs, some reflecting other fees associated with the development.

By February 2008 the taxpayer:

- ◆ had sold the retail shops and commercial car park; and
- ◆ was left holding 92 residential apartments and 32 associated car parks.

In May 2008, the Taxpayer began leasing the apartments while continuing to make them available for sale.

For the tax quarter ended 30 June 2008 (the relevant period), the Taxpayer received rent from the residential apartments of \$455,487 but did not make a GST increasing adjustment to account for the change in creditable purpose.

The Taxpayer:

- ◆ was no longer using the apartments solely for a creditable purpose and was required to make an adjustment under section 129-40 of the GST Act for the tax period ended 30 June 2008;
- ◆ used an apportionment methodology based on effective life.

Following an audit in mid-2009 the Commissioner determined that an adjustment event had occurred in May 2008 when the basis of holding the residential apartments changed from being for a creditable purpose (that is, for sale as new residential premises) to a non-creditable purpose and notified the taxpayer of an increasing adjustment of \$23,271 for the relevant period calculated using the output-based indirect method.

The Taxpayer acknowledged that it was required to make an increasing adjustment and that the issue for determination was the correct basis for apportionment.

What is the impact of the decision on your firm's practices?

The decision:

- ◆ highlights that following the approach in the Ruling is risk free;
- ◆ does not state that the only fair and reasonable method of apportionment is the one set out in the Ruling although the Commissioner's contention was to that effect.

It follows that there is room for other apportionment approaches that are fair and reasonable.

What were the contentions?

The Taxpayer:

- ◆ contended that as the Commissioner accepted that it had incurred the construction costs as being for a wholly creditable purpose at the time they were incurred, this meant, for the purposes of Step 2 of the Method Statement in section 129-40(1) of the GST Act, that the intended or former application of the residential apartments could be said to be 100% for a creditable purpose;
- ◆ argued that its intended application of the residential apartments should be viewed as being for a maximum of 40 years, not indefinitely (by applying the rates from Division 43 which deems buildings to have a life expectancy of 40 years);
- ◆ the actual purpose should be measured on the same basis;
- ◆ the extent to which the Taxpayer applied the residential apartments for a creditable purpose should be measured over the maximum possible use of the residential apartments, or 40 years.
- ◆ the Taxpayer's actual non-creditable use of the residential apartments should be calculated as two months (May and June 2008), or 2 out of a maximum of 480 months;

- ◆ using this calculation as a fair and equitable basis for adjustment, the Taxpayer considered it was entitled to 99.58337% and not 98.4168% of the income tax credits accepted by the Commissioner as being wholly referable to the residential apartments.

The Commissioner contended that what constitutes *fair and reasonable* in the current context is set out in GST Rulings:

- ◆ GSTR 2006/4 acknowledges that a taxpayer may choose its own apportionment method so long as it is *fair and reasonable* in all the circumstances;
- ◆ GSTR 2009/4 expressly states that an apportionment method based on an effective life method is not *fair and reasonable*.

What was the decision?

- 12 The [Taxpayer] calculated the total value of the complex to be \$115,315,000, of which approximately 24.6% represented the residential apartments. On this basis, a further amount of \$83,868, being 24.6% of \$341,560, was added to the amount of \$1,386,004 as being income tax credits relevant to the construction costs of the residential apartments, making a total of \$1,469,872.
13. Applying GST Ruling (GSTR) 2009/4, the [Taxpayer] divided the amount attributable to the residential apartments (\$28,315,000) by the amount of input taxed residential rent (\$455,487) for the period May to 30 June 2008 and determined that a creditable percentage for that period was 98.4168%, meaning that there would be an increasing adjustment amount of \$23,271 for the period, being 1.5832% of \$1,469,872.
14. This calculation was accepted by the [Commissioner]. 16. The essential question became whether the effective life of the apartments in question provided an appropriate methodology to determine a fair and reasonable basis of apportionment.
20. The [Commissioner] referred to *Ronpibon Tin NL & Tong Kah Compound NL v Federal Commissioner of Taxation* [1949] HCA 15; (1949) 78 CLR 47 in which it was held that the words to the extent referred to a need to apportion and that any apportionment methodology must be fair and reasonable.²⁶ The Tribunal does not accept the [Taxpayer]'s contention. Specifically, the Tribunal does not accept that GST Ruling 2009/4 fails to reflect the intention of Division 129 of the GST Act.
25. The [Commissioner] cited paragraphs 128 and 129 of GSTR 2009/4 in support of its contention that the apportionment adopted by the Applicant was unreasonable. It also emphasised that the Applicant assumed that the revenue-based apportionment is based on an indefinite intended application of the residential apartments, with the further assumption that the intended creditable use for the residential apartments could only be for a maximum of 40 years or 480 months. The [Commissioner] rejected this assumption on the basis that the apartments would have reached the end of their life expectancy once the 40 years had passed.²⁷
GST 2009/4 contains a cogent explanation as to why an apportionment method based on the effective life of the premises is not considered fair and reasonable. The Tribunal adopts that reasoning and sees no need to elaborate further.

TRIBUNAL'S DECISION

28. The Tribunal also accepts the [Commissioner]'s contention that the application is misconceived in its assumption that the revenue-based apportionment is based on an indefinite intended application of the residential apartments, and that the intent of a creditable use for the residential apartments could only be for a maximum of 40 years. As the [Commissioner] pointed out, the [Taxpayer]'s revised proposed percentage appears to be based on holding the apartments for sale for 40 years. This is an unreasonable contention, given that the apartments would have reached the end of their life expectancy once the 40 years had passed.

3- [FBT ~ update material is accessed on line through taxmap™](#)

Due to the sporadic nature of FBT developments and practitioner desire that all FBT material for an FBT year be available in one place we now publish FBT material on-line in printable form at Taxmap™.

Publishing on line will also allow us to minimise paper and toner wastage.

4- **State Taxes ~ update material is accessed on line through taxmap™**

Generally practitioners are interested in developments in one state only. Accordingly the State Taxes are now published on line. Publishing on line will also allow us to minimise paper and toner wastage.

5- Superannuation, ETP's & Pensions

200 Courts & Tribunals

(a) Courts

1. ** Did the Tribunal have jurisdiction to review the Commissioner's non decision? (C of T v Administrative Appeals Tribunals)

Source: Month 03-2011-44 ~ 5-2(a) – C of T v Administrative Appeals Tribunal [2011] FCAFC 37 (17 March 2011). Keane CJ, Downes & Gordon JJ

What is the issue?

Was the AAT's conclusion that it did not have jurisdiction to review the Commissioner's decision not to make a determination under s 292-465 correct?

If the AAT did have jurisdiction to review the Commissioner's decision then a further issue was whether the AAT was correct to conclude that the Commissioner's objection decision should be affirmed on the merits/

What was the outcome?

The Court found that the Tribunal did not have right to review the Commissioner's decision.

What were the facts?

On 9 May 2006, the Government announced the abolition of the reasonable benefit limits and age-based deduction rules for contributions;

On 13 June 2006, the Treasurer announced that persons could contribute up to \$450,000 of non-concessional contributions in any three year period and that the cap would apply from 10 May 2006.

On 7 December 2006, the bill for the *Tax Laws Amendment (Simplified Superannuation) Act 2007* (Cth) (the **2007 Superannuation Act**) was introduced into Parliament.

On 14 December 2006, Mr and Mrs McMennemin each contributed \$138,484 to the McMennemin Superannuation Fund (the **Fund**) making:

- ◆ each of them eligible for the maximum age-based deduction of \$105,113, as a concessional contribution under Div 292 of the 1997 Act;
- ◆ the balance of the contribution (\$33,371) was a non-concessional contribution to the Fund.

On 15 March 2007 the 2007 Superannuation Act:

- ◆ came into operation;
- ◆ permitted non-concessional capital contributions to superannuation of up to \$1 million for the period from 10 May 2006 to 1 July 2007: s 292-80 of Pt 3 of Sch 1 to the 2007 Superannuation Act.

On 26 June 2007, Mr and Mrs McMennemin each contributed a further \$1 million to the Fund in addition to the previous contributions of \$138,484 each.

On 16 October 2007, each lodged their income tax return for the 2007 financial year.

The Commissioner:

- ◆ decided that each of them had exceeded the non-concessional contributions cap applicable for the 2007 financial year by \$33,371; and
- ◆ assessed each as liable to pay excess contributions tax (**ECT**) of \$15,517.50.

Mr and Mrs McMennemin both requested the Commissioner under s 292-465:

- ◆ to disregard the excess non-concessional contributions; or
- ◆ allocate the excess non-concessional contributions to another financial year.

The Commissioner decided that:

- ◆ the circumstances were not "special circumstances" within the meaning of s 292-465(3)(a); and

- ◆ making the determinations would not be consistent with the object of Div 292 as required by s 292-465(3)(b).

Mr and Mrs McMennemin objected to the AAT which decided that:

- ◆ decided that it did not have jurisdiction to review the Commissioner's refusal to make a determination under s 292-465;
- ◆ if contrary to its primary conclusion that the Tribunal did have jurisdiction to review that refusal, it would have affirmed the Commissioner's decision on the objection on the merits

What were the contentions?

The Commissioner submitted that it was not and that the AAT did have jurisdiction to review the Commissioner's decision.

What was the decision?

12. This appeal is somewhat unusual in that it is brought by the Commissioner even though the effect of the AAT's decision was to negate the taxpayers' application for review.

Conclusion

56 The question which arises in this appeal depends upon the proper construction of the relevant provisions of Div 292 of the 1997 Act in light of Pt IVC of the TAA. Resolution of that question must begin and end in the text of the statutes: *Spencer v The Commonwealth* (2010) 241 CLR 118 at [50] and the authorities there cited. Reference to decisions about the operation of other differently worded statutory provisions is apt to distract attention from the task at hand.

57 The AAT was correct to conclude that it did not have jurisdiction to review the decision of the Commissioner to refuse to make a determination under s 292-465 of the 1997 Act as part of its review of Mr and Mrs McMennemin's objection decision dated 5 October 2009.

OTHER MATTERS

58 Given the view we have formed that the Tribunal did not have jurisdiction to review the Commissioner's refusal to make a determination under s 292-465 as it stood prior to the 2010 amendments, it is unnecessary to consider:

1. the Commissioner's application for relief against the AAT under ss 39B(1) and 39B(1A)(a) of the *Judiciary Act 1903* (Cth); and
2. whether it was open to the Tribunal to consider the matter on the alternate basis that it did have jurisdiction.

(b) Tribunals

1. ** Excess contributions – a comedy of errors (The Taxpayer and C of T)

[Source: Month 03-2011-43 ~ 5-2\(b\) – The Taxpayer and C of T \[2011\] AATA 168 \(15 March 2011\), Senior Member BJ McCabe](#)

What is the issue?

Should the excess superannuation contributions tax be remitted?

What was the outcome?

The Tribunal found the Commissioner followed the only course open to him in not remitting the penalty but pointed out that other remedies were available to him in relation to any mistakes made by his former accountant.

What is the impact of the decision on your firm's practices?

The facts recited by the Tribunal show the danger of the client saying whatever first comes into their head – every time something comes into their head.

What was the decision?

1. The taxpayer's superannuation fund reported that it had received a non-concessional contribution of greater than \$1 million which had been allocated to the taxpayer's account for the period 10 May 2006 - 30 June 2007. That is a problem, because the rules impose a cap of \$1 million on non-concessional contributions during that period. The Commissioner raised an excess contributions tax assessment on the amount exceeding \$1 million. The taxpayer has objected to that decision.
2. On objection, the taxpayer initially argued the excess contribution was properly characterised as a termination payment that would attract different treatment. ... In written submissions lodged on his behalf, the taxpayer contends the excess amount was incorrectly allocated to him by his former accountant.
3. ... The taxpayer's focus is on how the mistake came to pass, and whether it can be addressed without having to pay the tax.
5. The fund received a contribution in the amount \$1,489,402.31 on 31 July 2006. The fund lodged member contribution statements in respect of the 2007 year of income on 3 March 2008. The statements reported contributions in the amount of \$1,253,100 by the taxpayer. They also reported contributions of \$400,671 on behalf of the other member.
6. The taxpayer's affairs were subsequently audited and the excess contribution was identified as a problem. The Commissioner issued an assessment setting out the additional tax that was payable. The taxpayer lodged an amended return and revised statements from the fund which reduced the amount that had been allocated to the taxpayer's account and increased the amount that had been allocated to the other member - the one who had purported to join the fund on 30 June 2007.
7. In written submissions, the taxpayer argued that it was his intention to have the other member admitted to membership of the fund at the beginning of the 2006-2007 financial year rather than on the last day. He attributed the failure to make the appointment earlier to his then accountant.
9. The contribution in question was received and banked by the fund on 31 July 2006. Sub-regulation 7.08(2) of the *Superannuation Industry (Supervision) Regulations 1994* requires that the contribution be allocated to a member of the fund within 28 days of receipt. (A different time-frame may apply in some circumstances, but there is no suggestion those circumstances exist here.) The taxpayer was the only member of the fund at the time the payment was received by the fund, and he was the only member of the fund when the regulations said the payment had to be allocated. The Commissioner says that is the end of the matter: the whole amount had to be allocated to the taxpayer, and his tax has been assessed accordingly.
11. Even if I accept that the failure to admit the taxpayer's fellow director to membership of the super fund was the product of an unfortunate error in the office of the tax accountant, that error does not change the fact that the taxpayer was the only member of the fund to whom contributions could be allocated at the relevant time. The rules are quite detailed, but they are clear enough. The taxpayer's liability for taxation cannot be judged on the basis of what he should have done; he is liable on the basis of what he (or his agent, which is effectively the same thing at law) actually did do. I am not satisfied the Commissioner (or the Tribunal on review) has the discretion to ignore what occurred and behave as if the taxpayer had behaved differently.

CONCLUSION

12. The taxpayer's written submissions suggest the taxpayer should not be made to pay for an innocent mistake. Sadly for the taxpayer, I do not see how the Commissioner can accept that view. It may be that the taxpayer has other remedies open to him if he has incurred a loss as a result of his agent's failure to follow instructions - but that is a question for others. The objection decision must be affirmed.

6- Other Imposts, Offsets & Rebates

200 Courts & Tribunals

(b) Tribunals

1. ** Did the taxpayer keep the required records for the fuel rebate? (O'Brien and C of T)

Source: Month 03-2011-42 ~ 1-2(b) – O'Brien and C of T [2011] AATA 164 (14 March 2011), Senior Member SE Frost

What is the issue?

Are the Commissioner's assessments excessive?

Did Mr O'Brien:

- ◆ comply with his post-claim record-keeping requirements under the Act;
- ◆ provide sufficient evidence to support his claims.

Should the penalties imposed should be remitted.

What was the outcome?

The Tribunal agreed with the Commissioner that the shortfall amount resulted from a failure to take reasonable care to comply with a taxation law and was not willing to remit part of the 25% penalty.

What were the facts?

The taxpayer produced some of the records to support his claims after the audit commenced.

What is the impact of the decision on your firm's practices?

The record keeping requirements parallel the record keeping requirements in relation to GST. The taxpayer must have the records when lodging the claim.

The failure to retain the records resulted not only in a shortfall but also a 25% penalty.

What was the decision?

9. The problem from the Commissioner's perspective is that the record-keeping requirements in the PGBA Act have not been satisfied. Those requirements are set out in ss 25 to 27 of the PGBA Act. Section 25, headed "No entitlement to grants or benefits unless record-keeping requirements met", provides as follows (emphasis added):

(1) *Despite the provisions of Part 3 and the entitlement Acts:*

- (a) *you are not entitled to a grant or benefit in respect of a particular claim period unless you comply with the pre claim record keeping requirements set out in section 26; and*
- (b) *if you have made a claim for a grant or benefit in respect of a particular claim period—you are not entitled, and are taken never to have been entitled, to the grant or benefit in respect of that claim period unless you have complied with the post claim record keeping requirements set out in section 27.*

(2) *If:*

- (a) *you make a claim for a grant or benefit in respect of a claim period; and*
- (b) *you make a statement in the claim to the effect that you undertake to comply with the post claim record keeping requirements set out in section 27;*

the Commissioner may, for the purposes of making an assessment, assume that you will comply with those requirements. However, if you do not comply with those requirements, the Commissioner may amend your assessment under section 20.

11. Sections 26 and 27 of the PGBA Act then provide relevantly:

26 Pre claim record keeping requirements

- (1) *This section sets out the pre claim record keeping requirements that apply to you in relation to a grant or benefit in respect of a particular claim period.*
- (2) *You must:*
 - (a) *keep records that enable you to substantiate your claim for the grant or benefit; and*
 - (b) *retain those records until you make the claim.*

Note: Section 27 provides that you must continue to retain those records for 5 years after you make the claim.

21. Subsequently, at both the objection stage and following his application to the Tribunal, Mr O'Brien has provided documents supporting his claims to some extent. A thorough review of the documents has resulted in the Commissioner's acceptance of roughly 75% of the FTC amount originally claimed. Mr O'Brien does not assert that the Commissioner's calculation of credits on the documentation provided is wrong, but he says that his entitlement is greater than the Commissioner accepts. Unfortunately for Mr O'Brien, there is no documentation that he can produce that would justify acceptance of any greater amount.
22. Under s 14ZZK of the TAA, Mr O'Brien bears the burden of proving that the assessment is excessive. He has done that to the extent that he has been able to produce documentation since the assessment was made to justify some reduction in the amount assessed. For the Tribunal to reduce the assessments to any greater extent would be an exercise in guesswork with no reliable evidentiary basis to support it. The Tribunal will therefore confirm that the amount to be repaid to the Commissioner is the amount originally assessed, less the total amounts accepted by the Commissioner up to and including those noted in the Commissioner's supplementary submissions dated 2 March 2011.
24. As far as the rate is concerned, I agree with the Commissioner that the shortfall amount resulted from a failure to take reasonable care to comply with a taxation law.
25. The question then becomes whether any or all of the penalty should be remitted under s 298-20 in Schedule 1 to the TAA. That enquiry needs to be undertaken in full recognition of the factual background, ...
26. These fuel benefit and credit schemes are largely self-assessing. Claimants lodge their forms and, as a rule, have their claims paid relatively quickly without the delay that would be caused by a full examination and post-lodgment assessment process. In this process, of course, the Commissioner assumes the truthfulness and accuracy of the information submitted. One of the trade-offs for the relatively pain-free processing of claims is that penalties are imposed on claimants who have made claims lacking the expected level of truthfulness or accuracy.
27. Lack of truthfulness is not a necessary pre-condition to the imposition of the penalty, although it may result in a higher rate of penalty than a case not exhibiting such a shortcoming. Lack of accuracy similarly poses a significant threat to the revenue and that, no doubt, is why it also attracts a penalty.
28. It seems to me that this is very much the type of case that the Parliament would have expected to attract a penalty and not to justify remission.
29. Remission is to be decided on the basis of harshness, having regard to the particular circumstances of the taxpayer (*Dixon v Federal Commissioner of Taxation* [2008] FCAFC 54; (2008) 167 FCR 287). In my view, the result here is no harsher for this taxpayer than could be expected of the penalty provisions, operating in a routine fashion, and as intended by the Parliament.

7- Listed ATO Publications for the MONTHSource: <http://law.ato.gov.au/atolaw/index.htm>**100 ATO Publications that you can rely upon****(b) TD Series - including TD Series in draft form**

TD 2011/D1	Income tax: does it follow merely from the fact that an investment has been made by a trustee that any gain or loss from the investment will be on capital account?
TD 2011/D2	Income tax: can Part IVA of the Income Tax Assessment Act 1936 apply to a scheme designed to convert otherwise assessable interest income into non-assessable non-exempt dividends?
TD 2011/D3	Income tax: capital gains tax: will the Commissioner accept that the shares in a 'no goodwill' incorporated professional practice have a market value of nil when considering the application of subsection 116-30(1) of the Income Tax Assessment Act 1997 to an admission or exit of a practitioner-shareholder from the practice for no consideration?

(c) Product Rulings

PR 2011/6	Income tax: WA Blue Gum Project 2011
PR 2011/5	Income tax: tax consequences of investing in equities using the Macquarie Geared Equities Investment plus (2011 Product Brochure)
PR 2011/4	Income tax: West Coast Hardwood - Resale Offer

(d) Class Rulings

CR 2011/33	Income tax: redemption of units: LinQ Resources Fund
CR 2011/32	Income tax: demerger of Elementos Limited by Orocobre Limited
CR 2011/31	Income tax: scrip for scrip roll-over: exchange of shares in Mosaic Oil N.L. for shares in AGL Energy Limited
CR 2011/30	Income tax: proposed return of capital: OZ Minerals Limited
CR 2011/29	Income tax: Suncorp-Metway Group restructure - employee share scheme - treatment of shares or rights
CR 2011/28	Income tax: demerger of Straits Metals Limited by Straits Resources Limited
CR 2011/27	Income tax: restructure of Spark Infrastructure

(e) Taxpayer Alerts

TA 2011/2	Certain labour hire arrangements utilising a discretionary trust to split income
---------------------------	--

(f) Practice Statements

PS LA 2011/1	ATO's Advance Pricing Arrangement Program To explain the policies and procedures of the Advance Pricing Arrangement Program
PS LA 3434 (draft)	Matters the Commissioner considers when determining whether the Australian Taxation Office (ATO) view of the law should only be applied prospectively

200 Addenda & Errata & Withdrawals to documents intended to be relied upon

(a) Addenda

TD 2007/27A1 - Addendum	Income tax: consolidation: is the cost base of the goodwill referred to in subsection 711-25(2) of the Income Tax Assessment Act 1997 limited to the cost base of goodwill previously identified under subsection 705-35(3) of that Act?
TD 2006/50A1 - Addendum	Income tax: consolidation: losses: when a company that joins an existing MEC group is an eligible tier-1 company, do prior group losses of the head company of that group become subject to the loss utilisation rules in Subdivision 707-C of the Income Tax Assessment Act 1997?
TD 2004/78A1 - Addendum	Income tax: consolidation: do subsections 705-75(1) and 705-80(1) of the Income Tax Assessment Act 1997 apply to any part of an accounting liability for outstanding claims for the purposes of working out step 2 of the allocable cost amount for a joining entity that is a general insurance company?
TD 2004/77A1 - Addendum	Income tax: consolidation: general insurance: are accounting liabilities for unearned premiums adjusted under subsections 705-75(1) and 705-80(1) of the Income Tax Assessment Act 1997 for the purposes of working out the allocable cost amount for a joining entity that is a general insurance company?
TD 2004/71A1 - Addendum	Income tax: consolidation: can section 705-80 of the Income Tax Assessment Act 1997 apply to a liability (or a change in a liability) that is recognised for accounting purposes because of an event that occurred after the joining time that provides new evidence of conditions that existed at the joining time?
TD 2004/70A1 - Addendum	Income tax: consolidation: does the phrase 'is taken into account at a later time' in paragraph 705-80(1)(a) of the Income Tax Assessment Act 1997 require that an accounting liability, or a change in the amount of an accounting liability, of a joining entity that is first recognised after the joining time be examined when determining whether or not section 705-80 of that Act applies?
TD 2004/55A2 - Addendum	Income tax: consolidation tax cost setting rules: step 3 of the allocable cost amount: is the 'retained profits' amount referred to in subsection 705-90(2) of the Income Tax Assessment Act 1997 a cumulative retained profits balance?
TD 2004/4A1 - Addendum	Income tax: Is a dividend paid before 1 July 1987 an unfranked dividend for the purpose of section 705-50 of the Income Tax Assessment Act 1997 ?

(c) Withdrawals

TR 95/23W	Income tax: transfer pricing - procedures for bilateral and unilateral advance pricing arrangements
PR 2009/38 - Withdrawn	Income tax: tax consequences of investing in equities using the Macquarie Geared Equities Investment plus

300 ATO Publications that you are not entitled to rely upon

The ATO publishes documents other than public rulings in which it sets out its view of the law.

The ATO has stated unequivocally that these documents are not intended to be relied upon.

The documents listed in this section of the MTUN are documents recently published by the ATO which are not intended to be relied upon in forming a Reasonably Arguable Position.

(b) ATO ID's

ATO ID 2011/27	Offshore banking units: trading activity
ATO ID 2011/26	Capital gains tax: assignment of renewable energy certificates
ATO ID 2011/25	Capital allowances: immediately deductible expenditure - contractor providing geophysical surveying services to entities in the mining and mineral exploration industries
ATO ID 2011/24	Self managed superannuation fund: waiver of disqualified person status - meaning of 'serious dishonest conduct'
ATO ID 2011/23	Trading stock: natural increase - relevance of survival rates
ATO ID 2011/22	Commercial debt forgiveness: whether the notional value of a debt can be less than its face value if the debtor is solvent
ATO ID 2011/21	Medicare levy surcharge - overseas visitors health insurance policy
ATO ID 2011/20	Goods and Services Tax: financial supply - appointing and directing proxy to vote at a meeting of unit holders in a unit trust
ATO ID 2011/19	Taxation of financial arrangements: interaction between Division 974 of the Income Tax Assessment Act 1997 (ITAA 1997) and the definition of a financial arrangement (equity interest or right or obligation in relation to an equity interest) in Division 230 of the ITAA 1997

400 Addenda & Errata & Withdrawals to documents not intended to be relied upon**(c) Withdrawals**

ATO ID 2007/182 (Withdrawn)	Individual Retirement Accounts and Foreign Investment Fund measures
ATO ID 2007/10 (Withdrawn)	Assessability of foreign income received by an Australian resident performing research in the USA
ATO ID 2006/9 (Withdrawn)	Taxation of income of non-resident performing independent personal services: fixed base - the 1967 UK Agreement
ATO ID 2006/89 (Withdrawn)	Assessability of employment income received by a resident taxpayer working in Fiji
ATO ID 2006/339 (Withdrawn)	Interest deduction on funds borrowed to fund the redemption of redeemable preference shares
ATO ID 2006/326 (Withdrawn)	Assessability of salary and wages received while working as a director of studies and a teacher at an education institution in China
ATO ID 2006/29 (Withdrawn)	Assessability of employment income received by an Australian resident taxpayer while working in Hungary
ATO ID 2006/28 (Withdrawn)	Assessability of employment income received by an Australian resident taxpayer while working in Austria
ATO ID 2006/199 (Withdrawn)	Assessability of allowances received from employment in an overseas location
ATO ID 2006/191 (Withdrawn)	Assessability of salary and wages received by an Australian Defence Force (ADF) member from service in the Solomon Islands
ATO ID 2006/190 (Withdrawn)	Independent personal services income received by an Australian resident working in New Zealand for more than 91 days and less than 183 days
ATO ID 2006/15 (Withdrawn)	Energy Grants (Credits) Scheme: off road - forestry - preservation of generic milled timber
ATO ID 2006/131 (Withdrawn)	Assessability of income earned by an Australian resident discharging Australian governmental functions in the United States
ATO ID 2006/118	Assessability of income derived in New Zealand by an Australian resident

(Withdrawn)	taxpayer
ATO ID 2005/162 (Withdrawn)	Assessability of income derived under contract by an Australian resident in the Solomon Islands
ATO ID 2005/161 (Withdrawn)	Assessability of salary and allowances received by an Australian resident taxpayer working in the Solomon Islands
ATO ID 2005/160 (Withdrawn)	Assessability of employment income received by an Australian academic in Indonesia
ATO ID 2005/155 (Withdrawn)	Assessability of employment income received by an Australian Defence Force member serving in Western Samoa with the Pacific Patrol Boat Project
ATO ID 2005/154 (Withdrawn)	Assessability of research fellowship income earned by an Australian resident working in the United Kingdom
ATO ID 2005/115 (Withdrawn)	Assessability of a bonus payment received by an Australian resident from employment performed in Singapore and Australia
ATO ID 2004/821 (Withdrawn)	Assessability of employment income received by an Australian Defence Force (ADF) member from serving in Bosnia and Herzegovina with Operation OSIER as part of the NATO Stabilisation Force (SFOR)
ATO ID 2004/68 (Withdrawn)	Transfer pricing: secondary transfer pricing adjustments
ATO ID 2004/607 (Withdrawn)	Assessability of rental income from real property situated in South Africa
ATO ID 2004/600 (Withdrawn)	Exchange rate to be used when calculating the cost of contributions to a foreign life policy
ATO ID 2003/750 (Withdrawn)	Thin Capitalisation: loans from resident company to non-resident associate company
ATO ID 2002/503 (Withdrawn)	Assessability of proceeds from a foreign life assurance policy where taxpayer has no legal title to policy
ATO ID 2002/278 (Withdrawn)	Medicare levy surcharge - overseas visitors health insurance policy
ATO ID 2002/176 (Withdrawn)	Assessability of foreign salary and wages from services performed on an overseas project in a country with which there is no Double Tax Agreement
ATO ID 2001/696 (Withdrawn)	Guard Dog Expenses
ATO ID 2001/261 (Withdrawn)	Assessability of Papua New Guinea salary and wages derived by a resident

(d) Decision Impact Statements

2010/2740	Johnston, Byron v Commissioner of Taxation
2007/2795 - 2798; 2007/2802 - 2805	Shin v Commissioner of Taxation
NSD 852 of 2010	Virgin Blue Airlines Pty Ltd v Commissioner of Taxation

8- Legislation - update material is accessed on line through taxmap™

Legislation Enacted

Bills Before Parliament

We now publish legislation updates on-line at taxmap™ in a comprehensive tabular format showing summary & commencement dates. This development allows us to track developments on “as occurs basis” rather than monthly in arrears basis.

9- Appeals to the Full Court of the Federal Court - update material is accessed on line through taxmap™

We now publish the Full Court Appeals Update on-line at taxmap™. This development allows us to track developments on “as occurs basis” rather than monthly in arrears basis

Interpretation

In these Tax Update Notes a reference to the:

AAT is a reference to the Administrative Appeals Tribunal

Administration Act is a reference to the Taxation Administration Act 1953

ADJR is a reference to the Administrative Decisions Judicial Review Act

ITAA 1936 or the 1936 Act is a reference to the Income Tax Assessment Act 1936

ITAA 1997 or the 1997 Act is a reference to the Income Tax Assessment Act 1997

ITR is a reference to the Income Tax Regulations

FBTAA is a reference to the Fringe Benefits Tax Assessment Act 1986

GST Act means is a reference to the A New Tax System (Goods and Services Tax) Act 1999

GST Regulations is a reference to the A New Tax System (Goods and Services Tax) Regulations 1999

SGAA means Superannuation Guarantee (Administration) Act 1992

The SIS Act is a reference to the Superannuation Industry (Supervision) Act 1993

Tribunal is a reference to the Administrative Appeals Tribunal

The Regulations is a reference to the Income Tax Regulations

Status of ATO Documents:

TR 92/1 and TR 97/16 together explain when a Ruling is a public ruling and how it is binding on the Commissioner.

Status of a draft Taxation Ruling:

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

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.

Status of a Product Ruling:

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

Status of an ID and Private Binding Ruling:

ATO IDs are published on ATO law as precedential ATO views for ATO officers. ATO officers must search for, identify and apply relevant ATO IDs in resolving technical interpretative issues (see Law Administration Practice Statement PS LA 2003/3).

Accordingly, an ATO ID must be followed where: there is no material difference between the facts of the arrangement upon which a decision is required and a current ATO ID; and the decision maker considers that the outcome of the issue would be correct if the ATO ID were applied.

The database of ATO IDs serves a different purpose to the Register of Private Binding Rulings. Entries to the Register are made for purposes of integrity and transparency only and do not constitute precedential ATO views. Accordingly, entries on the Register cannot be relied upon as indicative of the ATO view.

Status of a GST Ruling:

Generally a GST Ruling is expressed to be a ruling for the purposes of section 37 of the Administration Act.

DISCLAIMER

The material in these Tax Update Notes is published on the basis that the opinions expressed are not to be regarded as the official opinions of Tax Matrix Pty Limited. These Tax Update Notes should not be used or treated as professional advice and readers should rely on their own inquiries in making any decisions concerning their own interests.

© 2011 Tax Matrix Pty Limited. These Tax Update Notes are not to be reproduced in whole or part without the written permission of Tax Matrix Pty Limited ABN 33 101 349 900.

As a guide to readers the following rating system has been applied at the front of the title of an article (the context being the section within which the article appears):

*** indicates the item is in the “must read category - will impact on your current practices” (legislation will not receive ***rating unless it has received Royal Assent.)

** indicates the item is in the “should read category”.

* indicates the item is in the “read if you have plenty of time” category.

An electronic version of these notes (pdf format) can be downloaded from our website on the first of each month (except January).

The electronic version contains fully functional links to all primary sources. The electronic version can be stored on your server.

Tax Matrix Pty Ltd

Tax Education & Tax Updating for Professionals
PO Box 228 South Yarra VIC 3141
taxmatrix@taxmatrix.com.au
Manager Research: Rachel Ritchie
E-mail: rachel.ritchie@taxmatrix.com.au