

The SOTHERTONS REPORT



MAY 2008

Welcome to the May issue of the Sothertons Report

We give an overview of Federal Treasurer Swan's first budget and its implications for our clients. With the end of the financial year rapidly approaching we outline tax planning issues and superannuation with a comprehensive reminder list for both categories. Other areas covered include: The Prime Ministers 2020 summit; Copyright and the ramifications for consumers and business; and the second part of our article on "Selling a Business".

In addition the report includes a number of useful tips in relation to capital gains tax, small business entities, trusts as well as various other tax issues. The implementation of the Rudd Labor government's industrial relations policy that commenced on 28th March 2008 is outlined in detail.

We detail how businesses who do frequent trade in the region can use an APEC (Asia-Pacific Economic Cooperation) Card to help ease and speed up their travel arrangements.

The Sotherton's Profile this month highlights Melbourne based ACG Corporate Services – one of Australia's largest and most successful corporate security firms.

AUSTRAC (The Australian Transaction Report and Analysis Centre) is Australia's anti-money laundering and counter terrorism financing regulator and we include an update of the act and their activities.

Of concern to the agriculture sector (and consumers as well) is an article from a Sotherton's Adelaide client on "Should the Water market be regulated?".

Since the last Report we have welcomed the following staff members to our ever growing ranks: Ariel Park, Tina Han, Helen Jiang and Ian Tao. We wish them all the best as they start and continue their professional careers. Until next time. ■

HIRING A CONSULTANT ? Be aware of the potential pitfalls.

Evaluating and Assessing.

Consultants can be instrumental in playing an important role in the daily activities of many businesses. As consultants cover a broad range of industries and backgrounds they need to be carefully assessed and evaluated. You want a consultant that has experience, industry knowledge and of course, innovative ideas.



Contractual Agreements.

It is imperative that you clearly define the following guidelines and have the completed agreement signed by both parties.

This should cover :

- The agreed work required
- The timeframe for completion – Many consultants work on several projects at the same time. Lock in specific timelines to guarantee the report fits within your expectations.

The Consultant's Background.

- Consultants abilities, skills and range of services vary widely. The consultants area can be a minefield as many late-comers see the area as a gravy train.
- Due diligence which includes thoroughly checking references for previous work completed and employment history.

Can Any Of Your Staff Contribute?

Businesses often hire outside consultants without thoroughly checking the background and resumés of their own employees.

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HIRING A CONSULTANT ? (continued)

Pay Rates For The Services Delivered.

You should conduct research into industry charges to identify typical costs you would expect for the services carried out. Business and commercial associations can be helpful in clarifying or pointing you in the right direction.

Additional Expenses.

Apart from the fee the consultant charges there are often additional expenses that they may expect to be covered. Advance guidelines should be discussed and nominated in any contractual document.

Interviewing the Consultant.

If they will be involved in the future directions and management of your business, it is imperative that you conduct a comprehensive interview. This should be treated as seriously as employing fulltime employees.

Confidentiality Agreements.

Having a signed letter of confidentiality is most important as the consultant's next job could be with-in your market sector or worse still, your major competitor. As consultants are free agents this potential conflict needs to be addressed and outlined in both the contract and a letter of confidentiality.

The Brief.

Lack of clear communication is a common mistake. To minimise complications once the project is under way the consultant and employer must have a clearly defined brief outlining all areas to be covered and what the employer's expectations are. A lack of clear communication is one of the most common mistakes made when employing outside contractors.

Introducing Your Staff To The Consultant.

Minimise problems by outlining to your staff who the consultant is and why they will be requesting certain documents, files and assistance. ■

PERSONAL TAXATION

Employee Share Schemes

Election required

The Government has announced that a taxpayer will be required to make an election to access the tax concessions available when receiving qualifying shares or rights under an employee share scheme. No further details were provided.

Removal of double taxation

The Government has announced that it will remove double taxation that arises in relation to certain employee share schemes (ESS) that use employee share trusts.

Entrepreneurs' Tax Offset

The Government will introduce a family income test for the entrepreneurs' tax offset.

The test will limit access to the offset by restricting eligibility when the adjusted taxable income (ATI) per year exceeds the amounts given below:

Taxpayer	Maximum ATI (\$)	Date of effect
Singles	75,000	1 July 2008
Families	120,000	1 July 2008

Income Test For Benefits

The Government has announced that it will introduce an income test for the following benefits:

Offset	Maximum income threshold (\$)	Date of effect
Dependent spouse	150,000	1 July 2008
Housekeeper	150,000	1 July 2008
Child-housekeeper	150,000	1 July 2008
Invalid relative	150,000	1 July 2008
Parent/parent-in-law offset	150,000	1 July 2008

Family Tax Benefit Part B

From 1 July 2008, FTB Part B will only be available to families where the annual adjusted taxable income of the principal earner does not exceed \$150,000.

Furthermore, FTB will only be delivered through Centrelink and Medicare, thereby removing claims through the tax system.

PERSONAL TAXATION

Child Care Tax Rebate

The Government has confirmed that the Child Care Tax Rebate will increase from 30% to 50%.

The cap on the amount that can be paid will be lifted from \$4,354 to \$7,500 per child. In addition, the rebate will be paid quarterly.

Education Tax Refund

The Government has confirmed it will provide eligible parents with an Education Tax Refund from 1 July 2008.

Baby Bonus

From 1 July 2008, the Baby Bonus will be increased to \$5,000.

In addition, from 1 January 2009, the Baby Bonus will be paid in fortnightly instalments and will only be available where family income does not exceed \$150,000 a year.



Measures For Carers

The following measures to support carers were announced in the 2008/09 Federal Budget:

- Carer Allowance recipients will receive a \$600 tax-free bonus for each eligible care receiver;
- Recipients of Carer Payments and Department of Veterans' Affairs Carer Service Pensions will each receive \$1,000 tax-free. Carer Allowance recipients who receive a Wife Pension or the Department of Veterans' Affairs Partner Service Pensions will also receive \$1,000;
- Eligible carers looking after children with a profound disability will have fairer and simpler access to financial support of up to \$546.80 per fortnight; and
- Disabled children whose ageing parents can no longer care for them at home will be provided with additional supported accommodation.
- Bonus payments are expected to be automatically made before the end of June 2008. Those receiving both payments on 13 May 2008 will receive both lump sum payments.



PERSONAL TAXATION

Expanded definition of income

Income eligibility for Government support programs, including the Age Pension and superannuation co-contributions, will include certain "salary sacrificed" contributions to superannuation, effective from 1 July 2009.

Net financial investment losses and net rental property losses will be included in determining the eligibility for certain government support programs, including senior Australians tax offset, Medicare levy surcharge and dependency tax offsets, effective from 1 July 2009.

From 1 July 2009, reportable fringe benefits will be included when determining the eligibility for certain tax offsets, including dependency tax offsets, senior Australians tax offsets and pensioner tax offsets.

BUSINESS TAXATION

Luxury Car Tax

The Government has announced that the Luxury Car Tax (LCT) will increase from 25% to 33% with effect from 1 July 2008.

However, the Government has stated that the luxury car limit will remain at \$57,123.



FBT

Jointly Held Investment Assets

The Government has announced that the FBT law will be amended to ensure it applies appropriately where an employer provides an employee and their associate with a fringe benefit in relation to a jointly held investment asset

The measure will take effect from 7.30 pm (AEST) on 13 May 2008 with respect to new arrangements.

Work-Related Items

The government has announced that the FBT exemption for work-related items will only apply if the items are used primarily for work purposes and be limited to one item of each type per employee per FBT year, unless they are replacement items.

The list of FBT-exempt work-related items will be extended to all work-related portable electronic devices, including those with

FBT (continued)

multiple functions. The government has also announced that the tax law will be amended to disallow employees from claiming depreciation for the work-related percentage of FBT-exempt items.

The changes to the FBT exemption for work-related items will apply to items purchased after 7.30 pm (AEST) on 13 May 2008.

The changes that disallow depreciation for FBT-exempt items will take effect as follows:

- for items purchased after 7.30 pm (AEST) on 13 May 2008, this measure will take effect from that time;
- for items purchased before 7.30 pm (AEST) on 13 May 2008, employees will be denied depreciation for the 2008-09 and later income years.

Superannuation

The 2008/09 Federal Budget did not announce any substantive changes concerning superannuation. There are no changes to the current superannuation regime.

OTHER BUDGET MEASURES

Family Trusts

The Government has confirmed that the following changes to family trusts, which were introduced by the previous Government, will be rolled back to revert to the following situations:

- the definition of "family" in the family trust election rules will be changed to limit lineal descendants to children or grandchildren of the test individual or of the test individual's spouse. This will take effect from 1 July 2008; and
- family trusts will be precluded from making a once-off variation to the test individual specified in a family trust election. This will take effect from the 2007/08 income year. ■

SCAMwatch

Don't let scams sneak under your radar!

Due to space limitations because of the Budget and Tax Planning Overviews we have held over an article on SCAMS until the July issue of the Report.



Put simply, tax planning is the arrangement of a taxpayer's affairs so as to comply with the tax law at the lowest possible cost. A common mistake is to believe that tax planning is optimised when every opportunity to reduce tax is taken.

This is because some opportunities to reduce tax rely on strained interpretations of the law. Therefore, tax planning involves much more than taking the option that at first appears to result in lower tax costs. It involves objectively assessing and actively managing tax risk.

Common tax planning techniques that can be deployed are deferring the derivation of assessable income and applying techniques to bring forward deductions. These techniques are discussed below.

It is important to realise that consideration may also need to be given to the general and any relevant specific anti-avoidance measures contained in the tax law.

Deferring assessable income

- The timing of when business income is derived depends on the method which a taxpayer uses. Depending on the nature of the business, income can be reported using either the cash or accrual basis. If the taxpayer is reporting income on an accrual basis, the income is assessable when a recoverable debt is created. If the taxpayer is reporting income on a cash basis, the income is assessable when it is physically received or applied on the taxpayer's behalf. However, an exception exists for income received in advance of services provided.

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TAX PLANNING

- If income is received in advance of services provided, it will not be assessable until the services are provided. However, the accounting records of the business must classify the unearned income separately from income already earned.
- Taxpayers who provide professional services may consider, in consultation with their clients, rendering accounts after 30 June to defer the income.
- Interest, rental income, dividends and royalties are not assessable until received (or otherwise paid or credited on the taxpayer's behalf).
- Generally, trust distributions are assessable in the year they are declared, notwithstanding the Commissioner's practice which allows a trustee up to two months after the end of the financial year to distribute the trust's income.

Maximising deductions

- An entity's debtors may be reviewed prior to year-end to identify and write off any debts which have gone "bad". A bad debt can qualify for a deduction subject to certain conditions being met.
- Certain business-related capital expenditure may be deductible. These expenditure include: establishment of business premises; research into likely markets or profitability of a business; due diligence reports; and liquidation and deregistration costs for a business.
- Consider writing off any depreciating assets which are no longer being held for use because a deduction may be available.
- Review the asset register to identify any low-cost and/or low-value assets that may be pooled together to access an accelerated rate of depreciation.
- Non-business taxpayers are entitled to an outright deduction for assets costing \$300 or less, provided certain conditions are satisfied.
- Business taxpayers are entitled to an outright deduction for assets costing \$100 (GST inclusive) or less.
- It is the GST-exclusive value of a depreciating asset that is used in calculating the depreciation, regardless of whether entitlement to input tax credits has been claimed.
- If an entity has carried forward losses, identify whether any net exempt income has been derived for the income year. Carried forward losses will need to be firstly offset against the net exempt income before being available to reduce any assessable income derived during the income year.

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TAX PLANNING



- Try to avoid making a donation in a year of losses. This is because a deduction for a donation cannot add to or create a tax loss.
- An entity that has been classified as a small business entity may consider choosing to apply the simpler depreciation concessions, which will provide an immediate deduction for assets costing \$1,000 or less (GST exclusive), and accelerated rates of depreciation.
- Trading stock can be valued at replacement value, market value or cost. The method does not need to be the same for each category of trading stock, therefore maximising deductions.
- Taxpayers may review their closing stock to consider whether any obsolete stock exists to obtain a deduction.
- If an entity has previously elected to use the trading stock concessions available to former Simplified Tax System (STS) taxpayers, consideration may be given to conducting a proper stocktake.
- Employers should ensure that superannuation contributions are paid to their employees' superannuation fund prior to 30 June 2008 to obtain a tax deduction and avoid any superannuation guarantee charge.
- A personal superannuation contribution is available to taxpayers if less than 10% of their total assessable income and reportable fringe benefits is derived from their employment.

Deemed dividends and private companies

- Certain loans, payments and forgiveness of debts by private companies to their shareholders and associates can give rise to unfranked dividends, which are assessable to the shareholders and associates. Try to repay any loans or payments by the earlier of the actual lodgement date or due date for lodgement of the company's return for that year. Alternatively, appropriate loan agreements should be in place.
- Review whether a trust has an unpaid present entitlement to a corporate beneficiary. Potentially, an unfranked dividend (from the company to its shareholders) can arise. Try to repay any unpaid entitlement to the corporate beneficiary by the earlier of the actual lodgement date or due date for lodgement of the trust's return for that year to avoid an unfranked dividend from arising.

TAX PLANNING

Personal services income

- If an individual applies personal efforts and skills in performing services for third parties through an interposed entity (company, trust or partnership), the personal services income rules may instead deem the individual to be assessable on the income generated, unless one of the required personal services business tests is satisfied or a determination is obtained from the Tax Office.
- Identify any unusual circumstances that will prevent the tests from being satisfied. A determination will be granted only if there are any unusual circumstances.

Non-commercial losses

- A loss from an individual's business activity (whether carried on alone or in a partnership) may only be offset against other income derived in the same income year if the business activity satisfies at least one of the four commerciality tests or a determination has been obtained from the Commissioner. Consideration should be given to the relevant tests, as the individual's overtax position will be impacted when the loss is deferred.

Small business entities

- Consider whether an entity satisfies the requirements to be classified as a small business entity. A small business entity can access various tax concessions, such as the simpler depreciation and trading-stock rules. (The small business entity regime replaced the STS from 1 July 2007. The definition of a small business entity is broader than that of an STS taxpayer.)

Companies

- Ensure that all distributions to shareholders during the franking period are franked to the same extent to avoid a franking deficit tax.
 - A private company has four months after the end of the income year to provide its shareholders with a distribution statement for dividends paid. In effect, the company can retrospectively correct any overfranking or underfranking of distributions.
- Trust distributions
- If a trust has derived capital gains and the income and capital beneficiaries are different, consider whether an election needs to be made to avoid the anomaly if the former will be taxed on the capital gains rather than the latter.

TAX PLANNING



- The trustee distributes the accounting profit, and not the taxable profit, of the trust.
- It is the Commissioner's practice that a trustee has up to two months after the end of an income year to distribute the previous year's net income. (The distribution is still assessable in the previous income year.)
- If a trustee is distributing income to a minor (i.e. under 18), the minor can receive up to \$1,667 in non-taxable distribution.
- If possible, consider distributing all the income of the trust to its beneficiaries. Income that is retained in the trust will be taxed at the 46.5%.
- If a company is owned by a discretionary trust, consider the necessity for the trustee to make a family trust election to ensure any losses or bad debts incurred by the company will be deductible.
- If shares are owned by a discretionary trust, consider the necessity for the trustee to make a family trust election to ensure any franking credits attached to the dividends will not be "wasted".
- If a family trust election has been previously made, try to avoid distributing outside the family group to avoid any potential liability to the family trust distributions tax.

Capital gains tax

- Consider crystallising any unrealised capital losses in the income year if you are anticipating a significant capital gain.
- Consider deferring the disposal of shortly-held assets. If an asset is held for at least 12 months, a 50% CGT discount may be available to reduce any capital gains.
- Consider whether a rollover relief is available to defer any capital gains.
- Consider the availability of the small business CGT concessions which can disregard, reduce or defer a capital gain arising from the disposal of an asset which has been used by an entity in the course of carrying on its business.

TAX PLANNING

- Review any expenditure incurred on an asset to ensure maximising the cost base of the asset.
- If a significant capital gain has been made, an eligible taxpayer may consider contributing some or all of the gain to his or her super fund to reduce the tax payable. This is because a deduction is available for personal superannuation contributions.

Salary sacrifice arrangement

- Consider entering into a salary sacrifice arrangement with your employee for the coming income year, particularly since the repeal of the superannuation surcharge. Salary sacrificing part of your cash salary for non-cash benefits can potentially reduce your income tax liability and result in a better net cash flow.
- If you are expecting to derive bonus and/or commissions prior to the close of the income year, consider salary sacrificing these amounts to reduce your tax liability.

Superannuation strategies

- Consider splitting concessional superannuation contributions with your spouse to receive your combined super balances in a more tax-effective manner.
- Consider entering into a salary sacrifice arrangement with your employer to forego part of your cash salary into superannuation. This potentially can reduce your income tax liability and increase the level of savings in your superannuation account.
- Eligible taxpayers who make a personal contribution will receive the Government's superannuation co-contribution.
- If permissible, consider moving assets into a superannuation fund because of the lower tax rate. ■

FBT Rates

The Tax Office has released the FBT thresholds and rates for the 2008/09 FBT year (i.e. the FBT year commencing on 1 April 2008).

Benchmark interest rate: The interest rate to be used in calculating the taxable value of a loan fringe benefit and a car fringe benefit under the operating cost method is 9% per annum.

Exemption threshold: The small business record-keeping exemption threshold is \$6,766.

ABOUT AUSTRAC



Australian Government

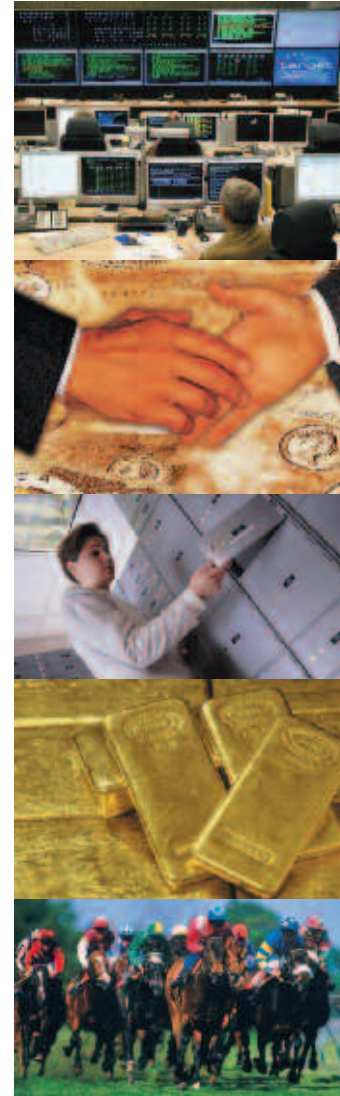
Australian Transaction Reports and Analysis Centre

The Australian Transaction Reports and Analysis Centre (AUSTRAC) is Australia's anti-money laundering and counter-terrorism financing regulator and specialist financial intelligence unit. AUSTRAC was established under the Financial Transaction Reports Act 1988 (FTR Act) and continues operation under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act).

The AML/CTF Act

Introduced to meet revised international standards and keep pace with criminal practices and changes in technology, the AML/CTF Act was given royal assent on 12 December 2006. To ensure minimum disruption to businesses, implementation of the new legislation is being staggered over two years, with provisions commencing between December 2006 and December 2008. Currently, the FTR Act and the AML/CTF Act exist alongside each other.

The industries affected by the AML/CTF Act are banking, non-bank financial services, money transfer, bullion dealers and gambling businesses (reporting entities) that provide 'designated services'. The designated services include amongst others: opening an account, accepting deposits or allowing withdrawals, making a loan, issuing a debit or credit card, issuing traveller's cheques, remittance services, funds management, superannuation, life insurance, financial planning and stockbroking.



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The AML/CTF Act employs a risk-based regulatory framework. The Act recognises that a reporting entity is best placed to assess the risk that its business may be used for money laundering or terrorism financing (ML/TF).

The risk-based framework allows entities to be more efficient and effective in their use of resources and minimises burdens on customers. Focusing on higher risk threats should mean that beneficial outcomes can be achieved more effectively.

AML/CTF Act Provisions

Initial AML/CTF provisions came into effect on 13 December 2006 and included various record keeping provisions, followed by correspondent banking and compliance reporting provisions on 12 June 2007. On 12 December 2007, the most significant provisions in the AML/CTF Act came into effect, namely those relating to AML programs and the requirement for businesses to actively assess and manage the risk of ML/TF they may reasonably face.

In December 2008, provisions relating to ongoing customer due diligence will come into effect, which means monitoring transactional activity and performing enhanced customer due diligence. Reporting obligations under the Act will also commence in December 2008 for threshold transactions, suspicious matters and international funds transfer instructions.

AML/CTF Programs

From 12 December 2007, all businesses that provide one or more designated services have been required to have in place an AML/CTF program to identify and manage a business's exposure to the risk of exploitation by parties engaged in ML/TF. This program also includes having customer identification procedures which allow a business to be reasonably satisfied its customers are who they say they are.

AML/CTF programs have two parts: A and B.

The purpose of Part A is to identify, mitigate and manage the risk a business may reasonably face in providing a designated service which might involve or facilitate ML/TF. This process will assist a reporting entity to put in place risk-based systems and controls to readily identify, recognise and assess changes to its ML/TF risk.

The purpose of Part B of an AML/CTF program is to set out applicable customer identification procedures. These new procedures relate to the collection and verification of customer information, which will vary between customer types: individuals, companies, trustees, partners, associations (incorporated or unincorporated), registered co-operatives, government bodies and agents. This may also depend on a business's risk assessment determined under Part A.

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AUSTRAC's Monitoring & Enforcement Strategies



Australian Government
Australian Transaction Reports
and Analysis Centre

AUSTRAC has worked hard

to identify, locate and send letters to reporting entities captured under the AML/CTF Act to advise them of their obligations under the Act. AUSTRAC has also undertaken an extensive national program to promote, educate and assist reporting entities in complying with the legislation. A Help Desk has also been established to manage any enquiries from entities.

Under the Policy (Civil Penalty Orders) Principles 2006 issued on 31 January 2007, reporting entities are expected to have taken 'reasonable steps' to fully meet their ongoing statutory obligations. In the first 15 months from each of the staggered commencement dates, civil penalty action will only be initiated where a reporting entity has failed to take 'reasonable steps' to comply with its obligations. AUSTRAC recognises that there is a wide variety of reporting entities, with differing levels of understanding and knowledge of their obligations and will, in the first instance, seek to resolve any identified compliance issues in a cooperative manner. In cases of serious non-compliance, the penalties for criminal offences include imprisonment for up to 10 years and fines of up to \$1.1 million.

By 12 December 2007, entities should have been either fully compliant or making steady progression towards meeting their AML/CTF program and know your customer (KYC) obligations. If not fully compliant, entities should have at least allocated appropriate resources to identify risks and implement appropriate systems and controls and to have determined milestones to ensure full compliance as early in 2008 as possible.

Compliance Reports

Reporting entities are required to give AML/CTF compliance reports to the AUSTRAC Chief Executive Officer (CEO). An AML/CTF compliance report provides AUSTRAC with information about reporting entities' compliance with the AML/CTF Act, the regulations and the AML/CTF Rules. Reporting entities had until 31 March 2008 to submit their first compliance report which required entities to report on how far they had progressed in implementing various components of their AML/CTF program. The easiest way for businesses to have submitted the compliance report was through AUSTRAC Online. By doing this entities benefited from a tailored, streamlined compliance report.

Entities who only offer designated services within the meaning of item 54 of table 1 in section 6 of the AML/CTF Act are exempt from

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the requirement to complete a compliance report. Item 54 covers an Australian financial services licence holder who arranges for a person to receive a designated service (other than an item 54 service). ■

Detailed information on the AML/CTF Act, AML/CTF programs, compliance reporting and on the obligations of reporting entities, is available from AUSTRAC:

Phone: 1300 021 037

Fax: help_desk@austrac.gov.au

Website: www.austrac.gov.au

2020 Summit calls for tax changes

The Initial Report from the 2020 Summit set out a number of ideas in regard to taxation, some of which are noted below.



- implementing a national tax system that is fair, simple and efficient to support the global competitiveness of Australia's economy
- undertaking a comprehensive review of state and federal taxes within a two-year timeframe. This review should consider how to simplify taxes, reduce inefficient taxes, harmonise, and ensure a progressive system
- implementing tax measures to promote low-carbon consumer choices and lifestyle changes
- creating a national preventative health agency funded by taxes on products with high social cost
- granting tax exemption status for a non-government school conditional on it spending a specified proportion of its total income on scholarships for students from low income families
- providing tax concessions to encourage greater corporate participation and partnerships with Indigenous business
- establishing a national mentoring plan funded by philanthropic funds and tax incentives to bring art into schools
- reviewing philanthropy and tax incentives to support organisations and individual artists and expanding the scope of prescribed private funds. ■

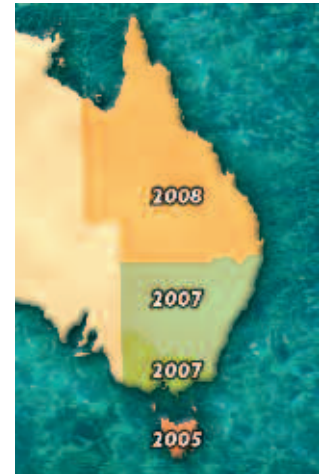
For those interested the "Australia 2020 Summit – Initial Report" is available at: www.australia2020.gov.au/report/index.cfm

Pay-Roll Tax Harmonisation

From 1 July 2007 New South Wales and Victoria agreed to harmonise their payroll tax legislation.

From 1 July 2008 Queensland and Tasmania will join these other two states (but be aware that the rate of registration thresholds will still differ) Sothertons' Report readers should be aware that the significant impact of the above changes will be the adoption of the payroll tax treatment of payments to contractors in Queensland.

The result will be far more people will be caught in Queensland under the new harmonised legislation applying from July 2008. Queensland will also see significant changes for the adoption or employment agent provisions. Obviously with the above legislation commencing the flow of communication and information between the relevant authorities will increase. ■



Taxpayer Alerts



The Tax Office has issued three Taxpayer Alerts warning taxpayers of certain arrangements that are currently being examined. The Alerts pertain to the following situations:

- Non-arm's length arrangements where a taxpayer uses borrowed funds to acquire an interest, such as units in a trust where the latter uses those funds to purchase income-producing property. The Tax Office is of the view that such arrangements do not provide a sufficient connection between the expenditure and the production of future income and/or capital gains.
- Non-arm's length arrangements under which a SMSF derives income through a direct or indirect interest in a closely-held trust. The tax implication is similar to that for the arrangement described above.
- Arrangements under which the trustee of a SMSF enters into certain limited limited-recourse borrowings, which may breach the superannuation law. This Alert does not deal with taxation issues other than those relating to the application of superannuation law.

SHOULD THE WATER MARKET BE REGULATED?

The Australian Water Market was developed as a result of the rapid increase in the demands on our nations scarce water resources. Since its beginning, it has evolved and matured into a complex and internationally unique market place, critical to our National Water Initiative and necessary to support continued prosperity and sustainability for many Australian water users.



Water trading is set to play an increasingly vital role in managing the use of water in the context of the current drought and climatic changes forecast for our future. It gives water license holders and irrigation company shareholders greater economic control over the use of their water allocations, and allows water to be traded according to supply and demand and the value it holds to individual irrigators.

Rather than a uniform and integrated market place, the Australian Water Market consists of a host of localised markets, some of which operate independently and some of which are integrated together. Each individual market can potentially have three tiers of governance that control the trading activities and market operations. These tiers of governance are Federal, state and localised rules through individual delivery companies. State legislation has by far the largest role with market activation as the states are currently responsible to title and conduct the transfer of rights.

A three tier governance system results in a confusing array of water trading rules and regulations. There are potentially over 40,000 trading zone opportunities that exist throughout Australia, each with its own unique process or rule for conducting a potential water transfer.

Currently, the operations of government transfer authorities and water brokers go unchecked and each of these stakeholders are not required to adhere to a specified standard of practice.

This has led to some brokers not operating audited trust accounts and governments/water authorities conducting water brokerage and

This article was provided by Daniel Arevalo who is a client of Sothertons Adelaide. Daniel is a water broker in the Adelaide office of Waterfind, Australia's national water broker.

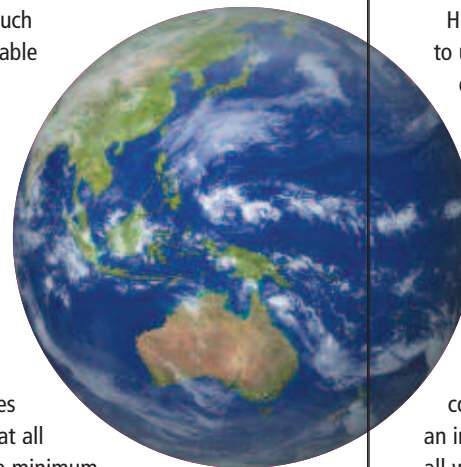
market regulation simultaneously. Such actions would be deemed unacceptable in other regulated markets.

It is estimated that \$1 billion of water is traded within the Australian Water Market annually, and Waterfind strongly believes that the trading of such a valuable and scarce commodity should be strictly regulated and fully supports the existence of a National body to regulate trading and regulatory activities and believes that in doing so, it would ensure that all trades are completed according to a minimum standard. The proposed regulatory body would require all monies associated with water trading activity to pass through audited trust accounts, and irrigation authorities would only be permitted to process and approve water transfers from licensed water brokers.

Amongst all of its complexities, the Australian Water Market has emerged as an unregulated market, with no governing body to regulate the activities of market operators, facilitators or intermediaries.

Regulation would also ensure that brokers have no involvement or influence with regards to regulating and approving water transfers, and would strictly monitor and prohibit brokers from buying and re-selling water for their own personal gain.

One of the main reasons that such a body does not exist is because it is believed by potential regulatory bodies that the cost, complexity and legislative framework necessary to set up a successful regulatory body outweighs the perceived benefits.



However, as irrigators and governments themselves have started to use water markets more frequently, there has been a groundswell of support for regulation to protect those participants and the viability of the water market.

The regulatory debate is now maturing to an extent that discussions are being held on the merits of self regulation versus legislative regulation.

The Australian Water Market emerged to serve the needs of irrigators and farmers, and has since become a necessity. It plays a vital role in assisting with minimising the adverse economic and social effects associated with our Nation's unbalanced supply and demand of water. Whilst Waterfind will continue to self regulate its operations, National regulation in such an important market is necessary to ensure a prosperous future for all water users. ■

Tom Rooney, CEO, Waterfind

Company Loans & Tax Office Concessions To Fix Inadvertent Errors – DEADLINE APPROACHING

Reminder: As mentioned in the October 2007 edition clients have limited time to avail themselves of the Tax Office's concessions with respect to shareholder loans. Failure to take action before 30 June 2008 could result in significant penalties and cash flow concerns.



The Tax Office realise that Division 7A which outlines the requirements regarding loans to shareholders and their associates is a complex area of law that may have resulted in errors or misunderstandings in the past. As such the Tax Office are allowing a one-off opportunity until the 30 June 2008 to self correct past mistakes regarding such loans and avoid penalties under Division 7A. The offer subject to certain criteria applies to honest mistakes and inadvertent omissions made in respect to the 2002 to 2007 financial years.

Should clients have concerns regarding potential risks or identifying what steps are required to rectify exposure and would like to take advantage of the Tax Office concession, please contact your Sothertons office.

APEC BUSINESS TRAVEL CARD



Asia-Pacific Economic Cooperation, or APEC, is the premier forum for facilitating economic growth, cooperation, trade and investment in the Asia-Pacific...



As regular business travellers would know only too well, long queues at customs can both be frustrating as well as adding unproductive hours to trips.

The good news, help is at hand for those businessmen who travel frequently within the Asia Pacific Region.

As an initiative of the APEC (Asia-Pacific Co-operation forum) and to help in their aims to foster and facilitate economic growth, cooperation, trade and investment in the Asia Pacific region the APEC Card was developed. If accepted to the system, the card gives a host of benefits. Cardholders are saved the bother of applying for individual visas or entry permits in 17 Asia Pacific nations.

The system effectively amounts to a three year re-entry permit to all member economies.

At the majority of member countries, members are processed through the crew lane.

The United States though not currently a member has agreed that card members can utilise the express lane at US Entry ports.

Countries that are signed up to the scheme include:

- Australia
- Brunei Darussalam
- Chile
- Hong Kong
- Indonesia
- Japan
- Republic of Korea
- New Zealand
- Papua and New Guinea
- Peoples Republic of China
- The Philippines
- Malaysia
- Peru
- Singapore
- Chinese Taipei
- Thailand
- Vietnam



It is hoped that current discussions being held with Canada, Russia and Mexico will result in all 21 APEC members being involved with this scheme. Once received the cards are valid for three years.

It is important to realise that the card is linked the members passport so if the passport is renewed the card likewise needs to be.

Should any client wish to know more about the card or APEC as an organisation, information can be found at:

<http://www.businessmobility.org/> or
<http://www.apecsec.org.sg/>

Application forms for those who qualify can be found at the following site: <http://www.immi.gov.au/allforms/index.htm> ■



The Tax Office has released the cents per kilometre rates to be used for calculating deductions for the 2007/08 income year:

Engine capacity (cc)	Rotary engine	Rate per km (\$)
0 – 1,600	0 – 800	0.58
1,601 – 2,600	801 – 1,300	0.69
2,601 +	1,301 +	0.70

SELF-MANAGED SUPER FUNDS

Acquisition of Assets by Self-Managed Super Funds (SMSF)

The Tax Office has released a Draft Self Managed Superannuation Fund Ruling stating its position on when a contribution of assets to an SMSF by a related party of the fund will not contravene the SIS Act.

Generally, a trustee of an SMSF is prohibited from intentionally acquiring assets from a related party of the SMSF. However, certain exceptions can apply.

The Draft states that a trustee intentionally acquires an asset if the trustee means to acquire the asset. Further, the legal owner of the asset is not a decisive factor.

Situations that will not result in a contravention of the superannuation law are:

- the trustee accepting a contribution of money; and
- a related-party making a monetary payment to a third party to extinguish a liability of the SMSF.

The Draft states that for any of the exceptions to apply, the acquisition of an asset must be at market value and consideration be given to the in-house asset rules.

Self-Managed Super Funds (SMSF) Tax Return

A single annual return, which will incorporate a super fund income tax return and the member contributions statement, will be used from the 2007/08 income year onwards.

Some of the key changes are set out below:

- the annual supervisory levy will be included in the fund's notice of assessment. The levy has been increased from \$45 to \$150 per year starting from the 2007/08 income year; and
- the annual return will include ongoing disclosure questions for trustees to ensure that they are aware of their obligations.

Topics for The Report...

We trust you enjoy and find these issues of the report both interesting and informative. If you would like us to cover a particular topic you need just send your suggestion via e-mail to David at... dliss@sothertonsmelbourne.com.au and we will do our best to fulfill your request.

COPYRIGHT – 10 COMMON MYTHS, MISCONCEPTIONS AND MISTAKES



Most of us think we know a little bit about copyright. But, as Alexander Pope (whose writings, you will be reassured to know, are now well and truly out of copyright) wrote, "A little knowledge is a dangerous thing"!

While many of us create, use and enjoy copyright materials every day, there is widespread confusion about how copyright comes into being, how ownership is obtained and what copyright does and does not protect. Here are some of the more common myths, misconceptions and mistakes.

MYTH 1 Copyright only applies to published, printed materials such as books and items like films, recordings and commercial software. In addition to protecting works of literature, music, drama and art, copyright covers many types of utilitarian materials that do not have "literary" or "artistic" qualities. For example, databases, business reports, diagrams, logos, spreadsheets, training materials, questionnaires and customised software may all be copyright protected. This is true even if they have not been "published" in the traditional sense or broadly disseminated.

MYTH 2 Copyright only comes into force once it is "registered". Actually, in Australia there is no system for registering copyright. This stands in contrast with other types of intellectual property rights such as trade marks and patents. Copyright protection is automatic once a work is "in material form" (e.g. reduced to writing or recorded on some other non-transitory medium). No registration or other formality is required.

(Continued)



MYTH 3 There is no copyright unless copyright is claimed or the "©" symbol appears on a work. Again, this is not the case. There is no requirement to place the © symbol or other copyright notice (such as "Copyright 2008 ABC Pty Ltd") on a work in order to enforce copyright in it. A work that does not bear these symbols may still be protected.

MYTH 4 The Web is a copyright-free zone. A common misconception is that the Internet is "the public domain". However, just because a work is in an electronic form does not mean that the owner has abandoned their copyright in it. Internet users should assume that their rights to use website materials are limited to viewing and use for private purposes, except where it is unambiguously clear from the site that wider use is permitted.

MYTH 5 Once the author of a copyright work dies, the work is no longer protected. This is incorrect. In fact, copyright in most cases now extends for 70 years after the death of the work's author.

MYTH 6 If I make a few changes to material, I won't infringe copyright and won't need to get permission. This is a very common and dangerous myth. Copyright is infringed where a person reproduces a substantial part of a work without the permission of the copyright owner. What is "substantial" is a qualitative (not quantitative) determination that varies from case to case. (For example in the past courts have held that 4 lines of a 32 line poem was a "substantial part", and that a few bars of a tune, were a substantial and therefore protectable part.)

(Continued)

Copyright – 10 Common Myths, Misconceptions and Mistakes (continued)

MYTH 7 If I copy less than 10 per cent of a work, I will not infringe copyright. While there are specific circumstances set out in the Copyright Act where a "less than 10 per cent" rule applies, these are of very limited application and mostly relate to reproduction of portions of materials for private study and research purposes and not for commercial purposes.

MYTH 8 I paid for the work so I must automatically own copyright. Businesses often engage third party contractors, such as a software developers, freelance writers, graphic artists, advertising agencies and architects to create copyright materials for them.

A commonly held misconception – and one that is at the heart of many copyright disputes – is that once payment for such services has been made, copyright automatically belongs to the business that has commissioned the work. In fact, except in very limited circumstances, the contractor will retain copyright, unless they have transferred it to their client by written transfer. In the absence of a transfer or an agreement otherwise, the client will, generally speaking, have a licence to use the work for the limited purpose for which it was created.

MYTH 9 Employees are the owners of copyright in any works they create. In contrast to the position with contractors, at law employees generally do not own the copyright in materials they create in the course of their employment. Copyright in these works automatically vests in their employer, unless there is an agreement otherwise.

MYTH 10 I can do absolutely anything I want to the work, and even claim that I wrote it, if I own the copyright in a work created by another. This assumption is false and can lead to disputes. The Copyright Act provides that a creator of a work retains so-called "moral rights" in works, even if the creator transfers copyright ownership to another. "Moral rights" are the right to object to "derogatory treatments" of a work, the right to be attributed as the author of a work, and the right not to have another falsely attributed as the author of a work.

Copyright is a minefield that needs to be carefully navigated. ■

Daniel Kovacs is a Senior Associate with Kliger Partners Melbourne specialising in Intellectual Property Law.

SUPERANNUATION GUARANTEE CHARGE CHECKLIST

From 1 July 2008, ordinary time earnings must be used to calculate superannuation guarantee amounts for your employees to avoid the superannuation guarantee charge.

The checklist below is to assist you with the change in requirements and plan for any additional costs.

Item	Yes	No
1. Have you reviewed the earnings base for all employees to ensure that their super guarantee amounts are being calculated based on ordinary time earnings to avoid the superannuation guarantee charge?	<input type="checkbox"/>	<input type="checkbox"/>
2. If you are paying employees bonuses, have you included these bonuses when calculating the super guarantee amounts to avoid the superannuation guarantee charge? (Note that discretionary bonuses, e.g. Christmas bonus, are not included.)	<input type="checkbox"/>	<input type="checkbox"/>
3. If you are paying employees allowances, have you included these allowances when calculating the super guarantee amounts to avoid the superannuation guarantee charge? (Note that reimbursement of expenses and fully expended allowances are not included.)	<input type="checkbox"/>	<input type="checkbox"/>
4. If you are paying employees commissions, have you included these commissions when calculating the super guarantee amounts to avoid the superannuation guarantee charge?	<input type="checkbox"/>	<input type="checkbox"/>
5. Have you considered the cost impacts on your business if required to increase super guarantee amounts for your employees?	<input type="checkbox"/>	<input type="checkbox"/>
6. Have you ensured that your business accounting systems is updated to handle the change in calculating the super guarantee amounts?	<input type="checkbox"/>	<input type="checkbox"/>
7. Have you devised and implemented a strategy to inform employees of possible changes to their super guarantee amounts?	<input type="checkbox"/>	<input type="checkbox"/>

If you have any queries regarding any of the above please contact your Sothertons Manager or Partner / Director. ■

WHO WILL BUY YOUR BUSINESS?

So, you have looked at how to prepare your business for sale including ways to enhance the value of the business.

Likely buyers will vary from business to business. Areas that will influence the buying pool include the industry sector, size of business, degree of complexity of the business and purchase price. Your buyer may come from the broader market or alternately your business may be attractive to a competitor, one of your suppliers, someone working in the same customer channel or even your own management team.

Finding the right buyer isn't simply a matter of putting an advertisement in the "for sale" section, or listing your business with a broker. These are options, and in some cases are quite appropriate. In other cases however there are better ways to achieve the result you are after. Selling a business is not a one size fits all formula. As a general rule, the higher the anticipated sale price and the more complex the business then the more sophisticated the sales process required. If you are working with someone in this area make sure they understand your business and are experienced in working with businesses of your size.

Before you take your business into the market make sure that you have put together an information kit on the business. Too often we see businesses where a possible sale is derailed simply because the vendors are not able to produce information required by the buyer in a timely way. At the time you go to the market you should have an Information Memorandum available on the business. This document should provide a high level overview of the business explaining the business from both a financial and non financial aspect. The key to getting your Information Memorandum right is to ensure that you don't include market sensitive information but do provide sufficient information to the potential buyer to decide whether or not they want to proceed with discussions. It is quite normal to have confidentiality agreements executed. Irrespective of this you should still manage carefully any market sensitive information. Simply handing over your financial statements, on first enquiry is a poor approach. Typically they will not properly explain your business and you are giving away confidential information. It can often turn out to be a lose/lose result.



Once you have a pool of interested buyers, managing the final negotiations and satisfying due diligence is critical. It is not uncommon to see disputes arise over the detail of what may be smaller issues. All of these need to be identified in advance, so that all of the parties can have a clear picture at the beginning. Once you have reached an agreement in principle the buyers may want to undertake a due diligence on the business. This is where they or their accountants will come into the business to go over it with a fine tooth comb. The level of due diligence will vary depending on the size of the business and what is being sold.

The key to a successful due diligence is being prepared for it. You should have everything ready. The information should be available and you should have anticipated the questions that will be asked. The more questions left unanswered or where there are doubts the greater the likelihood that the sale will fall over or there will be tougher negotiations around price, terms and conditions or warranties. By being prepared for the due diligence you can set a timeframe e.g. seven days. A buyer has a defined time to complete his investigation and must then move to a decision. Never allow this process to drift.

There's a process to achieving a successful business sale. Understanding and managing the process will make your business succession far more achievable. ■

Buying & Selling A Business – Due Diligence Action Checklist

Buying a business is a major decision. Purchase of a business can be done either through an asset sale, or the purchasing of shares in a company or interests in a trust. Regardless of the choice, it is important to ensure that a due diligence report into the business to be purchased has been conducted. The checklist highlights common areas that must be considered when buying a business. Information gathered should be discussed with your Sothertons Manager or Partner/Director.

Item	Yes	No
Financial health		
1 Have you obtained the last four years financial statements of the business?	<input type="checkbox"/>	<input type="checkbox"/>
2 Have schedules of the following been obtained, where applicable: liabilities (including contingent liabilities), inventory, and accounts receivable and payable?	<input type="checkbox"/>	<input type="checkbox"/>
3 Have you obtained an up-to-date copy of the business's credit report, if available?	<input type="checkbox"/>	<input type="checkbox"/>
4 Has a comparison between the business's gross profits with the industry trends been done?	<input type="checkbox"/>	<input type="checkbox"/>

(Continued)

Buying & Selling A Business – Due Diligence Action Checklist (continued)

Item	Yes	No
Taxation considerations		
5 Have you obtained the last four years tax returns of the business?	<input type="checkbox"/>	<input type="checkbox"/>
6 Have you obtained confirmation that all taxes such as income tax, GST, PAYG withholding and payroll tax are up to date?	<input type="checkbox"/>	<input type="checkbox"/>
7 Have you familiarised yourself with the tax obligations of the entity to be purchased?	<input type="checkbox"/>	<input type="checkbox"/>
8 Have you considered the stamp duty implications on the purchase of the business?	<input type="checkbox"/>	<input type="checkbox"/>
9 Have you considered whether the purchase of the business will be a supply of a going concern, ie GST free?	<input type="checkbox"/>	<input type="checkbox"/>
<p>⚠ Where a business is sold through an asset sale, the purchaser does not inherit any tax liabilities of the business. However, where a business is sold through the sale of units or shares, the purchaser inherits the tax liabilities of the business.</p> <p>⚠ Where a business is sold through the sale of units or shares, it will not qualify for as a supply of going concern, ie the purchase of the units or shares will be an input taxed financial supply.</p>		
If you are buying a business through an asset sale		
10 Has an asset register been obtained detailing all the assets being sold?	<input type="checkbox"/>	<input type="checkbox"/>
11 Have you checked the ownership and condition of the assets being sold?	<input type="checkbox"/>	<input type="checkbox"/>
12 Where the assets are leased by the business, have you obtained copies of the leases?	<input type="checkbox"/>	<input type="checkbox"/>
13 Are the assets adequately insured until settlement of the purchase?	<input type="checkbox"/>	<input type="checkbox"/>
14 Has the purchase price been apportioned across the assets being purchased?	<input type="checkbox"/>	<input type="checkbox"/>
<p>⚠ If the purchase contract for an asset sale includes the purchase of the business's trade debtors, you will not be able to claim an income tax deduction for bad debts.</p>		
15 Have you obtained a listing of all current shareholders or unit holders?	<input type="checkbox"/>	<input type="checkbox"/>
16 If you are purchasing the business through the sale of units, has the trust made a Family Trust Election (FTE)?	<input type="checkbox"/>	<input type="checkbox"/>

(Continued)

Buying & Selling A Business – Due Diligence Action Checklist (continued)

Item	Yes	No
Employees obligations		
17 Have you obtained a list of employees including their salary and entitlements?	<input type="checkbox"/>	<input type="checkbox"/>
18 Have all outstanding employees' entitlements such as superannuation guarantee and annual leave been accounted for?	<input type="checkbox"/>	<input type="checkbox"/>
19 Are the WorkCover premiums up to date?	<input type="checkbox"/>	<input type="checkbox"/>
<p>⚠ Where a business is sold through an asset sale, the purchaser can choose not to take on the employees of the vendor. However, where a business is sold through the sale of units or shares, there will be a continuity of employment & the buyer is responsible for any employees liabilities accrued.</p>		
Trading stock		
20 Does the trading stock include any obsolete stock?	<input type="checkbox"/>	<input type="checkbox"/>
21 Has the trading stock been valued at market value?	<input type="checkbox"/>	<input type="checkbox"/>
Business premises		
22 Have you sighted copies of all real estate leases, deeds, mortgages, and any relevant documents to the premises?	<input type="checkbox"/>	<input type="checkbox"/>
23 If there are improvements to the business premises, has a register been obtained detailing the improvements?	<input type="checkbox"/>	<input type="checkbox"/>
Where the business is conducted through a company		
24 Has a company search been done to verify the vendor?	<input type="checkbox"/>	<input type="checkbox"/>
25 Are all ASIC requirements up to date?	<input type="checkbox"/>	<input type="checkbox"/>
Other considerations		
26 Are the business operations subject to any government regulations? If so, are all relevant government licenses, permits or consents up to date?	<input type="checkbox"/>	<input type="checkbox"/>
27 Have you given thought to whether the structure (company, partnership or trust) that the business operates through is suitable for your needs?	<input type="checkbox"/>	<input type="checkbox"/>
28 Have you searched the local council and other government agencies records to ensure there are no plans or council orders that could disrupt the business or lead to a potential drop in sales?	<input type="checkbox"/>	<input type="checkbox"/>
29 If a restrictive covenant, earn-out clause or claw-back clause is included in the purchase contract, have you ascertained the legal and tax implications?	<input type="checkbox"/>	<input type="checkbox"/>

Tax Law Changes

In March 2008, the Government introduced into Parliament an amending Bill to:

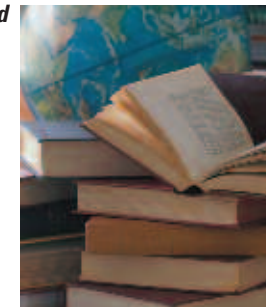
- allow taxpayers to claim a deduction in relation to an amount misappropriated by an employee or agent following the disposal of an asset;
- extend the period within which employers can make a superannuation contribution – after the quarterly due date, and still be eligible to use the late payment offset to reduce their superannuation guarantee charge liability;
- exempt from income tax the entire amount received from either a research fellowship under the Endeavour Awards Program or an Endeavour Executive Award, regardless of whether the recipient is a full- or part-time student; and
- exempt the first \$1,000 of an early completion bonus paid to an apprentice by a State or Territory.

Self-Education Expenses

In a recent decision, the AAT affirmed that a taxpayer was not entitled to a deduction for self-education expenses.

The Tribunal found that the expenditure was not incidental or relevant to the taxpayer's income-producing activities and did not have the essential character of an income-producing expense.

Generally, self-education expenses are deductible if they are incurred in maintaining or improving a taxpayer's skills and knowledge in his or her present occupation. However, self-education expenses incurred before employment commences (as in this case) or to obtain new employment are not deductible.



Super Update

In its Super Update March 2008, the Tax Office reminded employers of two important changes that will take effect from 1 July 2008:

- ordinary time earnings must be used to calculate employees' superannuation guarantee contributions, and
- employer-nominated super funds must offer minimum levels of life insurance death cover to members.

SOTHERTONS CLIENT PROFILE



Sothertons provides accounting services to leading national security group ACG.

Sothertons Melbourne is privileged to work for a diversity of successful clients. **ACG Corporate Services** is one of Australia's largest and most successful corporate security firms.

The company provides security services in such areas as corporate security officers, major event security, risk management services, electronic security applications, close personal protection, special protection officers and AGM security.

With offices in Melbourne, Sydney, Brisbane, Adelaide and Perth, ACG has a team of over 800 full time and casual staff.

The firm works for some of Australia's largest companies and has undertaken a number of prestige assignments including providing security services to the 2000 Olympics, World Economic Forum, 2006 Commonwealth Games, AFL Grand Final, to name a few.

Established in 2000, the firm continues to expand its range of blue-chip clients. Recently the company supplied security services for BHP Billiton's AGM in South Australia.

Hutchinson Telecoms – a world leader in telecommunications – has appointed ACG to provide around-the-clock security professionals in three of its locations.

Leading Australian packaging and recycling group Visy Industries has also recently appointed ACG. The contract is for the provision of asset protection and special services at nine Visy sites in Queensland, New South Wales, Victoria, South Australia and Western Australia.

Activities will include guard and gatehouse duties, monitoring of vehicle and pedestrian access, visitor and contractor control, after hour patrols and general safety and security.

ACG's CEO Harry Korras says that ACG's foundation, its organisational structure, support mechanisms and teamwork are the key elements fostering the company's strong working relationships and capability.

"In recent years companies have placed a far greater emphasis on security and implementing sophisticated methods of asset protection.

(Continued)



Today, many companies have large corporate security departments headed by senior executives," he says.

"In today's changed domestic and international environment security is seen as an important risk management function that requires significant investment to secure the right outcomes.

"From AGM and major event security and electronic security applications to extortion protection and travel risk planning, companies now operate in a very different environment.

"Australia has emerged from its age of innocence into the bright spotlight of international issues and conflicts. September 11 and Bali brought this into sharp focus. Security issues are now boardroom issues. AGM's used to be quiet, dignified affairs. Now hundreds attend and passions can run strong.

"As ACG's CEO, I am always thinking about the ever changing operational needs of our clients.

"Our work is continuously focused on enhancing clients' operating efficiency. The security function's purpose is to maintain the corporate environment so that an organisation's operating goals can be achieved unimpeded.

"Increasingly, major Australian companies are also using the one national provider of security services, as a more cost effective and operationally efficient option."

ACG Website: www.acgcorporate.com



CEO Harry Korras

Farm Relief (ECRP) Assessable

The Tax Office has released a Draft Determination stating that an Exceptional Circumstances Relief Payment (ECRP) paid to a farmer is not primary production income.



The ECRP is classified as ordinary income and, therefore, will be assessable.

Stapled Securities

Readers will recall we highlighted in the March 2008 issue that the Tax Office issued a Tax Alert warning taxpayers that it was examining the tax implications of investing in stapled securities.

The Tax Office has followed up on the Alert with a Draft Determination stating that a taxpayer is not entitled to an income tax deduction upon the sale of a stapled security at a loss, or upon the occurrence of an Assignment Event.

GIC and SIC Rates Released

The Tax Office has released the general interest charge and shortfall interest charge rates for the 4th quarter of the 2007/08 income year:

Rate	Annual (%)	Daily (%)
GIC	14.69	0.04013661
SIC	10.69	0.02920765

The Tax Office has also released the interest rate for overpayments, early payments and delays in refunds for the fourth quarter of the 2007/08 income year. The applicable interest rate is 7.69%.

Deeming Rates

The deeming rates for social security payments have increased from 20 March 2008. The new rates are:

- 4% for the first \$39,400 of a single pensioner's financial investments (\$65,400 for pensioner couples and \$32,700 for each member of an allowee couple); and
- 6% for financial investments above those amounts.

Labor's IR system begins

The Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008 commenced operation on 28 March 2008, just after the second anniversary of the Howard government's Work Choices amendments. This is the first wave of Labor's reform to Australia's industrial laws. It means:

- 1. No new AWAs:** Employers and employees are no longer able to make Australian Workplace Agreements.
- 2. ITEAs begin:** Employers that already had at least 1 AWA in place before 1 December 2007 will be able to offer ITEAs to new employees and current employees who are already party to an AWA.
- 3. AWAs and ITEAs are not the same thing!** Employers proposing to use ITEAs should NOT keep using the same document that they were using as AWAs. The differences range from things as simple as what the document calls itself to the Information Statement that has to be given to employees and the documentation that will have to be lodged with the Workplace Authority. Probably most important of all will be:
 - a nominal expiry date of no later than 31 December 2009; and
 - passing a No-disadvantage Test instead of the Fairness Test.
- 4. Collective Agreements:** New collective agreements will also be subject to a **No-disadvantage Test** instead of the **Fairness Test** and will only operate from 7 days after they have passed the test (except for "greenfields agreements" that apply to new businesses).

That all adds up to a situation where you should amend any AWA templates so that they are ITEAs before you use them **AND** if you have been using AWAs, think about collective agreements for your workplace.

The other part of this first wave is "**award modernisation**". This is a process that must be completed by the Australian Industrial Relations Commission by the end of 2009. It will involve turning awards into plain English documents that are easy to read and interpret. It could also involve removing some clauses of awards that no longer apply. Finally, it might lead to a reduction in the number of awards with "modern awards" operating on an industry basis.

The federal government has already foreshadowed their next wave of industrial reform by releasing a discussion paper on National Employment Standards. These are proposed to be in place by the end of 2009 and expand on the minimum entitlements that were brought in under Work Choices. The proposals include additional (unpaid) parental leave, enhanced access to flexible working arrangements and minimum redundancy entitlements (for businesses with more than 15 employees).

(Continued)

Labor's third wave will include reintroduction of unfair dismissal claims against businesses that employ less than 101 employees and the establishment of a new body to be called Fair Work Australia which will bring together the AIRC, Workplace Authority, Workplace Ombudsman and Building and Construction Commission. A draft bill is expected to be released for comment later this year. ■

Sam Eichenbaum is an Accredited Workplace Relations Specialist with Macpherson and Kelley Lawyers who are advisors to Sothertons Melbourne.

Sothertons Melbourne Staff & Clients Participate in Fun Run for the Kids



7.30am Sunday the 30th of March

saw 27,498 fit and eager athletes and others converge on the starting line for the 3rd Herald Sun/ City link Run For the Kids. Amongst this group resplendent in their Sothertons team tops could be found 53 Sothertons Melbourne team members and clients.

The funds raised by the event go towards the Royal Children's Hospital Good Friday Appeal. Contestants could choose between the 5.7km walk, the 5.7km run or the 14.14km run. The course gave contestants the rare opportunity to run on Melbourne's inner city streets, the Domain tunnel, the Westgate freeway, Bolte Bridge and the Docklands precinct all of which afforded spectacular views of the Melbourne's city skyline.

This event is only one of a number of fund raising events during the course of the year that Sothertons Melbourne's team members and clients participate in. It is pleasing to see that Sothertons team members Australia-wide acknowledge the importance of community participation and charity work.

Sothertons Melbourne Staff & Clients in Fun Run For the Kids

Congratulations to Sam Harrison from the audit team for achieving the quickest Sothertons time of 37min 44sec for the 5.7km run.

Likewise congratulations to Barak Hislop, Joanne Traynor and Joshua Lissauer for completing the 14.14km run in times of 01.08.04, 01.32.43 and 01.07.47 respectively. Not bad times considering the winner of the event, Canberra accountant and Olympic hopeful Brett Cartwright completed the event in 42.34.

Sothertons events organiser and social club committee woman Sheree Smith hopes that next years event will attract even more participants and has already commenced working on the project. ■



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