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EDITORIAL – *General Editors: Dale Pinto and Kerrie Sadiq*

The End of Another Busy Year for Tax 247

ARTICLES

Australia’s System for Relieving Foreign Source Income from Double Taxation: Yesterday, Today and Tomorrow – *The Hon Richard Edmonds AM SC*

The following article has been written in two parts. The first part, dealing with the decision in *Burton v Federal Commissioner of Taxation* at first instance up to and including the author’s analysis, was written prior to the Full Court delivering judgment on the taxpayer’s appeal on 22 August 2019. The second part, dealing with the Full Court’s dismissal of the taxpayer’s appeal and the author’s observations on their Honours’ reasons, was written after that date. At the time of writing the second part, the author did not know whether the taxpayer intended to apply for special leave to appeal to the High Court of Australia. 249

Digitalisation and Broadcasting: Evaluating the Application of Royalty Withholding Tax to Digitalised Business Models – *Celeste M Black*

The digital economy and, more specifically, highly digitalised business models are putting pressure on domestic and international tax systems. As potential responses are being explored by individual governments and the OECD Inclusive Framework, one alternative that has been raised is to more effectively utilise the royalty withholding tax mechanism. In order to evaluate this option in relation to a digitalised business, this article considers the application of withholding tax to payments made to an overseas supplier for access to a live transmission. The article analyses Australia’s domestic law and tax treaty network, revealing three patterns in the treaty definition of royalties that can lead to substantively different outcomes in relation to live transmissions. This analysis shows that the royalty withholding tax frameworks developed for traditional over-the-air broadcasting are under increasing strain as the technologies of media and communications converge. The degree of variability and uncertainty in tax outcomes that this analysis evidences is inconsistent with establishing a level playing field between traditional and more highly digitalised broadcasting businesses. 264

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