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ARTICLES

Interpretation of s 11-15: Significance of the text, context and history – *Justice Richard Edmonds*

The article canvases the full spectrum of the principles of statutory interpretation applicable to statutes of the Parliament of the Commonwealth of Australia from the general to the specific, noting the developments that have occurred in more recent years under the umbrella of an ascendant purposive construction, which places revenue statutes on the same plane as any other statute; recognising the paramount significance of text over some non-statutory application of the text as well as recourse to context in its wider sense to ascertain the legislative policy and purpose of the text. The author then examines matters relevant to and informing context with reference to policy considerations pitched at a high level of generality on the one hand and lower-level considerations discernable on the other. Finally, the author descends further into the specifics of the principles as they apply to s 11-15 with the benefit of the process of reasoning in HP Mercantile Pty Ltd v Commissioner of Taxation (2005) 143 FCR 553; 60 ATR 106. 79

A consideration of the jurisprudence in relation to the deduction provisions in the Income Tax Assessment Acts – *David Bloom QC*

The Explanatory Memorandum to the A New Tax System (Goods and Services) Tax Bill 1998 (Cth), the late Hill J in HP Mercantile Pty Ltd v Commissioner of Taxation (2005) 143 FCR 553; 60 ATR 106, and the Commissioner in GSTR 2006/3 have commented on the similarity between s 8-1 of the Income Tax Assessment Act 1997 (Cth) and s 11-15 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth). The author considers the common terminology – in particular, "to the extent that", "in carrying on a business" and the "private and domestic" exclusion – and how the interpretation of those terms for income tax purposes might be applied in a GST context. Ronpibon Tin NL v Federal Commissioner of Taxation (1949) 78 CLR 47, the barristers' home office cases and the more recent decisions of Federal Commissioner of Taxation v Anstis (2010) 241 CLR 443 and Spriggs v Federal Commissioner of Taxation (2009) 239 CLR 1; 72 ATR 148, illustrate the development of the scope of the income tax positive limb and its private and domestic exclusion. It is questioned whether the principles of tax relief are as settled as one might be lead to believe for income tax and GST purposes. 90

What's VAT got to do with it? – *Associate Professor Rebecca Millar*

This article challenges the commonly held view that Australia's GST law is different from other VAT laws. In asking "What's VAT got to do with it?", the article considers first whether the basic concept of a "value-added" tax is relevant to the Australian GST, and then whether foreign VAT/GST case law can shed any light on the meaning of Australia's GST. Focussing on the nexus required between the activities/outputs of an entity and its inputs, the article suggests that it is a mistake to presume that concepts like "direct and immediate link" and the "cost element" test (both found in CJEU case law) are somehow vastly different to the "in carrying on" and "relates to" tests in the Australian law. The key is to distinguish between inputs to value-adding activities, for which credits should generally be allowed, and inputs to consumption, including the quasi-consumption of "making input taxed supplies" and – more controversially – mere investment activities, for

which credits should be denied. While there are pitfalls to adopting a comparative approach to interpretation, the article suggests that they are outweighed by the benefits to be gained from an informed understanding of foreign case law. 99

Input tax relief and financial supplies: Nexus and relevance for apportionment *– John de Wijn QC*

This article considers the required method for calculating what portion of acquisitions relate to making supplies that would be input taxed and are to such extent denied eligibility for an input tax credit. It considers whether the approach to apportionment for this purpose is to be informed by reference to income tax cases and the extent that the A New Tax System (Goods and Services Tax) Act 1999 (Cth) requires or permits tracing to actual supplies in order to determine whether a portion of input tax on acquisitions are to be denied eligibility for an input tax credit under s 11-25. 125

An ATO perspective on the creditable purpose test *– Robert Olding*

The "blocking provision" that denies input tax credit entitlement for acquisitions that relate to making supplies that would be input taxed – s 11-15(2)(a) of the A New Tax System (Goods and Services Tax) Act 1999 (Cth) – raises questions of interpretation. These include whether, because of the general policy of avoiding cascading, it is appropriate to "look through" an immediate or direct relationship with an input taxed supply to the overall business purpose of the acquirer's enterprise. Having regard to the approach taken to date by the courts to interpreting the GST law, statements of principle by the Federal Court and High Court concerning statutory interpretation and competing policy considerations, the article concludes that it is unlikely that a court would depart from the ordinary meaning of s 11-15(2)(a) and effectively disregard a direct and immediate relationship with input taxed supplies. 131