Death and income tax – some discrete issues: part 2

by Ian Raspin, CTA, Managing Director, Lyn Freshwater, Senior Tax Consultant, and Mark Morris, FTI, Senior Tax Counsel, BNR Partners

This is the final part of a two-part series examining some standalone issues about tax and deceased estates. This article looks at the intricacies of the main residence exemption as it applies to a trustee or beneficiary of the estate. It examines how the cost base of the deceased's dwelling is determined in the hands of the trustee/beneficiary and the conditions that need to be satisfied for a full exemption, including the Commissioner's safe harbour for the sale of a dwelling outside the standard two-year exemption period. Importantly, the article also considers the recent changes that can deny the main residence exemption in some cases where the deceased person or beneficiary is a foreign resident. This article also considers when an agreement will be accepted by the Commissioner as satisfying the requirements of s 128(1)(d) of the *Income Tax Assessment Act 1997* (Cth) as being a deed of arrangement under which an asset passes to a beneficiary.

Introduction

This is part 2 of a two-part series, and it deals with aspects of the CGT main residence exemption concerning deceased estates, as well as the practical implications of beneficiaries entering into a deed of family arrangement on a challenge to a will by a family member. As with part 1, only income tax (including CGT) is considered.

Can the family home be retained and remain eligible for the main residence exemption?

Dwelling cost base

Before considering the scope of the main residence exemption in the context of a deceased estate, it is useful to reflect on the cost base rules that apply when the owner of a dwelling dies.[1] These rules vary depending on whether the deceased acquired the dwelling before 20 September 1985 (pre-CGT) or after that date (post-CGT). For a post-CGT dwelling, there are other factors that also need to be considered.

The acquisition cost for the deceased person's legal personal representative (LPR), or a beneficiary in their estate,[2] is set out in Table 1.[3]

It will be evident from Table 1 that it is not necessary in every case to rely on the main residence exemption to exempt a capital gain from a post-CGT dwelling that accrued prior to the death of an individual — that gain is often effectively ignored by the application of the market value acquisition cost rule for the LPR/beneficiary. The focus of the main residence exemption in these cases (as it is for a pre-CGT dwelling owned by the deceased) is the gain for the period after death.

The special rule establishing the cost base of a deceased's post-CGT residence after 20 August 1996 as being its market value at date of death was introduced as a compliance saving measure. The reason was that many people do not keep the records (including, for example, insurance, rates and interest) that are necessary to establish the cost base of their home because they anticipate that any gain from it will be exempt. The cost to the LPR of obtaining this data would amount to an excessive administrative burden.

For a property that devolved to an LPR or passed to a beneficiary after 20 August 1996, the cost base uplift to market value at death is available even where the deceased historically used the dwelling to produce assessable income. The only requirements are that the dwelling be their main

Table 1. Cost base rules for dwelling owned by deceased

Dwelling	Acquisition cost
A pre-CGT dwelling	Market value of the dwelling on the date of death
A dwelling that devolved to the LPR or passed to a beneficiary after 7.30 pm on 20 August 1996,[4] and that was the deceased's main residence when they died and was not then being used to produce income	Market value of the dwelling on the date of death
A post-CGT dwelling that devolved to the LPR or passed to a beneficiary before 7.30 pm on 20 August 1996,[4] and was the deceased's main residence when they died and was not then being used to produce income	The cost base/reduced cost base of the dwelling to the deceased
A post-CGT dwelling that was not taxable Australian property (if the deceased was a foreign resident)	Market value of the dwelling on the date of death
A post-CGT dwelling that was not the deceased's main residence when they died and/or was being used to produce income	The cost base/reduced cost base of the dwelling to the deceased

residence just prior to their death and that it not be used to produce assessable income at that date. This is an invaluable concession, and not necessarily consistent with the previous reasoning, but consistent with the notion that the LPR may be completely unaware about the prior use.

In practice, if a taxpayer acquired an investment property but moved into the dwelling, making it their main residence prior to their death, there would be no CGT for the period the property was used for income-producing purposes.

Section 118-195 ITAA97

For the sake of simplicity, the following discussion considers only whether a full main residence exemption may be available.

A full main residence exemption[5] applies to the trustee of a deceased estate, or a beneficiary to whom a dwelling passes, if:

- either of the following "dwelling conditions" is satisfied:
  - the deceased acquired the dwelling prior to 20 September 1985; or
  - the deceased acquired the dwelling on or after that date and it was their main residence when they died and was not being used to produce income at that time; and
- either of the following "post-death conditions" is satisfied
  - ownership of the dwelling ends within two years of the deceased's death (or such further period as the Commissioner allows); or
  - the dwelling was occupied by certain people after the deceased's death.

Meaning of "trustee of a deceased estate"

An initial issue is what is meant by the expression "a trustee of a deceased estate'" in s 118-195 ITAA97.

In income tax law, the words "trustee of a deceased estate" are generally used to describe an LPR during the administration of the estate and so the expression would not usually apply to a trustee of a testamentary trust. However, the ATO has taken the view in ID 2006/34 that, for the purposes of s 118-195, the words are not limited to an LPR but also include the trustee of a testamentary trust.

ID 2006/34 explains that this view is supported by comments made in the explanatory memorandum to the Taxation Laws Amendment Bill 1990 which introduced changes to s 160ZZQ of the *Income Tax Assessment Act 1936* (Cth) (ITAA36) (the provision which conferred an exemption in the ITAA36) to provide an exemption for the period a dwelling was occupied by an individual under the terms of the deceased's will:

> "The amendments are being made to allow the sole or principal residence exemption to apply to the dwelling of a deceased person for any period since the date of the deceased person's death during which the dwelling had been the sole or principal residence of the spouse of the deceased person or of a person who had the right to occupy the dwelling (life tenant) under the terms of the deceased person's will. At present no account is taken of the time during which a dwelling owned by a trustee of a deceased person's estate was the sole or principal residence of a life tenant."

ID 2006/34 concludes that, as a life tenancy would usually arise after administration of an estate has been completed, the phrase "trustee of a deceased estate" in s 118-195 must be interpreted as including the trustee of a testamentary trust to give effect to the intended policy.

Dwelling conditions

It is worth noting that, for a pre-CGT dwelling, there is no requirement that it actually be, or have been at any time, the main residence of the deceased.[6] While it is true that the LPR will acquire these dwellings for market value at the date of death, capital gains may accrue subsequently, and this is where the main residence exemption gives more exemption than is available under the normal acquisition rules for pre-CGT assets on death (that is, two years after death or such further period as allowed by the Commissioner). In practice, a full main residence exemption could potentially apply to any number of investment properties acquired by the deceased pre-CGT, in addition to a post-CGT main residence.

As noted previously, to qualify for a full exemption, a post-CGT dwelling that devolved to the LPR or passed to a beneficiary after 20 August 1996 must be the main residence of the deceased just before they died. (If the deceased acquired the ownership interest in the property before then, the dwelling must have been their main residence throughout the entire period that they owned it — not just before they died.[7])

This does not necessarily mean that the deceased must have lived in the dwelling at the time of their death. An individual can choose to continue to treat a property as their main residence for CGT purposes during a period that they are absent from it.[8]

The choice operates indefinitely if the dwelling is not being used to produce assessable income, or for a maximum of six years if it is used to produce income. If a choice is made, no other dwelling is treated as the individual's main residence.[9] This can be particularly useful for older clients moving into a nursing home who may desire to retain ownership of their home. If the residence is not generating income, but is left vacant, being used for weekend visits or to accommodate family members, the property could retain its main residence status indefinitely.

A post-CGT dwelling must also not be used to produce income at the time the deceased died, unless the absence choice completely exempts any gain on the dwelling (ie it was not used for concurrent income-producing purposes prior to the absence).[10]

Not all income-producing use will affect the main residence exemption. It will depend on whether the deceased would have been allowed a deduction for interest had they borrowed money to acquire the dwelling.[11] The deceased would not have been entitled to deduct interest expenses if, for convenience, they had used a home study to undertake work usually done at their place of work. Similarly, the deceased would not have been entitled to deduct interest expenses if they received payments from a family member for board or lodging (such payments are considered to be domestic arrangements and not rental income).[12]

Finally, an LPR or a beneficiary can ignore any income-producing use of a dwelling if the use occurred during a period for which an absence election was made under s 118-145 ITAA97, and the use did not exceed six years at the time of death.[13]

Post-death conditions: two-year rule

One of the alternative post-death conditions for a full exemption is that the LPR or beneficiary must cease to own what was the deceased's dwelling within two years of their death. More specifically, if the dwelling is sold under a contract, the settlement of the contract of sale must occur within two years.

Many practitioners assume that, because a contract for the sale of a dwelling is entered into within the first two years of the deceased's death, the requirement has been satisfied. The confusion stems from the fact that many CGT events are taken to occur as at the date of contract; this is the date that is used to determine the year of income in which the capital gain should be returned.

For the 2008-09 and later income tax years, the Commissioner has the discretion to extend the two-year period within which the main residence must be sold.

The ATO has published PCG 2019/5, which outlines the circumstances in which the discretion is likely to be exercised. It also provides a "safe-harbour" compliance approach that allows a person's tax affairs to be managed as if the Commissioner had allowed a period longer than two years in which to settle the sale of the dwelling

In a subsequent compliance check, the ATO will ensure that the safe-harbour conditions were met (including checking that the extension period is no longer than 18 months), but will not seek to determine whether or not they would have exercised the discretion

To qualify for the safe harbour, all of these conditions must be satisfied:

- during the first two years after the deceased's death, more than 12 months was spent addressing one or more of the following circumstances
  - the ownership of the dwelling, or the will, is challenged;
  - a life or other equitable interest given in the will delays the disposal of the dwelling;
  - the complexity of the deceased estate delays the completion of administration of the estate; or
  - settlement of the contract of sale of the dwelling is delayed or falls through for reasons outside the control of the LPR/beneficiary;
- the dwelling was listed for sale as soon as practically possible after those circumstances were resolved (and the sale was actively managed to completion);
- the sale was completed (settled) within 12 months of the dwelling being listed for sale;
- the following circumstances were immaterial to the delay in disposing of the interest:
  - waiting for the property market to pick up before selling the dwelling;
  - delays due to refurbishment of the house to improve the sale price;
  - inconvenience on the part of the LPR/beneficiary to organise the sale of the house; or
  - unexplained periods of inactivity by the LPR in attending to the administration of the estate; and
- the longer period for which the discretion would need to be exercised is no more than 18 months.

Given this last condition, the safe harbour cannot be utilised where a life interest lasts more than three and a half years from the death of the deceased. In that instance, a request will have to be made to the ATO for an exercise of the Commissioner's discretion.

Example[14]

Mrs Papageorgiou lived in her main residence until she died on 1 June 2015. Mrs Papageorgiou acquired the dwelling after 20 September 1985. It was not being used to produce assessable income when she died.

The beneficiaries of Mrs Papageorgiou's estate (her four adult children) decided to subdivide the property to increase the sale price. A plan was submitted to council on 30 November 2015. On 1 July 2016, the council advised that the plan was not approved.

The beneficiaries appealed the decision on 22 July 2016, and attended a hearing on 12 October 2016. On 28 February 2017, the tribunal advised that a new subdivision application should be lodged with the council. A new application was submitted to the council on 24 March 2017 but, by 1 June 2017, the council had not made a decision.

While the resolution of the subdivision application is beyond the control of the beneficiaries, they cannot rely on the safe harbour because the delay is due to the decision to subdivide, which is not necessary for the resolution of the estate or the disposal of the dwelling.

Where circumstances fall outside of the safe-harbour rules, a request must be made to the Commissioner to exercise the discretion. Additional factors that may be relevant to the exercise of the Commissioner's discretion (but are not relevant for the safe harbour) include, but are not limited to:

- the sensitivity of the personal circumstances of the trustee/beneficiary and/or of other surviving relatives of the deceased;
- the degree of difficulty in locating all beneficiaries required to prove the will;
- any period that the dwelling was used to produce assessable income; and
- the length of time that the trustee/beneficiary held the ownership interest in the dwelling.

In the authors' experience, the Commissioner will not consider exercising the discretion until the property sale has been settled.

The two-year concession is extremely generous. It provides LPRs with a reasonable period to administer the estate without having to worry about tax issues from the growth in value of the deceased's former residence (or pre-CGT dwelling).

It should be noted that the concession applies during this two-year period regardless of whether the property is the main residence of any of the specified individuals referred to in s 118-195 ITAA97 or whether the dwelling is used for income-producing purposes in that time.[15]

Post-death conditions: use of dwelling following death of deceased

If the two-year rule is not satisfied, an LPR or a beneficiary may nonetheless be entitled to a full main residence exemption if, from the date of the deceased's death, the dwelling was the main residence of the deceased's spouse or an individual who was given a right to occupy the dwelling under the deceased's will.[16]

If the dwelling ultimately passes to a beneficiary, the exemption will also be available for the period that the beneficiary occupies it.

It is unclear whether the right to occupy test extends only to a named (or identified in some way) beneficiary under the will, as opposed to any person the trustee may have power to allow them to occupy. In other words, it is uncertain how narrowly or broadly "under the will" should be construed. It is understood that many adopt the second approach, presumably taking into account the fact that a full exemption would be lost anyway if the occupant was a normal commercial tenant (because of income-producing use). It is suggested that caution should be exercised here, and perhaps a private ruling sought from the Commissioner if this is an issue.

The terms of the will must also be examined to determine what occupancy right has actually been conferred.

Example

Malcolm purchased a dwelling prior to 20 September 1985. He died on 1 July 2010.

When he died, he was living in the dwelling with his son Bruce. Malcolm's will provided that Bruce could occupy the dwelling for five years following his death.

Bruce continued to reside in the dwelling until it was sold by the trustee on 1 July 2019.

A full main residence exemption is not available because Bruce did not have a right to occupy the property under the will from 2015 to 2019.

The reference to a spouse[17] of the deceased does not include a spouse who was permanently separated from the deceased when they died.[18]

Although it is unclear from the legislation, it appears that the ATO takes the view[19] that the requirement that a dwelling be the main residence of a person specified in s 118-195(1) ITAA97 does not apply during the period that an estate is being administered, provided that person moves in as soon as practicable after the administration is completed.

Example[20]

Peter bought a house prior to 20 September 1985. He died in February 1992 and the house passed to the beneficiary under his will, Bob.

Under Peter's will, Patti had a right to occupy the house. However, Patti couldn't move in until probate and administration of the estate was granted. During this period, the house was vacant. Probate and administration of the estate was granted in September 1992 and Patti moved in immediately. Patti used the house as her main residence until Bob disposed of it in March 2019. Patti did not have an ownership interest in any other dwelling from the date of Peter's death.

As Patti moved into the house when it was first practicable to do so, it is treated as Patti's main residence from the time of Peter's death until Bob sold it.

Bob is entitled to a full main residence exemption.

If the spouse or other person occupying the property dies, it will often be the case that a full main residence exemption ceases to be available. Contrary to popular belief, there is no two-year rule that applies after their death. An exception to this rule would be where the property passes to a beneficiary who uses it as their own main residence.

In practice, LPRs often apply to the ATO to extend the main residence exemption to cover the period between the death of the spouse or other person occupying the property and the sale date. While there is no legislative basis for this, the authors have certainly seen cases where such an application has been successful.

What happens if the deceased is a non-resident?

Until recently, non-residents were not treated differently from residents in relation to obtaining the main residence exemption on an Australian dwelling. A common situation was that a person resided in Australia, owned a post-CGT Australian home and lived there for years, then became a non-resident, either leaving the Australian home vacant or renting it out. On making an absence choice, a full main residence exemption on sale was often obtained by the LPR, or the home passed to resident beneficiaries with a market value acquisition cost at the date of death. This is no longer the case.

Amendments to the law have now come into effect that will prevent foreign residents from claiming the benefit of the CGT main residence exemption for properties that they own in Australia. The amendments were foreshadowed in the federal Budget on 9 May 2017 and broadly apply to CGT events happening from that date (subject to some transitional arrangements set out below).

The amendments may also deny the exemption to the estate of a deceased foreign resident, although a less draconian approach has been taken there.

As far as individuals are concerned, the main residence exemption will be denied unless the individual was a foreign resident for six years or less at the time of the CGT event *and*, during their foreign residency, the individual, their spouse or minor child had a terminal medical condition, the spouse or child dies, or the CGT event arose from a relevant family law settlement.

In contrast, a trustee or beneficiary of a deceased estate will have access to the main residence exemption provided the deceased had been a foreign resident just before their death for a continuous period of six years or less.

Example[21]

Edwina acquired a dwelling on 7 February 2011, moving into it and establishing it as her main residence as soon as it was first practicable to do so. Edwina used the property as follows:

- residing in the dwelling until 25 September 2016 while an Australian resident; and
- renting the property out from 26 September 2016, at which time Edwina moved to Johannesburg.

Edwina passed away on 20 January 2018. At the time of her death, Edwina was a foreign resident for taxation purposes. However, as Edwina was a foreign resident for less than six years, she is not an excluded foreign resident.

Rebecca, an Australian resident, inherits the dwelling from Edwina. Rebecca moves into the dwelling and establishes it as her main residence on 21 April 2018. She continues to reside in it and use it as her main residence until she sells it. She signs the contract to sell the dwelling on 2 February 2021, with settlement occurring on 2 March 2021.

Rebecca is able to access the main residence exception for the whole period of ownership because:

- Edwina was not an excluded foreign resident at the time of her death. This means that the main residence exemption she accrued while she used the dwelling as her main residence is available to Rebecca; and
- the whole period between when Edwina passed away and when Rebecca moved into the dwelling and established it as her main residence is less than two years.

Rebecca is also able to access the main residence exemption for the period from when she moved into the property until she signed the contract for sale as she used the property as her main residence at all times and was an Australian resident at the time of the sale.

Therefore, Rebecca is able to access the main residence exemption for the entire ownership period.

If the deceased was a foreign resident for more than six years before death, no exemption will be available, even for periods where the Australian dwelling was actually the main residence of the deceased. Similarly, there will be no cost base uplift possibility at the time of death for a post-CGT dwelling.

Under transitional arrangements, the amendments will not affect the application of the main residence exemption to a capital gain or loss from a property that was acquired before 7.30 pm, by legal time in the Australian Capital Territory, on 9 May 2017 if the relevant gain or loss was from a CGT event that happened on or before 30 June 2020. (In the case of a dwelling acquired by a beneficiary after 9 May 2017, the transitional rule will apply if the dwelling was owned by the deceased or the trustee of their estate before that time.[22])

These arrangements may mean that actions need to be taken promptly to preserve main residence exemption entitlements that existed previously.

When an asset passes to a beneficiary under a deed of family arrangement

In certain circumstances, a family member may wish to challenge a will so that they can participate in the distribution of the deceased's estate, and it is agreed among the beneficiaries that they all enter into a deed of family agreement to avoid legal action.

As most people are aware, capital gains and losses that arise from the death of an owner of an asset are disregarded,[23] as are most gains and losses that the deceased's LPR makes if an asset "passes" to a beneficiary.[24]

An asset passes to a beneficiary in the circumstances set out in s 128-20 ITAA97, that is, most commonly when the beneficiary becomes the owner under a will (including as varied by a court) or under an intestacy (including as varied by a court).

Section 128-20(1)(d) provides that an asset also passes to a beneficiary in the estate of a deceased person if the beneficiary becomes the owner of the asset under a deed of arrangement, provided that:

- the beneficiary entered into the deed to settle a claim to participate in the estate; and
- the consideration given by the beneficiary consisted only of the variation or waiver of a claim to an asset or assets that formed part of the estate.

TR 2006/14 takes the view that a person is not required to commence legal proceedings in order to establish, for the purposes of s 128-20(1)(d), that they have a valid claim to participate in the distribution of the assets of the estate. A claim may be established by a potential beneficiary communicating their dissatisfaction with the will to the LPR.

This is said to be consistent with the policy outlined in the explanatory memorandum which introduced the equivalent provision in the ITAA36:[25]

> "In some cases a dispute may arise between claimants to the assets of a deceased estate. The dispute may lead to litigation which eventually results in an order of the court to vary the will. Alternatively, the parties to the dispute may reach a compromise agreement, which binds the parties to an agreement setting out their respective entitlements to assets. This agreement is reached without recourse to litigation and results in the execution of a deed of settlement; alternatively known as a deed of family arrangement or a deed of compromise. Because such a deed does not constitute an order of a court in terms of section 160J, the rollover under section 160X does not apply."

Because the law was changed to recognise a deed of arrangement as an alternative to a court order as a means of varying a will, the Commissioner takes the view that, for the purposes of s 128-20(1)(d), a deed of arrangement must be entered into in circumstances when a court might consider an application to vary the deceased's will. That is, the deed:

– must be made to settle a claim made by a person eligible to make an application for family provision; and

– must be entered into within the relevant timeframes for the making of an application to a court.

The latter point is determined in accordance with the succession laws of the relevant jurisdiction, and different jurisdictions have different periods — some periods run from the date of death (in Queensland, the period is nine months after death) and others run from the date of grant of representation (in the Australian Capital Territory, the period is 12 months from the date of grant). The courts in each jurisdiction may extend the time.

A difficult question is whether an application can still be brought where the LPR has completed their duties and holds property for beneficiaries as trustee. The High Court in *Easterbrook v Young*[26] found, in respect of the New South Wales provisions, that it could, and indicated that it would also apply to determine the meaning and effect of comparable provisions elsewhere. However, it is unclear whether this is actually the case.

The Commissioner therefore considers that, for s 128-20(1)(d) to apply, the taxpayer must generally enter into a deed of family arrangement in respect of an asset *prior* to administration being completed in respect of that asset.[27] The Commissioner acknowledges that, in some cases, an asset may pass under an agreement entered into after this point, but the beneficiary must be able to demonstrate that a court would have been likely to have entertained the application or to have granted an extension of time.

The authors consider the Commissioner's approach to be conservative, but not unreasonable, given the state of the general law and all of the circumstances. In cases where the Commissioner cannot be convinced, it may be necessary to demonstrate that an application would have been entertained or an extension of time granted by actually bringing the matter before the court.

Conclusion

This concludes the two-part series on death and income tax. Most of the issues examined are navigable by practitioners under the legislation, but some uncertainties remain and, in some cases, it will be prudent to get a private ruling from the Commissioner.

Ian Raspin, CTA
Managing Director
BNR Partners

Lyn Freshwater
Senior Tax Consultant
BNR Partners

Mark Morris, FTI
Senior Tax Counsel
BNR Partners

This article is an edited and updated version of "Death and taxes – some discrete issues" presented at The Tax Institute's Tasmanian State Convention held in Launceston on 17 to 18 October 2019.

References

[1] This discussion assumes that the deceased died after 19 September 1985. If the deceased died before that date, the dwelling would be a pre-CGT asset of their legal personal representative or beneficiary. The main residence exemption would be irrelevant in this instance.

[2] There are different rules for an interest in a dwelling that passed by survivorship to other joint tenants (see s 128-50 of the *Income Tax Assessment Act 1997* (Cth) (ITAA97)).

[3] S 128-15(4) ITAA97.

[4] S 128-15 of the In*come Tax (Transitional Provisions) Act 1997.*

[5] S 118-195 ITAA97.

[6] Column 2, item 2 of the table in s 118-195(1) ITAA97.

[7] S 118-195 of the *Income Tax (Transitional Provisions) Act 1997.*

[8] S 118-145 ITAA97.

[9] S 118-145(4) ITAA97.

[10] Column 2, item 1 of the table in s 118-195(1) ITAA97.

[11] S 118-190 ITAA97.

[12] IT 2167.

[13] S 118-190(4) ITAA97.

[14] This is example 4 from PCG 2019/5.

[15] See s 118-190 ITAA97 (in particular, the example following s 118-190(1)) and TD 1999/70.

[16] It is not clear whether this last category only applies to a person actually named in the will, or whether it could extend to a person subsequently nominated by the trustee. Care should be taken here, and perhaps a private ruling sought to remove any doubt.

[17] "Spouse" is defined in s 995-1(1) ITAA97 to included de facto and registered partners (whether of the same or different sex).

[18] Column 3, item 2 of the table in s 118-195(1) ITAA97.

[19] See www.ato.gov.au/General/Capital-gains-tax/Deceased-estates-and-inheritances/Inherited-dwellings/CGT-exemptions-for-inherited-dwellings.

[20] See www.ato.gov.au/General/Capital-gains-tax/Deceased-estates-and-inheritances/Inherited-dwellings/CGT-exemptions-for-inherited-dwellings/#Workoutifyourinheriteddwellingisexempt.

[21] This is example 1.7 in the explanatory memorandum to the Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures) Bill 2019.

[22] S 118-110 of the *Income Tax (Transitional Provisions) Act 1997.*

[23] S 128-10 ITAA97.

[24] S 128-15(3) ITAA97.

[25] Explanatory memorandum to the Taxation Laws Amendment Bill (No. 2) 1992.

[26] [1977] HCA 16.

[27] TR 2006/14.