

lump sum which includes compensation for various heads such as loss of earnings, loss of goodwill and loss of capital assets. Although there may still be an advantage in such a technique as far as revenue items are concerned, it should be noted that Part IIIA of the Act specifically allows for apportionment. Sub-section 160ZD(4) provides:-

“Where any consideration...relates in part only to the disposal of a particular asset, so much of that consideration as may be reasonably attributed to the disposal of the asset shall be taken to relate to the disposal of the asset.”

Counsel should give consideration to assisting the Commissioner of Taxation in “reasonably attributing” a portion of the lump sum settlement figure to the disposal of particular assets.

Family Law Act transfers

Finally, it should be mentioned that Part IIIA specifically provides for roll-over relief from CGT where there is a court sanctioned or court directed transfer of assets between spouses under the Family Law Act. As from 28th January 1988 the roll-over relief is extended to court directed or court sanctioned transfers of assets between a company or trust and one of the spouses to the arrangement. As is often the case concerning income tax amendments in modern times, this extension of the roll-over relief provisions is contained in an announcement made by the Treasurer on 28th January 1988 and will not be embodied in legislation until the draftsman gets back from holidays.

Conclusion

This brief comment should illustrate that there are vast opportunities as well as pitfalls for members of the Bar in relation to the impact of CGT on damages claims. A plaintiff who settles a claim for \$100,000 might be very angry if he finds that the Commissioner of Taxation is entitled to take almost half of that amount. On the other hand a defendant who refuses to settle a claim for \$100,000 might be more than willing to settle a claim for \$175,000 if he can be assured that the full \$175,000 will be a claimable capital loss. In either event, both sides should be quite certain as to the type of asset they are dealing with, because the Commissioner is likely to be resistant to the idea of allowing a capital loss on the payment of an amount by way of compensation or damages if he cannot have the corresponding sum included in the plaintiff's assessable income. □

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Last with the First

"Judge Appointed

Justice Roderick Pitt Meagher QC, has been sworn in as a judge of the NSW Court of Appeal. Justice Meagher was appointed to fill the position left by Justice Michael McHugh, who now sits as a judge of the High Court. Justice Meagher, 56, became a barrister in 1960 and took silk 14 years later."

.....Sydney Morning Herald 10 March 1989.

His Honour was sworn in on 31 January 1989.

The Skeptical View

Skeptics (sorry about the American spelling) are not cynics - necessarily. They are not sarcastic - all the time.

What are Skeptics?

In Australia they are members of the Australian Skeptics, an association inspired by the Committee for the Scientific Investigation of Claims of the Paranormal (CSICOP) in the U.S.A. They deserve closer attention from the Bar.

Surprisingly few lawyers are members. Perhaps the title emphasises science and deters them, but in reality reason and logic - rational argument - are its foundations.

It is quite a respectable organisation. The American body has on its committee eminent persons including Isaac Asimov, Murray Gell-Mann, Stephen Jay Gould, Paul Kurtz, James Randi, Carl Sagan, Dick Smith and many others perhaps not so well-known in Australia.

The NSW Branch of the Australian Skeptics (P.O. Box 575, Manly 2095) has as its president a witty and patient man with an interest in Egyptology, among other things - Barry Williams. What does it do?

It offers a standing reward of \$20,000 (offered by Dick Smith and Phillip Adams, the patrons) to the first paranormal claim proven genuine under controlled tests and not attributable to any other non-psychic cause.

It awards two prizes at its annual conference at Easter (usually in Sydney or - as for 1989 - Canberra):

1. The Bent Spoon Award - for the most outrageous paranormal claim of the year (in 1988 Anne Dankbaar won it for her claimed discovery of the Colossus of Rhodes - complete with bulldozer scrapes. Peter Brock's "energy polariser" won in 1987).
2. The Skeptical Journalism Award - for the best reporting of a paranormal topic (in 1988 the ABC's Investigators won for its piece on a supposed "fuel polariser" which it was said would improve a car's fuel consumption).

Apart from lawyers, members include scientists in all fields, medical practitioners, teachers, journalists and magicians (who duplicate Yuri Geller's spoon-bending with ease). It is consulted regularly by the mass media for comment on current paranormal crazes.

Psychic and/or paranormal claims are made daily: astrology, telepathy, scientology, clairvoyance, channelling, water divining, telekinesis, tarot, ouija, homeopathy, graphology, crystallography, pyramidology and so on. The list is limited only by the imagination of the proponents. The gullible are gulled, the ignorant are parted from their money. The Skeptics struggle mightily to keep the facts before the public mind.

Its activities and interests are fun, intellectually challenging and useful in the field of consumer education and protection. Lawyers would revel in it - hence this article.

For \$15 per annum there are an annual convention, a quarterly magazine (tall tales but true), occasional talks and demonstrations, contact with CSICOP and its Legal and Consumer Protection Subcommittee and a wealth of information and entertainment.

There is no scope in Australia for a Legal Sub-Committee: but first become a member. Write to the address given above or contact me for an application form. Help the Bar broaden its horizons □

N.R. Cowderly Q.C.