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EDITORIAL – *General Editors: Kerrie Sadiq and Dale Pinto*

Building a Better Tax Future 291

ARTICLES

Worker Status: How Can We Get It Working for Australia’s Tax System? –
Brett Freudenberg

A critical issue for tax and regulatory compliance is determining a worker’s status as an employee, independent contractor or something else. This issue has been the subject of recent litigation and given the rise of the gig economy is likely to become more acute as more people are given the ability to undertake entrepreneurial activities. This article will explore the current issues that concern “worker status” and some of the recent case law, as well as the potential influences this distinction can have on the worker, the engaging entity, government agencies and society as a whole. A number of recommendations are formulated in terms of systems administered by the tax office as a possible way to provide greater certainty, knowledge and equity in this area. 293

The Meaning of Goodwill – *Nick Gangemi*

Goodwill as a concept is important in both a legal and a commercial setting, with implications flowing into taxation, intellectual property and commercial. Different people have different views of this terms, with accountants, lawyers and valuation experts all having different ideals. Even in the legal setting, the cases and statutes are not always clear as to what is meant from the term. This article considers legal concept of goodwill, tracking its development from early cases in the United Kingdom in the 1600s, and moving into the more recent cases in Australia. The cases deal with a large number of situations and scenarios, ranging from business transfers to taxation. Tracing through all these cases is the consideration of three “concepts” of goodwill that come out of the jurisprudence: the “privilege concept” (being the privilege to conduct a business), the “custom concept” (the patronage of a business) and the “excess value concept”. The article shows how the cases move from one concept to the next, the current conception being one based on both privilege and the attraction of custom. 320

The Path to a Bifurcated Tangible Asset Depreciation Regime in Australia –
Christina Allen

More than two decades after their adoption, the rationale the generous depreciation concessions for small business remains unclear. Several after-the-fact explanations have been suggested, with the most common being a form of compensation for the proportionally high tax compliance burden borne by small businesses. It is, however, difficult to see how accelerated depreciation can provide appropriate offsets for compliance costs, particularly when the benefit is limited to profitable small businesses acquiring tangible property. Moreover, the emphasis on subsidising the acquisition of tangible assets seems misdirected given the 21st century trend towards deriving value from intangible assets and human capital. The small business depreciation system ultimately remains a concession in search

for a plausible tax policy basis. This article provides a brief history of the Australian depreciation system to document how the small business depreciation concessions were adopted and how they have evolved to date, beginning with the legislative amendments that consolidated fragmented depreciation rules away from industry-specific tax expenditures in the 1990s. The article explains that the policy of concessions without logical policy objectives continues with more recent ad-hoc concessions, including the temporary COVID-19 measures. 343

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