

AUSTRALIAN TAX REVIEW

Volume 51, Number 1

2022

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

Shaping the Future of Tax Reform 3

ARTICLES

Tax Reform – The Why, the When and the What – *Julianne Jaques QC*

The constitutional framework of Australia’s finances sets up both the drivers of and constraints on effective tax reform. Within this framework, there have been four significant federal tax reform events in Australia since federation – the introduction of federal income tax in 1915; federal income tax becoming exclusive in 1942; the Hawke-Keating reforms of 1985–1988 including the introduction of fringe benefits tax and capital gains tax; and the Howard-Costello reforms of 2000 including the introduction of goods and services tax. These tax reform events highlight three essential requirements for successful tax reform to occur: an established tax reform idea, a willing Government, and a receptive community. There are indications that Australia is progressing towards meeting these three requirements. When Australia does next engage in significant tax reform, emphasis should be placed on simplicity, which often takes second place to equity, to the detriment of both. 5

Australia’s Capital Allowance Regimes between 1915 and 1992: Tax Law Becomes an Instrument of Economic Policy – *Christina Allen*

The depreciation rules for tangible assets in Australian’s income tax law have evolved in two distinct phases. From 1915 to 1992, legislative amendments sought to overcome the limitations of a rigid and limited depreciation system through gradual expansion of the depreciation regime to more and more types of tangible assets and at the same time develop the depreciation rules into a tool for economic intervention. A partial consolidation of the rules in 1992 marked the beginning of a shift in depreciation policy to become a tool in a broader neoliberal agenda. This article explores the evolution of the depreciation rules for tangible assets in the initial seven and a half decades. The history of depreciation rules in this period provides useful insights into the view of Australian governments on both sides of the political divided of tax law as a tool to achieve economic policy objectives. 25

The Scope and Application of the Doctrine of Rectification in Correcting Mistakes in a Tax Setting – *Norman Hanna*

Countless transactions are entered into and recorded by written documents that have been drafted to achieve certain legal effects, including as to the material tax consequences for one of both of the transacting parties. Despite the greatest of care, it remains that, in a time-pressured world, mistakes in documents are inevitable to occur, resulting in a failure to express the parties’ true intentions and, consequently, non-attainment of the desired legal effects. This may result in a failure to achieve the intended tax consequences, as well as crystallising a material tax liability for one of both of the transacting parties. One potential pathway available to the parties to remedy such a mistake is the equitable doctrine of rectification. The purpose of rectification is to make a mistaken document conform to the

true agreement of the parties where the writing, by common mistake, has failed to express that agreement accurately, or failed to achieve the parties’ intended legal effect. This article examines the scope and application of the rectification doctrine in the context of tax cases in which that doctrine has been pleaded. 51

Critical Tax Theory: Insights From the US and Opportunities for All – *Anthony C Infanti and Bridget J Crawford*

At a moment when Australia – and the world – finds itself at a “critical juncture” as it reckons with a global pandemic as well as the inequalities that COVID-19 has laid bare, voicing – and listening to – critical tax perspectives has become more vital than ever. The economic impact of COVID-19 has precipitated talk of tax reform as nations consider how to pay for aid distributed during the pandemic and how to restart their economies. But more than just a time of crisis, the pandemic can be seen as an unexpected opportunity to break with a past plagued by social and economic inequalities, to rethink our relationships with each other, and to begin the work of building better and more just societies. If this opportunity is to be meaningfully seized, then tax law and policy rightfully belong at the heart of the discussion. 81