

# AUSTRALIAN TAX REVIEW

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## ARTICLES

**Deemed Dividend Rules: Tax-Free Extraction of Profits from Companies and Exploitation of Structural Foundations of the Income Tax Regime** – *Dale Boccabella and Kayleen Manwaring*

Accessing profits of a company in a tax-free or favourable tax form has occupied the income tax planner for generations. For closely held companies, the integrity provisions in s 109 and Div 7A of the *Income Tax Assessment Act 1936* (Cth) (and before that s 108) generally mark out the distinction between a taxable distribution of profits as opposed to other non-taxable economic transactions. However, the designers of these integrity provisions would not have expected them to provide a tax planning opportunity, especially one that circumvents or exploits foundational features of the income tax. The shareholder-associate rule in s 109 and Div 7A does this by making the associate (with her own tax rate schedule), and not the shareholder, the proper taxpayer in receipt of an assessable unfrankable dividend. This design flaw provides the tax planning opportunity without the need to give the associate normal shareholder rights or a dividend access share in the company. As a result, tax-preferred income can be released from the company without potentially attracting a taxing point, and opportunities for streaming become available. The article sets out the tax planning opportunities provided by the shareholder-associate rule and how it can be used to exploit and/or circumvent foundational features of the income tax. From there, the article addresses the question as to whether the tax planning will ultimately succeed. .... 87

**Pro Bono Tax Clinics: An International Comparison and Framework for Evidence-based Evaluation** – *A Kayis-Kumar, J Noone, F Martin and M Walpole*

Tax justice is often conceptualised in the context of the taxation of multinationals. Yet, the opposite end of the taxpaying spectrum is often overlooked; that is, unrepresented, vulnerable taxpayers. The benefit of university-based pro bono tax clinics – which aim to serve this cohort – is not only in improved tax compliance at the individual taxpayer level. Rather, the activities of tax clinics also extend to free community education to increase tax literacy, engaging the tax profession through skills-based volunteering, and grassroots research to advocate for reforms grounded in tax justice. This article explores and extends the international literature on pro bono tax clinics by: (1) conducting an international comparative analysis of the pro bono tax clinic experiences of Australia, United States, United Kingdom and Canada; and (2) developing an evidence-based evaluation framework (the Tax Clinics Program Logic) for a nation-wide university-based pro bono tax clinic program. As illustrated in the Tax Clinics Program Logic, the ultimate benefit of tax clinics is in creating a more socially just tax system. In doing so, this article contributes to the literature by highlighting lessons learnt from overseas experiences; proposing a novel, evidence-based framework for the evaluation of pro bono tax clinics; and conceptualising

pro bono clinics as a platform for conducting grassroots research to identify systemic injustices and advocate for tax reform. .... 110

**Multi-cell Entities and the Duties Act 1997 (NSW): Practical Considerations – Cullen Smythe**

Multi-cell entities are widely used in a number of foreign jurisdictions, but with a few notable exceptions, are rarely dealt with under Australian State taxation regimes. This article examines the practical implications arising from the use of a number of a multi-cell entities in the context of the New South Wales landholder and corporate reconstruction provisions of the *Duties Act 1997* (NSW). Entities considered include Delaware Series Limited Liability Companies, Australian statutory funds established under the *Life Insurance Act 1995* (Cth), unit trusts with different unit classes and protected cell companies used in Guernsey, with comparisons to those of the Isle of Man, and the Singaporean Variable Capital Company. The article includes numerous practical examples, and concludes with an outline of issues that need to be resolved when dealing with multi-cell entities in a structure or transaction. .... 133

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