

# Senate Standing Committee on Economics

## ANSWERS TO QUESTIONS ON NOTICE

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23 – 24 February 2011

Question: AET 95

Hansard Page: Written

Topic: Improving the operation of the anti-avoidance provisions in the income tax law

Senator Bushby asked:

I refer to your discussion paper of 18 Nov 2010 on *Improving the operation of the anti-avoidance provisions in the income tax law*.

Did you conduct discussions on the need for a review with the business and tax advisory groups?

Why isn't there some explanation in the document on why companies and entities undergo restructure? Why doesn't the document have some economic or commerciality analysis as the basis for seeking or not seeking reform? One could read the document and conclude that all restructures were aimed at tax avoidance?

What research do you have on how many corporate restructures take place each year and how many of them are for avoidance purposes – and how much tax has been avoided?

Also, what is the benefit to the economy of corporate restructures? Could you explain to the committee the typical example of legitimate restructures and whether, if it does inter alia incorporate some tax benefit, it will run foul of any new rules that you develop.

Do you agree that the Commissioner's comments in the AFR on 27 Jan, actually argue against reforms to Part IVA as they state that Part IVA rules 'largely explains why the why the amount of tax paid by companies as a proportion of GDP is higher in Australia than other countries.' ie why expand the tax net and thereby push Australian companies down the ladder in terms of tax competitiveness.

Does reform of Part IV A get a mention in the Red book briefing for the incoming government, and if so what reasoning has been used to justify a reform process?

The Tax Commissioner mentioned in his speech to the Australian Tax Teachers Association that ATO wins more court cases than it loses. Could you identify the major wins that you have had in the past three years and also the losses? And what have been the costs of this litigation, successful and unsuccessful, and for what revenue advantage?

What additional revenue have you budgeted for which will arise from changes the definition of 'tax benefit' as describe on page 1 of the AFR on 24 January 2011?

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How do you respond to the statement by ICA in the AFR of 24 Jan which suggests that by being overly zealous in your administration you might 'kill off' otherwise legitimate transactions which have been genuinely entered into for the purpose of profit making and commercial reasons?

What signals does this approach send to corporations considering locating in Australia and also to Australian corporations who are considering restructures so as to become more productive and profitable?

What is the current status of the Part IVA project and could you advise the committee the financial and human resources that you have allocated to the project over the next 12 months. Who is leading the project and in which divisions of Treasury and ATO?

What is the working title, so as to assist FOI requests, of this project and what deadline dates have you in mind? Draft report, final draft, consultation, draft legislation, consultation, new bill for Parliament and final passage.

Answer:

1. The Government is always seeking to improve and simplify the operation of the tax law. The need to review or revise anti-avoidance provisions in the income tax law has been identified on a number of occasions, including in the publications, *Tax Reform: Not a New Tax, A New Tax System* and *Review of Business Taxation: A Tax System Redesigned* commissioned by the previous government. Consequently, no specific discussions were had about the need for a review.

The purpose of releasing the discussion paper, *Improving the operation of the anti-avoidance provisions in the income tax law* was to consult with relevant stakeholders to obtain their views as to whether any changes are actually required to the anti-avoidance provisions in the income tax law.

2. The discussion paper, *Improving the operation of the anti-avoidance provisions in the income tax law* canvasses options at a general level to ensure that the general anti-avoidance rule (GAAR) contained in Part IVA of the *Income Tax Assessment Act 1936* is able to deal with existing and emerging risks. It also includes options to consolidate, streamline and improve the operation of the existing specific anti-avoidance provisions in the income tax law.

As the discussion paper canvasses these issues at a general level, it was not necessary to include specific explanations of all of the commercial areas which may currently be affected by the operation of Part IVA (e.g. corporate restructures).

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3. The Australian Taxation Office (ATO) does not collect data on the total number of corporate restructures which occur each year and is not in a position to categorise them according to their purpose without a case by case analysis of the particular arrangements.

The ATO's approach to tax compliance in the large business market is to use computer modelling to monitor variance in large business's activities and to individually monitor each of the largest businesses:

*Corporate restructuring can be identified by the ATO large business risk engine through changes in the assets and liabilities controlled by a corporate group.*

*Consolidation entry and exit notifications are also reviewed to identify restructures that have been carried out using complex or novel financial arrangements and or steps which do not appear to be necessary to achieve the business needs of the parties.*

*In respect of the largest businesses, the ATO closely reviews the activities of higher risk taxpayers and closely monitors the affairs of key taxpayers which together are responsible for most of the tax paid by large businesses.*

Whilst this allows the ATO to identify potential instances of abusive corporate restructuring, it does not result in aggregate analysis of the occurrence and drivers of these restructures which, of course, can occur for a variety of reasons.

However, the point that needs to be made is that some corporate restructures, the vast majority if not all of which would have legitimate commercial justification, can be structured in a way that avoids tax inappropriately. For example, the restructure may trigger a capital gains event, and where the restructure is done in a way that avoids that outcome – for example, by the inclusion of steps that have no commercial justification, the way the restructure is done can bring into play the potential application of the GAAR. It is the way in which the restructure is effected rather than the restructure itself which may give rise to questions as to the application of the general avoidance provision. A good example of this is the case of *British American Tobacco Australia Services Ltd v Commissioner of Taxation* [2010] FCAFC 30 (currently on appeal) where the Full Federal Court found that the way the restructure was put into effect resulted in an inappropriate tax benefit.

The ATO's annual *Compliance program 2010-11* outlines the ATO's approach in the area of corporate restructures. Areas to be reviewed include arrangements where taxation and economic outcomes are not aligned and are unnecessarily complex.

Where issues arise during compliance activities that raise the potential application of the anti-avoidance provisions, position papers are provided to the taxpayer and matters are referred to the GAAR Panel for advice. The GAAR Panel includes private sector experts.

4. The current application of Part IVA or an updated version of Part IVA, incorporating an expanded definition of tax benefit, to a corporate restructure will depend on the specific facts of

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that restructure. The Government does not consider there to be merit in speculating on hypothetical transactions to which possible future amendments might apply.

5. The Commissioner's comments were about the broader long term impact of having a GAAR. Reviewing the GAAR is not about expanding the tax net. It is about making sure that what is supposed to be in the net stays there.

6. The Red Book briefing that was provided to the incoming Government has been released publicly in a redacted form and can be found on the Treasury website. The need to review or revise anti-avoidance provisions in the income tax law has been identified on a number of occasions including in the publications, *Tax Reform: Not a New Tax, A New Tax System* and *Review of Business Taxation: A Tax System Redesigned* commissioned for the previous government.

7. In the 2007-08, 2008-09 and 2009-10 income years, the ATO contested 676 taxation dispute cases (excluding debt recovery proceedings and prosecutions) in the Administrative Appeals Tribunal, Supreme Courts, Federal Court (including matters heard by the Full Court) and the High Court which resulted in a court or tribunal decision. Many other cases are resolved prior to the actual hearing, most commonly through alternative dispute resolution.

The outcomes of court and tribunal decisions are included in the ATO's Annual Report, and are set out below (it should be noted that there are also a small number of cases that proceed to hearing but are resolved by way of settlement or withdrawal/concession prior to a judgment or decision being handed down):

|                            | 2007 - 2008 |     |                                       | 2008 - 2009 |     |                                       | 2009 - 2010 |     |                                       |
|----------------------------|-------------|-----|---------------------------------------|-------------|-----|---------------------------------------|-------------|-----|---------------------------------------|
|                            | Cases       | %   | Total disputed tax (plus penalty) \$m | Cases       | %   | Total disputed tax (plus penalty) \$m | Cases       | %   | Total disputed tax (plus penalty) \$m |
| COURT DECISIONS            |             |     |                                       |             |     |                                       |             |     |                                       |
| Favourable to the ATO      | 44          | 57% | 1,177.2                               | 45          | 64% | 1,147.1                               | 42          | 56% | 241.5                                 |
| Favourable to the taxpayer | 23          | 30% | 29.0                                  | 23          | 33% | 1,406.7                               | 26          | 35% | 1,309.2                               |
| Part favourable to the ATO | 10          | 13% | 55.4                                  | 2           | 3%  | 0.3                                   | 7           | 9%  | 45.0                                  |
| TOTAL                      | 77          |     | 1,261.6                               | 70          |     | 2,554.1                               | 75          |     | 1,595.7                               |
| AAT DECISIONS              |             |     |                                       |             |     |                                       |             |     |                                       |
| Favourable to the ATO      | 107         | 46% | 60.0                                  | 85          | 67% | 13.4                                  | 60          | 63% | 44.2                                  |
| Favourable to the taxpayer | 58          | 25% | 10.8                                  | 15          | 12% | 6.2                                   | 9           | 9%  | 1.6                                   |
| Part favourable to the ATO | 66          | 29% | 16.2                                  | 27          | 21% | 10.8                                  | 27          | 28% | 9.0                                   |
| TOTAL                      | 231         |     | 87.0                                  | 127         |     | 30.4                                  | 96          |     | 54.8                                  |
| 3 YEAR TOTAL               | 676         |     |                                       |             |     |                                       |             |     |                                       |

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NOTE: Of the \$1.309 billion in 2009-10, \$1.3 billion is in regard to related cases. In September 2010 special leave to appeal to the High Court was granted to the Commissioner in respect of \$483 million of the amount but denied in respect to \$819 million.

The ATO's Annual Report includes the total Legal Services expenditure incurred each year. As reported at page 176 of the 2010 report, in the 2009-10 income year, \$69.8 million was spent.

#### *Major wins and major losses*

The table in Annexure A provides details on some of the litigation matters (from 1 July 2007 to present) which the ATO consider to be the most significant in terms of their implications for the tax system. The cases listed are predominantly taxation disputes, across various jurisdictions. Non-taxation disputes have been marked with an asterisk.

The tax in dispute in each case, and the Commissioner's costs in the litigation, including that recovered from, or by, the other party, has also been included. However, it is important to note that the revenue advantage (or disadvantage) in many cases is usually much larger than the actual amount of tax that is in dispute in that particular case.

As the ATO does not maintain centralised records with respect to revenue advantage, it is difficult to quantify the total revenue advantage/disadvantage for each litigation matter. Furthermore, the significance of a particular matter may sometimes not necessarily be reflected in the revenue advantage or in the tax in dispute in that case, but by the law clarification provided by a court decision where there is, or was, uncertainty or contention as to the operation of the law in question.

The ATO endeavours to minimise the number of disputes that proceed to litigation and hearing but where appropriate, in the interests of law clarification the ATO contributes to the funding of a number of significant cases through its Test Case Litigation Program.

8. As the Government has not yet determined if it will adopt any of the changes to 'tax benefit' canvassed in the discussion paper, *Improving the operation of the anti-avoidance provisions in the income tax law*, it has not budgeted for any additional revenue.

9. The statement by the ICA was not that the administration of Part IVA was overly zealous but rather that it should not become overly zealous. It is partly for this reason that the Commissioner set up the GAAR Panel to advise him on a case by case basis of the appropriateness of having to resort to Part IVA. The Panel consists of senior and eminent practising lawyers and accountants, a current judge and a former judge.

10. The release of the discussion paper, *Improving the operation of the anti-avoidance provisions in the income tax law* sent a signal that the Government is committed to ensuring that Australia's

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tax law is guarded effectively against individuals and business who seek to avoid their tax obligations. Any changes made by the Government will ensure that the vast majority of taxpayers who do the right thing are not put at an unfair disadvantage by those seeking to avoid paying their share of tax.

11. The current phase of the Part IVA project is considering submissions received in the public consultation process. The project is being progressed by the Business Taxation Division of Treasury, which is headed by Paul McCullough. Resources will be allocated to the project over the next 12 months according to the Government's priorities.

12. The Project is using the title of the Government's discussion paper, *Improving the operation of the anti-avoidance provisions in the income tax law*.

The Government has not decided upon any deadline dates for later steps in the anti-avoidance project. To date the Government has only issued the discussed paper, *Improving the operation of the anti-avoidance provisions in the income tax law*. Other relevant materials will be issued for public consultation once the Government has evaluated the merits of the submissions received as part of the recent public consultation process. The Government will then determine whether, and to what extent, changes need made to the anti-avoidance provisions in the income tax law.

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#### Annexure A

| Name of case                                                                                                                                | Outcome                                                                | ATO's Legal Cost              | Legal Costs Recovered by the ATO | Costs Awarded to the Taxpayer | Taxpayer's costs paid by the Test Case Litigation Program | Tax in dispute | Issue                                                                                                                                                                                                                                      |
|---------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|-------------------------------|----------------------------------|-------------------------------|-----------------------------------------------------------|----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Bluebottle UK Limited v Deputy Commissioner of Taxation</i> [2007] HCA 54 - 5 December 2007 (High Court of Australia)                    | Favourable                                                             | \$1,087,269.50                | \$371,804.00                     |                               | -                                                         | \$0            | Whether a notice under section 255 of the <i>Income Tax Assessment Act 1936</i> (ITAA 1936) can be defeated by the assignment of the right to receive dividends to another non-resident entity that has no tax debts in Australia.         |
| <i>British American Tobacco Australia Services Limited v Commissioner of Taxation</i> [2010] FCAFC 130 - 10 November 2010 (Federal Court of | Favourable.<br><br>However, currently on appeal to the High Court – to | \$600,378.96<br><br>(to date) | Not yet determined               | Not yet determined            | n/a                                                       | \$0            | On the global merger of the British American Tobacco and Rothmans group of companies, net capital gains on the sale of the British American Tobacco's cigarette brand assets were crystallised in an entity with unrelated capital losses. |

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| Australia, Full Court)                                                                                              | be heard on 8 April 2011.                                                                                                                |                           |                    |                    |     |              | The Federal Court accepted the Commissioner's submissions that Part IVA should apply to assess net capital gains to the taxpayer.                                                                                                                                                                                                                                                                                                                                                                               |
| <i>Citigroup Pty Limited v Commissioner of Taxation</i> [2010] FCA 826 - 9 August 2010 (Federal Court of Australia) | Favourable regarding Part IVA; Adverse regarding GIC.<br><br>Currently on appeal to the Full Court – heard 8 Feb 2011. Judgment reserved | \$967,186.53<br>(to date) | Not yet determined | Not yet determined | n/a | \$37,530,904 | Whether, having regard to the factors set out in section 177D(b), it would be concluded that the taxpayer or one of the other parties to the scheme entered into or carried out the scheme for the purpose of enabling the taxpayer to obtain a tax benefit in connection with the scheme?<br><br>Whether the taxpayer was liable to pay General Interest Charge in respect of the amount of the amended foreign tax credit determinations made by the Commissioner in relation to Hong Kong bond transactions? |



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| <i>Commissioner of Taxation v AXA Asia Pacific Holdings Ltd</i> [2010] FCAFC 134 - 18 November 2010 (Federal Court of Australia, Full Court) | Adverse    | \$1,659,019.99 | -            | \$3,000,000 (estimate) | -            | \$114,937,582 | Whether the parties were dealing at arm's length within the meaning of the scrip for scrip provisions in Subdivision 124-M of the ITAA 1997; or whether Part IVA of the ITAA 1936 applies to deny the tax benefit.                              |
| <i>Commissioner of Taxation v Bamford; Bamford v Commissioner of Taxation</i> [2010] HCA 10 - 30 March 2010 (High Court of Australia)        | Favourable | \$876,639.68   | -            | -                      | \$483,194.90 | \$41,341      | Whether paragraph 97(1)(a) of the ITAA 1936 refers to a beneficiary's proportionate share of the 'income of the trust estate' and whether a trustee can determine what constitutes 'income of the trust estate' for the purposes of section 97. |
| * <i>Commissioner of Taxation v Futuris Corporation Limited</i> [2008] HCA 32 - 31 July 2008 (High Court of Australia)                       | Favourable | \$1,454,752.67 | \$202,884.14 | -                      |              | \$0           | The case concerned whether the taxpayer could challenge an amended assessment under section 39B of the <i>Judiciary Act 1903</i> .                                                                                                              |

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| <i>Commissioner of Taxation v Gloxinia Investments (Trustee)</i> [2010] FCAFC 46 - 24 May 2010 (Federal Court of Australia, Full Court)       | Adverse    | \$204,792.10 | - | -            | \$223,226.96 | \$0      | Whether sales to third parties of long-term strata-lot leases of residential apartments, constructed under a development lease arrangement, are taxable supplies of 'new residential premises'.                                                                                                                            |
| <i>Commissioner of Taxation v News Australia Holdings Pty Limited</i> [2010] FCAFC 78 - 30 June 2010 (Federal Court of Australia, Full Court) | Adverse    | \$393,526.72 | - | \$152,601.03 | n/a          | \$0      | The means by which a major restructure was undertaken resulted in a substantial capital loss.<br>The Full Federal Court held that Part IVA did not apply to cancel the capital loss.                                                                                                                                       |
| <i>Commissioner of Taxation v Reliance Carpet Co Pty Limited</i> [2008] HCA 22 - 22 May 2008 (High Court of Australia)                        | Favourable | \$350,412.41 | - | -            | \$277,349.18 | \$27,045 | Whether a deposit held as security for the performance of a purchaser's obligations under a contract for sale of land is consideration for a supply, within the meaning of section 9-10 of the <i>A New Tax (Goods and Services Tax) Act 1999</i> , where the deposit is forfeited for failure to perform the obligations. |

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| <i>Commissioner of Taxation v Star City Pty Limited</i> [2009] FCAFC 19 - 27 February 2009 (Federal Court of Australia, Full Court)               | Favourable                                   | \$748,724.73 | To be determined                | - | n/a          | \$21,435,795 | The issue in this case was whether an amount claimed to be prepayment of rent to occupy premises for 12 years, the payment of which was negotiated as part of the arrangement, is deductible under subsection 51(1) ITAA 1936 or section 8-1 of the ITAA 1997, or alternatively, if the outgoing is deductible, whether Part IVA applies. |
| <i>Commissioner of Taxation v Trail Bros Steel &amp; Plastics Pty Ltd</i> [2010] FCAFC 94 - 29 July 2010 (Federal Court of Australia, Full Court) | Adverse (cross appeal dismissed also though) | \$71,664.55  | \$60,000 agreed pending payment | - | n/a          | \$113,214    | This case involved an Employee Welfare Fund arrangement promoted by Cleary Hoare, and whether Part IVA applied.                                                                                                                                                                                                                           |
| * <i>Deputy Commissioner of Taxation v Broadbeach Properties Pty Ltd; Deputy Commissioner of Taxation v MA Howard Racing Pty Ltd; Deputy</i>      | Favourable                                   | \$504,929.21 | -                               | - | \$57, 713.82 | \$1,480,522  | The case examined the criteria for the exercise of the discretion under section 459J of the <i>Corporations Act 2000</i> to set aside a Statutory Demand issued by the Commissioner. At issue was whether the court could exercise this discretion where there were Part IVC proceedings on foot.                                         |

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| <i>Commissioner of Taxation v Neutral Bay Pty Ltd</i> [2008] HCA 41 - 3 September 2008 (High Court of Australia)                                        |            |              |                      |   |              |             |                                                                                                                                                                                                                                                                                                                       |
| <i>Hance v Commissioner of Taxation; Hannebery v Commissioner of Taxation</i> [2008] FCAFC 196 – 19 December 2008 (Federal Court Australia, Full Court) | Adverse    | \$345,569.28 | -                    | - | \$320,456.00 | \$0         | Whether outgoings (rent, management fees and responsible entity fee) incurred in relation to a managed investment scheme were allowable deductions as operating expenses in carrying on each applicant's business and deductible under s 8-1 of the ITAA 1997, or not allowable because they were on capital account. |
| <i>Lawrence v Commissioner of Taxation</i> [2009] FCAFC 29 - 20 March 2009 (Federal Court of Australia, Full Court)                                     | Favourable | \$260,140.57 | \$170,000 (estimate) | - | n/a          | \$1,490,270 | The case involved a Distributable Surplus Arrangement (DSA) promoted by Cleary Hoare. The objective of the DSA was to provide for the payment or transfer of property of a company in a manner that would not give rise to a deemed dividend. It involved the interpretation of section 177E of the ITAA 1936.        |

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| * <i>Pape v Commissioner of Taxation</i> [2009] HCA 23 – 3 April 2009 & 7 July 2009 (High Court of Australia)                             | Favourable | \$30,623.51  |                         |  |  | \$0         | This High Court challenge concerned the validity of payments under the <i>Tax Bonus for Working Australians Act (No 2)</i> 2009.                                                                                                                                                                                                                                                                                                      |
| <i>Raftland Pty Ltd as trustee of the Raftland Trust v Commissioner of Taxation</i> [2008] HCA 21 – 22 May 2008 (High Court of Australia) | Favourable | \$559,757.40 | \$112,575.07 (Estimate) |  |  | \$2,954,586 | Whether distributions of income by the taxpayer to the loss were a sham, or otherwise ineffective in equity, such that the apparent appointment of the trustee of loss trust as a beneficiary of the interposed trust was to be disregarded. If this was correct then the operation of Division 6 of Part III of the ITAA 1936, including the trust stripping provisions, would produce a tax liability in the hands of the taxpayer. |

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| <i>RCI Pty Ltd v Commissioner of Taxation</i> [2010] FCA 939 - 1 September 2010 (Federal Court of Australia)                              | Favourable.<br><br>However, currently on appeal to Full Court. | \$981,968.09<br><br>(to date) | Not yet determined. | Not yet determined. | n/a          | \$368,518,329 | This is a Capital Gains Tax reduction case involving the use of a US\$318 million exempt dividend paid by way of intra-group round robin to reduce the market value of a US subsidiary that was later sold as part of a major international reorganisation. Whether Part IVA applies. |
| <i>South Steyne Hotel Pty Ltd v Commissioner of Taxation</i> [2009] FCAFC 155 – 20 November 2009 (Federal Court of Australia, Full Court) | Favourable                                                     | \$251,837.79                  | -                   | -                   | \$549,190.26 | \$0           | The Full Federal Court held that: the leases of strata-titled hotel units by the taxpayer to the operator were input tax supplies of residential premises, the sale of units to an investor, subject to the leases, was the supply of a going concern and, therefore, GST-free.       |
| <i>Spriggs v Commissioner of Taxation; Riddell v Commissioner of Taxation</i> [2009] HCA 22 – 18 June 2009 (High Court of Australia)      | Adverse                                                        | \$424,085.68                  | -                   | -                   | \$390,557.93 | \$11,037      | Whether management fees incurred by professional football players in connection with negotiating a new employment contract with a football club are deductible. This raised the issue of whether the fees were incurred by the footballers in the                                     |

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|                                                                                                                                  |            |              |                                                                               |                    |     |              | course of earning assessable income from carrying on business as professional sportsmen.                                                                                                                                                                                                                                                                                                                                                                                                      |
| <i>St. George Bank Limited v Commissioner of Taxation</i> [2009] FCAFC 62 – 25 May 2009 (Federal Court of Australia, Full Court) | Favourable | \$715,000    | Party – Party costs currently being recovered. Cmmsr seeking approx \$100,000 | -                  | n/a | \$83,818,498 | Whether the ‘interest’ paid by the taxpayer to a related entity on the debentures and used to fund the acquisition of Tier 1 capital was deductible under section 8-1 of the ITAA 1997; whether the ‘interest’ paid after 1 July 2001 was a non-share distribution for the purposes of Division 974 and section 26-26 of the ITAA 1997; and whether the election under the <i>New Business Taxation System (Debt and Equity) Act 2001</i> to invoke the provisions of Division 974 was valid. |
| <i>Travelex Ltd v Commissioner of Taxation</i> [2010] HCA 33 – 29 September 2010 (High Court of Australia)                       | Adverse    | \$251,791.36 |                                                                               | Not yet determined |     | \$0          | Involves a taxpayer’s claim that the supply of foreign currency, in exchange for Australian currency, on the departure side of the customs barrier, is GST-free.                                                                                                                                                                                                                                                                                                                              |

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| <i>Virgin Holdings SA v Commissioner of Taxation</i> [2008] FCA 1503 – 10 October 2008 (Federal Court of Australia)                                                                           | Adverse    | \$553,781.08                                               |              | \$829,863.00 |  | \$17,722,873 | Whether double tax agreements entered into before the introduction of the capital gains tax regime in Australia deny the Commissioner the right to tax capital gains derived in Australia by foreign residents under Part IIIA of the ITAA 1936 or Part 3-1 of the ITAA 1997. The application challenged the Commissioner's view outlined in TR 2001/12, and involved capital gains amounting to \$97 million. Changes to Australia's major tax treaties and to the capital gains tax law reduce the impact of the decision going forward. |
| <i>W.R. Carpenter Holdings Pty Limited v Commissioner of Taxation; W.R. Carpenter Australia Pty Limited v Commissioner of Taxation</i> [2008] HCA 33 – 31 July 2008 (High Court of Australia) | Favourable | \$370381.68 (must not be for all stages of the litigation) | \$500,000.00 |              |  | \$0          | Whether the Commissioner is required to provide particulars of the matters taken into account by the Commissioner in the making of transfer pricing determinations under Division 13 of the ITAA 1936.                                                                                                                                                                                                                                                                                                                                     |



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· Decisions relating to non-tax issues.