

Bulletin

Thursday, 2nd June 2005

Government extends the principle of Mutuality

On 27 May 2005, the High Court decided not to grant special leave to appeal the decision of the full Federal Court in the *Coleambally Irrigation Mutual Cooperative Limited –v– SCT* case.

In that case, the full Federal Court found that an organisation, whose members are prevented from sharing the remaining assets of the organisation on a winding up, cannot gain income tax exemption under the mutuality provisions.

Our discussions with the Australian Taxation Office (ATO) indicated that this was an outcome which was unexpected and not fully intended.

As you may be aware, the ATO has required non-profit organisations to include in their constitutions a provision that surplus funds cannot be distributed to members on winding up. The *Coleambally* decision has therefore created a dilemma which has now been resolved.

On 30 May 2005, the Minister for Revenue and Assistant Treasurer announced an extension of the mutuality principle in tax laws to restore and preserve the tax benefits currently enjoyed by non-

profit organisations. The announcement can be viewed at <http://assistant.treasurer.gov.au/mtb/default.asp>.

The Amendment will need legislative change through Parliament but the ATO has indicated that “tax payers” can choose to anticipate enactment of the law and continue to operate as they have been. Those who choose to do so based on the Government announcement will not be disadvantaged.

The legislative change is expected to entrench the current ATO requirement whereby non-profit organisations cannot distribute surplus assets to members - but it is expected to allow such organisations to legally qualify for exemption from income tax under the mutuality principles.

Should further information be required please do not hesitate to contact Mr Bill d'Apice of our office.

MAKINSON & d'APICE
LAWYERS

Level 12 135 King Street Sydney NSW 2000 • GPO Box 495 Sydney 2001 • DX 296 Sydney
Telephone 02 9233 7788 • Facsimile 02 9233 1550 • Email mail@makdap.com.au • www.makdap.com.au