

AUSTRALIAN TAX REVIEW

Volume 39, Number 1

February 2010

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ARTICLES

A rethink of goodwill – Hung Chu and Wayne Lonergan

This article examines alternative approaches to goodwill, namely the economic approach, the accounting approach and the legal approach. The limitations of each approach and the differences between them are major contributors to the protracted confusion about the nature and value of goodwill. Having identified and evaluated the inherent limitations and the potential pitfalls associated with the application of each approach and highlighted the differences between the alternative approaches to goodwill, the article proposes a conceptually convergent approach to goodwill under which these differences can be analysed. The application of a conceptually convergent approach indicates that most of the apparent conflicts between the alternative approaches to goodwill turn out to be less divergent than they appear if the evolutionary nature of the value of identifiable assets over time is fully recognised and goodwill is perceived as the attractive force which actively brings in custom (net of custom brought in by identifiable assets) and generates net profit (or net cash flow) for a subject enterprise. This new way of thinking about goodwill has important implications for the land-rich assessment for stamp duty, capital gains tax and other litigation purposes.

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The proposed client-accountant tax privilege in Australia: How does it sit with the common law doctrine of legal professional privilege? – Andrew J Maples and Michael Blissenden

Legal professional privilege protects confidential communications between legal advisors and their clients from compulsory disclosure. In the taxation arena, this will include protection from disclosure to taxation authorities using coercive information-gathering powers. The common law privilege does not apply to the client-accountant relationship or to the tax advisor-client relationship where that tax advisor is not a lawyer. In 2005, New Zealand introduced a legislative regime to grant statutory privilege to confidential communications between accountants and their clients for the main purpose of providing or receiving tax advice. In 2008, the Australian Law Reform Commission (ALRC) recommended that Australia follow the New Zealand model and introduce a similar statutory regime. This article outlines both the ALRC proposal and the New Zealand client-accountant statutory regime. The rationale for the creation of a separate statutory privilege and the reasons for the rejection of the extension of the common law privilege to the client-accountant relationship are also considered. Finally, the article compares statutory privilege with legal professional privilege. This review highlights differences between the two forms of privilege and concludes that the practical level of protection afforded taxpayers claiming this new form of privilege is considerably less than common law privilege.

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Taxing *virtually* everything: Cyberspace profits, property law and taxation liability – Michael Walpole and Janice Gray

This article examines the application of property law and aspects of contract law to commercial activities undertaken in the virtual world in order to determine the application of real world tax rules. Aside from some practical and policy issues around the derivation of income in the virtual world, the question asked is, for income tax and capital gains tax purposes, whether activities and products of the virtual world could be construed as property. There is doubt about this. This, in turn, raises the question whether what is received in return for the disposal of so-called “virtual property” qualifies as consideration. In relation to goods and services tax (GST), questions arise around where the virtual enterprise is carried on, and what (if any) of the special GST rules for telecommunication supplies might apply. Virtual world activities seemingly pose new problems for legislation that was not designed for such transactions. 39

“Purposive” interpretation of taxing statutes – a critical comment – Dr Terry Dwyer

A commentary on Justice Gordon’s article published in the November 2009 issue of this Journal. 61

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THOMSON REUTERS

© 2010 Thomson Reuters (Professional) Australia Limited ABN 64 058 914 668

Lawbook Co.

Published in Sydney

ISSN 0311-094X

Typeset by Thomson Reuters (Professional) Australia Limited, Pyrmont, NSW

Printed by Ligare Pty Ltd, Riverwood, NSW