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01 | PRESIDENTIAL COLUMN

President's Note

Welcome to May's newsletter,

I hope you have all had an enjoyable month. It's hard to believe that we are coming to the end of the first teaching semester and that tax season is just around the corner, the year seems to be flying by, this means that our next ATTA conference in Christchurch NZ is not too far away. Further details can be seen below and I will provide an update on the conference details in next month's newsletter as we are keeping our fingers crossed that due to the NZ and Australian travel bubble we can have a F2F conference as well as an online mode for those unable to travel ... so start saving your pennies!

I would like to bring your attention that the ATO has released the National Tax Clinic program grant opportunity and details are available on the [Government's GrantConnect website](#). The grant can be found under Grant Opportunity ID (GO ID): GO4847 and closes on Monday 21 June. I encourage you, if you are interested in establishing a Tax Clinic, to take a look and feel free to reach out to any of the established clinics for advice about setting

up and running a clinic. From my perspective of being involved in the Curtin Tax Clinic, I can say that it is a very rewarding experience to be involved in. There is an international movement beginning in relation to Tax Clinics and this space is only going to expand over the next several years, on 26 May 2021, the first Tax Clinic Conference and Workshops were held in Greece (virtual) as part of the International Conference on Taxpayers Rights hosted by the [Taxpayers Rights Organisation](#) and through this organisation there is now a support group for international tax clinics to collaborate and support each other.

Low Income Taxpayer Clinics, or LITCs, are organisations that provide pro bono (free) or nominal fee representation to low income taxpayers who have tax disputes with federal, state, or local tax agencies. The disputes can involve audits, administrative appeals, collection, account adjustments, or litigation.

Our highlighted ATTA member for this month is our very own Editor Colin Fong who has provided us with a great insight into his character.



I would also like to take the opportunity to thank Bronwyn McCredie, Swapna Verma and Dr Toni Brackin for the wonderful presentations at the first ATTA Women in Tax Seminar which was held last month, please keep an eye out for further seminars to be held throughout the year.

Please don't forget to join the new [ATTA LinkedIn](#) page and take a peek at the [ATTA webpage](#), if you have any items you would like highlighted either in the newsletters or on the LinkedIn page please forward to media@atta.network.

Have a great month and I look forward to catching up with you again next month.

Annette

02 | ATTA'S 33RD ANNUAL CONFERENCE

Both the ATTA 2021 conference organising committee and the ATTA Executive have reached the unprecedented decision that we are postponing the January 2021 conference to 19-21 January 2022 (equivalent dates) due to the impact of COVID-19. The decision comes with a background of borders being closed and likely at best to open to Australia only (meaning a large portion of our attendees from outside the region could not come), and with many academics and graduate students facing reduced conference budgets and thus being unable to attend.

Adrian Sawyer

03 | ATTA PROFILE: MR COLIN FONG

How long have you been an ATTA member?

1998 after attending my first ATTA Conference at the University of Canberra and I think Michael Dirkis was the conference convenor.

Tell us about yourself, including what brought you to join ATTA?

I was the librarian with Atax, at the University of New South Wales and as the Atax academics were heavily involved with ATTA it was only natural to get involved.

What do you enjoy most about working with ATTA?

After attending my first ATTA conference and giving a paper, I was encouraged by the friendliness and collegiality of ATTA that I continued to regularly present at ATTA and over time I decided to give something back by creating an electronic ATTA News. It was only years later did I discover there was an earlier version of ATTA News in print.

Where were you physically born?

In a fish and chip shop, Harris St, Ultimo, NSW now located 100 metres from the Ian Thorpe Aquatic Centre.

What was your first job?

In primary school working weekends and school holidays in the family importing and exporting business in Sydney's Chinatown. Jobs included using home made glue to paste labels on soy sauce bottles which we decanted from large wooden barrels, carrying 56 pound bags of rice to customer's cars, serving customers etc.

What was your first job at a university?

Being a library assistant in the then Wolstenholme Library within the then Economics Faculty of the University of Sydney then later on as a library assistant in the Law Library of the University of Sydney. At the latter, I met many law students who later became academics, solicitors, barristers, judges, business people etc.

What is something people wouldn't normally know about you?

I was involved with the Australian Heritage Dancers for over 30 years and the group performed both locally and overseas including Canada, the USA, Italy and China. As members we were not allowed to have Australia Day off, as we had to perform on every Australia Day. I regret not going to Italy as I decided to go to an ATTA Conference instead! Performances ranged from both inside and outside the Sydney Opera House, Sydney Town Hall, Government House in Sydney etc.

Tell us about one of your notable brushes with fame.

In 2012 I attended the Movement for the Ordination of Women conference in Canberra and the then Governor-General, Quentin Bryce hosted an afternoon tea for delegates. I was called over to meet the Governor-General and six months later discovered a photo of me on the GG's website.



Mr Colin Fong
Editor and Member, ATTA

04 | ARRIVALS, DEPARTURES AND HONOURS

Angela Lee



Angela Lee joined the Victorian Bar in 2011. Angela practices predominantly in taxation, administrative and charity law and is the National Chair of the Tax Committee of the Law Council of Australia. Angela previously worked at Minter Ellison and PricewaterhouseCoopers, acting for corporate, government and individual clients in taxation matters. Angela is co-teaching the University of Melbourne Masters subjects, Tax Effective Writing with Justice Jennifer Davies and the Hon Tony Pagone QC, and Goods and Services Tax with barrister Mr Chris Sievers. Angela comments, "I gained much substantive and practical knowledge from completing my Masters at the Melbourne Law School, and it is a privilege to have an opportunity to pay this forward."

05 | ATTA PEOPLE IN THE MEDIA

Chris Evans

Quoted on ABC Radio 702 by Wendy Harmer at about 9:20 am on 30 April 2021 regarding Australia's tax rates.

Helen Hodgson

An interview with on [ABC Radio Brisbane \(Evenings\)](#); [ABC Radio Sydney \(Evenings\)](#); [Radio National \(Life Matters\)](#); [Ticker News](#) discussed gender-responsive budgeting in light of the release of the 2021 Federal Budget.

Miranda Stewart

Quoted on how Facebook minimises Australian tax, in Matthew Elmas, '[Facebook's \\$20 million tax bill is minuscule. But it might soon change](#)', 24 May 2021



06 | BULLETIN BOARD

Tax publication - Centre for Commercial and Corporate Law

The Christchurch-based Centre for Commercial and Corporate Law (the Centre) is pleased to announce its latest publication titled "The effectiveness of tax reviews in New Zealand: an evaluation and proposal for improvement", written by UC Professor of Taxation, Adrian Sawyer. The work (of 137 pages) expands on research undertaken (and a paper presented) in 2018 by the author. It comprises 14 chapters, and evaluates the effectiveness and contributions of nearly 100 years of tax review committees and working groups (including the most recent Tax Working Group 2019). Drawing on the lessons from past reviews and principles of best practice from overseas experience Sawyer proposes a permanent, or at least a semi-permanent, review body - the New Zealand Taxation Review Commission (NZTRC). His proposal considers the operation of permanent bodies in a number of countries that perform roles he envisages for NZTRC, including the Council for Advance Tax Rulings in Sweden, the United Kingdom Office for Tax Simplification and Board of Taxation in Australia. Established as a Crown entity with its own empowering legislation (a draft of which is outlined in the Appendix), its mission would involve establishing 'principles of taxation' and studying, examining and if necessary recommending changes to New Zealand's tax system. Sawyer comments that '[p]olitical considerations should not inform the work of the NZTRC, rather well-established good tax policy guidance should be the basis'. Professor of Law Shelley Griffiths (University of Otago) in her foreword notes that: 'The existing system of policy development by a professional, independent civil service supplemented by occasional specialist committees has not been ineffective. But that does not mean that a re-think is not a worthwhile project.' Of the book Griffiths concludes:

This book makes a valuable contribution to public policy in New Zealand. It is not just for 'tax nerds' (although there is plenty in it for them), but for all interested in New Zealand's economic and social wellbeing and those concerned about robust policy development. His proposal warrants serious consideration.

The book retails at NZD\$70 (plus NZD15 post and packaging for overseas sales). For orders and any enquiries please contact the Centre Director at andrew.maples@canterbury.ac.nz.



ATTA News Publishing Deadlines

Please note the following dates are approximate.

June edition of ATTA News:

- Items to the Editor by: 7 June 2021
- Publicly available on: 21 June 2021

July edition of ATTA News:

- Items to the Editor by: 7 July 2021
- Publicly available on: 21 July 2021



Do you have a Bulletin Board item?

Please email your Bulletin Board items to the [Editor](#) for inclusion in forthcoming editions of ATTA News.

07 | CALL FOR SUBMISSIONS

Scholarly Journals

American International Journal of Social Science

[2021 | Volume 10 | Issue 2](#)

AIJSS volume 10, issue 2 is scheduled to be published on April 30, 2021. Last date of submission is 31 March 2021.

New Zealand Journal of Taxation Law and Policy: Special Issue

Ranking: A

Manuscript Deadline: 30 June 2021

Theme: Tax and COVID-19

As editors from time to time we have a special issue dedicated to a theme or event. We are planning on having a special issue provisionally scheduled for the December 2021 issue on the theme of 'Tax and COVID-19'. We are open to submissions that address this evolving theme from any perspective and from jurisdictions outside of New Zealand. For contributions to be considered for this special issue we would like to receive them by 30 June 2021. For further details and/or an expression of interest please contact the editors.

Adrian Sawyer (adrian.sawyer@canterbury.ac.nz) and *Lin Mei Tan* (l.m.tan@massey.ac.nz)

Editors

Journal of the Australasian Tax Teachers Association
[2021 | Volume 16](#)

Ranking: B

Manuscript Deadline: 30 July 2021

Theme: N/A

The Editorial Board of the Journal of the Australasian Tax Teachers Association (JATTA) invites contributions from academic staff, legal scholars, practitioners, justice professionals and postgraduate researchers for possible publication in the 2021 issue of JATTA.

JATTA is a general law journal which also publishes articles that deal with taxation law, education and practice. JATTA publishes articles of between 8,000 – 12,000 words in length. There is no prescribed number of articles for each issue of JATTA. All submissions should be made by email and appear in double spaced 12 point Times New Roman font, preferably adhering to the Australian Guide to Legal Citation (4th edition). An Abstract of approximately 100 words should be submitted on a separate page.

Authors should review the JATTA Publication Ethics and Malpractice Statement prior to submitting an article for consideration.

All submissions for the current edition should be sent to the General Editors, Mr Donovan Castelyn and Ms Stephanie Bruce, via email at donovan.castelyn@curtin.edu.au; stephanie.bruce@curtin.edu.au.

Curtin Law and Taxation Review
[2021 | Volume VII](#)

Ranking: B

Manuscript Deadline: 30 July 2021

Theme: N/A

The Editorial Board of the Curtin Law and Taxation Review (CLTR) invites contributions from academic staff, legal scholars, practitioners, justice professionals and postgraduate researchers for possible publication in the 2021 issue of the CLTR.

The CLTR is a general law journal which also publishes articles that deal with taxation law and practice. The 2021 editorial team plans to publish articles, in addition to book reviews and case notes in the forthcoming issue. A competitive editorial policy will apply to the selection of articles and authors should review the CLTR Publication Ethics and Malpractice Statement prior to submitting an article for consideration.

Please submit articles (or queries) for this issue via email to Donovan Castelyn (Editorial Lead) and Stephanie Bruce (Editorial Assistant) at donovan.castelyn@curtin.edu.au and stephanie.bruce@curtin.edu.au.

We anticipate publishing the CLTR in November 2021.

Journal of Australian Taxation
[2021 | Volume 23 | Special Issue](#)

Ranking: B

Manuscript Deadline: 30 June 2021

Theme: Tax (Financial) Advisers, Tax Practitioners and Tax Academics

Areas of interest:

- Superannuation and self-managed superannuation funds
- Changes to the Tax Agents Services Act
- Limited recourse borrowing arrangements
- Education requirements for financial advisers
- Taxation of trustees and beneficiaries in a trust
- Estate planning taxation issues
- Taxation of investments

Each year we have a special issue dedicated to a theme or event. This year the special issue is focused on Financial advisers, Financial (Taxation) advisers and taxation academics and professionals relating to taxation issues specific to the financial planning industry. The special issue is scheduled to be published in November 2021. Submissions are invited from all interested professionals and academics that address this theme from any perspective and from jurisdictions outside of Australia and New Zealand. For contributions to be considered for this special issue we would like to receive them by 30 June 2021. For further details and an expression of interest please contact the editor: John McLaren (john.mclaren@utas.edu.au).

Journal of Australian Taxation
[2021 | Volume 23 | Regular Issue](#)

Ranking: B

Manuscript Deadline: 30 August 2021

Theme: N/A

The regular issue is scheduled to be published in November 2021. Submissions are invited from all interested professionals and academics.

For further details and an expression of interest please contact the editor: John McLaren (john.mclaren@utas.edu.au).

Australian Tax Review

[2021 | Volume 50](#)

Ranking: A

Manuscript Deadline: TBA

The General Editors are Prof Dale Pinto, Curtin University and Prof Kerrie Sadiq, Queensland University of Technology. The Australian Tax Review is a highly regarded refereed taxation journal published since 1971. It has maintained its “A” ranking in the 2019 Australian Business Deans Council journal quality list. It is seeking the submission of high-quality articles for one of the four issues which are planned to be published during 2021. All submissions will be subject to the journal’s usual rigorous double-blind refereeing process.

Please send submissions to *Dale Pinto* (Dale.Pinto@cbs.curtin.edu.au).

Austaxpolicy.com Blog (Tax and Transfer Policy Institute)

[TTPI Working Papers and Policy Briefs](#)

Manuscripts Submission Deadline: Continually

Publication Date: Continually

tax.policy@anu.edu.au

Conferences/Seminars/Symposiums

11th Queensland Tax Researchers Symposium (Virtual and Face-to-Face) Friday 9 July 2021

Advance Notice: Call for Papers

Griffith University will host the 11th Queensland Tax Researchers Symposium (‘QTRS’) on Friday, 9 July 2021. This will be both a online and face-to-face symposium

This symposium brings together tax academics and PhD and Honours students to discuss and present their current research interests.

The 2021 Symposium will be held online as well as at the Griffith University’s South Bank campus located on the fringe of Brisbane’s central business district. Those interested in presenting a paper (including research students) are encouraged to submit a short abstract of their work by 3 May 2021 (up to 500 words). Authors will be notified of their abstracts acceptance by 14 May 2021.

Free registration is open to all academics with a research or teaching interest in tax, as well as research higher degree students who are current undertaking an honours or a PhD dissertation in a tax related topic. While registration is free numbers are limited and attendees will need to register by Friday 28 May 2021. Note it is possible for tax academics to attend without presenting a paper.

General enquiries about the symposium (including paper submissions and registration) should be directed to: Brett Freudenberg (b.freudenberg@griffith.edu.au).

08 | TAX LAW DEVELOPMENTS



Australia

Federal Court of Australia

[Commissioner of Taxation v Auctus Resources Pty Ltd \[2021\] FCAFC 39](#)

McKerracher, Davies and Thawley JJ – 19 March 2021

Catchwords:

- Taxation – administrative overpayment made by the Commissioner of Taxation under taxation laws – construction of s 8AAZN of the *Taxation Administration Act 1953* (Cth) – assessment power of Commissioner of Taxation – taxpayer “self-assessed” activities as capable of being registered as research and development (“R&D”) activities – taxpayer claimed R&D tax offset refund – Innovation and Science Australia subsequently found taxpayer not engaged in R&D activities – taxpayer deemed never to have been registered for R&D activities and therefore not entitled to R&D tax offset refund – Commissioner of Taxation claimed tax offset refund was an administrative overpayment because the overpaid amount was paid by mistake – tax offset refund paid by mistake within meaning of s 8AAZN(3) of the *Taxation Administration Act 1953* (Cth) and general law – appeal allowed

The court orders that:

1. The appeal be allowed with costs.

[Le v Commissioner of Taxation \[2021\] FCA 303](#)

Allsop CJ, Logan and Thawley JJ – 24 March 2021

Catchwords:

- Taxation - onus of proof - appeal under s 14ZZ of the *Taxation Administration Act 1953* (Cth) - where Commissioner adopted asset betterment approach - where applicants submitted assessments were excessive - whether on appeal applicants had discharged onus of proof pursuant to s 14ZZK TAA - where applicants contended that taxable income as declared was accurate – where applicants made submissions capable of explaining unexplained wealth – whether Tribunal did not refer to those submissions in reasons – where adverse findings of credit made against applicants – appeal allowed
- Taxation – procedural fairness – whether findings of adverse credibility amounted to error – where adverse findings of credit based on inconsistency of applicants’ oral evidence – where adverse findings a matter for determination by the Tribunal – whether it was evident in Tribunal’s decision that there was an inherent and illogical inconsistency – where inconsistency amounted to unreasonableness
- Taxation – cross-appeal by Commissioner – where applicants successful in appeal – cross-appeal dismissed

The court orders that:

1. The appeal be allowed.
2. As a consequence: (a) the cross-appeal be dismissed; and (b) the matter be remitted to the Administrative Appeals Tribunal for rehearing according to law.
3. The applicants file such submission, if any, in respect of costs, including whether a certificate under s 8 of the *Federal Proceedings (Costs) Act 1981* (Cth) should be granted, as they may be advised, of not more than 4 pages, within 7 days and serve the same forthwith on the respondent.
4. The respondent file and serve such outline of submissions of not more than 4 pages in relation to costs as he may be advised not later than 7 days after the service on him of the applicants’ submission as to costs.
5. Thereafter, any question as to costs be determined on the papers.
6. Pending the receipt of submissions as to costs, costs be reserved.

[Commissioner of Taxation v Apted \[2021\] FCAFC 45](#)

Allsop CJ, Logan and Thawley JJ – 24 March 2021

Catchwords:

- Taxation – application for Coronavirus economic response payment (jobkeeper payment) – whether respondent eligible for jobkeeper payment – whether respondent “had an ABN on 12 March 2020” within the meaning of s 11(6) of the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 (Cth) (CERP Rules) – where respondent was not registered for an ABN on 12 March 2020 – where respondent was later registered for an ABN with a “date of effect” covering 12 March 2020 – held respondent did not have an ABN within the meaning of s 11(6) of the CERP Rules – whether the Commissioner’s decision not to exercise the discretion in s 11(6) of the CERP Rules to allow a later time for the respondent to have an ABN forms part of the reviewable decision – held Commissioner’s decision not to exercise the later time discretion was part of the reviewable decision – whether Tribunal erred in exercising the discretion to allow a later time in the respondent’s favour – held Tribunal did not err in exercising discretion – appeal dismissed

The court orders that:

1. The application be dismissed.

[Coal of Queensland Pty Ltd v Innovation and Science Australia \[2021\] FCAFC 54](#)

Logan, Griffiths and Moshinsky JJ – 23 April 2021

Catchwords:

- Taxation – research and development tax offset – where applicant held exploration permit for coal – where coal in the area had high level of ash content and the coal seams were banded – where applicant commenced a series of activities to investigate the nature and economic viability of mining the coal – where the Tribunal found that none of the registered activities were “core R&D activities” within the meaning of s 355-25(1) of the Income Tax Assessment Act 1997 (Cth) – where the Tribunal found that the exclusion in s 355-25(2)(b) applied – where the Tribunal found that the activities were not “supporting R&D activities” within s 355-30 – whether the Tribunal made findings for which there was ‘no evidence’ – whether the Tribunal applied the wrong legal test – held: appeal dismissed

The court orders that:

1. The applicant have leave to amend the amended notice of appeal to the form of the proposed further amended notice of appeal (second version) provided to the Court by email at approximately 3.44 pm on 23 November 2020.
2. The applicant forthwith file and serve the further amended notice of appeal referred to in paragraph 1.
3. The appeal be dismissed.
4. The applicant pay the respondent’s costs of the appeal, as agreed or taxed.

[KPTT v Commissioner of Taxation \[2021\] FCA 46](#)

Jagot J – 5 May 2021

Catchwords:

- Practice and procedure - whether identity of applicant should be suppressed - Court's power to make suppression and non-publication orders - whether suppression orders necessary to prevent prejudice to the proper administration of justice.

The court orders that:

1. The applicant be identified in the proceeding by the applicant’s name rather than by the pseudonym “KPTT”.
2. Order 1 be stayed for a period of 28 days.
3. The applicant pay the first respondent’s costs of and in connection with the issue of suppression of the applicant’s identity in the proceeding as agreed or taxed.

[Singh v Khan \(No 2\) \[2021\] FCA 463](#)

Stewart J – 5 May 2021

Catchwords:

- Restitution – claim for money had and received on mistake of law – whether applicant must plead loss or liability to third party – whether that the money recovered would be held by the applicant on constructive trust in favour of a third party can be raised as a defence to a common law claim for money had and received
- Equity – constructive trust – whether equity imposes constructive trust on the party receiving an overpayment on mistake of law – unconscionability lacking
- Taxation – withholding tax for supplier’s failure to quote a valid ABN – circularity of payment or accounting obligations
- Practice and procedure – application to strike out statement of claim on various grounds – whether reasonable causes of action – whether leave to replead a second time should be given – self-represented litigant

The court orders that:

1. The applicant’s statement of claim filed on 29 March 2021 is struck out.
2. The proceeding is dismissed as against the first and second respondents.
3. The applicant has leave to file a new statement of claim by 31 May 2021 to plead a money had and received claim against the third respondent for monies overpaid for the rent of premises at 8 Bringelly Road, Kingswood, in the period February 2012 to November 2017.
4. Costs are reserved.
5. The matter is listed on 3 June 2021, or such other date as the parties may arrange with the associate to Stewart J, for further case management and oral submissions on the costs reserved on 24 February 2021 and today.

[Shell Energy Holdings Australia Limited v Commissioner of Taxation \[2021\] FCA 496](#)

Colvin J – 12 May 2021

Catchwords:

- Taxation - appeal against objection decision of Commissioner of Taxation - where applicant party to joint venture agreements in relation to natural gas project - where participants in project held statutory titles which conferred authority to explore for petroleum - where applicant increased its proportional interest in each of statutory titles through purchase of additional proportional interest pursuant to Asset Exchange Agreement - whether applicant entitled to tax deduction under s 40-80 of Income Tax Assessment Act 1997 (Cth) for cost of acquiring additional proportional interest - consideration of nature of intangible assets comprising additional proportional interest - finding that deduction can be claimed in relation to additional proportional interest in some statutory titles
- Taxation - whether first use of additional proportional interest for exploration for petroleum - whether activities undertaken by applicant as part of project required use of authority to explore conferred by statutory titles - consideration of meaning of first use - consideration of meaning of exploration - finding that additional proportional interest was first used for exploration in relation to some statutory titles
- Taxation - consideration of when applicant first held additional proportional interest for purposes of Division 40 - consideration of provisions of Asset Exchange Agreement as to when dealing would take effect - whether provisions could operate retrospectively after dealings approved and registered
- Taxation - whether s 40-77 of Income Tax (Transitional Provisions) Act 1997 (Cth) disapplies Division 40 to the additional proportional interest - where s 40-77 disapplies Division 40 to mining, quarrying or prospecting right held before certain date - where s 40-77 disapplies Division 40 in circumstances where taxpayer held right before certain date and starts to hold new right after date which relates to same area - where offshore areas covered by statutory titles had been subject of earlier titles held by applicant - finding that Division 40 not disapplied by s 40-77
- Constitutional law - whether rights and title vested in each State by Coastal Waters (State Title) Act 1980 (Cth) prohibit exploration or exploitation of natural resources - consideration of breadth of authority to explore conferred by statutory titles - consideration of extent of activities requiring permission from the Commonwealth or relevant State

The court orders that:

1. On or before 24 May 2021 the parties do file an agreed minute of orders to give effect to these reasons or, if agreement cannot be reached, competing minutes together with written submissions of no more than five pages as to why orders should be made in the terms proposed by the party.
2. The matter be listed for a further case management hearing at 10.15 am on 31 May 2021.

[Mussalli v Commissioner of Taxation \[2021\] FCAFC 71](#)

McKerracher, Thawley and Stewart JJ – 14 May 2021

Catchwords:

- Taxation – income tax – deductibility – payments made upon entering into lease and license agreements of franchise restaurants – payments described as prepayments of rent – whether payments were capital in nature or on revenue account – characterisation of advantage sought – where the quantum of the prepayment was calculated without reference to the terms of the lease and license agreements

The court orders that:

1. The appeal be dismissed.
2. The appellants pay the costs of the respondent to be assessed if not agreed.

[Virgin Australia Airlines Pty Ltd v Commissioner of Taxation \[2021\] FCA 523](#)

Griffiths J – 18 May 2021

Catchwords:

- Taxation – objections to car parking fringe benefits tax assessments disallowed – appeal under s 14ZZ of the Taxation Administration Act 1953 (Cth) – car parking provided to flight crew and cabin crew at three airports – whether flight crew and cabin crew have a “primary place of employment” – if yes, where is that primary place of employment – task of statutory construction – legislative history of “carve out” of fringe benefits tax exemption for car parking considered – meaning of “business premises” – whether home base terminal or aircraft is primary place of employment – qualitative and quantitative assessment of which place of employment is first or highest in rank or importance

The court orders that:

1. The appeal be allowed.
2. On or before 31 May 2021, the parties are to file an agreed minute of orders to give effect to these reasons and as to costs or, if agreement cannot be reached, competing minutes together with written submissions, not exceeding three pages in length, as to why orders should be made in the terms proposed by the party.

Queensland

[Compass Group Education Hospitality Services Pty Ltd v Commissioner of State Revenue \[2021\] QCA 98](#)

Morrison and Philippides JJA and Williams J – 11 May 2021

Catchwords:

- Taxes and duties – Payroll tax – Objections, Appeals and reviews – where the appellants who used their own employees to provide services to charitable institutions – where charitable institutions are exempt from payroll tax pursuant to s 14(2) of the Payroll Tax Act 1971 (Qld) (PTA) – where the respondent assessed the appellants as being liable to pay payroll tax on wages paid to their employees, whose services had been provided to the charitable institutions – where the trial judge disallowed the appeal and held that Div 1B of the PTA has no application to common law employers – where the appellants contend that Div 1B of the PTA applies to a common law employer and the dictionary definition of “wages” does not apply in respect of an employment agency contract, therefore the appellants are entitled to an exemption under s 13J(2) of the PTA, with the consequence that no liability for payroll tax arises – where the respondent contends that the “only sensible construction” of the Employment Agent Provisions in Div 1B within the context of the PTA as a whole is one which does not apply those provisions to employer/employee relationships and Div 1B, in any event, does not cover the field of liability to payroll tax for employment agents – whether Div 1B of the PTA applies to a common law employer in circumstances where an employment agency contract exists, under which the employment agent provides the services of its employees to a client – whether if Div 1B of the PTA extends to a common law employer, whether the dictionary definition of “wages” applies to remuneration paid by an employment agent to its employee/service provider so as to make the employment agent liable for payroll tax – whether s 13J(2) of the PTA has the effect that the remuneration paid by the employment agent to its employee/service provider is exempt from the application of the deemed wages provision in s 13J(1)

The court orders that:

1. Appeal dismissed.
2. The appellants to pay the respondent’s costs on the standard basis.

[Comptroller-General of Customs v Inchcape Shipping Services Pty Limited \[2021\] QCA 61](#)

Fraser and Philippides and Mullins JJA – 6 April 2021

Catchwords:

- Appeal and new trial – Appeal – General principles – Right of appeal – When appeal lies – Other cases – where the applicant prosecuted the respondent, a shipping agent, in the Magistrates Court for 132 offences under the Customs Act 1901 (Cth) – where the applicant applies for leave to appeal against the decision of the primary judge dismissing the applicant’s appeal from the Magistrates Court – where the applicant relies upon three arguments for the contention that the primary judge erred in deciding that liability under s 236 of the Customs Act had not been established against the respondent – where the applicant argues under s 236 the respondent could be concerned in the commission of an offence against the Customs Act even if a “mistake of fact defence” may be available to the master under s 9.2 of the Commonwealth Criminal Code – where the applicant argues that the applicant did not bear a legal burden of disproving in each case that the master was acting under such a mistake of fact – where the applicant argues that it was not open to the primary judge to infer that the master of each of the seven vessels mistakenly and reasonably believed that the respondent would submit the relevant reports in accordance with the Customs Act – where the respondent opposed the grant of leave to appeal upon the basis that the order by the primary judge dismissing the appeals was in any event correct, because the primary judge erred in deciding that the reference in s 236 to a person concerned in the commission of any offence did not require proof of intention – whether leave to appeal should be granted in these circumstances
- Taxes and duties – Penal provisions under customs legislation – Offences – Aiders and abettors – where the applicant prosecuted the respondent, a shipping agent, in the Magistrates Court for 132 offences under the Customs Act 1901 (Cth) – where the offences were in relation to seven ships’ operators failures to make reports to the Department by the specified time, on various dates between 2014 and 2017, as required by ss 64, 64ACB and 64ACA – where the masters were not prosecuted – where the masters had retained the respondent as the shipping agent for the purpose of complying with the reporting obligations of the masters – where each ship’s master had provided the necessary reports to the respondent in time for the respondent to attend to compliance with the master’s statutory obligations – where the applicant alleged that the respondent was deemed to have committed the offences actually committed by the ships’ masters by s 236 of the Customs Act – where the magistrate found the respondent not guilty of each charge – where the applicant appealed to the District Court – where the primary judge dismissed the appeal – where the primary judge held that the second

The court orders that:

1. Grant the application for leave to appeal, limited to the applicant’s contention that the primary judge erred in deciding that liability under s 236 of the Customs Act had not been established against the respondent because a “mistake of fact defence” under s 9.2 of the Commonwealth Criminal Code might be available to the masters.
2. Dismiss the appeal.
3. The applicant is to pay the respondent’s costs of the application and the appeal.

Colin Fong

New Zealand

The Government has announced a housing package with an aim of increasing the supply of houses, removing incentives for speculators and delivering a more sustainable housing market. The package includes three key measures:

- Extension of the bright-line test for disposal of residential land;
- Change of use rules;
- Removal of interest deductibility.

Bright-line test

An amount a person receives from the sale of residential property within five years of acquisition is taxable as income. (This is, in effect, a focused capital gains tax.) A person’s main home is excluded. See Income Tax Act 2007 (NZ) ss CB 6A and CB 16A.

For residential properties acquired after 27 March 2021, the bright-line period will be extended to 10 years. However, new build properties acquired after that date will continue to be subject to a five year bright-line period.

Change of use rules

If during the bright-line period, the property is not the owner’s main home for a period of longer than 12 months, the proceeds must be apportioned between taxable and exempt amounts.

Interest deductibility

Deductibility of interest on loans used to purchase residential property will be phased out, as set out below:

Income year	Percent of interest deductible
1 April 2020–31 March 2021	100%
1 April 2021–31 March 2022	1 April 2021 to 30 September 2021 - 100%
(transitional year)	1 October 2021 to 31 March 2022 - 75%
1 April 2022–31 March 2023	75%
1 April 2023–31 March 2024	50%
1 April 2024–31 March 2025	25%
From 1 April 2025 onwards	0%

Legislation is expected shortly. Inland Revenue has produced the following guidelines:

[Inland Revenue, Interest deductions on residential property income – Proposed changes](#) (March 2021)

[Inland Revenue, Bright-line test proposed changes](#) (March 2021)

Jonathan Barrett

09 | TAX AND RELATED MEETINGS

Domestic

Various domestic events happening in the foreseeable future are listed below.

Melbourne Law School Tax Research Seminars Online

The tax research seminar online series hosted by the Melbourne Law School, aimed to provide a regular and congenial forum for presentation and discussion of new academic tax law, policy and theory research by colleagues in Australia, New Zealand and the region. The seminars are run online as a Zoom meeting, with 25 to 30 minutes paper presentation followed by comments from a discussant and then ample time for questions and discussion. [View the updated 2021 schedule.](#)

Upcoming Seminars:

- 29 July 2021 - The US Tax Cuts and Jobs Act- will it survive the new President and Congress? Presented by Ms Viva Hammer (University of Melbourne) and chaired by Professor Miranda Stewart.
- 26 August 2021 - Characteristics of Tax Avoidant Companies. Presented by Dr Bronwyn McCredie (QUT) and chaired by Professor Miranda Stewart

If you are interested in attending these events please email law-tax@unimelb.edu.au or register via the links provided above.

[Critical Junctures/Critical Perspectives – A Call for New Voices in Tax Reform](#)

Date: 15-16 July 2021

Location: Online from Melbourne

Cost: TBA

The symposium invites papers from scholars from all disciplines (for example, law, politics, economics, sociology) to offer critical perspectives on taxation. Topics might include (but are not limited to): the role of taxation in addressing wealth and income inequality; taxation and gender inequality; the differential impact of tax policy on marginalised groups such as Indigenous people, migrant and refugee communities and LGBTIQ+ groups; and the role of taxation in addressing environmental issues. The symposium will be hosted online from Melbourne and be held from 15-16 July 2021. Eligible participants will be invited to submit their written papers for possible inclusion in a special issue of the Australian Tax Review in 2022. Enquiries and abstracts of no more than a page should be submitted to kathryn.james@monash.edu. The deadline for submission of abstracts was 7 March 2021.

[11th Queensland Tax Researchers Symposium](#)

Date: Friday, 9 July 2021

Location: (Virtual and Face-to-Face)

Cost: Free

Plans are well under way for the Tax Symposium, with 13 speakers speaking on topics from tax complexity, cryptocurrencies and tax Literacy.

Free registration is now open. While it is free to attend you need to register by 25 June 2021 at the latest (indicating whether you will be attending face-to-face or online).

While it is free to attend there are limited spaces (as light refreshments will be served). Note the symposium will be followed by the launch of Griffith's Tax Major (at 5.30pm) - which you are welcome to attend as well (just indicate this on the registration form).

ATTA 2022 Conference

Date: 19-21 January 2022

Location: University of Canterbury

Please see more information contained at item 2 above or email [Andrew Maples](#).

[The Tax Institute](#)

[Law Council of Australia](#)

[Australian Conference Alerts](#)

Melbourne Law School, University of Melbourne Annual Tax Lecture 2021

Date: Thursday, 11 November 2021 at 6:00pm - 7:15pm (AEDT).

Mark your calendar for the Tax Group 16th Annual Tax Lecture. Mr Mark Leibler AC, the Senior Partner at Arnold Bloch Leibler, will speak about the tax and the rule of law. More details to follow.

[14th International Conference on Tax Administration](#)

Date: 23-24 November 2021

Location: Hilton, Sydney

Cost: TBA

Theme: Tax Administration at the Frontier

For the first time this prestigious biennial event that brings together leading tax administrators, academics and practitioners from around the globe will be a combination of face to face and virtual participation. In keeping with these challenging times we have chosen these dates to maximise the option of you being able to join us in person but with the flexibility to join us virtually if you can't.

The theme of the 2021 conference is: 'New Frontiers in Tax Administration'. During this two-day event, conference speakers will explore key tax administration issues including:

- cutting-edge initiatives in service delivery and compliance including digital and data use, tap and go, and artificial intelligence;
- data policy, ethical data exploitation, cyber security and new developments in regulating data platforms;
- globalisation of revenue administration; and
- tax dispute resolution and new approaches to protecting the financially vulnerable including the elderly, impaired and those in remote areas.

Presenters who previously had papers accepted please note we will be in touch to advise you of the new deadline for papers in case you want to refresh yours to take account of recent extraordinary developments!

Conference organisers have secured with the Hilton a special delegate rate of 10% off the advertised day rate. To book, please visit [here](#) or call on +61 (0)2 9266 2000 referring to group code GUNSWD for a discounted rate (10% off from hotel best available rate).

Contact: [Maree Magafas](#), UNSW Business School

International

Various international events happening in the foreseeable future are listed below.

5th International Taxpayer Rights Conference Date: Postponed to 6-7 October 2021 Location: Pretoria, South Africa Cost: USD\$325 Theme: Taxpayer Rights, Human Rights: Issues for Developing Countries	Canadian Tax Foundation	Institute for Fiscal Studies
	Institute for Austrian and International Tax Law	International Bureau of Fiscal Documentation
	International Fiscal Association	International Tax Planning Association
International Fiscal Association Congress Date: Postponed to 10-15 September 2022 Location: Cancun, Mexico Cost: Unknown Theme: TBA	International Events and Law Conferences	Practising Law Institute
	New York Bar Association	Hieros Gamos Worldwide Law Events
	International Bar Association	American Bar Association

10 | RECENT PUBLICATIONS

Readers are encouraged to inform the Editor of recently written publications for inclusion in these pages. Bold indicate ATTA members.

Domestic

The Conversation

Adams, Philip '[Australia's economy can withstand the proposed European Union carbon tariff](#)', 23 April 2021

Coates, Brendan '[The lesson for Australia out of Victoria's property tax hikes: two out of three ain't bad](#)', 24 May 2021

Hawkins, John; Li, Jinjing; Walsh, Michael James; Miranti, Riyana (Mira) & Vidyattama, Yogi '[The Low and Middle Income Tax Offset has been extended yet again. It delivers help neither when nor where it's needed](#)', 14 May 2021

Hodgson, Helen & Moyle, Sally '[The Women's Budget Statement was more like a first step than a revolution](#)', 14 May 2021

Holden, Richard '[Vital Signs: timing of Yallourn's closure shows it's high time for a carbon price](#)', 12 March 2021

Minas, John & Minas, James '[If we wanted to, we could stop filling shoeboxes with receipts. Here's how to simplify work-related tax deductions](#)', 3 May 2021

Tax and Transfer Policy Institute (TTPI)

[Austaxpolicy.com Blog](#)

It's Time for a Cross-Disciplinary Conversation About the Effectiveness of Job Seeker Sanctions, Simone Casey and David O'Halloran, 18 March 2021

Recent Cases in Common Law Jurisdictions: Trending Towards Convergence in General Anti-Avoidance Rules, **John Tretola**, 15 March 2021

America Should Eliminate Corporate Income Taxes, Edward Lane, 08 March 2021

The Goods and Services Tax and the Policy Behind Exempting Basic Food, **Fiona Martin**, 08 April 2021

A shocking statistical fact that will change the way you think about the gender pay gap, Yinjunjie Zhang & Robert Breunig, 06 April 2021

The EU and the Pacific: Global tax governance, Suriyo Seam, 02 April 2021

Taxation of non-resident online marketplaces: Is there a problem? **Victoria Plekhanova**, 3 May 2021

Budget courage needed to sustain recovery, John Hewson, 29 April 2021

Equity in taxation: An international comparison, Nanak Kakwani, 26 April 2021

Remapping the Frontier of Tax Authority Immunity from Taxpayer Suit in a Digital Tax Administration World, **John Bevacqua**, 20 April 2021

David Sutton, Jeremy Parker and Anthony Lake "The Taxation of Residential Property, Tax Complexity, Equity and Economic Efficiency: How do current legislative developments compare with CGT? [Part 1]

Other Works of Interest

O'Rourke, Kevin; **Kayis-Kumar, Ann** and **Walpole, Michael** '[Serious hardship relief: in need of a serious rethink](#)' (2021) 43(1) Sydney Law Review (advance access available)

Tax and Transfer Policy Institute Working Papers

- Paul Tilley: 1985 reform of the Australian tax system
- Sarah Dong, Mathias Sinning: Trying to make a good first impression: A natural field experiment to engage new entrants to the tax system
- Yinjunjie Zhang, Robert Breunig: Gender norms and domestic abuse: Evidence from Australia
- Mathias Sinning, Yinjunjie Zhang: Social norms or enforcement? A natural field experiment to improve traffic and parking fine compliance
- Syed Hasan, Shamim Shakur, Robert Breunig: Exchange rates, remittances and expenditure of households with foreign-born members: Evidence from Australia, April 2021
- Andrew Sinstead-Reid: Rehabilitating K.W. Sumner's 'Happiness Theory of Welfare' - Part 1: Sumner's welfare theoretic system, April 2021
 - Nicholas Biddle and Dinith Marasinghe: Using census, social security and tax data from the Multi-Agency Data Integration Project (MADIP) to impute the complete Australian income distribution, April 2021

(2021) 146 Taxation Today January/February

Robyn Walker and Veronica Harley, "Tax Rate Change Enacted along with Big-Brother Information Gathering Powers"

John Bevacqua, "Taxpayer Attitudinal Responses to Tax Audits: Strategic Implications of Recent Findings from the United States" [Part 3]

(2021) 147 Taxation Today March

Andrea Tolley, "BEPS 2.0: Tax Challenges of Digitalisation; Public Consultation Suggests Simplification is Key to Success"

Frank J Vari, "Practical Transfer Pricing Strategies in the COVID Environment"

(2021) 148 Taxation Today April

James Ryan "New Zealand Schools (State and State Integrated): GST and FBT Issues"

David E Spencer "Digital Services Taxes: The African Tax Administration Forum (ATAF) Suggested Approach"

(2021) 149 Taxation Today May

Shelley-ann Brinkley "Residential Rental Property Tax Changes"

David Sutton, Jeremy Parker and Anthony Lake "The Taxation of Residential Property, Tax Complexity, Equity and Economic Efficiency: How do current legislative developments compare with CGT? [Part 1]

International

British Tax Review Issue 1, 2021

- Australia's proposal to reform company tax residence: legal fictions approaching truth? - **Miranda Stewart**
- Digital Services Tax: Lessons from the Section 301 Investigation - Chris Noonan and **Victoria Plekhanova**

Kofler, Georg et al (ed) Controlled foreign company legislation, Amsterdam, IBFD, 2020; ISBN:978-90-8722-644-2

- Chapter 1: Controlled Foreign Company Legislation: General Report - **Richard Krever**
- Chapter 4: Controlled Foreign Company Legislation in Australia - **Richard Krever** and **Kerrie Sadiq**
- Chapter 25: Controlled Foreign Company Legislation in New Zealand - **Andrew MC Smith** and **Adrian J Sawyer**

Livingston, Michael A Tax and culture: convergence, divergence, and the future of tax law, Cambridge, UK, Cambridge University Press, 2020; ISBN-13: 978-1107136847, ISBN-10: 1107136849

Ooi, Vincent 'Adapting taxation for the digital economy in Singapore' (2021) 27 (1) Asia-Pacific Tax Bulletin 1-10

11 | QUOTABLE QUOTES

“Australia’s largest employer organisation, Ai Group, is urging the Victorian government to put the brakes on its plan to tax drivers of electric cars.

Ai Group chief executive Innes Willox said the proposed charges effectively put “the cart before the horse” and should not be introduced until cleaner cars were more widely adopted.

“Road infrastructure needs to be paid for and it will be important in the long term to maintain the tax base as batteries and fuel cells replace petrol tanks in Australia’s vehicle fleet. But Australia is currently well behind our peers in that transition,” Mr Willox said.

“Our slow uptake of clean vehicles is holding back national progress towards emissions targets – and increasing the pressure on every other part of the economy to deliver cuts.”

His comments come after governments around the world moved to ban the sale of new petrol and diesel cars within the next decade or so.

The widespread adoption of electric vehicles is widely regarded as a crucial step towards achieving net-zero emissions by 2050.”

Source: [Euan Black, The New Daily](#)

“As the old saying goes, the only two certainties in life are death and taxes.

Unless you’re Facebook.

The world’s largest social media company recorded \$712 million worth of advertising revenue in Australia in 2020, up from \$673 million in 2019, according to financial records filed with ASIC last Friday.

But after some creative accounting, that revenue was whittled down to just \$38 million in taxable profits, of which just \$11 million (30 per cent) was paid in tax.

That means the company paid less tax on its profits in 2020 than it did in 2019 – despite bringing in more revenue.

And the missing piece of the puzzle isn’t higher costs.

All that revenue conveniently disappeared because the company sent \$559 million in “reseller expenses” overseas under a deal with its US-based parent.

That’s \$51 million more than it sent overseas in 2019 – eating into its revenue boost and then some – though Facebook did pay more tax in total in 2020, with a total bill of \$20.1 million once taxes on other payments were included.

If you ask Facebook executives, they’ll likely say no rules were broken, which is true, but it doesn’t take a tax law degree to work out that’s not the point.”

Source: [Matthew Elmas, The New Daily](#)

What is said below could equally apply to the Income Tax Assessment Act 1936 and 1997 (Cth)

You're almost 20, Corporations Act

by William Isdale and Nicholas Simoes da Silva

A light-hearted dialogue in which a discontented mother and father implore their son (the Corporations Act) to grow up.

Father: Corporations Act 2001 (Cth), could you come here please? Your mother and I would like to speak with you.

[Enter Corporations Act.]

Father: Son, this year you're turning 20 years old. Your mother and I are proud of you – you've achieved a lot: a nationally consistent regulation of basic company law, insolvency, financial markets, products and services, among so much else. However, we are concerned about you. You need to grow up.

Corporations Act: What did I do? Was it the Financial Sector Reform (Hayne Royal Commission Response) Act 2020?

Father: No son, it's nothing to do with that. Please take a seat. And remember, what we're about to say comes from a place of love.

Oh how you've grown

Mother: Your father and I remember when you were just 1866 pages long. You've grown a lot since then, but don't you think you should slow down a bit? You've really been bulking up. You're now over 3,700 pages long, and that doesn't even include your Regulations and other legislative instruments!

Father: I can barely get my arms around your primary provisions without opening 6 PDFs on the Federal Register of Legislation! Your brother, the ASIC Act 2001 (Cth), only put on 232 pages in the same time period. And your sister, the National Consumer Credit Protection Act 2009, has only grown by 273 pages since she was born in 2009.

Corporations Act: That's not fair, I do so much more than them!

Mother: That's true, son. But your father and I think you should focus on your strengths. You're trying to do too much. Maybe it's time you gave up insolvency and financial markets regulation, and left them for other Acts to focus on. Please give it some thought.

You're hiding stuff under your bed

Father: I was vacuuming the other day and found over 366 legislative instruments under your bed, and a box of thousands of individual relief instruments. Why are you hiding these from us? We looked on the Federal Register of Legislation and found that many of them weren't on there. How are people meant to find the law? We raised you to be better than that.

Mother: I took a look at some and could barely understand them! Many of them were written as 'notional' legislative provisions, obscuring their actual effect. Didn't they teach you to express yourself clearly in school?

Corporations Act: It's not my fault – I need instruments to function!

Mother: Well, that leads us to our next concern, son ...

You're addicted to instruments

Father: We're worried you might be addicted to legislative and other instruments. You can't just keep putting an instrument on the parts of yourself you don't like. We barely recognise the boy we raised! Just last year, an ASIC legislative instrument 'modified' you so that your Australian Financial Services licence regime would apply in a significantly different way to foreign financial services providers.

Mother: We don't think you need all these instruments, honey. Don't you think you should be able to stand on your own two feet and let the nice people at ASIC get on with their other important work?

Corporations Act: Whatever, Mum. Everyone's using instruments these days. You just don't understand ...

You're too complicated

Mother: That's not the only thing I don't understand about you! You've become so complex – it's like I barely know you anymore. You've been using all these obscure definitions, like for 'simple corporate bonds depository nominee' – but there's nothing simple about it!

Father: Son, I'm sure you think using all this elaborate language is really cool, but a mark of maturity is expressing yourself clearly. No one talks like you in the real world. We think it's time you were a little clearer.

Corporations Act: I think you're being unfair. I've been a huge success, Mum and Dad – I've registered millions of companies and tens of thousands of licensees and representatives, while also punishing bad guys, and contributing to the economic success of our country!

You're falling behind

Father: That's well and good son, but you're falling behind. Even your cousin over the ditch is now machine-readable, while many of your instruments are saved as images!

Mother: You really do need to keep up with technology. Why are you still requiring directors to execute documents on a single, hard copy? And requiring meetings to be conducted in person, rather than digitally? You're falling behind the other kids.

Corporations Act: But ASIC fixed that for me last year!

Mother: We know son. But those modifications are time-limited, and intended simply to deal with the effects of the coronavirus pandemic. Don't you think it's time for a more fundamental review, to ensure you're keeping pace with technological change?

It's time to listen to your friends

Father: The truth is, son, that people are starting to say unkind things about you. Your uncle Hayne said that you've been "piling exception upon exception" and "carving out special rules for special interests". And Justice Rares said you were starting to look a bit like "legislative porridge".

Mother: Your teacher, Cally Jordan, said your class-mates thought you were "unlovely and unloved".

Corporations Act: Ouch!

Mother: We still love you son. But we do think it's time you grew up.

Father: Your mother is right. It's time you took a good hard look at your definitions and considered consolidating them, using them consistently, and making them clearer. And it's time to consider your legislative design – how you're using regulations and instruments, and how they can be made more accessible.

Mother: And it's time you ensured that you are clearer about what you're trying to achieve, so that your intent is actually realised.

Corporations Act: Ok Mum and Dad. I'll have a think about it. I feel a bit bruised, but I know you're just trying to help me.

Mother: Perhaps you should talk to the ALRC, son? I hear they've got some ideas ...

[Fade to black.]

Source: [William Isdale and Nicholas Simoes de Silva, ALRC](#)