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COVID-19 and Childcare Expense Deductions: Revisiting the Decision in Lodge – *Lydia Thiagarajah and Amanda Darshini Selvarajah*

The critical importance of childcare services has been emphasised during the COVID-19 pandemic, when it was recognised as an essential service, without which many parents cannot gain or produce income. It is therefore timely to revisit the decision in *Lodge v Commissioner of Taxation (Cth)* that formed the precedent for denying tax deductions for childcare expenses. The article finds the single High Court judgment on this important issue inadequate, with reliance incorrectly placed on a British case and demonstrates how a statutory and contextual interpretation would support a different outcome. It calls upon Parliament to act should the courts not do so and addresses potential concerns by proposing clear deductibility parameters. 51

COVID-19 Responses and the Contemplative Worker's Home Occupancy Expense Claim – *Elizabeth F Morton, Michael F Curran and Sarah A Hinchliffe*

The COVID-19 pandemic has resulted in government-mandated stay-at-home directives and office closures, challenging the scope of deductibility of home occupancy expense claims. Existing authority highlights that, in order to be eligible to deduct home occupancy expense claims, the taxpayer's home office usage must: (1) arise through necessity as opposed to mere convenience; and (2) be substantial, or almost exclusive, for income-earning purposes. In 2019, Boccabella and Bain found that, for the contemplative worker, the first criteria is all but impossible to satisfy, as these workers can work almost anywhere and therefore always have an alternative place of work. This article extends their examination by analysing how the COVID-19 environment arguably establishes the circumstances to enable the first necessity criteria to be satisfied. It follows that, where the contemplative worker also satisfies the second criteria, home occupancy expense claims will be deductible. 81

Ambiguous Doctrines and Legislative Responses to Current/Capital Expenditure – *Christina Allen*

Australian courts have struggled with distinguishing current expenses from capital expenses for the purpose of applying the principal deduction provision in the federal income tax legislation. In the late-1990s, the Review of Business Taxation proposed an overhaul of the tax laws based on the "tax value method" (TVM) to establish clear, objective criteria for characterising expenses. The proposed reforms were not adopted, and to date the tax system still lacks an effective way to deal with expenses relating to intangible wasting assets and benefits. However, aspects of the TVM could be incorporated into the current legislation. This article proposes two ways to do so: first, by adding an objective characterisation test to the legislation; and second, by allowing immediate tax deductions for expenses that

fall outside the definition of capital expenses but produce valuable benefits. Implementing these reforms will make the tax system more internally consistent. 105

Stretching the Concept of Charity in the Tax Context: Membership-based Entities as Charities – *Ann O'Connell*

Charities are private entities that provide public benefits. The public benefit requirement is, on its face, inconsistent with significant private benefits, such as benefits to members of the entity. Where a charity has a membership, this at least raises the question as to whether there are private benefits. Some recent judicial and administrative decisions concerned with whether an entity is a charity for tax purposes have overlooked significant private benefits to members. This has resulted in an expansion of the types of entities that are eligible for tax concessions, as well as a growing divergence between the notion of charity for federal tax purposes and for State and Territory tax purposes. These decisions are also surprising given the federal tax legislation recognises a range of entities as income tax exempt even though they are not charities. This article suggests ways these developments might be addressed. 121

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