

# Table of Contents

<b>Acknowledgments</b> .....	<b>11</b>
<b>Abbreviations</b> .....	<b>12</b>
<b>The Cover Cartoon</b> .....	<b>15</b>
<b>Preface</b> .....	<b>17</b>
<b>Chapter One—Overview</b> .....	<b>21</b>
1.1 Overview .....	21
1.2 Structure .....	26
1.3 Section Outlines .....	29
<b>PART I THE COMMON LAW AND TAXATION OF TRUSTS IN AUSTRALIA IN THE TWENTY-FIRST CENTURY</b> .....	<b>39</b>
<b>Chapter Two—Introduction</b> .....	<b>41</b>
2.1 Overview .....	41
<b>Section A—Common Law Issues Relating to Trusts</b> .....	<b>45</b>
<b>Chapter Three—The Purpose and History of Trusts</b> .....	<b>47</b>
3.1 Introduction .....	47
3.2 The Purpose and History of Trusts .....	47
<b>Chapter Four—Equity and Fiduciary Relationships</b> .....	<b>53</b>
4.1 Introduction .....	53
4.2 Equity .....	53
4.3 Fiduciary Duty .....	56
<b>Chapter Five—Types of Trusts and Their Methods of Creation</b> .....	<b>59</b>
5.1 Introduction .....	59
5.2 Express or Declared Trusts .....	60
5.3 Presumed or Implied Trusts .....	60
5.4 Constructive Trusts .....	61
5.5 Unit Trusts .....	62
5.6 Discretionary Trusts .....	64

5.7	Bare Trusts .....	65
5.8	Trading Trusts .....	65
5.9	Blind Trusts .....	65
5.10	Service Trusts .....	66
5.11	Charitable Trusts .....	67
<b>Chapter Six—Termination of Trusts .....</b>		<b>69</b>
6.1	Introduction .....	69
6.2	Termination of Trusts.....	69
<b>Chapter Seven—Trust Records and Trust Accounting .....</b>		<b>73</b>
7.1	Introduction .....	73
7.2	Implied Trusts .....	73
7.3	Constructive Trusts .....	77
7.4	Trust Accounting .....	78
<b>Section B—Taxation Law Issues Relating to Trusts.....</b>		<b>81</b>
<b>Chapter Eight—Taxation of Trust Distribution under Australian Income Taxation Law .....</b>		<b>83</b>
8.1	Introduction .....	83
8.2	Taxation of Trust Income and Property .....	83
8.3	CGT Implications .....	86
8.4	Non-Resident Trusts.....	89
8.5	Stamp Duty and Land Tax Issues.....	95
8.6	Personal Exertion Trusts and Interposed Entities .....	98
<b>Chapter Nine—Future Legislation and Suggested Outcomes.....</b>		<b>105</b>
9.1	Introduction .....	105
9.2	Likely Trust Taxing Legislation.....	105
9.3	Political Influences .....	107
9.4	Historical Examples .....	110
9.5	Conclusion.....	120

<b>PART II INTERNATIONAL ASPECTS OF THE AUSTRALIAN GOODS AND SERVICES TAX (GST) .....</b>	<b>123</b>
<b>Chapter Ten—Introduction .....</b>	<b>125</b>
10.1 Overview .....	125
<b>Chapter Eleven—The Australian GST System.....</b>	<b>131</b>
11.1 How GST Functions .....	131
11.2 The Australian GST System .....	132
<b>Chapter Twelve—The Reason the Howard Government Pursued the Policy Option of a GST for Australia.....</b>	<b>143</b>
12.1 Introduction .....	143
12.2 Demand for the GST.....	144
12.3 Conclusion.....	146
<b>Chapter Thirteen—The International Implications of the GST .....</b>	<b>149</b>
13.1 Introduction .....	149
13.2 Australian GST—International Implications.....	150
13.3 Conclusion.....	159
<b>Chapter Fourteen—An International Comparative: The Cook Islands.....</b>	<b>161</b>
14.1 Introduction .....	161
14.2 Cook Islands’ Political, Social, and Economic Overview .....	164
14.3 Cook Islands’ Government Finances .....	167
14.4 The Australian GST Compared to the Cook Islands VAT .....	173
14.5 Likely Outcomes of Australia’s GST.....	181
<b>Chapter Fifteen—A Better Plan: Alternatives and Solutions to the Problems of the Australian GST System.....</b>	<b>189</b>
15.1 Introduction .....	189
15.2 Alternatives.....	189
15.3 Conclusion.....	192

<b>Part III A CRITICAL ANALYSIS OF TAX AVOIDANCE SCHEMES IN AUSTRALIA .....</b>	<b>195</b>
<b>Chapter Sixteen—Introduction .....</b>	<b>197</b>
16.1 Overview .....	197
16.2 Australian Domestic Tax Avoidance Countermeasures p(GAARS).....	199
<b>Section A—Australian Domestic Tax Avoidance Countermeasures..</b>	<b>203</b>
<b>Chapter Seventeen—The Legislative Background to Tax Reducing Structures.....</b>	<b>205</b>
17.1 Introduction .....	205
17.2 Taxation Relief Incentives—Acceptable Tax Avoidance.....	205
<b>Chapter Eighteen—Tax Planning Structures and Tax Reducing Methods.....</b>	<b>213</b>
18.1 Introduction .....	213
18.2 Public Opinion .....	214
18.3 Acceptable Tax Avoidance—Tax Planning .....	215
<b>Chapter Nineteen—Tax Avoidance Schemes .....</b>	<b>225</b>
19.1 Introduction .....	225
19.2 Australian MMTAS .....	225
<b>Chapter Twenty—Promotion of Tax Avoidance Schemes.....</b>	<b>233</b>
20.1 Introduction .....	233
20.2 MMTAS of the 1990s.....	233
20.3 Conclusion.....	243
<b>Chapter Twenty-One—Anti-Avoidance Provisions—Part IVA and Personal Services Income Provisions .....</b>	<b>245</b>
21.1 Introduction .....	245
21.2 Part IVA .....	245
21.3 Personal Services Income .....	251
21.4 Interposed Entities.....	257

<b>Section B—International Taxation and Offshore Agreements .....</b>	<b>259</b>
<b>Chapter Twenty-Two—Offshore Trading and Tax Havens .....</b>	<b>261</b>
22.1 Introduction .....	261
22.2 Tax Havens of the South Pacific .....	261
22.3 Offshore Trading Trusts .....	270
22.4 Combating Trans-Jurisdictional Tax Avoidance.....	273
<b>Section C—The Alternatives.....</b>	<b>279</b>
<b>Chapter Twenty-Three—Suggested Australian Reforms.....</b>	<b>281</b>
23.1 Introduction .....	281
23.2 Suggested Tax Reforms.....	282
<b>PART IV THE APPARITION OF TAX REFORM: THE ISSUE OF TAXATION REFORM IN AUSTRALIA.....</b>	<b>287</b>
<b>Chapter Twenty-Four—Possible Motivations for Tax Reform.....</b>	<b>289</b>
24.1 Introduction .....	289
24.2 Possible Motivations for Tax Reform .....	294
<b>Chapter Twenty-Five—A Concise History of Tax Reform in Australia .....</b>	<b>299</b>
25.1 Introduction .....	299
25.2 1975—The Asprey Report Defining a ‘Good Tax System’ ..	301
25.3 1993—Tax Law Improvement Project: Capital Gains Tax ...	308
25.4 1999—The Review of Business Taxation (The ‘Ralph Report’) .....	313
25.5 2000—A New Tax System: Goods and Services Tax .....	318
25.6 Splendor/Squalor Ratio.....	322
25.7 2010—Australia’s Future Tax System Review (The Henry Review) .....	325
<b>Chapter Twenty-Six—Part IV Conclusion: Are There Alternatives?...</b>	<b>333</b>
26.1 Summary .....	333

<b>Chapter Twenty-Seven—The Bottom Line</b> .....	<b>339</b>
27.1 Introduction .....	339
27.2 Review .....	339
27.3 Contribution to the Study of Tax Compliance Behavior.....	342
27.4 Research Limitations .....	343
27.5 Suggestions for Further Research .....	344
27.6 Conclusion .....	348
<b>Appendix A</b> .....	<b>351</b>
Tieleman: A Case Study of a Tax Practitioner 2001 .....	351
<b>Appendix B</b> .....	<b>364</b>
ATO’s List of ‘Eligible’ Mass-marketed Tax Avoidance Schemes (2002) .....	364
<b>Appendix C</b> .....	<b>370</b>
Australian Governments since Federation .....	370
<b>Bibliography</b> .....	<b>372</b>
Articles/Books/Reports.....	372
Case Law .....	375
Legislation.....	379
Treaties .....	381
Other Sources .....	381
<b>Index</b> .....	<b>389</b>