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Tax Laws Amendment (2005 Measures No. 5) Bill 2005

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Law and Bills Digest Section

Contents

Glossary

AGAAP	*Australian Generally Accepted Accounting Principles*
AIFRS	*Australian International Financial Reporting Standards*
ITAA 1936	*Income Tax Assessment Act 1936*
ITAA 1997	*Income Tax Assessment Act 1997*
ITTPA 1997	*Income Tax (Transitional Provisions) Act 1997*
MEC group	Multiple entry consolidated group

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Tax Laws Amendment (2005 Measures No. 5) Bill 2005

Date Introduced: 18 August 2005

House: House of Representatives

Portfolio: Treasury

Commencement: Various

Purpose

The Tax Laws Amendment (2005 Measures No. 5) Bill 2005 ('Bill') contains six separate chapters, each of which pursues a different purpose. In brief they are:

- Schedule 1—to reduce compliance costs to taxpayers who can claim the foreign employment income exemption under section 23AG of the *Income Tax Assessment Act 1936* (ITAA 1936)
- Schedule 2—to allow certain high budget television series to have access to tax exemptions under Division 376 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- Schedule 3—to make changes to the ITAA 1997 with respect to the bad debt rules applicable to multiple entry consolidated (MEC) groups and to make changes to the *Income Tax (Transitional Provisions) Act 1997* (ITTPA 1997) to give companies an extended timeframe to make or revoke certain decisions
- Schedule 4—to make amendments to the ITTPA 1997 to ensure that taxpayers' thin capitalisation position doesn't change immediately after the changes to the Australian accounting standards from 1 January 2005
- Schedule 5—to extend to 30 June 2008 the operation of the so called 12 months rules for certain prepaid expenditure by investors in forestry managed investment schemes, and
- Chapter 6—to make changes to the debt/equity rules.

Background

The background for each separate measure is discussed below. Where necessary, the discussion of the individual measures also include some Concluding Comments.

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Individual measures

Chapter 1—Modifications to exemption for foreign earnings

Legislative background

This measure deals with income tax exemptions available to taxpayers who derive *foreign earnings* from *foreign services*. The term 'foreign services' is defined in section 23AG(7) of the ITAA 1936 and means 'service in a foreign country as the holder of an office or in the capacity of an employee'. 'Foreign earnings' is also defined in subsection 23AG(7) and includes certain earnings, salary, wages, commission, bonuses or allowances.

The underlying rationale for this exemption is the assumption that the foreign income has already been taxed in the country in which this income was earned.[1] Accordingly, it is a measure to prevent double taxation.

This exemption is only available where the taxpayer derives income from overseas employment for a continuous period of 91 days or more. However, the taxpayer may have short periods without earning income from foreign sources. Cooper, Krever and Vann explain that the exemption is available 'so long as the total period of employment is sufficiently long to offset the interruptions'.[2] Currently, the accumulation of days occurs via a credit and debit regime according to which a taxpayer is

> …entitled to 'credits' for days of continuous employment which may then be used to offset breaks between jobs to maintain a continuity for the purpose of the exemption.[3]

The proposed amendments will:

- make changes to this credit/debit regime
- make modifications to enable to access to the exemption for deceased taxpayers under certain conditions, and
- grant the exemption to certain employees who worked in Iraq.

The main provisions of Chapter 1

The proposed amendments will make three changes to the existing regime:

- insert proposed **new subsection 23AG(1A)** which will deem, in certain circumstances, taxpayers to have been engaged for a continuous period of 91 days even though the taxpayer did not actually work the required period in the foreign service. The proposed prescribes three cumulative requirements which a taxpayer must fulfil before this deeming provision becomes operative and the exemption becomes available:

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- the taxpayer dies before being in engaged in foreign service for a continuous period of 91 days (proposed **paragraph 23AG(1A)(a)**), and
- the taxpayer would have otherwise continued to be engaged (proposed **paragraph 23AG(1A)(b)**), and
- the continuous period of the taxpayer's engagement would have otherwise been a period of at least 91 days (proposed **paragraph 23AG(1A)(c)**).

- insert the 'Iraq amendment'. Proposed **subsection 23AG(2A)** exempts from the operation of subsection 23AG(2) taxpayers who earned foreign income from foreign service in Iraq in a specified period.

  Subsection 23AG(2) specifies situations in which the exemption provided under subsection 23AG(1) is not available to taxpayers. This includes situations where the a law of the foreign country gives effect to a double tax agreement (paragraph 23AG(2)(a)) or does not provide for the imposition of income tax on certain income (paragraph 23AG(2)(d)).

  After the fall of the Saddam regime, income tax in Iraq was suspended between 1 January 2003 and 30 April 2004. Therefore, under paragraph 23AG(2)(d), the exemption under subsection 23AG(1) was not available for taxpayers. By virtue of this proposed amendment, taxpayers will be able to claim the exemption as expected.

- changes the currently applicable credit and debit based system to calculate whether a particular absence from foreign service will break the continuous period required under this section.

  The amendments introduce a so-called 'one-sixth rule'. Under this rule, a taxpayer may have absences which are not considered to be part of the foreign service until such time that these accumulated absences amount to a total of one-sixth of the entire time spent in foreign service. In effect, this proposed regime allows the taxpayer to 'add' several periods of foreign services and be eligible for the exemption as long as the one-sixth rule doesn't apply.

  The Explanatory Memorandum sets out examples of the operation of the one-sixth rule in certain circumstances. The reader may refer to these examples.[4]

Costs of the measure

The Explanatory Memorandum says that the cost to revenue of the 'Iraq amendment' is expected to be $1 million in 2005/2006. The other measures are expected to be insignificant and are therefore unquantifiable.[5]

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Chapter 2—Refundable film tax offset – extension to high budget television series

Legislative background

The legislative background to the tax treatment of film funding, together with a detailed exposition of the current Australian Film industry, have been provided in the recent Bills Digests to the Film Licensed Investment Company Bill 2005 and the Film Licensed Investment Company (Consequential Provisions) Bill 2005.[6] These Digests discussed the amendments made to the Film Licensed Investment Company Laws. The reader may refer to these publications for further information.

Relevant to these amendments are the refundable tax offsets which are available under Division 376 of the ITAA. According to the above two Digests, this offset was created to:

> […] attract to Australia's shores large budget 'foot-loose' foreign films, [which] is available to 'film production companies' within the meaning of section 376-5 of the ITAA 1997. However, the availability of this offset is linked to the following financial thresholds:
>
> - the production film company must expend a minimum of $15 million on the production, and
>
> - if the production film company expends between $15 million and $50 million dollars—it must spend a minimum of 70 per cent of the film's total budget in Australia.
>
> Where the total budget for a film is more than $50 million, no minimum percentage applies and the tax offset is available regardless. Film production companies claiming this refundable tax offset will not be able to access any of the other film related tax incentives, including the incentives provided under Divisions 10B or 10BA ITAA 1936, or seek funding from the Film Finance Corporation.[7]

Main provision

An essential condition for the availability of the tax offset under Division 376 of the ITAA 1997 is that a certificate is issued by the Minister for the Arts. Where the Minister issues such a certificate, the production has access to a 12.5 percent tax offset for qualifying Australian production expenditure (section 376-10 ITAA 1997). The qualifying Australian production expenditure is worked out under Subdivision 376-C of the ITAA 1997. The different categories of film productions which currently can obtain such certificates are specified in section 376-15 of the ITAA 1997. They include feature films, telemovies and television mini-series.

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Item 2, proposed **subparagraph 376-15(1)(d)(iii)** will add a new eligible film format to the existing list; that is *television series* not previously covered by this Division. The term *television series* will be defined in **item 7,** proposed **section 376-17** According to this definition, a production qualifies as a television series for the purposes of this Division if the production is made up of 2 or more episodes which:

- were produced for exhibition on television under a common title
- contain a common theme, and
- contain dramatic elements.

In addition the episodes must have been produced for the purpose of being exhibited together in a national market.

As this definition can include previously excluded film formats such as documentaries, **items 3** and **4,** proposed **new subparagraphs 376-15(1)(e)(i) and 376-15(1)(e)(v)** will stipulate that, in relation to productions previously covered by this Division, documentaries as well as films 'forming part of a drama program series that is, or is intended to be, of a continuing nature' will remain excluded.

If a production falls within the definition of 'television series', then all of the conditions set out in Division 376, including the above thresholds, will apply. In addition, however, the proposed amendments will implement further thresholds and conditions which will apply before a production is able to obtain a certificate and access the offset. These include the following proposed amendments:

- a time limit to complete production. Under **item 5,** proposed **subparagraph 376-15(1)(ea)(i)**, a digital or other kind of animation television series must be completed within a period not exceeding 36 months. For any other production, the time frame for finalising all principal photography will be twelve months (**item 5,** proposed **subparagraph 376-15(1)(ea)(ii**).
- additional expenditure threshold. Under **item 5,** proposed **paragraph 376-15(1)(eb)**, the television series must have a qualifying Australian production expenditure of at least $1 million per hour. The formula which is used to calculate the average expenditure is set out in **item 6,** proposed **new subsection 376-15(3).** The basis for this formula is the total length of the television series so that, as a result, the television series can be comprised of a mix of more and less expensive episodes and still be entitled to the offset. At page 21-2, the Explanatory Memorandum includes example of a calculation to which the reader may refer.

Pilot episodes to a television series are considered to be part of the television series (**item 7, proposed subsection 376-17(4)**). Accordingly, for example, the length of the pilot has to be considered when calculating the additional expenditure threshold as discussed above. In addition, **item 11**, proposed **subsection 376-35(2)** will be introduced into the legislation

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to attract large scale television series production to Australia, even if the pilot to the series had been produced oversees.

Application

Item 13 provides that the amendments contained in Chapter 2 of the Bill will apply retrospectively to expenditure incurred after 1 July 2004.

Projected costs of the measure

The Explanatory Memorandum notes that the proposed measure will cost $12 million between 2004 and 2008 and specifies the following projected costs to revenue per annum:[8]

2004-05	2005-06	2006-07	2007-08
Nil	–$2 million	–$4 million	–$6 million

Chapter 3—Consolidation

Recent consolidation measures

With respect to recent consolidation measures implemented by the Federal Government, the reader is referred to the Bills Digest to Tax Laws Amendment (2004 Measures No. 6) Bill 2004, No. 88, 2004-5[9] and the Bills Digest to the Tax Laws Amendment (2004 Measures No. 7) Bill 2004, No. 111, 2004-5.[10]

Currently proposed consolidation measures

The proposed amendments can be divided into three parts:

- changes to the bad debt rules applicable to multiple entry consolidated groups (MEC groups)
- changes to ensure that modifications to the bad debt rules also apply to determine whether consolidated groups and MEC groups can deduct swaps losses, and
- changes to the timeframe within which head companies of consolidated and MEC groups may make or revoke choices made with respect to certain tax issues.

The following discussion will address each of the above measures.

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Changes to the bad debt rules applicable to multiple entry consolidated groups

Taxpayers who declare income on an accruals basis may encounter the situation where they have to declare income which is subsequently not realised. For example:

- a manufacturer delivers goods and invoices the purchaser, but never receives payment, or
- a bank or financial institution lends money to customers which subsequently is not repaid and becomes unrecoverable.

In both situations these bad debts may be written off by the taxpayer. The taxation regime accepts that in situations where such bad debts result, the taxpayer will have overstated their taxable income and therefore their tax liability. In consequence of this, the tax regime provides an adjustment mechanism in section 25-35 of the ITAA 1997. Under this section, taxpayers are entitled to deduct bad debts in order to compensate for the overstatement.[11]

However, a bad debt will only be deductible under section 25-35 of the ITAA 1997 if, and for such time as, there has been no change in the ownership or control of a company. The tax regime provides for two tests which can be used to determine whether a change has occurred:

- *continuity of ownership test* (continuity test) under section 165-123 of the ITAA 1997, and
- *same business test* under section 165-126 of the ITAA 1997.

The *same business test* can be described as being subsidiary to the *continuity test*: if a company does not fulfil the *continuity of business test*, it may, under certain circumstances, still claim the bad debt under the *same business test*.[12]

To operate effectively in the environment of consolidated groups, the two tests require modification. The CCH Master Tax Guide succinctly describes the purpose of the bad debt rules as follows:

> Special bad debt rules will ensure that an entity can deduct a bad debt that for a period has been owed to a member of a consolidated group, and for another period has been owed to an entity that was not a member of that group. […] Broadly, the claimant [that is the entity which can deduct the bad debt] can deduct a bad debt if each entity to whom the debt has been owed could (under the modified rules) have deducted the debt if it had been written off as bad at the end of its holding period.[13]

Schedule 3, Part 1, Division 1, item 1 will insert into the ITAA 1997 proposed **Subdivision 719-I** which contains bad debt rules applicable to consolidated groups. Proposed **section 719-455** sets out the test under which a group can determine whether a particular debt can be written off. The modified *continuity of ownership test* is prescribed in proposed **subsection 719-455(2)**; it will apply to the so-called 'top company' for the

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MEC group to guarantee that the ultimate owner of the debt is tested.[14] However, whilst the new regime will apply this test to the top company (accordingly, this 'top company' will be called the 'test company'), it is the head company of the MEC which will be deemed to have satisfied the *continuity of ownership test*. The Explanatory Memorandum explains that:

> It would be inappropriate to test the head company of the MEC group as the group's ability to satisfy the continuity of ownership test would change depending on which eligible tier 1 company was chosen as the head company.[15]

In order for the tests to apply properly, the proposed amendment also contains two legislated assumptions. The assumptions are contained in proposed **subsection 719-455(2)** and are based on proposed **sections 719-460** and **719-465**.

Under proposed **subsection 719-460(1)**, the first assumption becomes relevant whenever there is a change in the identity of the test company during the period in which ownership is tested. Proposed **subsection 719-460(2)** stipulates that for the purposes of applying the *continuity of ownership test*, it is assumed that no changes to the membership interests of the former or the new top company have been made after the identity of the company changed. The second assumption, contained in proposed **section 719-465**, is about certain circumstances in which a test company is deemed to have failed the *continuity of ownership test*. Proposed **subsection 719-455(3)** prescribes the times at which the test company is taken to have failed the *continuity of ownership test*.

As indicated above, where the test company fails the *continuity of ownership test*, it may still be permitted to deduct a bad debt if it can fulfil the *same business test*. This test is set out in Subdivision 165-C of the ITAA 1997 and modified to suit public listed companies by virtue of section 166-40. Proposed **subsection 719-455(4)** contains rules which prescribe to which company in the group and at which point in time the *same business test* is to be applied.

Changes to ensure that modifications to the bad debt rules also apply to determine whether consolidated groups and MEC groups can deduct swap losses

As a result of the economic uncertainties of the early nineties, lenders and borrowers realised that it was often beneficial for both to keep the borrower alive rather than to force a foreclosure.[16] This led to the development of so-called debt/equity swaps. The CCH Master Tax Guide explains that:

> A debt/equity swap occurs where a taxpayer discharges, releases or otherwise extinguishes a debt in return for equity in the form of shares or units in the debtor.[17]

Debt/equity swaps may result in a loss for the taxpayer/lender (swap loss) because the value of the extinguished debt exceeds the value of the shares or units received in return.[18] Under certain circumstances, swap losses may be tax deductible under section 63E of the

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ITAA 1936. According to this provision, various provisions in the ITAA 1997 dealing with bad debts will apply to swap losses as they apply to bad debt losses.

Schedule 3, Part 1, Division 2, item 3 will introduce proposed **section 709-220** which will limit the circumstances in which lenders/taxpayers within a consolidated or MEC group can deduct swap losses. As a result of this amendment, swap losses will be treated similarly to bad debt losses.

Schedule 3, Part 1, Division 3 contains consequential amendments to the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993*, the ITAA 1936, the ITAA 1997 and the *Income Tax (Transitional Provisions) Act 1997* which will account for the limitation prescribed in proposed new section 709-220.

Changes to the timeframe within which head companies of consolidated and MEC groups may make or revoke choices made with respect to certain tax issues

Schedule 3, Part 2, items 21 to 32 propose amendments to a variety of provisions in the *Income Tax (Transitional Provisions) Act 1997* which, if passed, will extend the time within which the head company of a consolidated group or a MEC group can make or revoke choices with respect to:

- retaining the tax cost of a joining entity's assets
- cancelling a loss by the head company of a consolidated group or MEC group
- using the value donor concessions
- waiving the capital injection rules, and
- using certain losses over three years.

The details to each of the above choices are set out in the Explanatory Memorandum. The reader is referred to pages 36 to 38 for a detailed discussion of the measures.[19]

Application

Item 33 provides that the amendments contained in Schedule 3 of the Bill will apply retrospectively on or after 1 July 2002.

Projected costs of the measure

The Explanatory Memorandum notes that the proposed measure will have no financial impact.[20]

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Chapter 4—Thin capitalisation – transitional provision

The capitalisation of a company can be expressed as the ratio of its debts and its assets. Where this ratio is expressed in favour of a company's debts and reaches certain thresholds, the law deems this company to be thinly capitalised and triggers certain mechanisms which disallow the deduction of finance expenses. The thresholds are determined by virtue of several tests set out in the ITAA 1997, including the *safe harbour debt test*, the *arms length debt test* and the *world wide gearing debt test*. The Thin Capitalisation Rules are contained in Division 820 of the ITAA.

The determination of the value of debts and assets, and consequently the ratio between them, is based on calculations guided by specific accounting standards. Until 31 December 2004, companies have been able to use the *Australian Generally Accepted Accounting Principles* (AGAAP). However, from 1 January 2005, companies were required to value liabilities and assets by using different standards. From that date onwards, the applicable standards are the *Australian International Financial Reporting Standards* (AIFRS). The change to the AIFRS was triggered by a general trend to converge accounting standards within the context of globalisation and has been made in order facilitate:

> cross border listings, financial statement comparability for investors, reducing the cost of capital in Australia and improving access to foreign capital for Australian entities.[21]

The new AIFRS are more stringent than the AGAAP and the valuation of liabilities and assets can lead to different results under the two standards. Accordingly, some companies which have not been thinly capitalised under the AGAAP may now face the problem that their debt/asset ratio, as calculated under the new AIFRS, pushes them over the applicable threshold and brings them within the ambit of the Thin Capitalisation Rules. As a consequence, even though the financial situation of the company has not changed, its legal status does. As a result, the deduction of some of the company's finance expenses is disallowed.

According to the Explanatory Memorandum, the proposed amendments are intended to allow taxpayers to better prepare for the impact the new AIFRS.[22]

Schedule 4, item 1 will introduce proposed **section 820-45** into Division 820 to provide taxpayers with a choice in relation to the accounting standards an entity applies for the purposes of assessing their debt/asset ratio. Under proposed **subsection 820-45(1)**, the choice will be available for the three consecutive income years of entities, beginning on 1 January 2005. Under proposed **subsection 820-45(2)**, entities may choose to value their assets and liabilities for the purposes of the Thin Capitalisation Rules either under the AIFRS or under the superseded AGAAP. The choice can be made with respect to any individual income year or all income years. It is likely that this choice will be guided by what is potentially more beneficial to the entity.

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Application

The choice will be available for three consecutive income years of entities, commencing on or after 1 January 2005.

Projected costs of the measure

According to the Explanatory Memorandum, the financial impact will be nil.[23]

Chapter 5—Forestry managed investments

As a general rule, deductions which are permitted under section 8-1 of the ITAA 1997 can be made in full in the year the expenditure occurs. However, under certain circumstances the tax regime permits taxpayers:

> …to amortise or deduct expenditures either over a fixed period or over the shorter of a fixed period and actual life of a benefit.[24]

The amortisation rules relevant to this amendment are the so-called 'prepayment rules' contained in sections 82KZML to 82KZMO of the ITAA 1936. Prepayments have been described as:

> Dual-purpose outgoings, with the amount ultimately incurred to achieve an income-generating objective but the timing based on a desire to achieve another objective, namely tax-minimisation.[25]

Rather than being able to deduct a prepayment under section 8-1 of the ITAA in the year it was made, the general prepayment rule is that a taxpayer is required to allocate a prepaid expenditure over a period of time which is to be calculated on the basis of a formula set out in section 82KZMD of the ITAA 1936. In other words, the prepayment is broken up into portions which are related to the period over which the benefit accrues.

Section 82KZMG of the ITAA 1936 stipulates an exemption to the above general prepayment rule, permitting investors in plantation forestry to deduct their prepaid expenditure in the year the expenditure was made. However, under current paragraph 82KZMG(2)(a), the availability of this exemption is restricted to expenditures incurred on or after 2 October 2001 and on or before 30 June 2006.

The proposed amendment contained in **Schedule 5, item 1** aims to extend the applicability of the special prepayment rule for forestry managed investments for a further two years. If passed, the exemption will be available to investors for expenditures made on or before 30 June 2008.

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Application

The amendment will take effect with Royal Assent.

Projected costs of the measure

According to the Explanatory Memorandum, the financial impact will be as follows.[26]

2007-8	2008-9
$30 million	$35 million

Chapter 6—Debt and equity interests

Chapter 6 proposes to make changes to the debt/equity rules set out in Division 974 of the ITAA 1997. These rules, based on the debt and equity tests stipulated in section 974-20 and 974-70 of the ITAA 1936 respectively, are concerned with ascertaining the nature of certain interests in entities. Plainly, if an interest satisfies the equity test, the interest is deemed to be an equitable interest, if it satisfies the debt test, it is deemed to be a debt interest.[27] Shares and loans are examples of equity interests and loan interests respectively.

The ITAA 1997 also specifies some exclusions which are applicable to the above tests, including an exclusion for so-called 'at call loans' given between connected entities. At call loans are loans which are provided without a fixed repayment day and which are repayable at call. If provided between connected entities, the tax law considers them to be 'related party at call loans'.

Whilst in essence a typical loan, the current debt/equity rules may cause a related party to a at call loan to be an equity interest rather than a debt interest. According to the Explanatory Memorandum, this has the consequence that repayments made in relation to at call loans are:

> … treated as frankable dividends. Generally, record keeping is more onerous and compliance costs are greater if the loans are treated as equity than otherwise would be the case.[28]

Central to the proposed new law are the changes made to subsection 975-75(6). Under the proposed new law, at call loans will be deemed to be debt interests which attract less burdensome compliance requirements (**item 8**, proposed **subsection 975-75(6)**). The changes are aimed at reducing compliance complexity for small business; the deeming provision applies only to entities that satisfy a turnover test. The threshold for the turnover test is set at $20 million annual turnover (item 8, proposed **paragraph 975-75(6)(b)**). If

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the entity's turnover is above this threshold, the at call loan will not be deemed to be a debt interest.

The proposed new law will also deal with these situations:

- an entity fulfils the turnover test in one income year (Income Year 1), but not in the following year (Income Year 2) (because, for example, it has increased business activities. In other words, the entity cannot fulfil the turnover test any more), or
- an entity cannot fulfil the turnover test in Income Year 1, but can in Income Year 2 (for example, because it has downsized its operations and fulfils the threshold test).

Where one of these circumstances prevails, entities will be given the opportunity to choose to rearrange their loans into loan forms which fulfil the debt test and are therefore debts for tax purposes. Where an entity makes such changes to their loans, the change is deemed to have been made at the beginning of the income year after which the change is made.

Endnotes

1 G S Cooper, R E Krever, R J Vann, C Rider, *Income Taxation – Commentary and Materials*, Thomson Legal and Regulatory Limited, 5th edition, 2005, p. 811.

2 ibid.

3 ibid.

4 Explanatory Memorandum to the Tax Laws Amendment (2005 Measures No. 5) Bill 2005, pp. 13-4.

5 ibid., p. 3.

6 T John, J Gardiner-Garden, 'Film Licensed Investment Company Bill 2005' 'Film Licensed Investment Company (Consequential Provisions) Bill 2005', *Bills Digests*, No. 180-1, Department of Parliamentary Services, Canberra, 2004-5.

7 CCH, *Australian Master Tax Guide*, CCH Australia Limited, Sydney, 2005, p. 1103.

8 Explanatory Memorandum, op. cit., p. 4.

9 B Pulle, Tax Laws Amendment (2004 Measures No. 6) Bill 2004, Bills Digest, No. 88, Department of Parliamentary Services, Canberra, 2004-5.

10 B Pulle, R Webb, Tax Laws Amendment (2004 Measures No. 7) Bill 2004, Bills Digest, No. 111, Department of Parliamentary Services, Canberra, 2004-5.

11 Cooper, Krever, Vann, Rider, op. cit., p. 485.

12 ibid, p. 73.

13 CCH, *Australian Master Tax Guide*, op. cit., p. 735.

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14 Explanatory Memorandum, op. cit., p. 4.

15 ibid., p. 32.

16 Cooper, Krever, Vann, Rider, op. cit., p. 488.

17 CCH, op. cit., p. 930.

18 ibid.

19 Explanatory Memorandum, op. cit., p. 36-40.

20 Explanatory Memorandum, op. cit., p. 5.

21 Australian Taxation Office, *Australian International Financial Reporting Standards, Blueprint for Tax Implications*, New Law Administration Design Practice, Australian Taxation Office, Canberra, May 2005, p. 9

22 Explanatory Memorandum, op. cit., p. 42.

23 ibid., p. 5.

24 Cooper, Krever, Vann, Rider, op. cit., p. 470.

25 ibid. See also CCH, op. cit., p. 692.

26 Explanatory Memorandum, op. cit., p. 6.

27 Where is satisfies both tests, the debt test takes precedence and the interest is deemed to be a debt interest (section 974-70); where neither test applies, the interest is deemed to be neither an equitable, nor a debt interest. See for more detail Cooper, Krever, Vann, Rider, op. cit., p. 683.

28 Explanatory Memorandum, op. cit., p. 55.

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