

Imports to Ectopia: Copyright and Income Tax Concessions

**Queensland Tax Researchers Symposium
Law School, University of Queensland**

Dr Jonathan Barrett

**School of Accounting and Commercial Law,
Wellington, New Zealand**

Where is Prof Prebble's Ectopia?



Overview

- ‘Ectopic’ in a tax context
- Copyright in a nutshell
- Why copyright is ectopic to artistic practice
- Tax treatment of peak copyright/above average special professional income
- Why these provisions are imports to Ectopia
- Concluding comments

'Ectopic' in a tax context

- Pathological, serious and incurable
- Fundamentally flawed
- Dislocated from the facts to which it relates
- Horizontal inequity – different treatment of similarly situated taxpayers

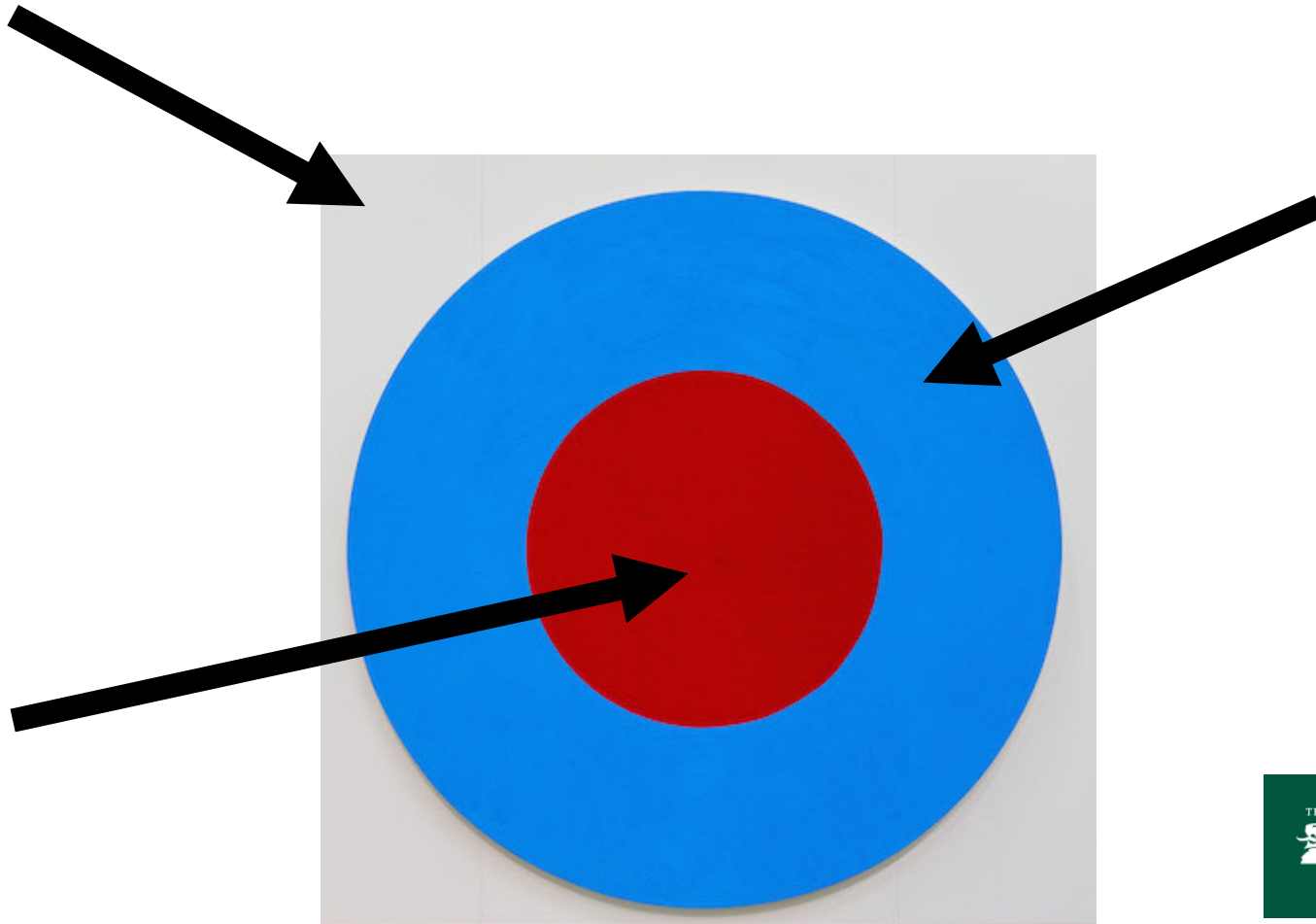
Copyright in a nutshell



Why copyright is ectopic to artistic practice

- Distinction between artist and artisan
- Not all artists are ‘authors’
- Copyright theory doesn’t fit singular artworks
- Much contemporary art is conceptual
- Copyright benefits few visual artists – therefore, artists’ resale royalty right (droit de suite)

A Max Gimlett Roundel



Tax treatment of peak copyright: ITA 2007 (NZ) s EI 3

- Copyright only (currently no ARR)
- Creation period (1 year +) – 2 year spread
- Creation period (2 year +) – 3 year spread

Tax treatment of above average special professional income: ITAA 1997 (Cth), div 405

- **Special professional** ‘author of ... an artistic work’ – ‘Note: The expression “author” is a technical term from copyright law’*
 - 4 year spread
 - Surely, div 405 covers selling current artefacts?
 - But does it cover ARR (esp. deceased artists)?
 - You must be an **author**

* CA 1968, s189: “artistic” means an artistic work in which copyright exists i.e. original works only

Imports to Ectopia?

- Lifetime would be the ideal tax period
- Annual variation in income is not unusual e.g. salespeople
- Only authors benefit among artists
- Example: a smoke artist*

* Berndnaut Smilde

Concluding comments

Let's

- find a better word than 'ectopia' for the basic phenomenon e.g. 'dissonance'
- ensure fair reward for artists but don't use tax to further privilege artists who are authors