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

Balancing Powers, Rights and Responsibilities in Tax Administration 73

ARTICLES

The Crackdown on Tax Practitioner Misconduct: Review of the TPB Register and Unregistered Practitioners – *Ken Devos and Elizabeth Morton*

Following high-profile scandal in early 2023 involving a registered tax agent, the Treasury’s reform package in August 2023, included the priority area of strengthening the regulatory arrangements to ensure they were fit for purpose. This resulted in the *Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023* (Cth) receiving Royal Assent in May 2024. This included Sch 3 covering Tax Practitioner Board (TPB) Reforms from expanding details of tax practitioners that are currently included in the TPB Register and addressing the issue of unregistered tax practitioners. This study builds on previous work which examined TPB Investigations statistics and decisions, by undertaking an analysis of select data in the TPB Annual Reports for the period 2018–2023 pertaining to both registered and unregistered tax practitioners. In addition, a detailed investigation of the TPB Register (2023) itself is completed, examining those who have received sanctions and/or terminations. The findings revealed, that while improvements had been made to the register’s functionality, further refinements were required regarding its search capabilities and information contained therein. From the point of view of deterring and detecting unregistered preparers, ongoing compliance and educational measures are encouraged. At the same time, we strongly recommend that a dedicated register of unregistered tax practitioners be published. The findings of the study add to the policy debate and will assist in ascertaining key benefits and challenges that the TPB faces with respect to unregistered tax practitioners and the TPB Register. 75

Redefining ATO Powers at the Intersection of Debt and Financial Vulnerability – *Kevin O’Rourke, Ann Kayis-Kumar and Michael Walpole*

At any one time more than two million Australians will have a tax debt owing to the Commonwealth. The Commissioner of Taxation has considerable powers to collect these debts, but also has powers to assist taxpayers who are experiencing financial vulnerability. These latter powers are not well understood and, in some cases, their scope, and even existence, are not yet settled. This article explores these powers, some of which are express legislative powers, while others are at best incidental to an express power. Other suggested powers will be seen as most likely conferring no power at all. This article calls for a redefining of the Commissioner’s powers to assist taxpayers experiencing financial vulnerability with their taxation debts, and makes recommendations for reform. 94

Taxing Non-resident Holders of Tokens Relating to Australian Land – *Christina Allen and Vu Manh Hoai (Mike) Nguyen*

Despite the rising interest in the tokenisation of rights to land, the tax systems of many jurisdictions have not addressed this issue to a large extent. This article considers the Australian tax treatment of land tokens and, in particular, “real estate tokens”, which generate an income stream, and “mining tokens”, which provide a promise of the future supply of resources. The article first establishes that land tokens referable to Australian land, issued by private enterprises, do not provide proprietary rights to Australian land. After examining the commercial features of land tokens, the article shows that potential income tax challenges would likely arise as a result of the scope of Australia’s capital gains tax regime, which currently applies to non-residents in relation to dealings with taxable Australian property. The history and development of the non-resident capital gains tax regime in Australia shows, in the absence of common law source rules, three main policy rationales underlying the current legislative design: alignment with international tax practice, administrative simplicity and consideration for foreign investment. However, this article finds that none of these tax policy rationales provide convincing grounds for capital gains derived by non-residents with respect to their Australian land token dealings being excluded from taxation. The Australian Government may operate on the basis that land tokens are dealt with on a portfolio basis (less than 10% of the value of the total token asset per investor), which makes the legislative inclusion of land tokens within the capital gains tax regime unnecessary. However, the question of whether to tax capital gains derived by non-residents upon disposal of Australian land tokens ultimately remains a matter of policy for the government to decide as the existing policy bases neither support nor exclude such taxation.

113

The Limitation of Res Judicata in Tax Refunds Due to Government Errors – *Chun-Chieh Hwang and Tien-Wei Hwang*

This article explores the tension between res judicata and taxpayers’ rights to claim refunds for overpaid taxes due to administrative errors, focusing on the tax systems of Australia and Taiwan. In Australia, res judicata does not prevent taxpayers from challenging tax assessments or seeking refunds if new facts or errors are discovered, as the *Income Tax Assessment Act 1936* (Cth) grants the Commissioner of Taxation the authority to amend assessments at any time. In contrast, Taiwan’s amended *Tax Collection Act* restricts refund claims after a final judgment, even in cases of administrative error. This article compares these legal frameworks, arguing that Taiwan’s current system may undermine fairness by limiting the correction of administrative mistakes. This article recommends that Taiwan should reform its tax laws to allow refunds in such cases and more clearly define the scope of res judicata to better balance procedural finality with taxpayer fairness.

138