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EDITORIAL	47
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CASE NOTE

Unit Trend – the High Court’s first decision on the GST general anti-avoidance rules	48
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ARTICLES

Incentives, rebates and third party adjustments after the AP Group decision *– Kevin O’Rourke*

The GST in Australia is a relatively young tax and its boundaries are only now being tested in the courts. The AP Group case raises deceptively simple “boundary” issues. Is there a supply for consideration? Is there third party consideration? It does so in the context of trade incentive payments that are common in commercial transactions. Yet the answers to the questions are not so clear and answers cannot be given by a contractual analysis alone. The decision in AP Group is troubling because it suggests there is a class of payment made by a business in the course of its enterprise that does not give rise to an entitlement to an input tax credit, an outcome contrary to the structure of the GST legislation. A suggested answer to avoiding the result of over-taxing business is that a decreasing adjustment should be available to the business making the payment. This possibility was not canvassed in argument in AP Group and, if accepted, would almost certainly have changed the result.	64
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