

2010 School Seminar Series

Waikato Management School
Te Raupapa



The Role of the New Zealand Anti-Avoidance Rule

Tuesday, 30 November 2010
11.00am - 12.00noon
MSB.4.02

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Abstract:

This paper considers a number of interrelated propositions that determine the role of the New Zealand general anti-avoidance rule ('GAAR') (ss BG1 and GA1 ITA) in taxation law jurisprudence. The first issue relates to the interplay between the GAAR and specific statutory provisions. The second issue relates to the interpretation of tax provisions, including more specifically the GAAR itself. The answer to these issues will ultimately determine the continuing relevance of the 'Duke of Westminster principle'. To date, despite the enactment of New Zealand GAARS, this doctrine has continued to be a pivotal principle in taxation law jurisprudence. Obviously, in turn, this has meant that the New Zealand GAAR has been ineffective to deal with avoidance schemes that have been purposely structured to fall within the formal parameters of a provision. It is contended that recent decisions of the newly constituted New Zealand Supreme Court indicate that if the Duke of Westminster principle is not dead, he should be "very careful when he crosses the road".

Bio:

Julie Cassidy is an Associate Professor of law at Deakin University, Victoria Australia. She has been teaching taxation law for twenty years and has published extensively in, inter alia, this area of law. Her book Concise Income Tax is now in its fifth edition and she has published in leading taxation and commercial law journals such as Australian Tax Forum, Revenue Law Journal, Taxation in Australia, Australian Business Law Review, Tax Specialist Bulletin for International Fiscal Documentation and South African Mercantile Law Journal. Her main research areas in taxation law are anti-tax avoidance measures and capital gains taxation.

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