

# Newsletter Spring 2008

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## Pitfalls of Being a Company Director

Being a company director might be *seen* to be privileged but it is a position of responsibility that should not be underestimated. The obligations and potential pitfalls are numerous, and **ignorance provides little or no protection** against court action, fines and/or personal liability for the company's debts.

### Non-executive Directors

The decision to become a director should not be taken lightly. If you are a director of a company only because a friend or family member asked you to, and particularly if you habitually sign anything placed before you without question, **think again**. Single director companies are now permissible under the Corporations Law so why expose yourself unnecessarily? Note also that 'shadow directors' (i.e. those who instruct the board but are not officially directors) can also be liable under the Corporations Law.

### Responsibilities of Directors

#### Directors must:

- ◆ Keep proper accounting records and retain them for at least 7 years
- ◆ Maintain the company's statutory records (e.g. register of shareholders, minutes)
- ◆ Lodge financial information and documents with ASIC, as required, and pay the Annual Company Statement fee
- ◆ Always act in the best interests of the company (first) and its shareholders (second)
- ◆ Lodge returns with the ATO and remit taxes as required
- ◆ Display the ACN (or ABN) on the company seal and all public documents, including cheques
- ◆ Comply with the requirements of the Privacy Act.

#### Directors must **not**:

- ◆ Enter into transactions where they know the company is (or will become) insolvent and will be unable to honour obligations. A breach of this requirement may lead to the directors becoming personally liable to creditors.
- ◆ Use company information improperly. If information is used dishonestly with the intention of gaining an advantage then the action will amount to a criminal offence. This also applies to former directors and employees.
- ◆ Cause the company to pay a dividend out of capital (as opposed to profits).

- ◆ Partake in action for the purposes of lessening competition between companies or make false and misleading statements.

### When could Directors become personally liable?

Although companies offer the advantage of limited liability, directors could find themselves personally liable in the event of:

- ◆ **Unpaid tax**, particularly PAYG Withholding tax, as well as associated **finances**;
- ◆ Trading whilst the company is **insolvent**;
- ◆ A call on **directors' personal guarantees** by creditors; or
- ◆ **Default of borrowing commitments** by the company, where directors' personal property has been provided as **security**.

### What action can be taken to reduce risk?

- ◆ Involve a good solicitor to advise you on steps you can take to protect your assets **now**. Transferring assets later, when a creditor's claim is on the horizon, will likely be too late to be legally effective.
- ◆ If you are asked to sign a director's personal guarantee, seek the advice of your solicitor and **keep a record**. In the event of your resignation as director, ensure your personal guarantees are removed.
- ◆ Take an active interest in the day-to-day running of the company and its solvency.
- ◆ If your point of view on a matter differs from the other directors, ensure that a record goes on file (and keep a copy). Consider whether the decision should be put forward to the members for ratification.
- ◆ Consider insurance against a breach of directors' duties, where available.
- ◆ If you resign as a director, ensure ASIC is notified appropriately. This will protect you against events that occur after your directorship ceases, but not against past events.

### Trustee Responsibilities

If you are a director of a trustee company you will have separate responsibilities under the Corporations Law and pursuant to the Trust Deed. If the company is trustee of a self-managed superannuation fund, you will have additional obligations imposed by the ATO that must be taken seriously to avoid fines and possibly criminal conviction.



## Life & Taxes

### Medicare Levy Surcharge Update

Currently, the Medicare levy surcharge is an additional 1% of taxable income imposed on those who do not have private hospital cover and who earn over the relevant thresholds.

In the last Federal Budget, it was announced that the income thresholds would be amended as follows:

	<u>Old</u>	<u>New</u>
Individuals	\$50,000	\$100,000
Couples/families	\$100,000	\$150,000

The increased thresholds are to apply from the **2008-09** year of income. If the bill is passed, a single person without private health insurance on the average annual salary of \$58,600 would save \$586 a year in tax.

**Before you go and cancel your health insurance policy, however, note that the change is not yet law.**

The bill is before a special economics committee because of concern that the change will have a drastic impact on both the health insurance industry and the Medicare system.

### Depreciation Period for Computer Software

The Government has increased the depreciation period for expenditure on in-house computer software which is capital in nature from 2.5 years to **4 years**. This measure applies to expenditure on 'in-house computer software' incurred on or after 7.30 pm (AEST) on **13 May 2008**.

Expenditure on 'in-house computer software' is expenditure by the taxpayer on acquiring, developing or having someone else develop computer software which is mainly used by the taxpayer. Expenditure on 'in-house computer software' continues to be depreciated on a **straight line basis**.

A 4 year depreciation period for expenditure on 'in-house computer software' is the same period as the Commissioner for Taxation's 'safe harbour' effective life for computer hardware.

### Expansion of Fuel Tax Credits Scheme from 1 July 08

Here's some good news for businesses suffering from the rising costs of fuel. Fuel tax credits provide you with a credit for the tax component (excise or customs duty) included in the price of fuel you use in equipment, machinery or heavy vehicles used in the course of carrying on your business. **Aviation fuels and alternative fuels (such as LPG, ethanol, etc.) are not eligible, nor are fuels used in light road vehicles of less than 4.5 tonnes gross vehicle mass.** So if your business only uses fuel for cars, read no further.

You must be registered for both GST and the fuel tax credits scheme before you can make a claim on your BAS. Your claim is based on actual usage, as follows:

Heavy road vehicles	18.51 cents per litre
Specified Activities*	38.143 cents per litre
Equipment & Machinery	19.0715 cents per litre

\*Check out [www.ato.gov.au/fuelschemes](http://www.ato.gov.au/fuelschemes) for more info.

### Demutualisation of MBF

Tax Laws Amendment (2008 Measures No.4) Bill 2008 was introduced into Parliament on 26 June 2008. Schedule 1 to this Bill amends the income tax laws to provide relief from capital gains tax (CGT) to private health insurance policy holders when their insurer demutualises.

These amendments ensure that policy holders who receive shares in the demutualised insurer will not be subject to CGT when they receive the shares. In addition, these shares will broadly receive a market value cost base.

Policy holders who receive a cash payment under their insurer's demutualisation, rather than shares, will not be subject to CGT at the time they receive this payment.

The changes will apply from 1 July 2007. **At this stage, the Bill has not yet been passed by Parliament.**

### First Home Saver Accounts

Legislation to implement First Home Saver Accounts was recently passed by Parliament and has become law. Account providers can offer the accounts from 1 October 2008 to assist Australians to save deposits for their first home.

For the first \$5,000 that the account holder contributes into the account each financial year, the government will generally contribute 17% of that amount. There will be an account balance cap of \$75,000 for the 2008-09 financial year, which will be indexed over the life of the account.

Earnings on First Home Saver Accounts will be taxed at 15%, payable by the account provider. Account holders must make contributions of at least \$1,000 over four separate financial years before they can withdraw the money from the account to purchase or build their first home. The withdrawals will be tax-free.

To be entitled to have a First Home Saver Account you must be at least 18 years of age and under 65 and have never owned a dwelling in Australia or Norfolk Island that was your main residence.

### Client File Uploader on our Website

We now have a client file uploader facility on our website to enable the transfer of files to us that are too large to send as an email attachment. It is very easy to use and can be found at [www.priestleymorris.com.au/uploader.php](http://www.priestleymorris.com.au/uploader.php)

You will be prompted for a login and password. Please contact our office for these details. (For security reasons the password will be changed on a periodical basis.) Just follow the prompts, attach your file and click the 'UPLOAD' button.



## Business Fraud



Which of the above people is a thief? If you guessed the one on the right, you'd be correct. The other one is simply on his way to a costume party. You see, in real life, thieves do not conveniently dress or typically 'act' as thieves. And when it comes to business/corporate fraud, they are often the *niciest* people and have been with the company for *years*.

### What are the Reasons for Committing Fraud?

- ◆ Drug/alcohol/gambling addiction
- ◆ Blackmail
- ◆ Compulsive shopping / living beyond means
- ◆ Maintaining a mistress (or mister!)
- ◆ Because the business "can afford it"

### What are some examples of Fraud?

Fraud is not just stealing money from the till. It can be very elaborate and usually happens when an employee gains a thorough understanding of the employer's operating and information systems. Some examples are:

- ◆ Diverting customer payments
- ◆ Writing cheques to self (or a nominated company) and putting a supplier's name on the cheque butt
- ◆ Manipulating recorded overtime (sometimes in collusion with others)
- ◆ Paying personal bills (e.g. utilities) through the company
- ◆ Purchasing stock for own use, or for a business 'on the side'
- ◆ Theft of stock, for own use or resale
- ◆ 'Borrowing' money from the company with the initial intention of paying it back.

### How to Prevent & Detect Fraud

- ◆ Separate handling and recording duties where possible so that the same person does not handle both functions;
- ◆ Understand your systems and be aware of any system weaknesses that might present opportunities for fraud;
- ◆ Encourage your staff to take regular holidays and ensure that a competent person fills in for them, or do so yourself. Many cases of fraud have been discovered while the perpetrator has been away. Also, rotate staff where possible.
- ◆ Keep your accounting records up to date and ensure that your bank account, trade receivables and payables are regularly reconciled. High-risk inventory should be tightly managed and random stock checks conducted, not just at year end.
- ◆ Compare actual trading results to budget and investigate variances promptly.
- ◆ Beware of relying purely on trust. Just because someone is trustworthy now doesn't mean they will be trustworthy in five or ten years time. Circumstances change, and people change.

### What to do if you Suspect Fraud in your Business?

Don't take matters into your own hands. Get professional advice from someone such as your solicitor or accountant. Large security companies also offer systems reviews and can provide related advice.



## NSW State Budget Update

### Payroll Tax

- ◆ The tax free threshold is to be **indexed annually** in line with the Sydney CPI.
- ◆ For 2008-09 the threshold is **\$623,000**.
- ◆ The payroll tax rate of 6 per cent is to be reduced as follows:
  - ⇒ to **5.75%** from 1 January 2009
  - ⇒ to **5.65%** from 1 January 2010
  - ⇒ to **5.5%** from 1 January 2011.

### Stamp Duties

- ◆ The abolition of duty on the transfer of business assets (excluding land) has been brought forward from 1 July 2012 to **1 January 2011**.
- ◆ **Reminder:**  
Stamp duty on the transfer of unlisted shares/units will be abolished from **1 January 2009**. If you are planning on acquiring shares in an unlisted company it might be worth keeping this in mind.



# Our Staff

We thought for our staff section we'd do something a little different this time. This is a recollection of the early working life of Lex McCorquodale FCA, a former employee of Priestley & Morris, our ancestor firm.

*"I commenced with Priestley & Morris, having replied to an advertisement, at the end of July 1940 at fifteen shillings (\$1.50) a week. And I went out on audits!! Sargents (meat pies), Mark Foy's with their attractive building in Liverpool Street, Rosehill Racecourse and the manufacturers of Akubra Hats - Dunkley Woollen Mills.*

*We all wore suits (double breasted was fashionable), ties and Akubra fur felt hats. We were issued with Waterman fountain pens and took a bottle of green ink out on audits. My recollection is that we initialled a copy of every piece of paper received by the Accounts Department of a client company - sales docket, delivery docket, invoices for purchases, creditors statements etc."*

## Memory of Lex McCorquodale FCA

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**Postscript**  
Michele Nevill and Melissa Simmons recently participated in the Institute of Chartered Accountants netball tournament and were part of the team that came away with the trophy for the mixed netball division. Congratulations, Melissa and Michele!



# The Tail End

Have you ever wondered what the tawny, scrawny lion and the kangaroo holding the shield were all about? Well, this is the NSW Coat of Arms and every tiny detail of the design is steeped in history and tradition. Worth a moment to consider, wouldn't you think?



The NSW Coat of Arms was designed by William Gullick and granted by King Edward VII in October 1906. That makes it over 100 years old! On the shield is the red cross of St George with a white trim, derived from the NSW badge developed in 1869 and rooted in naval traditions. The eight-pointed stars on each arm of the cross represent the Southern Cross. Within each quadrant formed by the cross, Gullick placed images of a golden fleece with a red band and a sheaf of wheat, to represent the early gold mining and agricultural achievements of our state.

The shield is supported by a lion, representing Great Britain, and a kangaroo, representing Australia. The crest is a rising sun, representative of a newly rising country and still a strong symbol today within the Australian armed forces. The Latin motto 'Orta recens quam pura nites' means "Newly risen, how bright thou shinest", as shown by the rising sun. It also refers to the State's continuing progress and development.

I wonder if the skinny lion was representative of the starvation encountered early on in the colony!

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Please contact us if you would like our Newsletter emailed in the future or if you would like extra copies.

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