

# AUSTRALIAN TAX REVIEW

Volume 42, Number 3

August 2013

## EDITORIAL

<b>Posturing and politics</b> .....	147
-------------------------------------	-----

## ARTICLES

### **Part IVA: An international perspective – A H Slater**

As much as it is disliked by taxpayers and their advisers, Pt IVA of the Income Tax Assessment Act 1936 (Cth) as a general anti-avoidance rule provides something mostly absent from its international counterparts: a degree of certainty as to the circumstances in which it may be invoked, and a degree of certainty as to the actions which the fisc may take in reliance on it. Together these qualities of Pt IVA allow taxpayers in Australia to plan their tax affairs with a degree of assurance rarely available to taxpayers in other countries. ....	149
---	-----

### **Prior to being bankrupt, superannuation is a claimable asset – characterising and shaping the nature of a member’s interest – Peter Bobbin**

This article addresses the concept of owing, due or payable as it relates to a person’s superannuation interest. This is the amount that may be the subject of a garnishee notice from the Australian Taxation Office (ATO). There is a general belief that superannuation is an investment strategy secure from the demands of a person’s creditors. This is not correct. The ATO has expressed its own view on what is due or payable in a superannuation context and therefore what part of a taxpayer’s superannuation its debt recovery officers can target under a garnishee. This article concludes with a review of the nature of a person’s interest in superannuation and identifies the extent to which the tailoring of such an interest may limit or expose superannuation to greater risk of recovery under the Taxation Administration Act 1953 (Cth). ....	160
--	-----

### **CGT event K7 provides loss recognition for personal consumption expenditure: History, anomalies and policy basis – Dale Boccabella**

Absent the furtherance of an express policy, most income tax systems do not permit deductions or cost recognition for personal consumption expenditure. To do so would largely turn an income tax regime into a tax on savings. Australia’s general deduction section provides the most notable example of exclusion from deductibility of consumption expenditure. The capital gains tax (CGT) regime also denies loss recognition on many (but not all) assets “used” for private purposes. However, CGT event K7 contains a surprising provision: it provides a CGT capital loss for personal consumption expenditure. It does so by providing for full CGT loss recognition attributable to the portion of a depreciating asset used for personal use. No cogent policy basis for CGT event K7 loss recognition was suggested, and none is apparent. Further, the event does not expressly co-ordinate with the rule denying CGT loss recognition on personal use assets. This lack of co-ordination generates uncertainty and can also lead to different outcomes on what are materially the same facts. ....	182
--	-----

BOOK REVIEW – *Richard Krever*

**Incentivising Employees: The Theory, Policy and Practice of Employee Share  
Ownership Plans in Australia** ..... 206