Welcome to the first issue of the Australian Tax Law Bulletin (ATLB), which is devoted to articles on current tax issues in practice in order to benefit legal and tax professionals, as well as tax administrators. ATLB will provide opinions and arguments on recent tax legislation (state and Commonwealth), tax administration, judicial issues and policy. Our editorial board members have extensive and high-level practical experience in taxation law in both the private and public sectors.

At the time of writing, on the aftermath of the 2014 federal Budget, this is a very exciting time to be involved in the tax industry, with a new federal government looking at new ways of doing business. The significant size of current and projected budget deficits means that tax reform will play an important role in the short to medium term. We aim to provide timely, relevant and authoritative opinions and arguments on such reforms, as well as ongoing tax issues.

This first issue focuses on several recent and important tax cases. Joe Power examines the case of Deputy Commissioner Of Taxation v Zammitt and explores the inherent ambiguity in the relevant tax laws. In a unanimous decision, the five-member Bench of the NSW Court of Appeal (Bathurst CJ, Beazley P, Gleeson JA, Bergin CJ, Tobias AJA) found that the transitional provisions did not require the Commissioner to serve a separate director penalty notice under Div 269 of Sch 1 of the Taxation Administration Act 1953 (Cth) before he can recover a penalty that was originally payable and recoverable under former Div 9 of Pt VI of the Income Tax Assessment Act 1936 (Cth).

Karen Payne considers the Full Federal Court decision in Commissioner of Taxation v Resource Capital Fund III LP. As Payne notes, this case provides a very good example of the hybrid mismatch challenge, where double taxation may arise, despite the existence of a double tax agreement, which is designed to prevent potential double taxation. In her article, Payne analyses legal and practical issues in relation to Australia’s application of double tax agreements and the appropriate interaction of the OECD Partnership Report with these.

Chris Wallis’s article, “The main residence exemption is like a fairy tale!”, provides a detailed illustration of how complex the CGT main residence exemption can be. Wallis looks at the exemption involving a deceased partner where the dwelling has been used to produce assessable income. His analysis uncovers a myriad of perplexing issues and the need for taxpayers to seek professional advice. As Wallis notes:

To avoid making false or misleading statements in relation to the main residence exemption, clear thinking is required as to the information that the Commissioner can obtain to establish that the dwelling is being used, or at one time was used, to produce assessable income or even to establish that a person was not using the dwelling during a period of time.

The 2014 Federal Budget’s budget deficit levy (a surcharge on income tax) will arguably take Australia to 126 different taxes. Given the high probability of such tax reform and further changes in the near future, it is useful (ie, anticipating impacts on tax planning) in this first issue to reflect on what recent major tax reviews in Australia (the Henry Review) and the UK (the Mirrlees Review) have concluded about possible future directions for tax reform and where we are now.

In my article, I have found a striking similarity in the opinions of these reviews as to what constitutes a sensible tax system. Such a system relies on only seven generally broad taxes. This provides significant simplicity benefits and much greater levels of efficiency and equity — this all appears compelling. However, given the politics of tax, the good work of such reviews is generally ignored. My article calls for an independent body to take over the role of tax legislation design, implementation and ongoing maintenance. If it doesn’t work, fix it.

Footnotes