The onus of proof following the Cassaniti decision

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The Full Federal Court decision of Steward J (Greenwood J agreeing and Logan J concurring with additional reasons) in *FCT v Cassaniti* notably clarifies the law in relation to what is necessary for a taxpayer to discharge their burden of proof on review in a tribunal or court. The practical effect of this clarification may be that taxpayers are more likely to succeed in meeting their burden of proof on review. For corporations, both large and small, individuals and small-to-medium enterprises, the commentary in the case provides an effective roadmap to assist them in discharging the burden of proof.

Introduction

The Full Federal Court decision of Steward J (Greenwood J agreeing and Logan J concurring with additional reasons) in *FCT v Cassaniti*[1] (*Cassaniti*) notably clarifies the law in relation to what is necessary for a taxpayer to discharge their burden of proof on review in a tribunal or court. *Cassaniti* sets out, in concise terms,[2] a series of five propositions relevant[3] to determining whether a taxpayer has discharged their burden of proof. The practical effect of this clarification may be that taxpayers are more likely to succeed in meeting their burden of proof on review.

For corporations, both large and small, the decision highlights the operation of s 1305 of the *Corporations Act 2001* (Cth) (Corporations Act) which may have the effect of practically discharging the burden of proving underlying facts if the matters are recorded in the financial records[4] of a company. This should have the effect of making the process on review quicker, more certain and consequently cheaper for litigants (subject to proving the documents were kept by the company for the purposes of the Corporations Act — see the discussion of *Price v FCT*[5] below).

For individuals and small-to-medium enterprises (SMEs), the commentary on what is necessary to meet the burden of proof will assist them in preparing matters so as to discharge their burden of proof where record-keeping was not flawless (for example, in SMEs, trust and intra-family dealings). For larger taxpayers, there is also an opportunity to utilise elements of the decision to reduce the scope of dispute as to material facts which could also have the effect of greatly reducing the cost and duration of disputed facts in court.

This article sets out the recent history of burden of proof issues, the facts, the submissions on appeal and the decision in *Cassaniti*, and thoughts on practical consequences for future tax cases.

The burden of proof in tax cases

A taxpayer always has the burden of proof in tax proceedings regardless of whether it is a review of an objection decision[6] under Pt IVC of the *Taxation Administration Act 1953* (Cth) (TAA), an application[7] for declaratory relief pursuant to s 39B of the *Judiciary Act 1903* (Cth), or a review under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (ADJR Act) processes (or their state[8] law counterparts). It should be noted that the burden of proof is a different concept to the standard of proof (which is discussed below as it forms part of the taxpayer's burden). The taxpayer's burden of proof under ss 14ZZO and 14ZZK TAA really comprises two parts:

- establishing, with evidence, the underlying facts on which the law is to operate (and in this regard, the standard of proof to which each fact must be proved is relevant);[9] and
- that the operation of the law when applied to those facts establishes that the assessment is excessive.[10]

It is not unfair[11] for the Commissioner, on application for review or declaration, to rely on this burden of proof and require a taxpayer to prove each factual element of their claim. However, what is necessary to discharge this burden of proof arguably changed in practice between the early 1990s and recent times and, in particular, regarding when a taxpayer can be said to have discharged their burden of proving the facts on which they relied.

The starting point for the analysis of the burden of proof is often *FCT v Dalco*[12] (*Dalco*). In *Dalco*, the Commissioner issued a default assessment[13] to the taxpayer. The taxpayer sought to disprove the Commissioner's amended assessments by showing the Commissioner had wrongly treated the income of companies or trusts which the taxpayer or his family company acquired or controlled as assessable income of the taxpayer.[14] That is, the taxpayer sought to succeed by pointing to an error made by the Commissioner rather than establishing what their true taxable income was. A majority of the High Court, agreeing with separate concurring judgments by Brennan J and Toohey J, found for the Commissioner.

The formulation preferred by Brennan J, citing *George v FCT*,[15] was that to discharge the burden of proof, "the burden lies upon the taxpayer of establishing affirmatively that the amount of taxable income for which he has been assessed exceeds the actual taxable income which he has derived during the year of income"[15] and that "…in order to carry that burden he must necessarily exclude by his proof all sources of income except those which he admits. His case must be that he did not derive from any source taxable income to the amount of the assessment".[15] Brennan J found that the manner in which a taxpayer can discharge the burden varies with circumstances[16] and that:

> "If the Commissioner and a taxpayer agree to confine an appeal to a specific point of law or fact on which the amount of the assessment depends, it will suffice for the taxpayer to show that he is entitled to succeed on that point. Absent such a confining of the issues for determination, the Commissioner is entitled to rely upon any deficiency in proof of the excessiveness of the amount assessed to uphold the assessment, though the taxpayer is limited to the grounds of his objection."

While *Dalco* concerned a default assessment, the High Court subsequently confirmed the same principles governed standard assessments pursuant to s 166 of the *Income Tax Assessment Act 1936* (Cth) (ITAA36).[17]

The high-water mark for taxpayers came shortly after in 1992 in *FCT v Ma* (*Ma*).[18] Mr Ma, the former owner of restaurants, was a large-scale punter: evidence was provided by both a bookmaker's clerk and a bank manager and member of the Port Macquarie Race Club Committee to this effect.[19] From 1982 to 1985, the applicant deposited large sums of money in his various bank accounts. The Commissioner issued income tax assessments for these years on the basis that these deposits represented much more money than could be accounted for by the income returned from the applicant's known receipts of capital.

The applicant objected to these assessments, claiming that the deposits, withdrawals and re-deposits were for betting purposes. In finding Mr Ma had discharged his burden of proof, Burchett J provided that, "if a taxpayer denies any undisclosed source of income, provides acceptable evidence of how he spends his time, and demonstrates a reasonable explanation for any appearance of the possession of assets, he will generally discharge his burden of proof unless some positive reason is shown why he is to be disbelieved."[20]

Subsequently, *Ma* has been somewhat confined to its unique facts. In *Haritos v FCT* (*Haritos*), a five-member bench of the Full Federal Court said of a passage in *Ma*, in a not disapproving manner:[21]

> "The proposition which the appellant sought to derive from this passage was that in performing its review function, the Tribunal may be required to make an estimate upon inexact evidence, and it cannot avoid its responsibility to make findings by relying on the burden of proof section. This proposition may be accepted for the present purposes."

However, in *Haritos*, the Full Court went on to say that the reason that the taxpayer must fail in that case was because:[21]

> "… they are unable to identify the estimate they contend the Tribunal should have made and *the evidence by reference to which the estimate should have been made.*" (emphasis added)

The Full Court then added that:[22]

> "The Tribunal was not entitled to adopt what the appellants described as an 'all or nothing' approach. If an 'at least' figure was established on the evidence, then the Tribunal should have made a finding in accordance with that evidence.
>
> We think that proposition is correct. If a taxpayer claims his or her expenses were $10, but fails to prove that fact because their evidence is rejected, this does not prevent the Tribunal from finding that the expenses were $5 where there is other satisfactory evidence establishing expenses of at least that amount."

The Full Federal Court also said in *Rigoli v FCT*[23] that the Federal Court below and the Administrative Appeals Tribunal at first instance were right to conclude that Mr Rigoli had not discharged his burden of proof by tendering a report prepared by an accountant as to what, approximately, his income should have been in the relevant years. The Full Federal Court[24] referred with approval to the tribunal's decision at first instance which provided:[25]

> "While it is true to say that a taxpayer can discharge the burden of proof in a manner which may depend on the circumstances, *Mr Rigoli did not adduce any evidence of the amount or source of his income for any [of] the income years in issue. He simply sought to rely on the report prepared by Mr Kompos.* That report was prepared for the purpose of enabling the Commissioner to make an assessment of the amount upon which, in his judgment, income tax ought to have been levied. It was not intended to and did not establish, even on the basis of an estimate, the actual taxable income of Mr Rigoli from all sources for the income years in question." (emphasis added)

While many of the precedential cases involve natural persons and undisclosed income, decisions based on the burden of proof have been increasingly common in large corporate litigation. For example, the first instance decision in *Chevron Australia Holdings Pty Ltd v FCT (No. 4)*[26] concerned whether the consideration for a cross-border loan facility was arm's length consideration or less than arm's length consideration. In that case, at first instance, the case was disposed of by reference to the fact that Robertson J did not find the evidence given by the experts to be addressed to the correct statutory question, and therefore the applicant could not succeed in showing that the relevant consideration was arm's length or less than arm's length consideration[27] and the taxpayer could not discharge their burden of proof.

Accordingly, while the manner in which a taxpayer may discharge their burden of proof may vary — especially where particular issues are agreed to be determinative by the Commissioner — in a Pt IVC proceeding (and more generally), the Commissioner is entitled to, and often does, rely on taxpayers being unable to *prove with evidence* what their assessment should have been.

The facts, submissions and decision in Cassaniti

Mrs Cassaniti provided services as a bookkeeper. From about June 2010 to about April 2014 onwards,[28] she was employed by the trustee of three different trusts, each of whom hired her labour to an accounting practice with which her husband, Mr David Cassaniti, and her cousin-in-law, Mr Sam Cassaniti, were associated. Mr Sam Cassaniti was described as a "convicted tax fraudster"[29] in the Commissioner's submissions.

Mrs Cassaniti swore a total of three affidavits in the initial proceedings. She deposed that she had been paid a gross salary of $65,000 and her net pay deposited into a bank account. She exhibited in an affidavit the payslips she had received during the period in dispute. It was found as a matter of fact at first instance that she had only ever received the amount net of purported withholdings.[30] However, despite this, none of the employing trustees had:

– ever been registered for PAYG withholding as required by the TAA;
– lodged payment summaries as required;
– filed tax file number declarations; or
– ever remitted any amounts to the Commissioner.[31]

The three principals of the accounting practice (her husband, his cousin and another man) were not called as witnesses.[32]

The Commissioner's submissions on appeal

The Commissioner's position on appeal was that:

– the payslips, offers of employment and PAYG payment summaries were recent inventions;[33]
– an adverse inference (ie that no evidence they could have given would have assisted Mrs Cassaniti) should have been made, pursuant to the rule in *Jones v Dunkel*,[34] from the failure to call the three principals of the accounting practice; and
– the respondent had failed to discharge her onus of proof because she had not adequately proven the authenticity of the business records she relied on.

In respect of the submission on recent invention, the Full Court's view was that this amounted to an attack on the credibility of Mrs Cassaniti, and her evidence having been accepted as truthful below could not be sustained on appeal as the allegation had not been properly and fairly put to her on cross-examination below as required.[35] Additionally, the allegation was not mentioned in the objection decision or the summary of the case required to be provided by the Commissioner and was not, as should have occurred,[36] put to the taxpayer at the earliest opportunity.

In respect of the submission that Mrs Cassaniti had not sufficiently proved the authenticity of the documents, Mrs Cassaniti had sworn three affidavits deposing to the payslips being the documents she saw every week at the offices of the accounting firm and that she received those documents every week.[37] This was sufficient, in the Full Court's view, to establish the provenance of those documents as her evidence had been accepted as truthful. Further, the Full Court found that it was open for the tribunal to infer the authenticity of the PAYG payment summaries and payslips from their contents[38] and that they may be admissible as business records that provide evidence of the truth of the facts recited in the document without identifying the precise author of the document (ie as the person who made the representation in the document, whoever he or she is, had, or might reasonably be supposed to have had, personal knowledge of the asserted fact).[39]

The Full Court then also referred to the prima facie evidence provision in s 1305, which provides that a "*book kept* by a body corporate *under a requirement of this Act* is admissible in evidence in any proceeding and *is prima facie evidence of any matter stated or recorded in the book*" (emphasis added) and "a document purporting to be a book kept by a body corporate is, unless the contrary is proved, taken to be a book kept as mentioned in subsection (1)".

Relevantly, a *book*[40] includes *financial records*[40] which include "invoices, receipts…documents of prime entry … working papers and other documents needed to explain… the financial statements".[40] Under the Corporations Act, a corporation is required to keep written financial records that, "correctly record and explain its transactions and financial position and performance".[41] The Full Court concludes,[42] based on a number of authorities,[43] that the payslips and payment summaries tendered by Mrs Cassaniti were probably financial records required to be kept under the Corporations Act by the employing entities and operate to provide prima facie evidence of the matter stated or recorded in them.

The Commissioner's submissions provided that the evidence provided by Mrs Cassaniti was "insufficient". This prompted the Full Court to specifically remark that the Commissioner alleging the evidence was insufficient (in spite of three affidavits from Mrs Cassaniti and their exhibits) may suggest that the taxpayer bears a "special burden of proof" and that no such special burden of proof exists. The Full Court's reasons then provide, under both applications for declaratory relief and in Pt IVC reviews, five propositions of general relevance:[44]

– the degree or standard of proof required by a taxpayer is that which applies in an ordinary civil proceeding. Referring to the description by Justice Hunt in *Allied Pastoral*,[45] that can be described as, "…if the plaintiff succeeds… in weighing down those scales ever so slightly in his favour then he has discharged the burden he carries…";
– a taxpayer is not obliged to call all material witnesses and produce all material documents which support their proposition;
– there is no requirement that direct evidence by testimony or affidavit can only be accepted if it is corroborated;
– the first instance hearer of the case is free to accept the evidence of the taxpayer alone if they find it truthful; and
– while it would usually be prudent to corroborate the evidence of a taxpayer and adduce contemporaneous objective evidence, "prudence should not be confused with the requirements of the law".

Implications of the decision in Cassaniti

The five general propositions above represent the view of the Full Federal Court of Australia on how fact-finding must be approached in tax cases. That means that taxpayers should be able to rely on them when faced with a submission that they have not met their burden of proof. As such, the burden of proof should not be applied as if the taxpayer is required to undertake a Sisyphean task of recreating, from scratch, each individual transaction or component of a case with corroborating evidence. The potential opportunities for taxpayers to rely on some or all of the five principles, and the more general observations regarding businesses records and s 1305, tend to break into three observable groups.

For individuals with large or unexplained transactions (such as intra-family gifts), it should be possible to prove that such transactions do not have the character of income by provision of direct truthful evidence from the recipient. It may not be necessary to call every member of a family group to do so (particularly if they are overseas or involved in a dispute). While it would be prudent to be able to corroborate as many

factual integers of the case as possible, it is not necessary to corroborate each element *provided* the taxpayer's evidence is likely to be accepted as truthful and any corroborating evidence that does exist is capable of weighing the scale of probabilities ever so slightly in the taxpayer's favour.

For taxpayers in the SME space, where records are often not kept in accordance with the standards expected of large organisations, it should be possible to facilitate proof by identifying specific business records, or financial records required to be kept under the Corporations Act, to prove individual points. For example, where there is a question about whether a specific amount was actually paid (for example, so as to give rise to a deduction pursuant to s 8-1 of the *Income Tax Assessment Act 1997* (Cth) (ITAA97), a book or financial record reflecting the payment was actually made, or at least committed to, should be a prima facie sufficient basis to then make the submission it had been incurred within the meaning of the tax law.

For taxpayers in the corporate space, where there is a dispute with the Commissioner about the aggregation of large or complex data sets, a financial record kept by the corporation may be proof of the relevant underlying facts (eg monthly management reports showing a summary of intra-group payables incurred during the income year or factory reports showing that particular quantities of inputs were actually consumed), either as a business record or under s 1305. This could have important implications in transfer pricing and intra-group financing disputes, as well as in more day-to-day operations (ie the rate of depreciation of plant and equipment). The term financial report has been interpreted broadly, including budgets,[46] documents recording gross margins and other documents required to be kept in order to discharge the obligation to "correctly record and explain its transactions and financial position and performance".[47]

Finally, regardless of the size and scope of the dispute, in a dispute conducted by an incorporated taxpayer, there may be the opportunity to curtail the fact-finding exercise by identifying *financial reports* required to be kept by a body corporate under the Corporations Act which prima facie discharge the taxpayer's burden of proof. This should reduce the taxpayer's task at trial to arguing on the relevant technical operation and application of the law (and responding to the Commissioner's attempts, if any, to disprove the relevant facts). In this respect, there are at least three important distinctions between the business records exception to the hearsay rule and s 1305 of the Corporations Act:

- first, the business records exception acts as an exception to the hearsay rule. It prevents the record being inadmissible as proof of the facts represented in the record. It does not go the step further that s 1305 does and makes the business record prima facie evidence of the truth of the contents;
- second, the business records exception only applies where it can be proved that the representation was made "by a person who had or might reasonably be supposed to have had personal knowledge of the asserted fact … or … on the basis of information directly or indirectly supplied by a person who had or might reasonably be supposed to have had personal knowledge of the asserted fact". By contrast, s 1305 applies to "a book kept by a body corporate under a requirement of this Act". There is no requirement to prove that the person who made the representation or supplied the information might be reasonably supposed to have had personal knowledge of a fact; and
- third, the business records exception contains an exception in s 69(3) of the *Evidence Act 1995* (Cth). The business records exception does not apply to representations in the documents if the records were "prepared or obtained for the purpose of conducting, or for or in contemplation of or in connection with, an Australian or overseas proceeding".[48] There is no such exclusion in s 1305 (presumably as the thing that called the document in existence was the requirement under the Corporations Act rather than a self-serving statement for the purposes of proof in litigation).

The second and third points illustrate an interesting avenue for taxpayers to facilitate satisfying their burden of proof. Facts recorded in a taxation workpaper may not satisfy the business records exception to the hearsay rule where the records are not prepared by a person with personal knowledge of the asserted fact and, in some circumstances, could arguably be prepared in contemplation of the proceeding in which they could be sought to be tendered. However, if such workpapers did meet the criteria in s 1305, they could be prima facie proof of the fact asserted.

> *"This should have the effect of making the process on review quicker, more certain and consequently cheaper for litigants …"*

The limits of the usefulness of s 1305 of the Corporations Act

There has also, helpfully, been a recent delineation of the limits of the usefulness of s 1305 in *Price v FCT*.[49] Mr Price was a long-haul truck driver employed by a series of companies — Allyma Pty Ltd (Allyma), Allyma Transport Pty Ltd, Allyma Transport Services Pty Ltd and later Sunrock Australia Trust (Sunrock) — managed by his brother Jim. It appears that at least some accounting services were supplied to these companies by David Cassaniti (ie the husband of Mrs Cassaniti). The Commissioner assessed Mr Price without the benefit of a PAYG credit for amounts he said were withheld from his wages by the relevant companies. Mr Price approached his case on the basis of the decision in *Cassaniti* and claimed that a series of payslips were prima facie proof of the amount and fact of withholding by operation of s 1305.

Justice Thawley found against Mr Price. Specifically, in doing so, he referred to the decision in *Cassaniti* and distinguishes the facts of Mr Price's case from the position of Mrs Cassaniti. Taking the employer in the years 2001 to 2003, Allyma, Justice Thawley found the relevant payslips were marked 14 November 2016 (or he could infer they were

produced at the same time as those marked 14 November 2016) and had been produced by an accounting firm associated with David Cassaniti. Allyma went into liquidation in 2009 and had actually been deregistered in 2011. Further, the liquidator of Allyma had no involvement in the creation of the documents. As such, the payslips, could not[50] be a *book kept* "by a body corporate under a requirement" of this Act as they were not produced by Allyma, nor maintained by Allyma, as Allyma did not exist at the time of their creation.

In the case of the last employer, Sunrock, it did exist at the time the documents were created and there was scope for the operation of s 1305 in respect of a PAYG payment summary. However, Justice Thawley rejected the prima facie proof offered by the PAYG payment summary as it did not correspond with Sunrock's general ledger, "payroll advices" given to Mr Price and Mr Price's bank statements.[51] As such, even where the payslips were prima facie proof of the facts recorded in them (ie the amount withheld and the fact of withholding), this was displaced by other evidence.

Finally, taxpayers should be careful not to confuse discharging the burden of proving the underlying facts with the entire burden of proving an assessment is excessive. Taking the earlier example of a s 8-1 dispute, a financial record or business record may be used to prove the fact that an amount was paid. However, that will not go the further step of proving that the legal analysis of the principles underpinning s 8-1 is satisfied (eg is it incurred *in earning your assessable income*?).

One particularly interesting area may involve trust distributions where the actual instruments recording entitlement have been lost, but the books of a trustee company record the entitlements arising. Whether an entitlement under a trust instrument was sufficient to be a present entitlement,[52] within the meaning of s 97 ITAA36, is often a complex mixed question of law applied to the facts, and what conclusions could be drawn by a court will vary greatly depending on the broader factual matrix (eg the trust deed, the direct evidence of the directors of a trustee, etc).

State tax matters

Cassaniti is a decision of the Full Federal Court in relation to income tax. It is not necessarily binding on state courts in respect of state tax matters. However, given the generality of the principles described, there is no reason why the principles should not be adopted and applied more broadly. In this instance, it may be noted there may be scope for applying the principles from *Cassaniti* in state tax cases where there is a dispute as to whether or not a burden has been discharged. In *CDPV Pty Ltd v Commissioner of State Revenue (Vic)*, Justice Croft remarked:[53]

> "The Commissioner is, as observed in the Commissioner's submissions, at an evidentiary disadvantage inasmuch as those who are seeking an exemption have within their control almost all of the evidence in relation to what is occurring on the Land and why things were or were not done on the Land. The Commissioner can only really point to objective circumstances with a view to determining the position. *Consequently, I accept that, when the Court is faced with a case of this nature, and particularly where, as in this case, the Court is faced with very uncertain evidence, a focus must be maintained on whether the onus has been met.*" (emphasis added)

Even though only some states operate under evidentiary law which is to be uniformly intercepted with federal evidence law, there is no reason in principle why the five general propositions at para 88 of *Cassaniti* should not be of general application in a variety of state tax matters arising under state tax laws. Further, s 1305 operates regardless of which state or territory the matter arises in. Accordingly, it should be possible to utilise the principles in *Cassaniti* to help establish that the onus of proof has been met by the taxpayer in state matters.

Concluding comments

The decision in *Cassaniti* represents much-needed clarification on the extent to which the Commissioner can successfully assert that the burden of proof has not been met. More practically, it provides a roadmap to steps that can be taken to narrow issues in dispute before and during litigation by reference to certain documentary and sworn evidence to reduce the cost, complexity and risk in resolving disputes with the Commissioner(s). For corporations, both large and small, both the five principles enunciated at para 88 of *Cassaniti* and the operation of s 1305 highlight ways in which it may be possible to contain the extent of a factual dispute both before and during litigation. Taxpayers would be well advised to consider the case and its implications in any active disputes, at the audit or later stages, with the Commissioner.

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2 *Cassaniti* at [88].
3 See also *Cassaniti* at [9] per Logan J.
4 S 9 of the *Corporations Act 2001* (Cth); see also ss 268 and 1305 of the *Corporations Act 2001*.
5 [2019] FCA 543.
6 Ss 14ZZK and 14ZZO of the *Taxation Administration Act 1953* (Cth).
7 *Cassaniti* at [5] per Logan J, citing s 80 of the *Judiciary Act 1903* (Cth) and *Chief Executive Officer of Customs v Labrador Liquor Wholesale Pty Ltd* (2003) 216 CLR 161 at [132]; *Dickinson v Minister of Pensions* [1953] 1 QB 228 at 232; *Currie v Dempsey* (1967) 69 SR (NSW) 116 at 125.
8 S 98 of the *Taxation Administration Act 1997* (Vic); s 88 of the *Taxation Administration Act 1996* (NSW); s 66 of the *Taxation Administration Act 2001* (Qld); s 85 of the *Taxation Administration Act 1996* (SA); s 37 of the *Taxation Administration Act 2003* (WA); s 81 of the *Taxation Administration Act 1997* (Tas).
9 *FCT v Thomas* [2018] HCA 31 at [84] and [85] per Gageler J.
10 *FCT v Thomas* (2018) 357 ALR 445; [2018] HCA 31 at [84] – [85] per Gageler J.
11 *Cassaniti* at [17] per Logan J; see also *FCT v Dalco* (1990) 168 CLR 614 at 624 per Brennan J.
12 *FCT v Dalco* (1990) 168 CLR 614 (*Dalco*).
13 S 167 ITAA36.
14 *Dalco* at 618 per Brennan J.
15 *George v FCT* (1952) 86 CLR 183.
16 *Dalco* at 624 per Brennan J.
17 *FCT v Australia and New Zealand Savings Bank Ltd* (1994) 181 CLR 466 at 479.

18 *FCT v Ma* (1992) 37 FCR 225 (*Ma*).

19 *Ma* at 226.

20 *Ma* at 230.

21 *Haritos v FCT* [2015] FCAFC 92 (*Haritos*) at [234].

22 *Haritos* at [236]-[237].

23 [2016] FCAFC 38.

24 Ibid at [12].

25 *Rigoli and FCT* [2015] AATA 169 at [73].

26 [2015] FCA 1092.

27 *Chevron Australia Holdings Pty Ltd v FCT (No. 4)* [2015] FCA 1092 at [504]-[525].

28 *Cassaniti* at [29].

29 *Cassaniti* at [87].

30 *Cassaniti* at [30].

31 *Cassaniti* at [31].

32 *Cassaniti* at [32(4)].

33 *Cassaniti* at [34].

34 *Jones v Dunkel* [1959] HCA 8.

35 *Cassaniti* at [45].

36 *Cassaniti* at [43].

37 *Cassaniti* at [58].

38 Citing a series of propositions regarding this point provided by Justice Perram in *Australian Competition and Consumer Commission v Air New Zealand Limited (No. 1)* (2012) 207 FCR 448 at [92].

39 S 69 of the *Evidence Act 1995* (Cth) and *Guest v FCT* [2007] FCA 193 at [25].

40 S 9 of the *Corporations Act 2001*.

41 S 286 of the *Corporations Act 2001*.

42 *Cassaniti* at [71].

43 *Australian Securities and Investments Commission v Rich* [2005] NSWSC 417; *Caratti v The Queen* [2000] WASCA 279; and *Linfox Transport (Aust) Pty Ltd v Arthur Yates & Co Ltd* [2003] NSWSC 876 are referred to.

44 *Cassaniti* at [88].

45 *Allied Pastoral Holdings Pty Ltd v FCT* [1983] 1 NSWLR 1 at 8.

46 *Australian Securities and Investments Commission v Rich* [2005] NSWSC 417.

47 S 286 of the *Corporations Act 2001*.

48 S 69(3)(a) of the *Evidence Act 1995*.

49 *Price v FCT* [2019] FCA 543 (*Price*).

50 *Price* at [161].

51 *Price* at [101].

52 See, for example, *Lewski v FCT* [2017] FCAFC 145.

53 (2016) 103 ATR 385 at 400.

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