

AUSTRALIAN TAX REVIEW

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EDITORIAL

From anti-avoidance to tax induced insolvency	145
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BOOK REVIEW

Sham Transactions edited by Edwin Simpson and Miranda Stewart – Yuri Grbich	147
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ARTICLES

The Hatter’s watch: Tax benefit in Part IVA – Mark Brabazon SC

The 2013 amendments to the tax benefit concept in Australia’s general anti-avoidance rule are the first major change to the rule since 1981 when Part IVA was enacted. The meaning of the amendments and their effect on settled principles of tax benefit jurisprudence are examined. Analysis of the text reveals an absence of clarity at a number of key points in the amended legislation including the “based on a postulate” concept, the “reasonable alternative” concept, and the direction to disregard tax effects. The assignment of clear meaning will become a task for the judiciary.	150
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The “economic benefits model” for trusts – fool’s gold? – Alex Evans

Following the High Court’s decision in <i>FCT v Bamford</i> , the Gillard Government embarked on a reform of Div 6 of the Income Tax Assessment Act 1936 (Cth). Treasury proposed and developed three options for reform: the patch, proportionate, and economic benefits models. Submissions received during consultation identified problems with each option and indicated a lack of consensus as to the best way forward. This article posits that Treasury and the Australian Taxation Office wish to move away from the current trust deed and trust law dependent approach to rules that primarily turn on tax law concepts. Consequently, the reform documents presented the economic benefits model as the most desirable option. This article argues that the reform documents significantly understated the complexity that such a model involves in practice and illustrates this point by analysing the rules for the taxation of trusts in the United States.	162
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The Commissioner’s power to issue creditor’s statutory demands: Implications for corporate rescue post insolvency – Sylvia Villios

The Commissioner’s role in a corporate insolvency has expanded as new forms of taxation have been created, leading to tax claims consuming more and more of an insolvent debtor’s estate. The literature which considers the role of the Commissioner in a corporate insolvency is predominantly concerned with whether the Commissioner should be given preferred treatment relative to other creditors; that is, whether such claims should be paid ahead of other unsecured, and in some cases also secured, claims. Many jurisdictions have traditionally conferred a priority on tax claims. The form and scope of such a priority varies. However, it appears that there is a trend towards the removal of taxation priorities. This article will outline the Law Reform Commission inquiries that led to the abolition of tax priority in Australia and will examine the various arguments concerning the proper role of the Commissioner in a corporate insolvency. In particular, this article argues that the

Commissioner's power to serve a company with a statutory demand has regrettable consequences when it comes to attempts to implement corporate rescue. The article suggests areas for reform and considers directions for future research and action. 187