

The SOTHERTONS REPORT



MARCH 2008

Welcome to the March issue of the Sothertons Report

With the election of a Labor government late last year and their then mooted changes to a broad range of reforms to taxation, family benefits and superannuation, the first sitting of the new Parliament has seen the introduction of many of them. We outline these changes as well as simplifications to the tax system and planned changes over the next few months. The May budget, interest rates and world economic trends will greatly affect the longer term strategies of this government and the reforms currently on the agenda.

As is a regular element we highlight rulings from the Administrative Appeals Tribunal including a few bizarre ones.

Featured in this issue is the profile on Pacific Enviromin Ltd, a Sothertons Brisbane client involved in the mining of bentonite and details the breadth of its current and potential worldwide applications under research and development.

We have previously covered stress in the workplace and in this issue we focus on fatigue and its ramifications and how to address the problem with beneficial outcomes for both the employer and employee. A short introduction to scams affecting business and consumers is touched on as precursor to a more comprehensive feature in the next issue.

We are all aware of global warming and the environmental implications of pollution and waste as front-page news every day. On page 24 we are happy to promote an initiative of the World Wildlife Fund and other concerned environmental groups to reduce electricity usage (and in return reducing carbon emissions) for one hour on 29 March 2008. In conclusion, we include the first of a two part article on preparing a business for sale and the checks and balances one needs to consider. Until next time. ■

Stamp Duty – Related Substituted Purchasers

Ad Valorem stamp duty is imposed on every contract or agreement for the sale of a property. Where the purchaser named in the contract or agreement differs from the transferee named on the transfer of land document stamp duty is charged again at ad valorem rates.

The stamp duty Act allows nominal stamp duty to be assessed in certain circumstances where a related person known as the "Substituted Purchaser", is substituted between the time of signing the contract and completing the transfer of land document if no profit has been gained.

The purpose of the related substituted purchaser provisions of the Act is to provide relief from ad valorem stamp duty on an eligible substitution. If the conditions of the substituted purchaser are met nominal duty is charge of \$20.00.

Related Party: Related Parties of an individual purchaser are in linear format and include;

- Parent ■ Brother or Sister ■ Child
- Spouse or De Facto partner ■ Parent of Spouse or De Facto partner
- Brother or Sister of Spouse or De Facto partner
- Child of Spouse or De Facto partner

Related entities of an individual purchaser include;

Company – A company can be substitute to or a company formed where all the shareholders are related to each of the other shareholders, of the individual as per the linear descendants above.

For a company not formed or a shelf company not purchased to be considered a substituted purchaser, action must be underway to incorporate or purchase the company at the time of entering into the contract or agreement. Evidence must be supplied with the substituted purchaser form that at the time of the contract the named purchaser intended to transfer the property to the corporation and that action has been taken to incorporate or purchase the company.

Unit Trust – The same applies for a Unit Trust as per a company where all the unit holders are related to the individual as per the linear descendants above.

Other structures – These provisions do not apply to Discretionary Trusts or Superannuation Funds.

How to Apply

An application form entitled "Transfer to Related Substituted Purchaser" must be completed by both the original named purchaser and the substituted purchaser. This must be forwarded with the original contract or agreement and the transfer of land which evidences the substitution of the purchaser. Additional evidence is required for a company or unit trust. ■

Labor's Tax Reforms

24 November 2007 ushered in a new era for the Australian political landscape with the Labor party winning the Federal election. As part of its election campaign, Labor promised various tax reforms which included changes to personal income tax, and measures to assist families with the increasing cost of raising children.

Assisting families

A range of 'family friendly' measures will be introduced, and scheduled to go into effect on 1 July 2008, including:

- increasing the child care tax rebate to 50%, payable quarterly;
- providing a limited 50% Education Tax Refund for families receiving Family Tax Benefit Part A (FTB-A) or who have school-attending children receiving Youth Allowance; and
- limiting eligibility for Family Tax Benefit Part B (FTB-B) to families with a combined adjusted taxable income of less than \$250,000.

Reverse changes to family trusts

Labor is proposing to reverse the changes made to family trusts that were introduced in September 2007.

The changes saw the broadening of the definition of 'family' and 'family group', changing the test individual for a family trust in limited circumstances, and allowing the revoking of family trust elections and interposed entity elections in limited circumstances. The proposed date of effect is 1 July 2008.

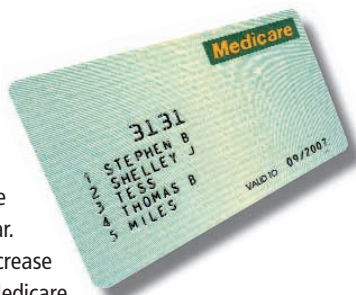


Labor's proposed reversal means taxpayers will only be able to access the changes introduced in September 2007 in the current income year. ■

Medicare Levy

The Medicare levy threshold amount for senior Australians who are eligible for the SATO will also increase in line with the LITO for the 2008/09 income year.

The threshold amount will increase from \$25,867 to \$28,867. The Medicare levy phase-in limit for senior Australians who are eligible for the SATO will increase from \$30,431 to \$33,961. The Medicare levy phase-in limit that applies to couples eligible for the SATO will increase from \$44,647 to \$49,412. ■



Income Tax Rates Cut

The Government has since introduced into Parliament a Bill proposing income tax rates cuts.

For the 2008/09 income year, the proposed personal tax rates and tax payable for resident taxpayers are set out in the table below:

Income Tax Scales

Taxable income (\$)	Tax payable (\$)
0 – 6,000	Nil
6,001 – 34,000	15% of excess over 6,000
34,001 – 80,000	4,200 + 30% of excess over 34,000
80,001 – 180,000	18,000 + 40% of excess over 80,000
180,001 +	58,000 + 45% of excess over 180,000

The low income tax offset (LITO) for the 2008/09 income year will increase from \$750 to \$1,200.

Therefore, taxpayers will be entitled to the LITO if their taxable income is less than \$60,000.

As a consequence of the increase in the LITO, senior Australians who are eligible for the senior Australian tax offset (SATO) will have no tax liability until their income reaches \$28,867 for singles and \$24,680 for each member of a couple for the 2008/09 income year. ■

Multiple Birth Allowance

The eligibility for the multiple birth allowance has been extended from 1 January 2008.

The changes will allow families with at least three children born in the same multiple birth to be eligible for the allowance until:

- the children are 16 years of age; or
- if at least three of the children are in full-time study, until the end of the calendar year in which the first born of the three children turns 18 years of age. ■



Tax Law Changes

In February 2008, the Government introduced into Parliament a Bill seeking to:

- remove tax deductibility for contributions and gifts to political parties, members and candidates, including membership fees;
- remove an inconsistency in the tax law relating to farm managed deposits, thereby ensuring eligible primary producers will be able to access the concessions;
- ensure that a superannuation lump sum payment paid to a person who has a terminal medical condition is tax-free; and
- ensure the Equine Workers Hardship Wage Supplement Payment received by individuals is tax-free. ■

First Home Savers Accounts

The Government has formally approved the establishment of the First Home Savers (FHS) Accounts scheme.

It is anticipated that eligible first home buyers will benefit from the scheme.

The scheme will be offered through banks, building societies, credit unions and life insurers.

Although the detailed features of the scheme have not been finalised, key features will include:

- co-contribution from the Government of a minimum of 15% on after-tax contributions of up to \$5,000;
- individuals aged between 18 to 65 will be able to open an account with an initial contribution of at least \$1,000 so long as they comply with the eligibility criteria for the First Home Owners Grant;
- the minimum savings period for the scheme is four years;
- interest earned will be taxed at a rate of 15%; and
- withdrawals will only be permitted for the purchase of an eligible first home and will be tax-free. Alternatively, individuals can roll over the full amount of the account to their superannuation fund at any time. ■



Simplified Tax System

The Tax Office has released a fact sheet outlining the eligibility criteria for the small business entity concessions and how the changes affect former simplified tax system (STS) taxpayers.

The STS was replaced by the small business entity regime from the 2007/08 income year. The concessions available under the former STS are still available. In addition, where a taxpayer has been classified as a small business entity, they can choose to access other various concessions, including accounting for GST on a cash basis and the FBT car parking exemption.

The requirements to be classified as a small business entity differ from the STS. ■

CGT on Holiday Unit

In a recent decision, the Administrative Appeals Tribunal (AAT) has affirmed that a holiday unit that was used for short-term holiday accommodation was not an active asset for the purposes of the CGT small business concessions.



Two basic conditions must be satisfied before a taxpayer can access the concessions – the taxpayer must be a small business entity or satisfy the 'maximum net asset value' test, and the CGT asset must be an active asset. Depending on the concession being accessed, further conditions must also be satisfied.

Where the conditions are satisfied, the capital gain arising from the disposal of a CGT asset can either be disregarded or reduced.

A CGT asset is an 'active asset' if it is used, or held ready for use, in carrying on a business by a taxpayer, an affiliate or a connected entity. ■

Federal Government's proposed changes for superannuation

The new Government has proposed a number of changes to superannuation. These changes are still in the proposal stage.

Superannuation Guarantee rates

At this stage there is no proposal to increase the Superannuation Guarantee (SG) rate, however the Government is seeking to achieve a 15% superannuation savings target in two ways:

1. By encouraging low to middle income earners to make personal contributions through an **enhanced co-contribution scheme**. The government will consider expanding the current co-contribution scheme by lifting the maximum gross income cut-off of \$58,980 per annum or reducing the means test.
2. By considering the introduction of **'soft compulsion'**, which is defined as an employee putting an extra 1% into their super each time they receive a wage increase or start a new job, up to a maximum of 3%.

The Government is looking to prohibit employers from reducing their 9% compulsory SG contributions when an employee voluntarily sacrifices salary. Under the terms of the proposal, salary sacrifice is technically an employer contribution. This has meant that a very small number of employers have been able to avoid paying the full 9% SG by claiming an employee's voluntary salary sacrifice contributions as meeting this obligation.

The Government is proposing to stop this practice. ■



SCAMwatch is a website owned and maintained by the Australian Competition and Consumer Commission and the Australasian Consumer Fraud Taskforce.

SCAMwatch highlights a variety of popular scams that regularly target Australian consumers and small business. It also offers consumers tips on how to protect themselves from scams, what they can do to minimise damage if they do get scammed and how they can report a scam. **Visit the site at:** <http://www.scamwatch.gov.au/content/index.phtml/itemId/693900>
A more comprehensive article will appear in the next issue.

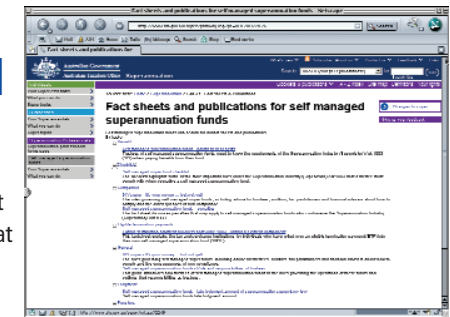
In-house Assets and SMSFs

The Tax Office has recently issued a fact sheet explaining what an in-house asset is, the transitional rules that apply to certain assets owned by a SMSF before 11 August 1999 and the changes that will apply after 30 June 2009.

The in-house assets rule states that a trustee of a superannuation fund must not acquire in-house assets if to do so would increase the ratio of such assets to over 5% of total assets, or if the ratio already exceeds 5%.

The Tax Office has stated that a trustee of a SMSF, which has assets affected by the transitional rules, needs to review their fund investment structure to ensure compliance with the in-house asset rules after 30 June 2009.

If you have any queries regarding the above your Sothertons Partner/Director is well equipped to assist and advise. ■



Shed Qualifies as Main Residence



In a bizarre decision by the AAT, it was held that a shed used by a taxpayer qualified as a main residence despite the fact that the taxpayer only moved her bed into the premises.

If a dwelling, which a taxpayer owns or acquires, qualifies as their main residence, any capital gains arising from the disposal of the dwelling will be disregarded or reduced. ■

Provision Of Trade Credit

The recently released Taxation Determination TD 2008/1 discusses the consequences of a private company providing trade credit to a shareholder (or their associate) on the usual terms it gives to parties at arm's length, and the shareholder fails to repay an amount within the agreed payment term.

The Tax Office states that provided the private company deals with the failure to repay in the same manner in which it deals with defaults on similar loans made to parties at arm's length, the tax law does not automatically deem that a loan has been made by the private company to the shareholder (or their associate).

If the private company does not deal with a failure to repay on time by a shareholder (or their associate) in the same manner in which it deals with defaults of similar loans made to parties at arm's length, potentially a loan can be deemed to have been made.

A private company may be taken to pay a dividend at the end of the company's income year if it lends an amount to a shareholder (or their associate) during the year.

The dividend needs to be included in the assessable income of the shareholder (or their associate) as an unfranked dividend. (The definition of loan includes the provision of credit or any other form of financial accommodation.)

However, if the shareholder (or their associate) fully repays the amount by the earlier of either the due date for lodgment of the private company's tax return for the income year or the lodgment day of the private company's tax return for the income year, a loan does not arise between the private company and the shareholder (or their associate). ■

Wash Sale Arrangements

The Tax Office has stated recently in a Taxation Ruling that the Commissioner may make a determination to cancel any tax benefits obtained in connection with a 'wash sale' arrangement.

Whether the Commissioner makes a determination to cancel any tax benefits obtained will depend on the facts of the particular situation.

An arrangement where a taxpayer disposes of an asset in order to apply a resulting capital loss against a capital gain previously incurred (or deduction against assessable income), and both capital assets are significantly similar, may attract the Commissioner's adverse attention. ■

Personal Services Income (PSI) Case



The Tax Office has released a Decision Impact Statement (DIS) regarding an Administrative Appeals Tribunal (AAT) case concerning whether a taxpayer generating PSI satisfied the business premises test and, as a result, was entitled to a personal services business (PSB) determination from the Commissioner.

In this case, the AAT decided the private use of a garage which was part of a building used in the generating of PSI was not so slight that it should be ignored. The garage was used to store personal items and a motor vehicle which was not exclusively used for business. Consequently, the AAT was satisfied that the taxpayer did not use the premises exclusively for a business purpose, and did not meet the requirements of the business premises test.

PSI is ordinary or statutory income which is mainly derived, directly or indirectly through an interposed entity (company, trust or partnership) from an individual's personal exertion. However, the PSI regime does not apply when an individual is carrying on a PSB.

If a taxpayer passes the business premises test, they will be considered as carrying on a PSB and be excluded from the PSI regime. A taxpayer may seek a PSB determination from the Commissioner to be excluded from the PSI regime.



Taxpayers who are deriving PSI and working from home should ensure that the business part be physically separate from their residence to satisfy the business premises test. ■

PSI and the Results Test

In a recent Federal Court case, two taxpayers generating PSI lost their appeals against the Commissioner.

The case concerned the Commissioner's refusal to grant the taxpayers PSB determinations on the basis that they did not satisfy the results test.

The Court found that the relationship between the taxpayers and the company engaging their services was that of an employer / employee because:

- the taxpayers were not liable to rectify any defects in the work performed;
- payment for the services rendered was not pegged to the completion of any specific tasks; and
- no further equipment was required to be provided by the taxpayers for the efficient performance of the tasks.

If a taxpayer meets the requirements of the result test, they will be regarded as carrying on a PSB and be excluded from the PSI regime. The results test requires a taxpayer to meet three conditions:

- the income is paid to achieve a specific result or outcome;
- the taxpayer provides any necessary tools or equipment to do the work; and
- the taxpayer is liable to rectify any defects in the work.



In determining whether a taxpayer meets the conditions of the results test, it is the economic substance and not the legal substance that is important. ■

GIC and SIC Rates Released

The Tax Office has released the general interest charge and shortfall interest charge rates for the third quarter of the 2007/08 income year. **The rates are as follows:**

RATE	ANNUAL	DAILY
GIC	14.15%	0.03866120%
SIC	10.15%	0.02773224%

The Tax Office has also released the interest rate for overpayments (IOP), early payments (IEP) and delays in refund (DRI) for the third quarter of the 2007/08 income year.

The applicable interest rate is 7.15%. ■

Trust Cloning

Trust cloning refers to the practice of transferring an asset between two trusts that have the same beneficiaries and terms.



Generally, when an asset is transferred between two trusts, CGT implications will be triggered. However, where the beneficiaries and terms of the two trusts are similar, a CGT exception applies.

The Tax Office previously released a Taxation Ruling which provides its view on when the CGT exception applies. Since the release of the ruling, the Tax Office has become aware of examples where trusts, particularly discretionary trusts, may not be the same and therefore assets transferred between the trusts will trigger a CGT event.

The Tax Office is encouraging taxpayers or their advisers who have relied on the exception, but who are now concerned that the exception test was not satisfied, to contact it or lodge a private ruling. ■

Wesfarmers' Acquisition of Coles

The Tax Office has released a Class Ruling providing its view on the tax implications for a Coles shareholder following the acquisition of Coles by Wesfarmers.



The ruling provides that Coles shareholders are able to disregard any capital gains arising from the acquisition by accessing the script for script rollover relief. However, the capital gains are not disregarded to the extent that the capital proceeds include the cash consideration received. ■

FBT and Minor Benefits

In a recent Taxation Ruling, the Commissioner expressed that a fringe benefit provided by an employer to their employees (or associate) will only attract the minor benefits exemption where:



- **the notional taxable value of each benefit is less than \$300;** and
- **having regard to the circumstances, including a consideration of the infrequency and irregularity, it would be unreasonable to treat the benefit as a fringe benefit.**

Further, the Ruling states that even if the notional taxable value of a benefit is less than \$300, the benefit is not necessarily an exempt benefit. There are certain fringe benefits that are specifically excluded from the operation of the minor benefits exemption.

If the minor benefits exemption applies to a benefit, no FBT liability arises from the provision of that benefit. ■

IRAs and Assessable Income

In a recent Interpretative Decision, the Tax Office states that a lump sum distribution paid to a resident individual taxpayer upon closing a traditional Individual Retirement Account (IRA) held in the United States is included in the taxpayer's assessable income.

However, the reportable amount in the taxpayer's income tax return is reduced by any amounts previously reported as notional income under the Foreign Investment Funds measures and where certain exceptions are met.

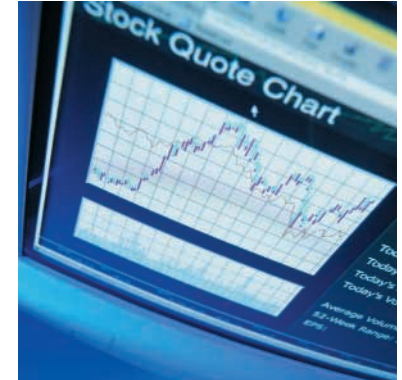
The assessable income of a resident individual taxpayer includes any ordinary and statutory income derived in or out of Australia. ■

Alert On Stapled Securities

The Tax Office has issued a Taxpayer Alert warning taxpayers investing in stapled securities that it is considering whether they are entitled to a deduction when the stapled securities are sold on the ASX at a loss, or on the occurrence of an Assignment Event.

In particular, the Tax Office is considering whether the structure of a stapled security constitutes a scheme to obtain a tax benefit therefore denying any deductions arising from its disposal.

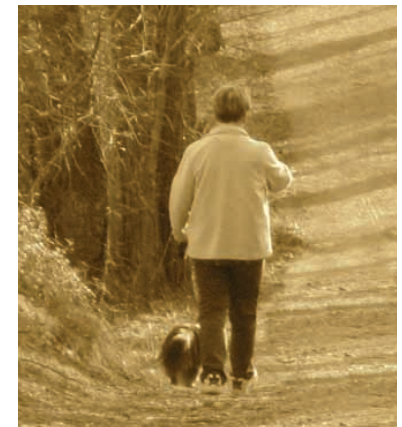
A stapled security is an arrangement where a company issues a security consisting of a note and a preference share to resident investors. The Tax Office said that in these arrangements the company issuing the securities suggests that an investor may claim deductions for losses in certain circumstances. These circumstances include the assignment, transfer or surrender of the note, or conversion or disposal of the stapled security. ■



UK War Widows Pension

In two separate but related Interpretative Decisions, the Tax Office expresses its view that the UK War Widows pension and supplementary pension received by a taxpayer are not assessable income for the purpose of Australian tax.

This is because the pensions are similar to a pension for defence caused death or incapacity paid under the Veterans' Entitlement Act, which is listed as an exempt payment for income tax purposes. ■



Entrepreneurs' Tax Offset

Partners in a partnership

In a recent Interpretative Decision, the Tax Office states its view that a taxpayer whose assessable income includes personal services income (PSI), which is attributed to being a partner in a partnership that is not conducting a personal services business (PSB), is entitled to the entrepreneurs' tax offset (ETO).

Company and eligibility

In another recent Interpretative Decision, the Tax Office has provided its view that a company that is not conducting a PSB is entitled to the ETO. However, if the company is only deriving PSI, the ETO will be nil. This is because any PSI derived by a company does not form part of its assessable income but is included in the assessable income of the individual generating the PSI.

ETO and PSI

The ETO is available to eligible taxpayers. The offset is equal to 25% of the income tax liability that is attributed to a small business entity income. If the annual turnover is more than \$50,000, the offset is phased out until it equals zero at turnover of \$75,000.

PSI is income that is mainly derived from an individual's personal exertion. The income can be derived either directly by the individual or indirectly through an interposed entity (company, trust or partnership). However, the PSI regime does not apply when an individual is carrying on a PSB. ■

Tax Office Assistance

In two separate but related media releases, the Tax Office has stated that farmers, businesses and individuals who are experiencing difficulty in complying with their tax obligations as a consequence of the drought, floods, bushfires and storms to contact its office either through their tax agents or directly. ■



Construction Induction Cards Now Recognised Across Multiple State Boundaries

Induction cards obtained by construction workers in Victoria, NSW or Queensland are now valid for work in those States.



This logo must appear on either the front or rear of the induction card irrespective of who the issuing party is.

In November 2006 agreement was reached at the Harmonisation meeting between Victoria, NSW and Queensland to mutually recognise general induction safety programs for construction work. The training programs that are now mutually recognised (effective 1 January 2007) are:

Victoria *Foundation for Safety Construction Industry Induction Training Agreement (Red Card – sample shown at right)*



NSW *WorkCover Construction Induction Certificate for the Construction Industry*

Queensland *General Safety Induction Construction Industry (Blue Card)*

Qualifications relating to demolition or asbestos removal work do not form part of the mutual recognition agreement at this time.

For mutually-recognised training qualifications, this change will mean that construction workers can move freely between these States and can work in State border areas more easily.

It is proposed that a national accreditation scheme be developed for safety induction of construction workers. It is envisaged that the national accreditation scheme will replace State-based training programs, including the agreement for mutual recognition of construction inductions now in place between Victoria, NSW and Queensland.

Regardless of whether a national accreditation scheme is established or not, the mutual recognition agreement between Victoria, NSW and Queensland is set to expire two years from 1 January 2007. ■

*Noel Arnold & Associates are one of Australia's largest Risk Management and OH&S Consultants.
www.noel-arnold.com.au*



Earth Hour 2007 was a Sydney Event
Earth Hour 2008 is a GLOBAL MOVEMENT

The Issue: Climate change is the most significant threat to life on Earth. One way to slow the current rate of global warming is to get each individual to make small adjustments to the way they live. To achieve individual change we need to demonstrate how simple and easy the changes are. Created to take a stand against the greatest threat our planet has ever faced, Earth Hour uses the simple action of turning off the lights for one hour to deliver a powerful message about the need for action on global warming.

The Solution: An event that gets full community involvement in a simple action that will make a difference. WWF-Australia invites all households and businesses to turn off their lights for one hour at 8pm on March 29 2008 – this is Earth Hour. This simple act has captured the hearts and minds of people all over the world. As a result, at 8pm March 29, 2008 millions of people in some of the world's major capital cities, including Copenhagen, Toronto, Chicago, Melbourne, Brisbane, Sydney and Tel Aviv will unite and switch off for Earth Hour.

The Objectives: Get as many individuals, households and businesses as possible to turn off their lights as a symbolic statement about the greatest contributor to climate change (eg: fossil fuel-fired energy) and educate the community on the threat of global warming and what each individual can do to make a difference in their day-to-day activities to reduce their emissions. ■



www.earthhour.org

Pacific Enviromin Limited "PEV"

One day, the few remaining smokers at any of the Sothertons offices may be inhaling a "non-toxic" cigarette !!!! And it just might be because of a patented process developed by Sothertons Brisbane client, Pacific Enviromin Limited (PEV). After significant R&D by PEV and an Australian university, several university tests proved that using an industrial mineral, calcium bentonite, in cigarette filters reduced carcinogens in tobacco smoke by 95%. PEV is now working with a global tobacco company to continue the research.

This is just one example of the environmental remediation division of PEV, which also hold patents and licences for absorbing arsenic and heavy metals from soil and water, the removal of oil spills, and enhancement of soils and crops, all using various formula of calcium bentonite.

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PEV's Bentonite Based Environmental Technologies

Without doubt, the world faces significant environmental issues.

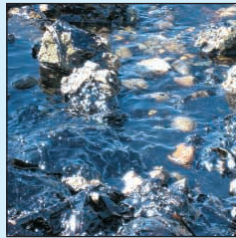
Pacific Enviromin working closely with the CSIRO, the Centre for Risk Assessment and Remediation (CERAR) at the University of South Australia and CRC Care, is confronting these challenges through the development of its bentonite-based environmental remediation, public health and improved crop yield technologies.

Pacific Enviromin owns, jointly owns, or has exclusive worldwide rights to exploit several remediation and environmental technologies, which are at varying stages of development.

The technologies include:

■ Removal of Oil Spills by Organically Modified Clays:

an oil spill removal technology using modified industrial clays, that when contained in porous bags ("Spillows") absorb large amounts of oil and diesel and float on water as spill control barriers.



■ Improved Crop Yield using Beneficiated Clay:

a treatment of degraded or 'poor' soils that is designed to reduce the leaching of plant nutrients, reduce water requirements and sustain a significant increase in crop yield.



PEV commenced life as the listed company, Techstar Limited, in 1999, taking interesting patents and prototype inventions through the development and commercialization pipeline. As the original inventions exited the pipeline, the company looked for the next batch of R&D opportunities.

In 2005, the Company acquired the business which had been developing the interesting environmental remediation technologies mentioned above, and began the commercialization of some of the technologies. The first was "Spillows", a technology developed in partnership with CSIRO, which uses a bentonite-based product contained in porous tubes to absorb water-borne oil spills or protect environmentally sensitive riparian areas from petroleum leakage.

Introduction of the smoke technology to global players followed, and interest in the soil enhancement product lead to agreements in the Middle East to assist in "greening the desert".

More recently, PEV has been working with a Pacific Island nation to provide a remediation process for its degraded soils.

(Continued)

■ Reduction of Toxic Compounds from Industrial Sites and Cigarette Smoke:

a technology applying chemically modified clays as a selective filtration/absorption with particular application to cigarette filters, smog and toxin facemasks and industrial filtration systems to reduce toxic emissions.



■ Remediation of Contaminated Soils using Bioavailability Reduction:

a technology to reduce the bio-availability of heavy metals and other pollutants in contaminated soils using bentonite's capacity to draw and bind other compounds to it.

■ Clay-Based Technology for Wastewater Remediation:

a technology to remediate industrial and municipal waste-water.

■ Remediation of Heavy Metal Contaminated Sites:

a technology to minimise human exposure to contaminated soils through the use of a clay-based synthetic material to bind heavy metals. The project has the support of the South Korean Government, and the CRC Care has successfully completed trials in South Korea, and is progressing trials in China, which have also been successful.



In 2006, PEV extended its vertical integration by acquiring Australia's largest calcium bentonite resource in Central Queensland at Mantuan Downs west of Rockhampton. Mining at this resource will commence in March 2008.

The calcium bentonite from the Queensland resource is considered among the highest quality in the world and will be used for a multitude of applications including purification of food oils and wines, pharmaceuticals, livestock feed, pelletisation of iron ore, agricultural applications, and of course, environmental remediation.

With this acquisition, came the name change to more accurately reflect the company mission – environmental remediation and industrial minerals.

PEV has also acquired tenements covering other industrial minerals such as dolomite and nepheline syenite, and most recently completed the acquisition of a western Queensland sodium bicarbonate project. The sodium bicarbonate is contained in subterranean brine water that will be pumped to the surface, then purified through reverse osmosis. This process will generate significant volumes of potable water which will be available for the local community.

Sodium bicarbonate (baking soda) is used extensively in food manufacture, pharmaceuticals, mineral processing and other industries. Major derivative products such as sodium carbonate (soda ash) and caustic soda are also key inputs into a number of industries including chemicals and glass manufacture.

According to PEV Chairman, Brian Jones, PEV will continue to build a diversified, industrial mineral portfolio because these products have a multitude of industrial uses, are in strong demand from Asia, generally have minimal primary processing costs, and provide product diversification within the one portfolio. The environmental remediation projects provide a natural end market for the minerals, and also the opportunity to do something beneficial for some of the major environmental issues facing Australia and SE Asia.

Brian said that as a growing ASX listed company, PEV has additional burdens of corporate governance and disclosure, and he will continue to look to Sothertons, who have provided support to PEV and its antecedents for many years, for ongoing support in accounting, tax and financial matters. ■

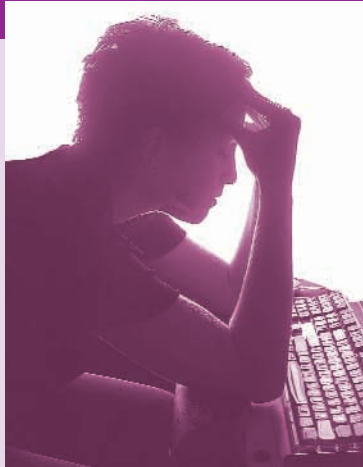
Sothertons Brisbane is proud to be associated with this groundbreaking organisation.

Pacific Enviromin Limited, www.pacenviromin.com



FATIGUE MANAGEMENT – Are You Getting Tired at Work?

Australian State & Territory Occupational Health and Safety Legislation imposes obligations on employers to ensure the health and well-being of employees. In doing so, identifying and controlling risks that affect employees can be relatively simple, whilst other workplace hazards can be more complex, such as fatigue.



The modern workplace recognises that fatigue can be a major contributing factor to accidents, as the psychosocial health of employees can significantly impact performance and productivity. Consequently, the management of fatigue related risks has increasingly become a focal point. This has also been coupled with regulator expectations that employers understand how fatigue affects the human body and what risk control solutions are available to minimise or prevent harm in the workplace.

This article outlines the fundamental elements of fatigue, contributing factors and how fatigue risks can be effectively managed within the workplace.

Important Prosecution

A Western Australian transport company was convicted in 2005 and fined for inadequate management of workplace fatigue risks. Improvement notices were initially issued by a WorkSafe inspector that indicated that a fatigue management plan should be developed by the transport company to identify key risks and suitable control measures for their employees. Further warnings were issued when it was found no suitable action had been undertaken. This ultimately led to the company being prosecuted for failure to put into place a fatigue management plan.

The case emphasises that the management of workplace fatigue, where relevant, is an essential component to effective risk management and also is an obligation of the employer to adequately address.

What is Fatigue?

There are a number of different definitions for fatigue and these include:

'The consequence of inadequate restorative sleep; and 'The increasing difficulty to perform physical or mental activities'.



Everyone has a basic 24 hour day activity cycle (i.e. body clock) against which many of the body rhythms (such as sleeping, wakefulness, digestion etc) operates. These cycles are referred to as "circadian rhythms".

The effectiveness of the body clock can be severely affected by shiftwork, inadequate rests, or irregular working hours, resulting in sleep disruption and/or health problems for the individual concerned.

Is your business exposed to workplace fatigue?

Employees can be exposed to workplace fatigue. However, there are particularly high risk work environments where the contributing factors are significant or permanent features of that workplace.

These high risk factors in a workplace may include:

- Working 12 hour shifts or longer.
- Working out of normal working hours – shift work and/or night work e.g. truck drivers, hospital staff, security.
- Insufficient rest periods between work shifts.
- Adverse working conditions e.g. noise, dust, vibration, temperature extremes etc e.g. factory workers, machine operators, miners.
- Employees undertaking repetitive or monotonous work e.g. production line workers, data entry personnel.
- Work tasks requiring sustained physical or mental effort.
- Complex physical or mental tasks.

Your OHS Legal Obligations

Under OHS legislation, employers must provide and maintain for employees a working environment that is safe and without risks to health. This includes managing fatigue related risks.

Health under our OHS legislation includes not only physical but psychological health of employees.

Employers must identify fatigue related hazards and eliminate risks to health so far as is reasonably practicable, and if not, reduce them so far as is reasonably practicable.

OHS legislation also requires employees of all levels to take reasonable care for their own health and safety and that their acts or omissions at a workplace do not adversely affect the health and safety of themselves or others.



Managing Workplace Fatigue

Fatigue Management Plans (FMP's) based on Australian Standard 4360 Risk Management principles, are an effective risk management strategy to control exposure to fatigue.

An FMP enables employers to identify potential fatigue hazards in the workplace, and develop suitable means of controlling these hazards so far as is reasonably practicable.

By developing and implementing a planned approach, employers can reduce the likelihood and severity of workplace incidents where fatigue is a contributing factor.

A FMP will document the strategies you have determined to control the risks of fatigue.

The key steps in developing a FMP are as follows:

1. Identify the Contributing Factors to Fatigue

- Roster design, e.g. night shifts, nature of rest breaks, changes to rosters.
- Task related factors, e.g. excessive workloads, repetitive tasks,
- Work environment factors, e.g. adverse working conditions such as noise, dust, vibration, heat, etc.
- Non-work related factors, e.g. family/social commitments, sleep disorders, secondary jobs.

2. Assess the Risks of Fatigue

Assess risks so that you can prioritise and effectively control the hazards identified. To determine the level of risk for each individual fatigue contributor, the likelihood of the incident occurring and the consequences once that incident has occurred should be considered. Some examples of the type of risks associated with fatigue include:

- Decreased alertness;
- Higher error rate;
- Impaired judgement;
- Reduced productivity;
- Stress;
- Heart Disease, etc.

3. Implement Risk Control Measures

Steps to control hazards are then formulated with reference to the 'hierarchy of controls'. Types of control measures and strategies which should be considered in your FMP include:

- Reviewing work loads/ requirements and associated resources;
- Development of internal rostering guidelines to limit the number of night shifts rostered in a row;
- Reviewing task allocations;
- Investigating the possibility of job rotations where practicable;
- Outsourcing / contracting out non-essential activities;
- Investigating and minimising work environment factors such as controlling noise exposure;
- Ensuring employees are taking their allocated rest breaks, etc.

4. Monitor and Review the Effectiveness of the Fatigue Management Plan & Controls

Risk control measures implemented should be monitored and reviewed to ensure the control measures are adequate in terms of being effective in reducing the risk to an acceptable level. ■

Noel Arnold & Associates are one of Australia's largest Risk Management and OH&S Consultants.
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Timing of Receipts

The Tax Office has issued a Self Managed Superannuation Funds (SMSF) Determination that provides its view on the timing of when a dividend or trust distribution is received by a SMSF for the purposes of the in-house asset rules.

The Determination states that the timing depends on the payment option that is either chosen by the SMSF or prescribed by the company or trust respectively.

The in-house asset rules govern the proportion of a superannuation fund's assets that may be lent by the trustee to or invested in an employer-sponsor of the fund or an associate of the employer. The rules state that a trustee of a superannuation fund must not acquire in-house assets if to do so would increase the ratio of such assets to over 5% of total assets, or if the ratio already exceeds 5%.

However, transitional provisions can apply to exclude investments in related entities as being in-house assets. One of the transitional provisions seeks to exclude investment made in related entities between 12 August 1999 and 30 June 2009 as being classified as in-house assets. This transitional provision requires a taxpayer to test when a dividend or trust distribution is received by the SMSF. ■

PREPARING FOR A BUSINESS SALE

- **How long do you need to get your business sale ready?**
- **When do you start the preparation process and what are the implementation steps?**

The reality is that succession is a process, not an event. Business owners who deal with their succession as an event, something they decide on, on the spur of the moment, almost always dilute the value that may have otherwise been available to them.

Based on the theory that sooner or later every business will be sold, or die then it should be developed with the view to its future sale from day one. In most cases this does not happen, so what is the next best alternative?

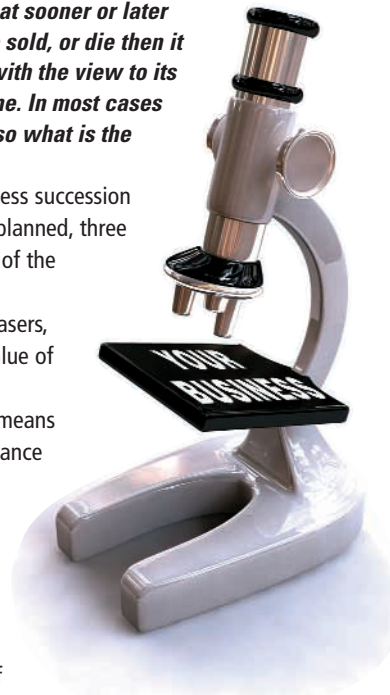
Where possible, business succession should be mapped and planned, three to five years in advance of the business sale.

The majority of purchasers, when they assess the value of a business will look for established trends. This means seeing business performance reflected in the financial statements over a number of years.

Most buyers and their advisers will want to review the financial performance of the business for at least the

past three years. So if you are making changes to enhance the business value then ideally these changes will show themselves over a sustained period.

Where you can only show improved performance over one year or in the forward budgets then there will always be a level scepticism that this is an aberration, or that the improvement has been artificially created in some way. Irrespective of the conclusion a higher level of discount to the result will generally be applied.



Working on a three to five year time frame what are the critical steps?

■ **Undertake a Business Diagnostic:**

This is a thorough review of your business – warts and all. It is designed to assess where the business is currently at, a level of risk analysis and an identification of the areas where the business could improve. This is important because often the greatest danger for a business owner is not knowing what they don't know.



■ **Complete a Valuation:**

You need to put a benchmark in the ground and know what the business is worth. Too often business owners have no real understanding of the true value of the business.

■ **Start on the Housekeeping:**

Often we see businesses where some of the history needs to be cleaned up. This is often reflected in the balance sheet and may take some time to sort through.

■ **Business Enhancement:**

Based on your diagnostic, start making changes in the business that will cause permanent and measurable improvement.

Create the reporting and results trail that tracks the changes and the improvements achieved. At the same time build your forward budgets and estimates around the leverage that will come out of the change.

When you have worked through this and established your trends over a three year time period then you are ready to go market.

Back to the timing issue. Too often we see vendors who are looking to micro manage the timing of the business sale. In some cases the result is that they miss out on a good opportunity or wait until a time when the sales environment is not a strong one.

You should work on "window periods". These are the times within a succession plan when a sale is a reasonable outcome. For most small businesses the window period is any time plus or minus eighteen months from their ideal sale date. Being open to a window period means that if the right buyer comes along somewhat before the time you want to sell then you should still take the opportunity. Alternately if you need to wait an extra year for the right sale environment then this should also be manageable. ■

Offshore voluntary disclosure

The Tax Office is encouraging people to come forward and make disclosures of undisclosed income from offshore activities.

The ATO are increasing their audit activities in cases where people may try to conceal income and assets offshore in tax havens. Taxpayers who contact them before they are the subject of an audit and make a full and true disclosure will have reduced shortfall penalties.



The ATO are asking taxpayers to review their tax returns.

You may receive correspondence from your bank or the Tax Office about the compliance program and the voluntary disclosure initiative.

The ATO have worked on a project with some Australian financial institutions, and in a pilot program have asked some of their overseas subsidiaries or branches in Vanuatu to write to their Australian customers informing them of this opportunity and how to make a voluntary disclosure, if required.

The ATO are also sending letters to individuals they have identified using AUSTRAC data or having an offshore debit or credit card issued by a financial institution in the tax havens of Jersey, Guernsey or the Isle of Man.

Helping people do the right thing and taking a firm approach with those who don't, builds confidence in the tax system and helps create a level playing field for all taxpayers.

Benefits – reduced shortfall penalties

If you make an offshore voluntary disclosure under this initiative and your additional taxable income is \$20,000 or less for a year you will not have to pay a shortfall penalty for that year.

If the additional taxable income exceeds \$20,000 for a year, you will be entitled to a reduced shortfall penalty of 5% of your additional liability.

Shortfall penalty can be as high as 90% of the additional liability, depending on the circumstances that led to the shortfall and the taxpayer's level of cooperation. ■

**Sothertons
Australian Offices**



Our Partners are Your Partners

ADELAIDE

Sothertons, 42 Hurtle Square, Adelaide SA 5000
GPO Box 2193, Adelaide SA 5001
Phone: (08) 8223 7311 Fax: (08) 8223 7488
Email: sothertons@sothertonsadelaide.com.au

BRISBANE

Sothertons, 8th Floor, 10 Market Street, Brisbane, QLD 4000
Phone: (07) 3221 1877 Fax: (07) 3221 8261
Email: sothbris@sothertons.com.au

GLADSTONE

Sothertons, Level 1, 100 Goondoon Street, (PO Box 5066) Gladstone, QLD 4680
Phone: (07) 4972 1300 Fax: (07) 4972 4386
Email: sothertons@sothertonsgladstone.com.au

MELBOURNE

Sothertons, Level 6, 468 St Kilda Rd, Melbourne, Victoria 3004
Phone: (03) 9820 6400 Fax: (03) 9820 6499
Email: sothertons@sothertonsmelbourne.com.au

PERTH

Sothertons, Level 3, Centrepont Tower,
123 Colin Street, West Perth, WA 6005
Phone: (08) 9322 6280 Fax: (08) 9322 5564
Email: sothertons@sothertons-wa.com.au

SYDNEY

Sothertons, Level 24, Westfield Tower 2,
101 Grafton Street, Bondi Junction, NSW 2022
Phone: (02) 9389 7777 Fax: (02) 9387 4995
Email: info@sothertonssydney.com.au

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