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Foreign Revenue Laws

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Introduction[1]

1 Lord Mansfield's celebrated dictum: "For no country ever takes notice of the revenue laws of another"[2] has lost much of its resonance in English insolvency law but retains potency in a number of other jurisdictions, as recently illustrated by the facts of *Re Saad Investments Company Limited* in the Federal Court of Australia.[3] This article, which is written from the point of view of English law, examines the vestigial effects of the foreign tax rule and questions its place in any modern system of corporate insolvency law. In doing so, it will return to the decision in *Saad Investments* which conveniently exposes some of the dangers of the more traditional approach.

Government of India v Taylor[4]

2 In this 1950s case, the Government of India sought to prove in the voluntary liquidation of an English company which had traded in India and incurred local tax liabilities in the course of doing so. The House of Lords held that those liabilities were unenforceable in England and that, in consequence, no proof of debt could be admitted. There was a subtle distinction in the reasoning of the members of the Committee which may have some ongoing relevance in situations where the decision has not been abrogated by legislation. The majority considered that the

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[1] The author had the benefit of comments on a draft of this article from Norton Rose Fulbright colleagues both in the UK and other jurisdictions but any remaining errors are, of course, his responsibility alone.

[2] *Holman v Johnson* (1775) 1 Cowper 341, but see also references to *Planché v Fletcher* (1779) 1 Doug 251 and *Lever v Fletcher* (1780, unreported), cited by Viscount Simonds in *Government of India v Taylor* [1955] AC 491 (HL).

[3] [2013] FCA 738, on appeal *sub nom Akers & Ors v Deputy Commissioner of Taxation* [2014] FCAFC 57 (Federal Court of Australia). Leave to appeal to the High Court of Australia was subsequently refused.

[4] Above note 2.

"liabilities" of a company in liquidation for which a liquidator had to provide in accordance with section 302 of the Companies Act 1948 (that being the legislation governing company liquidations at the time) did not include claims which were unenforceable and which were not, therefore, "liabilities" within the meaning of the relevant provision of the Act. The minority was prepared to accept that such a claim might be a "liability" but held that it was nonetheless unenforceable. In consequence of the unanimous decision that such claims were excluded, English companies could be completely wound up and thereafter dissolved, without foreign tax authorities receiving any dividends despite the purported universality of the liquidation. This could even result in a return to shareholders whilst the tax remained unpaid. Lest it should be thought that this was a xenophobic approach, it should be noted that the English approach was widely shared with other jurisdictions[5] and that it developed in an era when there was little perceived need for international co-operation in the matter of tax collection.

3 Outside the field of insolvency law, the broad rule enunciated by Lord Mansfield remains one of general application. The current edition of Dicey, Morris & Collins formulates the rule in the following terms:

> "Rule 3 – English courts have no jurisdiction to entertain an action:
> (1) for the enforcement, either directly or indirectly, of a penal, revenue or other public law of a foreign State; or
> (2) founded upon an act of state."[6]

MARD

4 This article does not purport to give a full account of the various means by which the tax authorities in different jurisdictions will assist each other in relation to the collection of tax. It is, however, important to be aware that wide-ranging measures are now in place which serve to make a rule whereby a foreign tax authority is excluded from participation in a liquidation appear anachronistic. The provisions next described are in addition to any bi-lateral treaty or double taxation agreement obligations which may exist.

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[5] Subject to the legislative developments under consideration in this article and any applicable treaties between states, the foreign tax rule appears to have been more or less universally adopted. The jurisprudential basis of the rule remains unclear and it has been severally characterised as a rule of public international law, of private international law and of public policy. See further, F. A. Mann, *Studies in International Law* (1973, Oxford University Press, Oxford), at 495 and I. Fletcher, *Insolvency in Private International Law* (2nd ed) (2005, Oxford University Press, Oxford), at paragraph 2-94.

[6] Lord Collins (ed), *Dicey, Morris & Collins on The Conflict of Laws* (15th ed) (2012, Sweet & Maxwell, London), at paragraph 5R-019. It will be noted that the rule as so formulated extends to penalties. Although some reference is made to penalties when considering the terms of the Cross-Border Insolvency Regulations 2006 (SI 2006/1030), this article is concerned with the proper treatment of revenue claims and it is recognised that penalties raise different considerations – not least of which is that the burden of admitting claims for penalties would in most cases be borne by innocent creditors.

5 "MARD" stands for "Mutual Assistance in the Recovery of Debt" and, in the English context, refers to arrangements which allow certain countries to ask HMRC for assistance in obtaining information, serving legal documents and recovering tax debts. The arrangements differ according to whether or not the relevant tax authority is that of another EU Member State. Where it is, the relevant law and regulations are primarily EU measures, specifically EU Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, and EU Commission Implementing Regulation 1189/2011 of 19 November 2011. However, these are supplemented by section 87 and Schedule 25 of the Finance Act 2011 and by the MARD Regulations 2011.[7] The details of these measures are not important for present purposes but the opening recital of the Council Directive is an informative statement of the desired approach:

> "Mutual assistance between the Member States for the recovery of each other's claims and those of the Union with respect to certain taxes and other measures contributes to the proper functioning of the internal market. It ensures fiscal neutrality and has allowed Member States to remove discriminatory protective measures in cross-border transactions designed to prevent fraud and budgetary losses."

6 Paragraph 6 of Schedule 25 of the Finance Act 2011 expressly provides that HMRC, at the request of an EU tax authority, may take such steps (including "legal or administrative steps, whether by way of legal proceedings, distress, diligence or otherwise") to recover foreign tax as could be taken in respect of a corresponding UK claim.

7 Where the relevant tax authority is not that of another EU Member State the arrangements will either derive from a bi-lateral arrangement or from the Council of Europe/Organisation for Economic Co-operation and Development Convention on Mutual Administrative Assistance in Tax Matters. In these cases the applicable domestic legislation is sections 173 and 175 of the Finance Act 2006, the Recovery of Foreign Taxes Regulations 2007[8] and the Recovery of Foreign Tax (Amendment) Regulations 2010[9] which are to similar effect in terms of enforcement powers. The preamble to the Convention notes that "a co-ordinated effort is necessary in order to foster all forms of administrative assistance in matters concerning taxes of any kind." Although the Convention was opened for signature as long ago as 1988 and it entered into force in 1995, States are continuing to ratify it in increasing numbers and it is gaining correspondingly wider effect.

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[7] SI 2011/2931.
[8] SI 2007/3507.
[9] SI 2010/794.

8 That then is the tax background against which the insolvency application of the foreign tax rule should be reconsidered.[10] Although this is a live issue, there is nothing particularly new about concerns as to whether the exclusion of foreign tax claims from insolvency proceedings is appropriate. For example, Forsyth J said in 1988 in the Canadian case of *Re Sefel Geophysical Ltd*:[11]

> "…India (Govt. of) v Taylor is specific authority for the principle that foreign revenue claims are not provable in a liquidation setting. However, given the present trends of international comity in the recognition of foreign bankruptcy proceedings, I am not sure that the India (Govt. of) case is compatible with the current judicial climate. If the goal is to deal with liquidations in an orderly fashion in one country by virtue of deference shown by competing nations, surely some claims should at least be recognized. I am not dealing with the priority of those claims at this point, but rather I am saying that current comity principles suggest that some foreign tax claims should be recognized in a Canadian liquidation setting. Comity is about respecting foreign judgments, proceedings and acts of state. If our bankruptcy proceedings are respected and deferred to, as they were in the case at bar, I am of the opinion that the claims of foreign states should be respected in our proceedings as long as they are of a type that accords with general Canadian concepts of fairness and decency in state-imposed burdens."

9 These comments significantly pre-dated the legislative developments next considered.

European Insolvency Regulation

10 The issue has already been addressed by European insolvency law. The European Insolvency Regulation (Council Regulation (EC) No 1346/2000 of 29 May 2000) entered into force on 31 May 2002. It has direct effect and required no implementing legislation. Article 39 provides:

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[10] As of 19 November 2014, the UK and 51 other jurisdictions (Albania, Anguilla, Argentina, Aruba, Austria, Belgium, Bermuda, British Virgin Islands, Cayman Islands, Colombia, Croatia, Curaçao, Cyprus, Czech Republic, Denmark, Estonia, Faeroe Islands, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hungary, Iceland, Ireland, Isle of Man, Italy, Jersey, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Montserrat, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland and the Turks & Caicos Islands) signed a multilateral competent authority agreement automatically to exchange information in order to fight tax evasion (see further: <www.oecd.org>).

[11] [1989] 1 WWR 251, at [26] (Alberta Court of Queen's Bench), holding that certain US and UK tax claims were provable debts. See also: M. Koehnen and A. Klein, *The Recognition and Enforcement of Foreign Judgments in Canada*, a paper presented during the IBA Annual Conference 2010 in Vancouver, at 25 – 27, available at:
<http://mcmillan.ca/Files/132622_Paper_%20Recognition%20and%20Enforcement%20of%20Foreign%20Judgments%20in%20Canada%20%20-%20IBA%20Vancouver%20October%202010%20(co-%20(2).pdf> (last viewed 26 November 2014); H.-P. Gagnon, *Bill C-55 and the UNCITRAL Model Law on Cross-Border Insolvency: the harmonization of Canadian insolvency legislation*, LL.M thesis, McGill University Institute of Comparative Law, 2006, at 95–98, available at:
<http://digitool.library.mcgill.ca/R/?func=dbin-jump-full&object_id=101817&local_base=GEN01-MCG02> (last viewed 26 November 2014), at 95-98.

> "Right to lodge claims
> Any creditor who has his habitual residence, domicile or registered office in a Member State other than the State of the opening of proceedings, including the tax authorities and social security authorities of Member States, shall have the right to lodge claims in the insolvency proceedings in writing."

11 The express provision for the lodging of claims must, by implication, rule out any public policy objection to the admission of such claims. In any event, the public policy exception articulated by the Regulation at Article 26 is expressed only as a qualification to the duty to recognise proceedings and enforce judgments and is not, according to its own terms, applicable to the right to lodge proofs (which is in a different chapter of the Regulation). Article 26 provides:

> "Any Member State may refuse to recognise insolvency proceedings opened in another Member State or to enforce a judgment handed down in the context of such proceedings where the effects of such recognition or enforcement would be manifestly contrary to that State's public policy, in particular its fundamental principles or the constitutional rights and liberties of the individual."

12 Given that the principal function of the European Insolvency Regulation is to regulate jurisdiction, observing the principles of unity and universality as far as possible, it is difficult to see what other approach could have been taken to tax debt on an intra-EU basis. In Ireland, it has been held that the right of a foreign tax authority to lodge claims implies a right to act as a creditor in the initiation of insolvency proceedings[12] and an English court would likely reach the same conclusion.

13 In contrast to the Cross-Border Insolvency Regulations 2006,[13] the right of foreign tax creditors to prove is not qualified by reference to the nature of their claims. There are, however, some limitations to be borne in mind. The foreign tax rule, in so far as it is part of the domestic law of the Member State opening proceedings, still applies to claims from tax authorities outside the EU. (Denmark exercised an opt-out and is, for these purposes, to be treated as if it was not a Member State.) Moreover, it applies only to claims in proceedings to which the Regulation applies as listed in Annex A (as updated from time to time). Thus the requirement to admit foreign tax claims under Article 39 has no application to an English scheme of arrangement.

14 It should also be noted that Article 39 does not confer any priority on foreign tax creditors even if they enjoy such priority in their own jurisdictions.[14] It therefore

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[12] *Re Cedarlease Limited* [2005] 1 IR 470 (High Court of Ireland), where a winding-up order was made in respect of an Irish company on the petition of the Commissioners of Customs & Excise for the UK.
[13] See above note 6 and below.
[14] See a contrary argument, discussed but not supported, in B. Wessels, "Tax Claims: Lodging and Enforcing in Cross-Border Insolvencies in Europe" (2011) 2 *International Insolvency Law Review* 131.

remains the case that foreign tax creditors may wish to see secondary proceedings opened in order to secure priority out of local assets.

Cross-Border Insolvency Regulations 2006

15 The 2006 Regulations are the United Kingdom's enactment of the UNCITRAL Model Law on Cross-Border Insolvency. In contrast to the focus of the European Insolvency Regulation on the allocation of jurisdiction, the 2006 Regulations are focused on recognition and co-ordination. In the midst of these enabling provisions, it is sometimes overlooked that Article 13[15] has nothing to do with parallel proceedings and, by virtue of Regulation 3, takes effect as an incident of all domestic insolvency proceedings. Article 13 provides:

> "Access of foreign creditors to a proceeding under British insolvency law
> 1. Subject to paragraph 2 of this article, foreign creditors have the same rights regarding the commencement of, and participation in, a proceeding under British insolvency law as creditors in Great Britain.
> 2. Paragraph 1 of this article does not affect the ranking of claims in a proceeding under British insolvency law, except that the claim of a foreign creditor shall not be given a lower priority than that of general unsecured claims solely because the holder of such a claim is a foreign creditor.
> 3. A claim may not be challenged solely on the grounds that it is a claim by a foreign tax or social security authority but such a claim may be challenged –
> (a) on the ground that it is in whole or in part a penalty; or
> (b) on any other ground that a claim might be rejected in a proceeding under British insolvency law."

16 Quite apart from necessary adaptation to the language of "British insolvency law", this formulation is a departure from the drafting of the Model Law. The Model Law offers two alternatives, the first of which is tracked in paragraph 2 above (without any paragraph 3 to follow). The second option is set out in the following footnote to the Model Law:

> "The enacting State may wish to consider the following alternative wording to replace paragraph 2 of article 13:
> 2. Paragraph 1 of this article does not affect the ranking of claims in a proceeding under [identify laws of the enacting State relating to insolvency] or the exclusion of foreign tax and social security claims from such a proceeding. Nevertheless, the claims of foreign creditors other than those concerning tax and social security obligations shall not be ranked lower than [identify the class of general non-preference claims, while providing that a foreign claim is to be ranked lower than the general non-preference claims if an equivalent local claim (e.g. claim for a penalty or deferred-payment claim) has a rank lower than the general non-preference claims]."

The same article discusses which court would have jurisdiction to determine the admissibility of a disputed tax liability and calls for clarification of the Regulation on this point.

[15] See also Article 14. The Model Law, as enacted, is set out in Schedule 1 to the 2006 Regulations, where the division into "Articles" is preserved.

17 In other words, the Model Law gives the enacting State an express choice as to whether or not foreign tax claims are to be admissible[16] and the drafting of the footnote clearly suggests that the draftsman thought that, without more, paragraph 1 would admit foreign tax claims. This is a point to be borne in mind when considering formulations of Article 13 adopted in other enacting States. Even allowing for the fact that the Model Law itself calls for interpretation to have regard to its international origin and the need for uniformity of approach,[17] the correct interpretation of other local enactments will be a question of local law. It is felt that the express treatment of foreign tax claims adopted in the 2006 Regulations has some advantages. Not only does it avoid any potential ambiguity as to the removal of the foreign tax rule, which might otherwise be sought to be invoked by policy considerations transcending the admission of other foreign creditor claims, it also affords the opportunity to delimit the scope of the claims to be admitted. In the case of the 2006 Regulations, grounds for excluding foreign tax claims other than the mere identity of the tax authority are preserved as is the right to reject any penal element of a tax liability.

18 It is important to note the precise terms of Article 13 in the 2006 Regulations. First, it only purports to deal with participation in domestic proceedings and says nothing of the application of the foreign revenue rule in any other context. Secondly, it applies only to "a proceeding under British insolvency law"[18] and thus excludes, for example, schemes of arrangement under the Companies Act 2006.

19 Where it applies, the European Insolvency Regulation takes precedence over the 2006 Regulations.

Other Enactments of the Model Law

20 To date, the Model Law has been enacted (but not necessarily brought into force) in some twenty States covering twenty-one jurisdictions. It is not the function of this article to undertake a comparative analysis[19] but even a cursory overview reveals some marked differences of approach. Australia has enacted the Model Law with the alternative version of paragraph 2 which preserves its exclusion of foreign

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[16] See also the 2013 edition of the UNCITRAL Guide to Enactment where the commentary on Article 13 includes, at paragraph 120, the slightly pejorative observation that: "The alternative provision in the footnote differs from the provision in the text only in that it provides wording for States that refuse to recognise foreign tax and social security claims to continue to discriminate against such claims." (The same wording appeared as paragraph 105 of the 1997 edition.)

[17] Article 8.

[18] The definition of "British insolvency law" in Article 2(a)(i) is that it means "in relation to England and Wales, provision extending to England and Wales and made by or under the Insolvency Act 1986 (with the exception of Part 3 of that Act) or by or under that Act as extended or applied by or under any other enactment (excluding these Regulations)."

[19] For further information, see L. C. Ho (ed), *Cross-Border Insolvency: A Commentary on the UNCITRAL Model Law* (3rd ed) (2012, Globe Law & Business, London).

tax claims.[20] New Zealand,[21] the British Virgin Islands[22] and Mauritius[23] have also expressly reserved the right to exclude such claims. Other countries have enacted a version of Article 13 which includes paragraph (1) thereof but makes no reference to foreign tax claims. Examples include South Africa,[24] Uganda[25] and Montenegro.[26] Having regard to the wording of the alternative Article 13(2) in the Model Law, this may signify the abrogation of any foreign tax rule that previously applied but, as indicated above, the correct interpretation of the enactments in question will be a matter for the local courts.[27] The United States has enacted Article 13 subject to an express provision that the allowance and priority of foreign tax claims shall be governed by any applicable tax treaty of the United States, under the conditions and circumstances specified therein.[28]

21 This demonstrates that the application of the foreign tax rule to domestic insolvencies remains a live issue internationally, notwithstanding the increasingly co-ordinated efforts being made in respect of other aspects of tax collection.

Scope of *Government of India v Taylor* in English law

22 To recap, the European Insolvency Regulation means that the foreign revenue rule has no application to the claims of tax authorities which are submitted by tax authorities from other Member States (excluding Denmark) provided that the claims are being submitted in insolvency proceedings which are listed in Annex A (which includes all the principal forms of proceedings under the Insolvency Act 1986 but excludes schemes of arrangement). The 2006 Regulations mean that tax claims cannot be rejected in insolvency proceedings under the Act on the ground the ground that the claimant is a foreign tax authority provided that the claim is not a claim for a penalty and it does not offend any other principle of English law.

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[20] Section 12, Cross-Border Insolvency Act 2008 (C'th).
[21] Schedule 1, Article 13, Insolvency (Cross-Border) Act 2006.
[22] Section 446, Insolvency Act 2003.
[23] Schedule 9, Article 13, Insolvency Act 2009.
[24] Section 13, Cross-Border Insolvency Act 42 of 2000.
[25] Section 233, Insolvency Act 2011.
[26] Article 113, Law on Business Organisation Insolvency.
[27] There is also scope for a possible public policy objection under Article 6 of the Model Law (if enacted) since it can hardly be suggested that Article 13 is intended to have overriding effect in circumstances where an alternative formulation of paragraph (2) anticipates the express retention of the foreign tax rule (but see further below as regards the position in English law).
[28] US Bankruptcy Code Chap 15, §1513. In *Kapila in the matter of Edelsten* [2014] FCA 1112 (Federal Court of Australia), the Australian court made an order recognising US bankruptcy proceedings as foreign non-main proceedings. The debtor had Australian tax liabilities and the US Bankruptcy Court had sought to protect those claims by making orders permitting foreign creditors, including the Australian Deputy Commissioner of Taxation to file claims and rank *pari passu* with other general unsecured creditors. The Australian court nonetheless made provision for similar protection in its own orders (see paragraph 68).

However these express incursions on the rule in *Government of India v Taylor* do not cover the full extent of its previous application.

23 The wider reaches of the rule have concerned recognition issues and the concept of a "tax bankruptcy". A "tax bankruptcy" is an insolvency proceeding where the only or predominant creditor is a foreign tax authority such that the proceeding can fairly be characterised as means for the enforcement of the claims of that authority. This has been seen as a bar to common law recognition of the proceeding notwithstanding that the proceeding is being conducted in a jurisdiction which would otherwise qualify for recognition. This article examines the question as one of English law but necessarily cites some decisions from other jurisdictions which are relevant to the determination of questions which are, as yet, unanswered in English law.

24 The difficulties in respect of recognition can be traced back to the decision of the High Court of Ireland in *Peter Buchanan Limited v McVey*[29] but the facts of that case were an unfortunate set of circumstances from which to develop a general principle. The claimants were a Scottish company in liquidation and its liquidator. The liquidation had resulted from a winding-up order made in Scotland on the petition of the Scottish Revenue. The defendant was a director of the company and the beneficial owner of its share capital. The trial judge, Kingsmill Moore J, found as a fact that the sole object of the liquidation was to recover tax due in Scotland following the execution of dishonest transactions designed to defraud the Revenue. He further found that the sole object of the proceedings in Ireland was also to collect the tax due in Scotland and that, in the event of success, every penny recovered, after payment of the costs and expenses of the liquidation, would go to the Revenue. He concluded:[30]

> "That, in my opinion, is the substance of the suit – to collect the revenue of a foreign State. Being of this opinion, I reject the claim."

25 Kingsmill Moore J's judgment traced the history of the foreign tax rule, which he identified as a principle, precluding direct action to recover foreign taxes, before considering its application to the different form of action before him. As to that, he reasoned:[31]

> "If I am right in attributing such importance to the principle, then it is clear that its enforcement must not depend merely on the form in which the claim is made. It is not a question whether the plaintiff is a foreign State or the representative of a foreign State or its revenue authority. In every case the substance of the claim must be scrutinised, and if it then appears that it is really a suit brought for the purpose of collecting the debts of a foreign revenue it must be rejected. Mr. Wilson has pressed upon me the difficulty of deciding such a question of fact and has relied on "ratio ruentis acervi". For the purpose of this case it is

[29] [1954] IR 89; [1955] AC 516 (Note).
[30] [1955] AC 516, at 530 (High Court of Ireland).
[31] Ibid., at 529.

> sufficient to say that when it appears to the court that the whole object of the suit is to collect tax for a foreign revenue, and that this will be the sole result of a decision in favour of the plaintiff, then a court is entitled to reject the claim by refusing jurisdiction."

26 The decision was upheld on appeal to the Supreme Court of Ireland. However, in words which are directly relevant to later cases, Maguire CJ said:[32]

> "I agree that if the payment of a revenue claim was only incidental and there had been other claims to be met, it would be difficult for our courts to refuse to lend assistance to bring assets of the company under the control of the liquidator. But there is no question of that here. The position seems clearly to be as found by the trial judge, that these proceedings were started in Scotland with the purpose of collecting a tax – and that apart from costs and expenses of the liquidator any moneys recovered will inevitably pass to the Revenue."

27 Of critical importance to the subsequent development of the foreign tax rule in English law, Kingsmill Moore J's judgment was cited and approved by Lord Keith in *Government of India v Taylor*.[33]

28 The issue, for recognition purposes, of the materiality or otherwise of the proportion of total debt represented by foreign tax debt came before the Federal Court of Australia in *Ayres v Evans*.[34] That case arose out of letters of request from the High Court of New Zealand to the Federal Court seeking the aid of the Australian court to enable the official assignee to get in a bankrupt's Australian property. More than half the bankrupt's outstanding debts were owed to New Zealand revenue authorities. At first instance Lockhart J, rejected an application of the foreign tax rule based on the proportion of the tax debt to the whole[35] and preferred instead to decide that aid should be given on the basis of the court's statutory duty to act in aid pursuant to section 29 of the Bankruptcy Act 1966.[36] The bankrupt's appeal was dismissed, essentially on section 29 grounds, but the court also held that the foreign tax rule did not apply in any event. Fox J said:[37]

> "I am of the opinion that the rule does not apply where a liquidator or an official assignee seeks to get in property which will in a due course of administration benefit ordinary creditors as well as the revenue."

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[32] Ibid. at 533 (Supreme Court of Ireland). The same principle was subsequently applied by the High Court of Ireland in *Re Gibbons, ex parte Walter* [1960] Ir Jur Rep 60 (the judgment refers (at p61) to "a bankruptcy matter initiated by the English revenue authorities in England for the purpose of collecting moneys due to the revenue authorities in England" but does not consider the size of tax debt in relation to any other liabilities).

[33] [1955] AC 491, at 510 *et seq* (HL). See also, *Byrne v Conroy* [199] 2 CMLR 617 (Supreme Court of Ireland.

[34] 51 FLR 395, on appeal 56 FLR 235.

[35] 51 FLR 395, at 404-405.

[36] Section 29 being than the Australian equivalent of what is now section 426, Insolvency Act 1986 in English law.

[37] 56 FLR 235, at 238, see also at 249 (per Northrop J) and 253 (per McGregor J).

29 *Ayres v Evans* was followed in South Africa in *Priestley v Clegg*,[38] where an English trustee in bankruptcy applied for recognition so as to enable him to administer the bankrupt's assets in the Republic. The bankrupt's objection based on the fact English tax debt accounted for some 94% of his total debts, was dismissed. Eloff J referred to the "somewhat strained reasoning" in the *McVey* case.[39] The issue as to the proportion of total debt required to be tax debt in order for the whole proceeding to be stigmatised as a tax bankruptcy has not been addressed in the English decisions.

30 All the foregoing cases were concerned with efforts by office-holders to collect assets. The next cases for consideration, which arose out of the infamous bankruptcy in England of one Roy Tucker,[40] also focused on information gathering. In the Isle of Man, the courts first distinguished information gathering from the recovery of foreign tax debt for the purposes of the rule, which was, in any event, trumped by section 122 of the Bankruptcy Act 1914[41] but then, in subsequent proceedings to recover money, by which time other creditors had been paid off leaving the English revenue as the sole creditor, held that the foreign tax rule defeated the trustee.[42] The trustee also sought to use examination powers in Guernsey. Here, section 122 was held to not necessarily be a trump card but that the foreign tax rule had no application because the trustee's obligations to identify and recover property were independent of the revenue's claims in the bankruptcy.[43] The Guernsey Court of Appeal added some pertinent observations about the practicality of characterising a proceeding as being, or not being, a "tax bankruptcy":

> "The position in bankruptcy is not static, as the facts of the present case show. Creditors prove their debts, and are paid off from outside sources: other creditors learn of facts which may lead to an entitlement to prove. The trustee learns of facts which cause him to admit proofs which he had earlier rejected. The extent of the assets recovered from time to time may be greater or less than the amount of the preferential revenue claims. There will be many cases in which it will be impossible to say, until the administration of the bankruptcy is virtually complete, that the bankruptcy is or is not a tax bankruptcy in the sense described.
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> In particular, there will be many cases in which no sensible answer can be given to that question at the stage where the trustee is gathering information as to the bankrupt's affairs. It is not difficult to conceive of circumstances in which, at the time of the application for a private examination, the prospects of a dividend for non-revenue creditors may depend,

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[38] 1985 (3) SA 955 (T) (Transvaal Provincial Division). The decision was followed in the Namibia High Court in *Bekker No v Kotzé & Anor* 1996 (4) SA 1287 (Nm).
[39] Ibid., at 957.
[40] See generally, D. Graham, *Tucker and the Taxman*, in I. Fletcher (ed), *Cross-Border Insolvency: Comparative Dimensions (The Aberystwyth Insolvency Papers)* (1990, UKNCCL, London).
[41] *Re Tucker a Bankrupt ex parte Tucker & Ors* (Staff of Government Division of the High Court of Justice of the Isle of Man, 11 July 1988). Section 122, Bankruptcy Act 1914 was an analogue of section 426, Insolvency Act 1986 which was applicable to the Isle of Man.
[42] *Bird v The Bankrupt & Ors* (Chancery Division of the High Court of Justice of the Isle of Man, 5 October 1980.
[43] *Bird v Meader* (Guernsey Court of Appeal, 1988).

> substantially, on information which the trustee expects to obtain in the course of that examination. The court to which a request for aid is made will then be faced with the dilemma that the status of the bankrupt as a "tax bankruptcy" may depend upon whether or not the request is granted. Considerations of this nature lead us to the conclusion that there is no safe basis upon which a distinction can be drawn, for the purposes of section 122 of the Bankruptcy Act 1914, between foreign bankruptcies in which the foreign revenue is, or appears to be the sole creditor or the only creditor entitled to participate in a distribution, and foreign bankruptcies in which the foreign revenue is but one of a number of creditors "

31 This nonetheless appears to be the law in Jersey where the Royal Court has refused to act in aid where the English Revenue was the sole creditor but has acted in aid in two other cases where there was at least one other creditor.[44]

32 For England, the potential issue in respect of examination powers was resolved by the decision of the House of Lords in *Re State of Norway's Application (No 2)*.[45] The case arose out of an application under the Evidence (Proceedings in Other Jurisdictions) Act 1975 but it afforded the House of Lords an opportunity to clarify the application of the foreign tax rule as enunciated in *Government of India v Taylor*. Lord Goff, with whom the others members of the Committee agreed, said:[46]

> "I return to the rule in Government of India v Taylor [1955] A.C. 491. It is of importance to observe that the rule is limited to cases of direct or indirect enforcement in this country of the revenue laws of a foreign state. It is plain that the present case is not concerned with the direct enforcement of the revenue laws of the State of Norway. Is it concerned with their indirect enforcement? I do not think so. It is stated in Dicey & Morris, at p. 103, that indirect enforcement occurs (1) where the foreign state (or its nominee) in form seeks a remedy which in substance is designed to give the foreign law extraterritorial effect, or (2) where a private party raises a defence based on the foreign law in order to vindicate or assert the right of the foreign state. I have been unable to discover any case of indirect enforcement which goes beyond these two propositions. Even so, since there is no authority directly in point to guide me, I have to consider whether a case such as the present should nevertheless be held to fall foul of the rule. For my part, I cannot see that it should. I cannot see any extraterritorial exercise of sovereign authority in seeking the assistance of the courts of this country in obtaining evidence which will be used for the enforcement of the revenue laws of Norway in Norway itself."

33 Some of the potential difficulties of applying the decision in *Government of India v Taylor* to a cross-border insolvency case were addressed by the Supreme Court of New South Wales in *Re Oygevault International BV*.[47] Oygevault was a Dutch company being wound up in New South Wales. It had a small tax debt in the Netherlands which was not provable in the Australian proceedings on account of the foreign tax rule. On the other hand, the consequence of the rule being allowed to apply would be that insolvency proceedings would be opened in the Netherlands, the Australian proceedings would thereupon be regarded as ancillary proceedings

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[44] *Re Tucker (Jersey)* [2000] BPIR 876 reporting a decision in July 1988 (Royal Court of Jersey); *Re Bomford* [2002] JLR N 34 (Samedi Division) and *Re Collet* [2009] JRC 054 (Samedi Division).
[45] [1990] 1 AC 723 (HL).
[46] Ibid., at 809D-F.
[47] 14 ACSR 245 (Supreme Court of New South Wales – Equity Division).

and the realisations made in the Australian proceedings would have to be remitted to the Netherlands for distribution in accordance with Dutch law under which the tax debt would have priority. The court considered that the tax liability was insignificant compared with the downsides which would result from proceedings in the Netherlands. The court held that it had jurisdiction to authorise a payment which was expedient and in the interests of creditors. It therefore authorised the Australian liquidators to pay the tax debt in full. It is conceivable that an English court would, in an appropriate case, reach a similar conclusion. Liquidators have a statutory power "to do all such other things as may be necessary for winding-up the company's affairs and distributing its assets" and, in an analogous context, "necessary" has been interpreted as not connoting absolute compulsion but rather high expediency.[48] Administrators too have comparable powers.[49]

34 This cycle of authority came almost full circle in the decision of the Court of Appeal in *QRS 1 ApS v Frandsen*,[50] where the facts were strikingly reminiscent of those in the Irish *McVey* case. On this occasion, Danish companies had incurred Danish tax liabilities. The Danish tax authorities obtained winding-up orders against the companies in Denmark and the companies (in liquidation) then commenced proceedings in England against the defendant, who had directly or indirectly owned the companies and who was domiciled and resident in England. The defendant's personal liability was alleged to have arisen out of his involvement in asset-stripping manoeuvres which had resulted in the companies having no assets and no liabilities other than those owed to the Danish tax authorities. The litigation in England was being funded by the Danish tax authorities. The court held that the case was indistinguishable from *McVey* and, having disposed of some further arguments based on EU law (not the European Insolvency Regulation, which post-dated this case), upheld a decision striking out the proceedings.

35 Finally, in this recitation of authority, *Relfo Limited v Varsani*[51]established that unsuccessful efforts to recover in a foreign jurisdiction, which had failed on account of the foreign tax rule, did not preclude the subsequent pursuit of a remedy in domestic proceedings. Relfo was an English company in voluntary liquidation in England. Its majority creditor was HMRC. Relfo brought proceedings in Singapore against its director alleging breach of fiduciary duty in relation to a substantial

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[48] Sections 165 and 167, Schedule 4, paragraph 13, Insolvency Act 1986; *Re Wreck Recovery Salvage Co* (1880) 15 ChD 353. See also *The Connaught Income Fund, Series 1 v Capita Financial Managers Limited & Anor* [2014] EWHC 3619 (Comm).

[49] Ibid., Schedule B1, paragraphs 60 and 65, Schedule 1, paragraph 13. *Re MG Rover España SA* [2006] BCC 599, *Re Collins & Aikman Europe SA* [2006] BCC 861 and *Re MG Rover Belux SA/NV* [2007] BCC 446 are all relevant in this context because they concern administrators making payments otherwise than in accordance with English distribution rules. However, all also need to be treated with caution because they do not deal with non-provable tax debts.

[50] [1999] 1 WLR 2169 (CA).

[51] [2009] EWHC 2297 (Ch) (on appeal [2011] 1 WLR 1402 (CA) but the grounds on appeal did not relate to the foreign tax rule).

transfer of money out of the company and against the defendant alleging knowing receipt or dishonest assistance. Relfo would have succeeded in its claims had the Singapore court not dismissed the claims because of the foreign tax rule. After an appeal in Singapore was dismissed, Relfo commenced new proceedings in England. The principal issues in the case concerned service of the English proceedings but, in addition, the defendant sought to avoid liability by arguing that the proceedings should be stayed on the ground of *res judicata*. Unsurprisingly, the argument did not succeed:

> "The Singapore courts could not assist; it would be a travesty of justice if, on that count alone, the English courts rejected the claim as well."[52]

36 From these authorities, it is possible to advance the following propositions about how the foreign tax rule applies in England to cases falling outside the scope of the European Insolvency Regulation and the 2006 Regulations:

1. There is an absolute bar on proof of debt by foreign tax authorities;[53]
2. There is no objection to aiding tax bankruptcies by assisting in the gathering of information;[54]
3. Where a tax bankruptcy exists for the sole purpose of satisfying the claims of a foreign tax authority, the English courts will not assist the recovery of assets or entertain actions brought for that purpose;[55]
4. Cases where there are some other creditors may be distinguishable from those covered by proposition 3 above but, if so, it is unclear where the boundary would be drawn;[56]
5. Bearing in mind that there will rarely be recognition cases where there is no foreign tax debt at all, foreign insolvency proceedings where the local tax authority does not account for a major part of the total debt may more readily be assisted, as may cases where the final outcome cannot be predicted with confidence;[57]
6. In an exceptional case, the court might sanction the payment of a foreign tax liability which was not admissible to proof if to do so was in the interests of the estate and its creditors;[58] and
7. The application of the foreign tax rule in another jurisdiction so as to prevent recoveries by an English liquidator will not give rise to a *res judicata* estoppel precluding subsequent proceedings in England.[59]

37 There are two obvious areas which are either left open or at least not directly answered by the European Insolvency Regulation and the 2006 Regulations: schemes of arrangement and relief which is consequential upon recognition of extra-EU tax bankruptcies.

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[52] Ibid., at paragraph 43 (per Jules Sher QC (sitting as a Deputy Judge)).
[53] *Government of India v Taylor* [1955] AC 491 (HL).
[54] *Re State of Norway's Application (No 2)* [1990] 1 AC 723 (HL).
[55] *QRS 1 ApS v Frandsen* [199] 1 WLR 2169 (CA).
[56] Consider: *Ayres v Evans* 51 FLR 395, on appeal 56 FLR 235 (Federal Court of Australia). *Priestley v Clegg* 1985 (3) SA 955 (T) (Transvaal Provincial Division).
[57] Consider: *Bird v Meader* (Guernsey Court of Appeal, 1988).
[58] *Re Oygevault International BV* 14 ACSR 245 (Supreme Court of New South Wales – Equity Division).
[59] *Relfo Limited v Varsani* [2009] EWHC 2297 (Ch).

38 As previously noted, the European Insolvency Regulation and the 2006 Regulations have no application to schemes of arrangement (in the former case because schemes are not an Annex A procedure and in the latter case because they are not proceedings under "British insolvency law"). *Government of India v Taylor* was decided by reference to the provisions of the Companies Act 1948 which was the legislation then in force governing both company liquidation and schemes of arrangement. There is an obvious logic to the proposition that the decision of the majority that foreign tax claims were not "liabilities" for the purposes of section 302 of that Act would also mean that foreign tax authorities were not "creditors" for the purposes of section 206 of the same Act (power to compromise with creditors and members), which was the precursor of the current scheme legislation in the Companies Act 2006. However not only was the decision of the majority on the meaning of "liabilities" not supported by the minority, the majority explicitly acknowledged that "liabilities" might not have a uniform meaning throughout the statute and the point is open.

39 The Inland Revenue in Singapore was treated as creditor in *Re RMCA Reinsurance Limited*,[60] but that case was concerned with whether the court could direct a meeting of a class containing one member for the purposes of considering a proposed scheme and there is no indication in the judgment that the right of the Singapore Revenue to be treated as a creditor was considered. *RMCA* has been referred to in a number of cases, but always on the single person meeting point. The most recent of those cases was *TSB Nuclear Energy Investment UK Limited v Toshiba Nuclear Energy Holdings (UK) Limited*,[61] which concerned a scheme to effect a merger between associated companies in a way that mitigated a potential exposure to Japanese taxation. It is not clear from the judgment whether any Japanese or other foreign tax authority had outstanding claims and the only expressed tax concern was as to whether it was proper to approve a scheme designed to avoid tax (on the facts of the case, the court concluded that it was a proper exercise of the jurisdiction). Viewed more broadly, a refusal to recognise foreign tax authorities as creditors would undermine the attractions of English schemes of arrangement for foreign companies (including some from EU Member States) who turn to the English legislation in the absence of any satisfactory equivalent in their places of incorporation. Even if foreign tax authorities were not creditors for these purposes, there would be nothing to prevent schemes being promoted which included provision for such liabilities. However, there would then be an increased risk of a dissenting authority seeking to disregard the effects of a scheme elsewhere on the ground that it was not bound.

40 It is suggested that this risk can be discounted. The point is not covered by *Government of India v Taylor* and so applying the foreign tax rule in this context

[60] [1994] BCC 378.
[61] [2014] EWHC 1272 (Ch).

would be a development in English law. Quite apart from the reasons adumbrated elsewhere in this article which would make such a development undesirable, it is highly questionable whether the foreign tax rule could have any application in any event. The rule is concerned with the direct or indirect enforcement of foreign revenue claims; it is not concerned with acknowledging the existence of such claims.[62] Not everything that involves a foreign tax claim amounts to enforcement, as is demonstrated by the decision of the House of Lords in *Re State of Norway (No 2)*[63] on the question of information gathering. It is thought that it would be perverse to prevent a company from using a scheme of arrangement to compromise all its liabilities simply because it proposed to treat foreign tax claims as being part of those liabilities.

41 Recognition raises different considerations. It is clear that there are open questions, at common law, as to the recognition of tax bankruptcies and as to what percentage of total debt would be sufficient to constitute a proceeding a tax bankruptcy. However, setting aside the provisions for recognition in the European Insolvency Regulation, there are two further avenues through which recognition might be sought for a foreign proceeding on terms which avoid the application of the common law rule: section 426 of the Insolvency Act 1986 and the 2006 Regulations.

42 Section 426 will be invoked where a foreign liquidator seeks the assistance of the English court through the medium of a letter of request from the court which opened the foreign proceedings. Although the court has authority to apply either English law or the law of the requesting State, it is enjoined to "have regard in particular to the rules of private international law."[64] These words have caused difficulty in other contexts,[65] but were taken by Rattee J in *Re Bank of Credit and Commerce International SA (No 9)* to mean that the foreign tax rule might be invoked so as to deny assistance.[66] Despite this, the point remains open but it should be noted that the special relationship which may be assumed to underlie the selection of jurisdictions which can avail themselves of section 426[67] would be unlikely to be determinative because the House of Lords in *Government of India v Taylor* rejected a similar argument in respect of Commonwealth jurisdictions.

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[62] *Re Visser* [1928] 1 Ch 877 (cited with apparent approval by Viscount Simonds in *Government of India v Taylor*, at 505); *Re Lord Cable* [1976] 1 WLR 7.
[63] See above note 45.
[64] Section 426(5).
[65] *Re Television Trade Rentals Limited* [2002] BCC 807; *Re HIH Casualty and General Insurance Limited* [2008] 1 WLR 852 (HL).
[66] [1994] 3 All ER 764, at 784, on appeal [1994] 1 WLR 708 (CA) but the appeal does not mention this point. See also, *Al-Sabah v Grupo Torras SA* [2005] 2 AC 333 (PC), at 47.
[67] Co-operation of Insolvency Courts (Designation of Relevant Countries and Territories) Order 1986 (SI 1986/2123); Co-operation of Insolvency Courts (Designation of Relevant Countries) Order 1996 (SI 1996/253) Co-operation of Insolvency Courts (Designation of Relevant Country) Order 1998 (SI 1998/2766).

43 The question is whether any potential difficulty can be side-stepped by using the 2006 Regulations or whether the same issue could arise in that context (in which case it would apply to all cases falling outside the scope of the European Insolvency Regulation and not just to section 426 jurisdictions). The 2006 Regulations contain no express exclusion of tax bankruptcies from recognition but Article 6 preserves public policy objections:

> "Nothing in this Law prevents the court from refusing to take an action governed by this Law if the action would be manifestly contrary to the public policy of Great Britain or any part of it."[68]

44 However, there would be difficulties in basing an objection on Article 6. First, the use of the word "manifestly" in Article 6 suggests a restricted interpretation should be given to the scope of the article.[69] Secondly, it would be anomalous to uphold a public policy objection based on the foreign tax rules, let alone a "manifest" objection, where Article 13 of the same instrument expressly provides for the admissibility of such claims. Other approaches to resisting recognition of a tax bankruptcy would be the assertion of a residual discretion and the powers of the court under Articles 20(6) and 22. Notwithstanding the ostensibly mandatory wording of section 426 of the Insolvency Act 1986, the Court of Appeal held in *Hughes v Hannover Ruckversicherungs-Aktiengesellschaft*[70] that in the exercise of its general discretion the court had a power to refuse assistance which was not restricted to public policy grounds. It seems likely that such a discretion would also be held to exist in respect of relief granted under the 2006 Regulations, the more so because of the provisions of Articles 20(6) and 22. Those articles give the court power to modify, terminate or attach conditions to relief which is consequential upon recognition.[71] This is, in effect, an enactment of the same discretion held to have existed in *Hughes* and the question is then whether the foreign tax rule would be considered a sufficient ground to invoke its exercise. The comments made in the context of section 426 are not propitious in that respect[72] but the different statutory context and the changed environment in relation to tax collection and international insolvency generally offer the opportunity for a different approach which could be rationalised by reference to Article 13.

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[68] The right of the court to refuse recognition on public policy grounds would probably be assumed in any event: *Re A Debtor (Order in Aid No 1 of 1979) ex parte the Viscount of the Royal Court of Jersey* [1981] 1 Ch 384, at 402.

[69] Consider: *Re Stocznia Gdynia SA* [2010] BCC 255, at paragraph 27.

[70] [1997] 1 BCLC 497 (CA).

[71] See more generally on Articles 20 and 22, *Cosco Bulk Carrier Co Limited v Armada Shipping SA & Anor* [2011] BPIR 626.

[72] Note also *Rubin v Eurofinance SA* [2013] 1 AC 236 (SC), at paragraph 27 (per Lord Collins): "The CBIR supplement the common law, but do not supersede it."

Saad Investments[73]

45 As a matter of first impression, the proposition that a State can be expected simultaneously to recognise and give assistance to a foreign insolvency proceeding in which the claims of its own fiscal authority will be denied and rendered worthless is a startling one. However that was precisely the issue which came before the Federal Court of Australia in *Saad Investments*.

46 Saad Investments was a company incorporated in the Cayman Islands which was in liquidation in that jurisdiction pursuant to a winding-up order made by the Grand Court of the Cayman Islands. The Cayman liquidation had been recognised in Australia pursuant to the Australian enactment of the UNCITRAL Model Law. The recognition orders entrusted the Cayman liquidators with the administration, realisation and distribution of the company's Australian assets. Having made realisations in Australia, the Cayman liquidators proposed to remit assets out of Australia. The company had an Australian tax debt which was not admissible in the Cayman insolvency proceeding because of the foreign tax rule[74] and the Australian Commissioner of Taxation applied to the Federal Court of Australia to modify its recognition orders so as to prevent the remittance of assets and thereby enable him to recover the tax due. The Commissioner limited his claim in that he sought to recover no more than what he would be entitled to receive as his *pari passu* entitlement as an unsecured creditor in the Cayman proceeding.

47 The Cayman liquidators opposed the Commissioner's application. The central issue was whether the Commissioner could invoke the power in the Model Law to modify or vary recognition relief on the ground that his interests were not "adequately protected".[75] The Commissioner had made his application because there was no jurisdiction to wind-up the company in Australia and his usual remedies were no longer open to him because of the stay resulting from recognition but one of the grounds on which the Cayman liquidators resisted the application was precisely because a liquidation in Australia was impossible. At first instance, Rares J, determining the case in favour of the Commissioner, held:[76]

> "The [liquidators'] argument that Saad Investments cannot be wound up here reinforces why, for the purposes of Art 22(1), the Commissioner's interests are not adequately protected. The Commissioner cannot, or may not be able to, avail himself of a number of statutory remedies if the [recognition] orders are not modified. Those orders are the existing relief operating under Art 21 that currently confer a benefit on all other creditors of Saad Investments. That relief was available to the [liquidators] because Saad Investments, first, operated in Australia and not only had assets but made capital gains here that were taxable, before the Grand Court ordered

[73] See above note 3.
[74] The application of the foreign tax rule was modified, under Cayman law, by statute but not so as to affect the ordinary operation of the rule on the facts of this case.
[75] Article 22 in the Model Law and also as enacted in the Australian legislation.
[76] [2013] FCA 738 (Federal Court of Australia), at paragraphs 41-42.

> it to be wound up in the Cayman Islands, and, secondly, it was insolvent both here…and internationally. If the [liquidators] had not been granted relief under the Model Law, such as that in the [recognition] orders, then the Commissioner could have used the remedies available to him under the taxation laws to obtain the equivalent of what would have been his pari passu entitlement to a distribution had he been entitled to prove in Saad Investment's liquidation here or in its centre of main interests in the Cayman Islands.
>
> For these reasons, I consider that Art 22(1) gives the Court of the forum jurisdiction to make orders enabling the payment of taxation and penalty liabilities to be made from the debtor's assets held by it or by a foreign representative appointed under Arts 19 or 21 before those assets are removed from the local forum and sent to the debtor's centre of main interest or elsewhere at the direction of the foreign representative."

48 Rares J's decision was upheld on appeal. The leading judgment was given by Allsop CJ, with whom the other members of the court agreed. Much of the appeal judgment is concerned with submissions as to the jurisdiction to make modification orders which would not arise in the same way in relation to the 2006 Regulations, and to an argument about submission to the Cayman proceeding which was fact specific. On the broad question of principle, Allsop CJ said:

> "These statements [being statements of the general approach advanced by the appellant liquidators] can be accepted; but they do not direct attention to the particular case of how a local (recognising) court should approach the question of the position of a creditor who has enforceable rights in the local (recognising) jurisdiction, but who will be stripped of all benefit of those rights if assets are sent to the foreign main proceeding, because the law of that jurisdiction will not permit the enforcement of such a debt…
>
> While the Model Law reflects universalism, there is nothing in the Model Law or the UNCITRAL Working Papers prior to its formulation, or in the CBI Act, which would justify the stripping of rights of a local creditor by reason of recognition."[77]

49 On an alternative public policy argument advanced by the Commissioner,[78] which the court did not need to determine having regard to its conclusion that the Commissioner's interests were not adequately protected, Rares J had added:

> "It is fundamental to any society that its government be able to require its citizens and others whom operate a business or reside within that society, to pay taxation so as to maintain the State. I would simply observe that, without deciding the issue, there is thus considerable merit in the Commissioner's reliance on [public policy]."

50 However, the appellate court considered that, if the legislation had required the surrender of the assets in Australia, public policy would not have been the basis for any further objection.[79] There is nonetheless robust realism in Rares J's observation.

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[77] [2014] FCAFC 57 (Federal Court of Australia), at 114 and 120. See also, *Kapila in the matter of Edelsten* [2014] FCA 1112 (Federal Court of Australia) mentioned above note 28.
[78] Article 6 in the Model Law and also as enacted in the Australian legislation.
[79] At paragraph 147.

51 Part of the price to be paid for advancing the cause of cross-border co-operation in insolvency cases may well be that the foreign tax rule (at least in its application in an insolvency context) should be consigned to the dustbin.