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ARTICLES

The politics of tax: Can it be disinfected? – *The Hon Justice Richard Edmonds*

With the recent change of government in Australia, it is perhaps a pertinent time to ask: what will this bring on the tax reform front? Arguably, very little because the infection of politics in tax has become so pervasive that it has extinguished any hope for sound and informed consensus. Such consensus is an essential platform upon which to formulate and implement structural tax reform going forward. The author canvasses whether it might be possible to apply some disinfectant to take the politics out of tax, or at least reduce the infection, but accepts the task, while worth a try, will not be easy. 5

An international dimension to the politics of tax – *The Hon Justice Logan RFD*

The assertion of a right to tax has always been a manifestation of sovereignty. In Australia, that right is constitutionally conditioned upon a right to contest liability in the courts. Cyberspace knows no national boundaries. Information technology has already and will, ever increasingly, both challenge the relevance of national sovereignty and provide greater opportunities for its exercise in relation to the identification of evasion of tax. This article explores by reference to recently decided cases issues which have arisen and may yet arise from the interface between the assertion of a right to tax and information technology. 10

The dangers of the ATO’s “policy intent” approach to the construction of Tax Acts – *Mark Robertson QC*

The author discusses the Australian Taxation Office’s (ATO) “policy intent” approach to statutory construction. He argues that Griffith CJ’s observation 100 years ago that “nothing could be more dangerous or fallacious” holds true today, especially because the ATO is involved in drafting. This approach, which not only leads to the wrong result, has led to the ATO being criticised for encroaching beyond its Constitutional function. He urges tax teachers to add to their syllabus the consequences of the wrong approach with a view to ensuring that the correct purposive approach is understood better by the next generation. 22

The consequences of disposals of part interests in mineral and petroleum tenements – *Antony Barrier*

Few areas of Australian revenue law have attracted as much attention in recent times as the method of taxation of the country’s mineral wealth. With soaring commodities prices, the Australian mineral and petroleum sectors expanded exponentially in the first decade of the 21st century, with growth in both exploration for new deposits and exploitation of existing reserves. Amid much controversy, the mineral resource rent tax and extended petroleum resource rent tax regime commenced operation on 1 July 2012. However, there are many imposts affecting the resource-based industries other than the headline-hitting

“rent” taxes. This article takes a practical and comparative look at the various Australian taxes in the context of a common resources transaction: the disposal of a part interest in a mining or petroleum tenement. 31

A re-evaluation of deprival value: The case of specialised in-situ asset valuation – *Dr Hung Chu*

The valuation of specialised in-situ assets is one of the central issues in “land rich” cases. This article revisits the concept of deprival value and identifies several problems associated with its use as a measure of market value for tax purposes. The article also provides an alternative theoretically sound framework to assess the market value of specialised in-situ assets for tax purposes in certain cases. 54