
JOURNAL OF LAW AND FINANCIAL MANAGEMENT

IN THIS ISSUE

Cross-Regulatory Arbitrage: An Illustration from Leasing

E. Huang

Impairment of Assets: A Tax Accounting Interface

L. Nethercott and T. Anamourlis

The Insider Trading Implications of Directors' Margin Loans

J. Overland

Tyrone M. Carlin

Joint Editors

Guy Ford

JOURNAL OF LAW AND FINANCIAL MANAGEMENT

JOINT EDITORS

Tyrone M Carlin
and
Guy Ford

Macquarie Graduate School of Management

The mode of citation of
this volume is
(2009) 8(1) JLFM Page

EDITORIAL BOARD

Associate Professor Christine Brown (*Melbourne*)

Professor Alex Frino (*Sydney*)

Professor James Guthrie (*Sydney*)

Professor Ian Ramsay (*Melbourne*)

Joellen Riley (*Sydney*)

Professor Andrew Terry (*UNSW*)

Professor Tom Valentine (*UWS*)

Professor R G Walker (*UNSW*)

Dr Neil Esho (Australian Prudential Regulation Authority)

ISSN 1446 - 6899

The Journal of Law and Financial Management is a refereed Journal. Every manuscript submitted to the journal is subject to review by at least one independent, expert referee.

CONTENTS

Editorial7
------------------------	----

Articles

Cross-Regulatory Arbitrage: An Illustration from Leasing

E Huang

When a corporation is making financing decisions, accounting/regulatory arbitrage and tax arbitrage are important considerations. In November 2000, David Jones entered into an in-substance sale and leaseback transaction with Deutsche Bank in relation to its flagship stores in Sydney and Melbourne.¹ This transaction differs from the more traditional sale and leaseback transactions such as those in *Metal Manufactures Ltd v Federal Commissioner of Taxation (1999) 43 ATR 375* and *Eastern Nitrogen Ltd v Federal Commissioner of Taxation (2001) 46 ATR 474*. In both cases, a form of proprietary interest in the leased properties vested in the lessors. In the David Jones transaction, David Jones retained freehold title to the buildings and transferred economic control of the property to Deutsche Bank through a finance lease, then subsequently leased back the buildings through an operating lease. In this paper, the transaction is analysed as a case study to illustrate that tax arbitrage and accounting regulatory arbitrage are not separate considerations in the financing decision-making process. Therefore, regulators and business decision-makers cannot look at regulation in a vacuum.... .8

Impairment of Assets: A Tax Accounting Interface

L Nethercott and T Anamourlis

The relationship between taxation law and accounting has been a complicated one in recent years. The decision of the Australian Accounting Standards Board (AASB) to adopt International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board (IASB) has lent a more complex dimension to this interface.

There are two important areas of taxation law where the interface of tax and accounting principles arise. They concern the issues of Thin Capitalisation and Consolidations. However, of particular concern in both of these areas is the treatment of intangible assets and their impairment. This paper seeks to examine these issues and some of the consequences of recent legislative amendments to the tax law and the adoption of IFRS.. 14

The Insider Trading Implications of Directors' Margin Loans

J Overland

The use of margin loans by directors of listed companies to acquire shares in their own companies raises a number of important issues, not least of which are the insider trading implications. This topic has been the subject of a significant focus this year, primarily due to the release of an Issues Paper and Report on Aspects of Market Integrity by the Corporations and Markets Advisory Committee in response to a ministerial request. This article discusses the relationship between insider trading and directors' margin loans, analyses the current state of the law in the context of relevant commentary and law reform proposals, and proposes alternative mechanisms to address the complex underlying issues in light of the current policy focus..... 20

EDITORIAL

Now in its eighth year, the Journal of Law & Financial Management has achieved a number of important milestones including quality ratings by both The Australian Business Deans Council (ABDC) and the Australian Research Council (ARC) in their respective journal ranking lists. Another important development for the Journal of Law & Financial Management has been the partnering with the Social Science Research Network (SSRN) for the electronic distribution of each issue. Since 2006, the Journal of Law & Financial Management has been distributed exclusively via SSRN to more than 130,000 subscribers worldwide through the SSRN eLibrary. This online international distribution has greatly increased the reach and impact of the journal.

This issue the Journal of Law & Financial Management looks at issues associated with business regulation, particularly in relation to taxation, accounting and market operation. In this issue, Juliette Overland examines the use of margin loans by directors of listed companies and important regulatory issues related to insider trading. In the wake of extreme volatility in capital markets and triggered margin loan sales, this article provides a timely commentary. Next, Les Nethercott and Tony Anamourlis examine the interface of taxation and accounting to investigate issues in relation to the treatment of intangible assets and their impairment. Finally, Eva Huang provides a commentary of the cross-regulatory arbitrage between accounting and taxation as it relates to leasing and examines the case of David Jones in a sales and lease back transaction.

Tyrone M Carlin & Guy Ford, Sydney

June 2009