

Mansell, Ken

From: F John Morgan [F.John.Morgan@vicbar.com.au]
Sent: Sunday, 2 September 2007 9:58 AM
To: Unlimited Amendment Period
Subject: Unlimited Amendment Period Review - Could you consider giving finality for tax exposures that don't involve assessment: such as withholding tax (eg. the recent ABB Case [2007] FCA 1063)

Dear UAP Officer,

I note with interest this review. The idea of getting finality in tax affairs after a particular period is to be commended.

I wanted to bring to your attention other areas of unlimited tax exposure outside those that require assessments (and thus amendments).

ABB Australia Pty Limited v Commissioner of Taxation [2007] FCA 1063 (20 July 2007)* is a case where the Commissioner imposed Dividend Withholding Tax in 2003 on a 1996 dividend, as far as I can see there is effectively no limit on how far back the Commissioner could go back to impose DWHT of this kind, if he took the view the was a dividend where that tax should have applied (withholding tax being a tax that operates on the facts without the need for an assessment).

I'm not sure whether this is within your purview, but I thought it warranted consideration as being within the spirit of what you are looking at.

Cheers,

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("2007%20FCA%201063")