



Michael Cosgrove

Bachelor of Economics
Bachelor of Laws (Hons)
Master of Laws

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Admitted to the legal profession
2009

Admitted as a barrister in NSW
2015

Also entitled to practise in
Australian jurisdictions
(Commonwealth, State and Territory)

Michael primarily practises in taxation law, particularly federal taxation law. Michael's clients include multinationals and other corporates, as well as the Commissioner of Taxation.

Michael has experience in relation to a wide range of federal income tax issues, examples of which relate to international tax (including transfer pricing, transferor trusts and controlled foreign companies), indirect tax (including goods and services tax and fuel tax), company distributions, dividends and share premium or capital accounts (including account tainting), the taxation of trusts, the debt and equity distinction, as well as the application of anti-avoidance provisions (including the general anti-avoidance provisions in Part IVA). Michael has an extensive advice practice, and accepts briefs before and during all stages of a dispute with the Australian Taxation Office.

Michael has been involved in a number of significant or high-value cases, including:

- The landmark transfer pricing appeal, *Chevron Australia Holdings Pty Ltd v Commissioner of Taxation* [2017] FCAFC 62, which involved a number of tax and related issues.
- A dispute concerning the taxation consequences of the AUD 6 billion share buy-back that occurred as part of the takeover of Optus by SingTel in *Cable & Wireless Australia & Pacific Holding BV (in liquidatie) v Commissioner of Taxation* [2017] FCAFC 71.
- The taxation treatment of amounts incurred in relation to generation trading rights following the New South Wales reforms to the electricity market in 2010, in *Origin Energy Ltd v Commissioner of Taxation (No 2)* [2020] FCA 409.

Michael also accepts briefs in connection with administrative law and constitutional issues, in particular in circumstances where they relate to disputes in connection with taxation matters.

Michael is listed:

- In the "Best Lawyers in Australia" list for Tax Law ([2021](#) edition).
- As a "rising star" in the Legal 500's Tax section for the Australian Bar ([2021](#)).
- In Doyle's Guide, "Leading Tax Barristers – New South Wales" ([2018](#), [2019](#) and [2020](#)).

PROFESSIONAL MEMBERSHIPS

New South Wales Bar Association

Australian Institute of Administrative Law

Australian Association of Constitutional Law

AWARDS OR PROFESSIONAL RECOGNITION

Best Lawyers in Australia (Tax Law) (2021 ed.; published April 2020)

“Rising star” in the Legal 500’s Tax section for the Australian Bar (2021)

Doyle’s Guide: Leading Tax Barristers – New South Wales (2018, 2019, 2020)

2010 Gustav and Emma Bondy Postgraduate Prize (in relation to legal theory)

CCH Australia Prize 3 (Awarded for Advanced Taxation Law – undergraduate)

LexisNexis Commercial Law Prize (Awarded for Commercial Law – undergraduate)

PROFESSIONAL EXPERIENCE

September 2007 to June 2015 – Australian Taxation Office

Graduate program.

Legal Services Branch (now Review and Dispute Resolution).

Tax Counsel Network.

Audit, objection, private ruling, litigation and legislative amendment experience.

Experience across a range of areas, such as the general anti-avoidance provisions (GAAR) (including preparing papers for, and presenting several cases to, the GAAR panel for preliminary or final advice), transfer pricing, share buy-backs, capital gains tax issues, superannuation regulatory issues, special income (non-arm’s length income) and fringe benefits tax, as well as issues relating to administration, in particular involvement in cases in which challenges were made to the validity of assessments.

SELECTED CASES

Cable & Wireless Australia & Pacific Holding BV (in liquidatie) v Commissioner of Taxation (2016) 102 ATR 542; [\[2016\] FCA 78](#) (and on appeal, (2017) 251 FCR 483; [\[2017\] FCAFC 71](#); and in responding to application for special leave to appeal to the High Court, on the papers, [\[2017\] HCASL 231](#)) – led by J Hmelnitsky SC and C Burnett. Dispute concerning the application of the share buy-back provisions in respect of the AUD 6 billion buy-back of Optus shares, as part of the Optus takeover by Singtel.

Binetter v Commissioner of Taxation [2016] FCAFC 163 – led by T Thawley SC and K Morgan; and on special leave to appeal to the High Court ([2017] HCATrans 126) – led by J Gleeson SC and K Morgan. Dispute about the Administrative Appeals Tribunal’s function and burden of proof in connection with fraud or evasion, and in connection with the application of deceased estate provisions. The matter involved a constitutional argument advanced by the other party in support of their case.

Academy Cleaning & Security Pty Ltd v Deputy Commissioner of Taxation [2017] FCA 875 – led by K Deards and G O’Mahoney. Dispute concerning entitlement to a deduction under the general deduction provision and the application of the general anti-avoidance provisions in respect of an arrangement about “REDD” credits (reducing emissions from deforestation and forest degradation).

A v Commissioner of Taxation [2016] FCA 1307 – led by J Hmelnitsky SC. Proceedings for review of decisions to issue notices that had been issued by the Commissioner of Taxation. The published decision concerns suppression and non-publication orders which were sought and obtained.

News Australia Holdings Pty Ltd v Commissioner of Taxation [2017] FCA 645 – led by J Hmelnitsky SC and G O’Mahoney. Dispute as to whether interest of approximately USD 66 million (approximately AUD 75 million) was “derived” by a controlled foreign corporation (thereby making an amount assessable income because of the operation of the controlled foreign company and consolidation provisions); and whether a public ruling relevantly bound the Commissioner of Taxation.

Chevron Australia Holdings Pty Ltd v Commissioner of Taxation [2017] FCAFC 62 – led by D Bloom QC, P Kulevski, K Deards and L Hespe. Appeal concerning the interpretation and application of the transfer pricing provisions in Division 13 and Subdivision 815-A in connection with a USD 2.5 billion loan under a credit facility agreement, as well as dispute as to related administrative and constitutional law issues concerning either the making of determinations or the validity of laws.

Linfox Australia Pty Ltd v Commissioner of Taxation [2019] AATA 222 – led by S Lloyd SC and K Deards SC (and on appeal, [2019] FCAFC 131). Fuel tax. Dispute as to whether four toll roads were each a “public road”, whether fuel used in powering vehicle air conditioners was subject to the road user charge (first instance), and whether a provision under which credit entitlements cease applied.

Origin Energy Ltd v Commissioner of Taxation (No 2) [2020] FCA 409 – led by J Hmelnitsky SC and M Hirschhorn. Whether “capacity charges” totalling AUD \$330 million were capital and hence not deductible, being amounts incurred under “GenTrader Agreements”, entered into in relation to two power stations as part of the New South Wales government’s 2010 reforms to the electricity sector.

La Mancha Group International B.V. v Commissioner of Taxation [2020] FCA 1799 – led by M O’Meara SC. This matter concerned a proposed cross-border merger between a Dutch and Luxembourg company, the principle of universal succession, and whether the merged entity would be subject to the tax liabilities and hold the appeal rights of the entity that would cease to exist under the proposed merger. Acted for the Commissioner of Taxation (taxpayer’s declaration consented to).