

AUSTRALASIAN TAX TEACHERS ASSOCIATION CONFERENCE 2015

ABSTRACT

Title: An International Comparative Analysis of the Depreciation of Wasting Intangibles – Implications for Australia’s ITAA97

Author: Nicholas Augustinos

Author’s Institution: Lecturer, The University of Notre Dame Australia School of Law, Sydney

Author’s Email: Nicholas.Augustinos@nd.edu.au

Keywords (five): depreciation, wasting intangibles, international comparisons

Text of Abstract:

The paper focuses on the tax treatment of wasting intangibles. The aim of the paper is to conduct an international comparative analysis to see what insights might be obtained on the question of whether Australia should incorporate a separate depreciation allowance for wasting intangibles in the Income Tax Assessment Act 1997 (ITAA97). The relevant research builds on research which has been previously published by the author in the *Australian Tax Review* (Volume 38(2) May 2009). That publication highlighted the fact that the absence of a separate depreciation allowance for wasting intangible assets was not an ideal outcome from a tax policy perspective and that the enactment of section 40-880 (the ‘Black hole’ deduction provision) had not adequately dealt with the problem. In particular, that publication showed that, for certain wasting intangibles, the absence of a separate depreciation allowance places the courts in a difficult position when applying the ITAA97 as they are left with the option of either granting an immediate deduction for large, ‘chunky’ expenses in order to ensure their recoverability or, alternatively, to hold that the expenses are capital expenses and effectively not recoverable.

From a policy perspective, wasting intangibles should be depreciated over their effective life. Depreciation should reflect the time period over which the benefit provided by the wasting intangible is consumed. We do not have provisions in the ITAA97, however, which establish this outcome for all wasting intangibles.

By examining the operation of tax legislation in other countries, the paper aims to show whether a comparative international analysis further supports the incorporation of the abovementioned depreciation allowance into the ITAA97 and what implications might be drawn from such an analysis as to the drafting of such a depreciation allowance.

Does this paper relate to a PHD that you are currently enrolled in? No.

Please consider this paper for the following prize: Best Tax Research Paper.