

The SOTHERTONS REPORT



FEB/MARCH 2009

Welcome to the first edition of the Report for 2009.

The world is undergoing momentous change at present and Australia is being dragged into the financial crisis that affected most other parts of the world late last year. With no respite in sight and with Governments trying to resurrect their own economies by massive input of finances to stimulate spending, it certainly looks like a rocky road for us all this year.

Added to this turmoil, Victoria has been ravaged by fires described as the worst in Australia's history. At the time of writing the death toll continues to rise and the destruction of property is hard to imagine. A number of Sothertons' clients were affected and we are offering whatever assistance we can as they begin rebuilding their lives and dealing with the inevitable bureaucratic red tape from insurance companies and government.

We count ourselves fortunate that none of our clients is listed amongst the casualties, however our collective thoughts extend to those who have lost loved ones, friends and neighbours. The generosity of the Australian people in donating to relief funds has been one of the few positives to come out of this disastrous event, as is the dedication and heroism of firefighters and relief workers. Staff, partners and clients of Sothertons around Australia have given their support to those affected. Autophone, a Sothertons client, donated 2-Way radios to assist emergency communications. As the fires were ravaging Victoria and NSW, far north Queensland and Northern NSW were equally affected by torrential rain and flooding with the trauma these forces unleashed on the community.

On a happier note, during the month of February those travelling on Qantas either domestically or on short haul international sectors will be able to tune into an audio session with Sothertons' Mark Lipson as he discusses forensic accounting. A transcript appears in this issue.

Whilst the country battled both economic and natural disasters the legislative changes and rulings continue to rain down on us and we cover the salient features of the latest changes in this issue along with the payroll tax harmonisation project, directors' personal liability and the changing face of compilation reports. Please remember we at Sothertons are there to help you through both the good as well as the more difficult times. Working together will result in our all emerging from the economic doom and gloom far stronger and better placed.

Until next time. ■ **David Lissauer**
dliss@sothertonsmelbourne.com.au

Audit Protection Service

The Australian Taxation Office (ATO) continues to announce significant increases in their audit activity. Now more than ever, taxpayers are at risk of being selected for a random audit.

Unfortunately, the instigation of a random audit or investigation by the ATO, or indeed any Federal or State revenue agency, will result in costs to you. Even if there are no adjustments to a return leading to an increased tax or other liability, there will still be costs associated with the preparation of material for the ATO, or the agency involved, and the managing of the response process.

It is for this reason that we have taken out Audit Insurance to cover the professional fees incurred in preparing all relevant documentation and responses to the ATO, or any other government agency, conducting an audit, review or investigation (including workers' compensation audits). This policy, underwritten by Vero Insurance Ltd, covers these costs (up to a prescribed limit) for any audits, reviews or investigations relating to the current year's returns, and all previous years.

This cover does not automatically extend to you. However we can add your account (on payment) to the list of clients participating in this service. In the event that you are subsequently subjected to an audit, we will then claim our fee from the insurance company.

Should you have any questions with respect to this offer, please contact this office.

Please note that all insurance premiums paid in respect of this cover are tax deductible. ■

Sothertons Melbourne Celebrations

Sothertons Melbourne and its antecedent firms are celebrating 30 years of service to our clients, a milestone that we are immensely proud of. During the year we will be holding functions to help mark this landmark and we look forward to greeting our clients and service suppliers in these celebrations. ■



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, Centrepoint 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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If we do not hear from you we will assume you are happy to receive this and other future publications and will retain your name on our mailing list.*

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Tax Laws Amendment

The Federal Government has introduced a Bill into Parliament to amend certain provisions of the tax laws, including the:

- CGT provisions relating to roll-overs for corporate restructures;
- collection of foreign tax debts by the Tax Office;
- election to use the late payment offset for superannuation guarantee contributions by employers; and
- taxation laws for technical corrections and other minor amendments, including fringe benefits tax, and CGT and employee share trusts. ■



Amending Bill

A Bill amending the Luxury Car Tax (LCT) regime has received enactment. The Bill ensures that:

- vehicle financing arrangements do not affect refunds being claimed by eligible primary producers and tourism operators;
- and
- refunds will be paid directly to claimants.

The amendments also clarify that the transitional provision for contracts entered into before 7.30pm (AEST) on 13 May 2008 will still apply, notwithstanding that a luxury car was the subject of a financing arrangement entered into after that date.



Eligible primary producers and tourism operators may be entitled to a partial refund for LCT paid.

Amending Regulations

The Government has also enacted amending Regulations which define the terms 'tourist activity' and 'refundable-eligible car' for the purposes of determining whether a primary producer or a tourism operator is eligible for a partial refund for LCT paid. ■

Investment Allowance

A 10% temporary investment allowance may be available to businesses that purchase qualifying depreciating assets after 12.01am (AEDT) on 13 December 2008 and before 1 July 2009.

It is also a requirement that the asset:

- cost \$10,000 or more and be used in Australia; and
- be installed and ready for use by the end of 30 June 2010.



Qualifying assets include most plant and equipment such as tractors and forklifts. ■

PAYG Instalment Reduction

A 20% reduction for the December 2008 quarter PAYG instalment payable applies to small business entities that have their instalment amounts determined by the Commissioner.

Generally, a 'small business entity' is an entity that has an aggregated annual turnover of less than \$2 million. ■

Managed Investment Schemes and Deductions

In a test case decision, the Full Federal Court has held that two taxpayers were entitled to deductions relating to their investment in an almond managed investment scheme (MIS).

The Court found the taxpayers' investment in the MIS was a business. It held that any relevant outgoings would be incurred as operating expenses of the business and therefore the outgoings were deductible pursuant to the tax laws. ■



One-off Sale of Land and GST

In a recent case, the AAT held that a sale of land was a taxable supply, even though the acquisition and sale of land was distinguishable from the vendors' primary production business and a one-off transaction.



Each activity of an entity needs to be considered separately to determine whether that activity is an enterprise for GST purposes. Generally, if a profit-making intention exists, an enterprise exists. Therefore, a liability for GST potentially arises. ■

FBT and Exempt Benefits

An Interpretative Decision released by the Tax Office has stated that any cost of upgrades involving built-in internal components that are made at the time of the purchase of a portable electronic device will form part of the cost-base of the device.

That is, the cost of the upgrades may also qualify for an exemption from FBT.

However, the cost of peripheral items (e.g. extended warranty) will not be included in the cost of a device. ■



Deductibility of Compound Interest

The Tax Office has released a Tax Determination in which it states that the principles governing the deductibility of compound interest are the same as those governing the deductibility of ordinary interest.

Broadly, a nexus must exist between the interest and the deriving of assessable income for the interest to be deductible.

Compound interest is interest that accrues on interest that is unpaid. ■

Loans to Settle Trust

The Tax Office has released a Draft Taxation Determination in which it states its preliminary view that interest incurred on a loan used to settle a trust can only be deductible to the extent to which a taxpayer has used the borrowings to gain or produce their assessable income. ■

Trust Cloning Exception

Readers will recall that in the December 2008/January 2009 issue of this publication, it was reported that the Government will abolish the 'trust cloning' exception.

The Tax Office has since said that it will continue to apply the existing law until the changes are enacted. ■

Racehorses and Data Matching

The Tax Office has announced that it will electronically match data relating to the sale and ownership of thoroughbred racehorses.

According to the Tax Office, the data will be obtained from the sales records from auctioneers and from the Registrar of Racehorses.

The data collected will be used to identify taxpayers whose tax affairs should be reviewed and ensure taxpayers have reported their obligations in accordance with the tax laws. ■



Goods Taken for Private Use

The Tax Office has released the amounts which it will accept as estimates of the value of goods taken from trading stock for private use for the 2008/09 income year by taxpayers in certain specified industries

These industries include:

- Bakeries
- Delicatessens
- Butchers
- Takeaway food shops
- Restaurants / cafés
- Fruiterers / greengrocers
- Caterers
- Mixed businesses (e.g. general stores).



GIC and SIC Rates Released

The Tax Office has released the GIC (General Interest Charge) and SIC (Shortfall Interest Charge) rates for the third quarter of the 2008/09 income year (i.e. 1 January 2009 to 31 March 2009):

Rate	Annual (%)	Daily (%)
GIC	11.76	0.03221918
SIC	7.76	0.02126027

The Tax Office has also released the interest rate for overpayments, early payments and delays in refunds for the third quarter of the 2008/09 income year. The applicable interest rate is 4.76%. ■

APESB Accounting Professional and Ethical Standards Board

New and Onerous Rules for Compiled Financial Information from 1 January 2009

By David Lissauer FCPA, Director, Sothertons with the assistance of Colin Parker FCA, Principal, GAAP Consulting (www.gaap.com.au) and a member of the Australian Accounting Standards Board (2006-2009)

Introduction

New professional rules on how we compile financial information for your use apply from 1 January 2009. These new requirements which contained in APES 315 'Compilation of Financial Information' (issued by the Accounting Professional and Ethical Standards Board) will change the manner in which we deliver such services, the level of enquiry we make of you, the extent of documentation required of us, as well as the type of the compilation report issued. These new and revised requirements will be discussed with you, and communicated in an engagement letter.

APES 315 sets the standards for members in public practice who undertake compilation engagements of historical or prospective financial information; and is applied to the extent practicable for engagements to compile non-financial information. It also applies to members in business to the extent practicable when they compile information for their employers (e.g., regulatory reporting requirements and compilation reports prepared under ASIC Class Order CO 98/1417 'Audit relief for proprietary companies').

APES 315 is effective for engagements commencing on or after 1 January 2009. APES 315 supersedes APS 9 'Statement on Compilation of Financial Reports (May 1996)'. While there are a number of similarities between these two standards; the new standard is more onerous for accountants and clients.

A Compilation Engagement

A compilation engagement is simply defined as an engagement to compile financial information. Its objective is to use **accounting expertise** to collect, classify and summarise financial information. The procedures undertaken are not designed and do not enable the expression of assurance on the financial information.

A compilation engagement INCLUDES:

- Preparation of financial statements (which may or may not be a complete set of financial statements), and
- Compilation of other financial information.

A compilation engagement EXCLUDES:

- Preparation of a taxation return and financial information prepared solely for inclusion in the taxation return,
- Analysis of figures provided by a client to report to the client, e.g., providing advice on a client's proposed purchase of another entity, using the other entity's financial statements, and
- Relaying information to a client, without collection, classification or summarisation of the information.

Understanding Key Requirements and Impacts

APES 315 'Compilation of Financial Information' has a broad scope; it applies to the compilation of financial information (also non-financial information) rather than solely financial statements. Accordingly, a number of existing engagements will fall within the requirements of this new ethical standard, e.g., forecast information, stock counts, income statement preparation, and non-financial information.

Compilation engagements must now explicitly comply with ethical standards and relevant legislation. These standards address the five fundamental principles (integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour); the conceptual approach; threat and safeguards; and ethical conflict resolution. The public interest obligations of the ethical standards must also be followed.

Independence is not a requirement for a compilation engagement but it must be assessed on each engagement. Where an accountant is not independent, a statement to that effect must be made in the compilation report.

The terms of engagement must be documented and communicated to the client in accordance with ethical standards.

A compilation engagement must be planned to ensure that it is conducted in accordance with APES 315, and all applicable professional standards, laws and regulations. A general knowledge of the business and operations of the client needs to be obtained, including familiarity with the accounting principles and practices of the industry in which the client operates, and with the form and content of the financial information. The planning considerations are now more formalised and onerous.

The documentation requirements are now far more prescriptive. Working papers must be prepared that appropriately document the work performed. They must: provide a sufficient and appropriate

record of the procedures performed for the engagement; identify the sources of significant information used; and demonstrate that the engagement was conducted in accordance with APES 315 and other professional standards, including policies and procedures and any applicable ethical, legal and regulatory requirements. There are also more stringent requirements for internal review before the compilation report is released.

Where false or misleading information is supplied by the client, there is now a requirement to make further inquiries and verify responses, request additional information, and consider acceptance and continuance of the client relationship.

Consideration needs to be given by the accountant as whether the compiled financial information is appropriate in form and content and free from obvious material misstatements. These include: material mistakes in the application of the applicable financial reporting framework; non-disclosure of the financial reporting framework and any material departures; non-disclosure of significant matters, and the financial reporting provisions of a contract.

For a compilation engagement of general purpose or special purpose financial statements, an acknowledgment must be obtained from the client of its responsibility for the reliability, accuracy and completeness of the accounting records and disclosure to us of all material and relevant information. A similar principle applies to 'other' compiled information.

In relation to accountants compilation reports, new requirements have been introduced for prospective information (including identification of key assumptions), and identification of departures from the reporting framework. A compilation report is not required where the financial information is audited or reviewed in accordance with Australian Auditing Standards.

A Compilation Report Must Contain:

- A title
- An addressee
- A statement that the engagement was performed in accordance with APES 315
- When relevant, a statement that the member is not independent of the client
- Identification of the compiled financial information, noting that it is based on the financial information provided by the client (if applicable)

- The basis of any forecast information
- Key assumptions (applicable to prospective financial information only)
- A statement that the client is responsible for the financial information compiled by the member
- A statement that neither an audit nor a review has been carried out, and that accordingly no assurance is expressed on the compiled financial information
- If applicable, identification that the member is reporting on a special purpose financial statement and the specific purpose for which it has been prepared
- If applicable, a paragraph drawing attention to the disclosure of material departures from the applicable financial reporting framework:
 - The date of the compilation report
 - The accountant's address
 - The accountant's or firm's name and signature, and
 - An appropriate disclaimer of liability.

The financial information compiled must contain a reference such as "Unaudited", "Compiled without Audit or Review", or "Refer to Compilation Report" on each page of the compiled financial information.

There are new reporting requirements to communicate to those charged with governance on significant matters arising from the compilation engagement. Also a specific requirement has been introduced to consider the impact of subsequent discovery of facts on the compiled financial information.

Conclusion

These onerous professional requirements come at time when many business and not-for-profit entities are struggling with the fallout of the global financial crisis. As the compilation engagements are undertaken in 2009, particularly those for 30 June financial reporting period, many clients will experience first-hand the impact of APES 315 'Compilation of Financial Information'.

The new requirements will result in an increased cost for compilation engagements. Our revised policies and procedures are being finalised and our people trained in these new requirements. Whilst we have absorbed the costs in tooling up for these new requirements, there will be increased costs for the performance of individual compilation engagements in accordance with the mandatory requirements of APES 315. All public practitioners face similar challenges in coming to grips with APES 315. ■



Australia is facing a 'Luxury Recession'

All the commentary and retail sales data coming through for the post-Christmas and New Year sales in Europe, the USA, Australia and New Zealand tells us this financial crisis is very different to previous recessions.

Low interest rates and low petrol prices. No raging inflation. Core retail spending is stable or showing marginal growth. People are spending on day-to-day-items, the necessities like food, clothes, alcohol and home entertainment. This is happening all over the western world.

Not Convinced?

For the 33 retailers in the US tracked by Thomson Reuters, we saw only a 0.9 per cent drop in December same-store sales. More than half beat analysts' expectations. Sales at US Wal-Mart stores open for more than a year rose 1.7%.

In the UK, department store chain Debenhams showed better than expected trade over the crucial Christmas period and fashion retailer NEXT said trade was within expectations and reaffirmed profit forecasts for the financial year. Sainsburys supermarkets performed well with 4.5% rise in like-for-like sales and Morrisons reported 8.1% increase in stores open for over a year.

Europe's largest mobile phone retailer, Carphone Warehouse Group PLC also managed a 13% rise in retail revenues. Again, well-run retailers did well at Christmas despite the economic climate.

In Australia, strong retailers like Wesfarmers, Woolworths Group, Harvey Norman and JB HiFi are all reporting – or believed soon to report – stable results.

Overall, consumers are still spending their pay packets on things they "need". And we're doing it with more money in our pockets than we did 12 months ago, thanks to low petrol prices and mortgage repayments.

The luxury market tells a different story. People have halted spending on perceived discretionary items and the loss experienced with the significant drop in sales is impossible to absorb for any length of time.



The US jewellery chain Zales posted a 35% sales drop over December and January. Louis Vuitton shelved its plans for a new mega store in Tokyo. Many of Auckland's luxury Chancery shopping precinct retailers have closed.

Closer to home, some retailers in Sydney's luxury strip, Castlereagh Street, have not served a local customer in six months.

Then there is David Jones, which recently reported a 9.5% fall in sales and the prudent decision to cut 150 management jobs as a result. But you'll also note, not a single job loss in its retail outlets. They are deliberately not reducing their customer service.

Signs clearly point to a luxury recession, as consumers tighten their belts and weed out the "wants" from the "needs".

But even facing this "luxury recession" smart thinking and experience is allowing some retailers and brand owners to weather the storm.

Back on Castlereagh Street Sydney, one of the oldest and wisest privately-held jewellers, remembering previous downturns, has switched his stock profiles and advertising to target inbound travellers who benefit from the low Aussie dollar and can claim back the GST. It's working too. ■

By Kevin Moore CEO , Crossmark Asia Pacific.

In his role as CEO of CROSSMARK, Kevin Moore looks at the world of retailing from grocery to pharmacy, bottle shops to car dealers, corner store to department stores. In this insightful blog, Kevin covers retail news, ideas, companies and emerging opportunities in Australia, NZ, the US and Europe and writes a regular blog which can be accessed from the website below. His international career in sales and marketing has seen him responsible for business in over 40 countries, which has earned him grey hair and a wealth of expertise in international retailers and brands.

CROSSMARK Asia Pacific is Australasia's largest provider of retail marketing services, consulting to and servicing some of Australasia's biggest retailers and manufacturers.

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How Green is Your Building?

Background

Commercial buildings are responsible for approximately 10% of Australia's total greenhouse gas emissions with the use of energy for cooling, ventilation and lighting accounting for more than 70% of the energy used by the commercial building sector.

Energy use in the commercial building sector has been identified by government authorities as a prime target for energy reduction initiatives for some time. The 2004 release of the "Securing Australia's Energy Future" white paper first raised the concept of mandatory disclosure of energy efficiency levels in commercial buildings.

More recently the National Framework for Energy Efficiency (NFEF) released a concept report discussing different framework structures in delivering an effective and transparent method of disclosing energy efficiency data for commercial buildings.

The introduction of a mandatory reporting scheme is expected to drive owners of commercial buildings to reduce their energy use and associated greenhouse gas emissions.

Whilst the concept report does not specify the actual rating tool that would be used to measure the energy efficiency of a commercial building, it outlines existing building rating schemes that could be used.

There a number of effective means of measuring a building's efficiency through existing building efficiency rating frameworks.

How Green is Your Building?

Building efficiency ratings provide an indication of how well the building minimises the consumption of energy and water, as well as ranking on its performance on other environmental areas such as waste management. The building ratings enable tenants, investors and regulators to compare buildings on a “like for like” basis to incorporate sustainability criteria in the selection and evaluation process. The **Green Star** and **National Australian Built Environment Rating System (NABERS)** are two commonly used rating tools.

Green Star

Green Star is a voluntary environmental rating

scheme that was developed by the Green Building Council of Australia (GBCA). It has frameworks that evaluate the efficient design of new and existing buildings based on assessment of nine performance categories that includes energy use, water use, materials of construction and building emissions.



NABERS

NABERS is a voluntary performance based rating system that rates existing buildings on measured (rather than design) operational impacts such as energy use, water use and waste generation and recycling rates.



The system is a national initiative managed by the NSW Department of Environment and Climate Change (DECC).

NABERS rates a building's efficiency based on its operational impacts on the environment, and provides an indication of how well the environmental impacts are managed. Buildings are rated using a one (poor) to five (exceptional) star rating. The ratings are based on existing data which was gathered nationally to enable the average rating level to be determined taking into account geographic factors such as climate which affect a buildings energy use. NABERS can be used to rate office buildings, hotels and homes.

Rating tools for retail buildings, hospitals and schools are currently being developed and expected to be available shortly.

Calculating your buildings rating can be undertaken online once the required data covering a 12 month period has been obtained, although the results of the assessment cannot be promoted.

However, this type of assessment may be useful for internal use by organisations seeking to assess their buildings environmental performance.

Alternatively, an assessment can be undertaken by an accredited assessor who submits the assessment to the DECC for verification and issue of a rating certificate.

Improving Your Buildings Environmental Performance

The first step to improving a building's environmental performance is to determine the baseline performance by collecting historical and current energy, water, waste to landfill and recycling data. Once the baseline data is established, the NABERS or Green Star framework can be applied to rate the current environmental performance of each building.

Establishing the baseline will enable the effectiveness of future improvement initiatives to be evaluated and also confirm if targets have been met. Involvement of key stakeholders and the use of best practice data are valuable in setting realistic targets for each building. An action plan is established which reflects the agreed performance targets taking into account budget and time constraints.

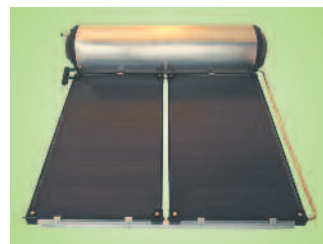
Reducing Energy and Water Use

There are a variety of energy and water saving initiatives with a range of complexity and cost that may be practically implemented to improve the environmental performance of buildings.

Some examples of these initiatives include:

ENERGY:

- Integrated air conditioning and lighting controls that service only areas that are occupied.
- Onsite power generation through multiple solar arrays, ceramic fuel cells and Trigeration (combined heat/cooling and power generation).
- Natural ventilation with automated windows and louvres.
- Efficient triphosphor lighting (T5 or T8) lamps.
- New and efficient lift systems.
- Lux level sensor controls to dim the lights when there is natural light.
- Sprinkler tank used for thermal storage.
- Installation of high efficiency chillers and use of existing chillers as a back up.



WATER:

- Installation of rainwater capture systems
- Use of grey water systems for toilet flushing
- Installation of dual flush toilets
- Implementation of low flow taps and cut-off sensors
- Use of low flow urinals
- Closed loop fire water tests



Government Assistance Schemes

To encourage owners of existing less efficient buildings to reduce greenhouse gas emissions and associated impacts on the environment, the government has established a \$90 million Green Building Fund as part of the **Clean Business Australia** initiative.

The grant is divided into two streams of funding. Stream A supports the refurbishment of existing buildings to reduce energy consumption, with grants of up to \$500,000 available. Stream B is aimed at developing knowledge and skills in improving energy efficiency for people involved in the operation of commercial office buildings, with grants of up to \$200,000 available. For both streams, up to 50% of the project costs can be funded.

Green Building Benefits

Increasingly, building owners are recognising the gap that emerges between the rental yields being achieved by less efficient properties, and those with leading edge high efficiency ratings and innovative spaces.

Improving your building's efficiency may save your organisation on operating costs, increase productivity, lower absenteeism, increase the value of the building and promote rental rate and increase growth in yields whilst reducing the building's greenhouse gas emissions and environmental impact. ■

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Main Residence Exemption

In a recent case, the Administrative Appeals Tribunal held that the CGT main residence exemption was not available to a husband and wife (the taxpayers) on a unit they acquired with the intention of it being their main residence, but which they ultimately never lived in.

The taxpayers purchased a unit in June 2000 with the intention of residing in it. However, due to the nature of the husband's work, they said that it only became practicable for them to reside in the unit in January 2006.

The Tribunal's view was the taxpayers did not move into the unit when it was first practicable to do so. It was also the Tribunal's view that the nature of the husband's work was not sufficient to enable the main residence exemption to be invoked.



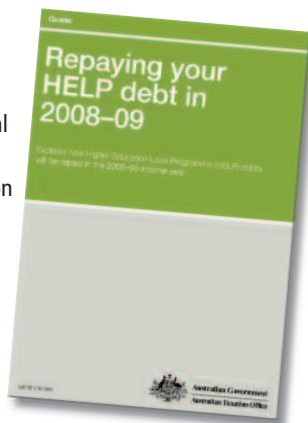
The Commissioner has stated in a Taxation Determination that the mere intention to occupy a dwelling as a main residence is insufficient to obtain the exemption. ■

Deferral of HELP Repayments

The Administrative Appeals Tribunal has declined a taxpayer's request to defer his compulsory Higher Education Loan Programme (HELP) repayment because the circumstances cited by the taxpayer did not amount to special reasons.

Taxpayers with an accumulated HELP debt may apply to the Commissioner to defer their repayment if making the repayment has caused or would cause serious hardship. Alternatively, the taxpayer may apply if there are other special reasons that make it fair and reasonable to defer the repayment.

If a taxpayer's HELP repayment income is below the minimum repayment threshold for a financial year, no repayment is required.



Keep Your Receipts

In two separate but related media releases, the Government and the Tax Office reminded parents to keep receipts relating to expenses incurred on their children's education if they wish to claim the education tax refund.

From 1 July 2008, eligible families can receive a maximum refund of

- \$375 for each child undertaking primary studies and
- \$750 for each child undertaking secondary studies.

The Tax Office states that only expenses which are paid for by parents will qualify for the refund. It also states that if an item is used for different purposes, only the amount that relates to a child's education is eligible for the refund. ■



Early Access to Super Benefits

The Tax Office has released an Alert warning people of arrangements offering early release of their superannuation benefits.

Broadly, the arrangements involve the rollover of superannuation benefits into a self-managed superannuation fund (SMSF).

The benefits are then released from the SMSF by the organisers of an arrangement without a condition of release as prescribed by the superannuation law being satisfied.

The Tax Office says that these arrangements may involve a breach of taxation and superannuation laws.

Generally, superannuation benefits must be preserved in a member's superannuation fund until a condition of release, such as the member permanently retiring and reaching her or his preservation age (which depends on the member's date of birth).

An early access of benefits is only permitted in certain restricted circumstances. For example, severe financial hardship and compassionate grounds. ■

Tax Concessions for Businesses

The Government has announced changes to the temporary investment allowance, which was announced in December 2008. Broadly, the amendments will:

- increase the rate to 30% (from 10%) for eligible assets acquired between 13 December 2008 and 30 June 2009, and install ready for use by June 2010;
- extend the allowance to assets acquired between 1 July 2009 and 31 December 2009, and installed by 31 December 2010, but at a rate of 10%; and
- decrease the cost of the eligible assets threshold for small businesses to \$1,000.

General businesses will also be eligible for the allowance, provided the cost of eligible assets is more than \$10,000. ■

Lump Sum Payment and Assessable Income

In another case heard by the Administrative Appeals Tribunal, it held that a lump sum payment received by a taxpayer in arrears of weekly compensation entitlements was assessable income.

The Tribunal found that the lump sum payment was a replacement for loss of income. It also found that the taxpayer was not entitled to reduce his assessable income from the payment or claim a deduction for pension amounts recovered by Centrelink out of the payment.



Generally, compensation payments which are a substitute for income will be assessable income, even if received as a lump sum. ■





Federal Government \$42 Billion Nation Building & Jobs Plan

The Rudd Government announced on February 3, a \$42 billion Nation Building and Jobs Plan to support jobs and invest in future long term economic growth as a response to the severe global recession.

Treasury estimates that the Nation Building and Jobs Plan will support up to 90,000 jobs in 2008-09 and 2009-10. The following is an edited extract from the Government's releases:

Key measures announced include:

- Free ceiling insulation for around 2.7 million Australian homes
- Building or upgrading a building in every one of Australia's 9,540 schools
- Building more than 20,000 new social and defence homes
- \$950 one off cash payments to eligible families, single workers, students, drought affected farmers and others
- A temporary business investment tax break for small and general businesses buying eligible assets
- Significantly increased funding for local community infrastructure and local road projects

The initiatives in the Nation Building and Jobs Plan will provide a predicted boost to economic growth of around ½ per cent of GDP in 2008-09 and around ¾ per cent to 1 per cent of GDP in 2009-10.

The Rudd Government hopes by investing in jobs and long term economic growth the Plan will strike the right balance between immediate support for jobs now, and delivering the long term

investments needed to strengthen future economic growth. For every \$1 spent providing immediate stimulus to the economy the Government has invested more than \$2 on long term investments that will generate future economic growth.

Long Term Nation Building Investments

Direct investment by the Government in goods and services has significant scope to boost economic growth and productivity and support jobs because it adds directly to demand. There are five major components of the Nation Building and Jobs plan.

Education

- Build or upgrade large scale infrastructure, such as libraries and halls in every primary school, special school, and K-12s school in Australia.
- Build 500 new science laboratories and language learning centres in schools that can demonstrate need.
- Up to \$200,000 to every Australian school for maintenance and renewal of school buildings.

(Continued)



Energy Efficient Homes

- Installing ceiling insulation in 2.7 million Australian homes which will cut around \$200 per year off the energy bills of these households
- Reduce greenhouse gas emissions by around 49.4 million tonnes by 2020, the equivalent of taking more than 1 million cars off the road

20,000 Social and Defence Homes

- Build 20,000 new social housing dwellings and 802 new houses for the Australian Defence Force.
- Urgent maintenance to upgrade around 2,500 vacant social houses

Small Businesses and General Business Tax Break

- A 30 cent in every dollar investment tax break for small and general businesses buying eligible assets.



Black Spots, Boom Gates, Regional Roads and Community Infrastructure

- 350 additional projects in the Black Spot Program and the installation of around 200 new boom gates at high risk rail crossings
- \$650 million funding boost for local community infrastructure and maintenance on Australia's national highways

One-off Bonuses

The two Bills implementing the one-off bonuses announced in the Nation Building and Jobs Plan are awaiting enactment.

Tax Bonus for Working Australians Bill (No 2) 2009

This Bill ensures that taxpayers who paid tax in 2007/08 after taking into account tax offsets and imputation credits will receive a one-off bonus.

The amount of bonus will depend on a taxpayer's taxable income for that financial year:

- \$900 if taxable income was up to \$80,000;
- \$600 if taxable income was between \$80,001 and \$90,000;
- \$250 if taxable income was between \$90,001 and \$100,000; and
- \$0 if taxable income was more than \$100,000.

The bonus will be paid to eligible taxpayers from April 2009.

Household Stimulus Package Bill (No 2) 2009

This Bill ensures that eligible families or individuals will receive the following bonuses:

- \$900 Single Income Family Bonus to families who, on 3 February 2009, were eligible for Family Tax Benefit Part B.
- \$950 per child Back to School Bonus to families who, on 3 February 2009, were eligible for Family Tax Benefit Part A.
- \$950 Training and Learning Bonus to students and people outside of the workforce returning to study.
- \$950 Farmers Hardship Bonus to farmers and rural-dependent small businesses who, on 3 February 2009, received exceptional circumstances-related income support.



Immediate Stimulus to Support Jobs and Economic Growth

Targeted bonuses to low and middle income households will provide an immediate stimulus to the economy and support Australian jobs. In conjunction with the payments delivered as part of the \$10.4 billion Economic Security Strategy announced in October, these measures have been designed to assist those groups most affected by the flow-on effects of the global recession.

Many Sothertons clients will be eligible to receive the one-off tax bonus payment. The Government has indicated the legislation will be introduced in February 09.

The Tax Office is responsible for making the proposed payments once the legislation is law. They expect to begin making payments from early April 2009.

To be eligible to receive the proposed payment people need to have lodged their 2007-08 income tax returns by 30 June 2009 and be an Australian resident. Some conditions apply for minors.

Clients will also be eligible for the payment if an extension of time to lodge beyond 30 June 2009 has been granted before the measure becomes law. Once the measure is law, any client who receives an extension to lodge after 30 June 2009 will not be entitled to the payment.

The ATO will work out if a taxpayer is eligible for the payment and how much they're entitled to by using the information provided in their 2007-08 tax returns.

The ATO have set-up a special phone number so people who use tax agents, but who want to receive the payment directly, can register their personal bank account details for this payment. The number is 1300 686 636.

All changes of address and bank account details should be made by the middle of March to ensure people's money goes into the right bank account or the cheque is delivered to the correct address in early April 2009.

More information will be released in future issues of the Sothertons Report. Should any client have any questions in relation to this matter we ask that you contact your Sothertons Partner or accounting services manager. ■

Capital Allowances: Effective Life Review of Smash Repair and Car Wash Assets



Background

The Tax Office has commenced a review of the automotive body, paint and interior repair industry as defined by ANZSIC code 94120 with a view to making new effective life determinations.

Effective lives are used by taxpayers to work out a deduction for an asset's decline in value (depreciation deduction). The purpose of the review is to ensure the Commissioner's effective life determinations cover all of the assets commonly used today, and reflect current industry practices and expectations.

The Commissioner's determinations operate as a 'safe harbour' for taxpayers. The option of self-assessing effective lives is also available.

Scope of Review

The review will cover the assets used in the repairing, panel beating and/or spray painting of smashed or damaged automotive vehicles (commonly referred to as smash repairs). Also included in the review are the assets used in repairing the interior/exterior of automotive vehicles including the provision of car wash or cleaning services, as well as the activities of replacing, repairing and/or tinting automotive vehicle glass.

The ATO expect their review of these assets to be completed within 18 months, with new effective life determinations applying from 1 July 2010. Draft effective lives will be issued for public comment well before final decisions are made. ■



QANTAS INFLIGHT ENTERTAINMENT

radio



TALKING BUSINESS with Mark Lipson Sothertons Forensic Accountant

Sothertons Melbourne Director Mark Lipson was recently interviewed by Peter Switzer for the Qantas inflight program "TALKING BUSINESS".

The program will be aired on all domestic and short-haul international flights for six weeks commencing February 1st.

PS On Talking Business I'm about to talk to Mark Lipson who is a Director of Sothertons, a medium sized national firm of chartered accountants and business advisors, and he's going to be talking about the fascinating subject of forensic accounting which aims to find assets that may be hidden, and so therefore involves a good degree of detective work in financial sleuthing, if such a word exists. Welcome to Talking Business Mark.

ML Thanks very much Peter.

PS Mark, one of my very unfair colleagues at this recording studio said it seemed unbelievable that we can use the word fascinating and accountants in the one sentence, but this is a really exciting and sexy area of accounting, isn't it?

ML Well Peter, it's certainly an area that moves away from the traditional concept of what accountants do and how they do it. Each case is very, very, different, involving, as you quite rightly said, some interesting concepts and some interesting facts and cases.

PS What's the most common area where Forensic Accountants get involved?

ML Well, there's probably three main areas. Certainly family law, the valuation of assets, the tracking of assets if they've gone missing is a common one. Fraud investigation is a strong stream in that particular discipline, and commercial law/ commercial litigation where accountants identify loss and damage when breaches to contracts or to the Trade Practices Act occurs.



QANTAS INFLIGHT ENTERTAINMENT

PS In the case of family law, can you give us a typical situation where an accountant might find they're actually acting in this forensic accounting kind of way?

ML Certainly. In Australia we have a single expert rule where the husband and the wife will agree to a single forensic accountant to provide the family court with advice regarding the valuation of the business or the identification of the asset pool for the family, and the value of that asset pool.

PS Do you find that one partner, in particular, is unwilling to accept fair evaluations of assets and that's why there's been a need to pull the objective person in?

ML Oh absolutely, Peter. Even with a single expert, it doesn't mean that both husband and wife agree with what the single expert determines as the value of the business, or shares, or certain assets, and as a consequence you do get situations where the husband and the wife may challenge the view or the opinion formed by the single expert.

PS The single expert must occasionally get arguments and hate mail from both sides as well?

ML Well, we're pretty shielded. In one sense it's still a very formal legal process where I normally interact with the legal representatives for both sides – I rarely get involved with the husband or the wife directly – so no, we don't actually receive the hate mail. [laughter]

PS [laughter] That's very comforting, but let's go to the next stage, to the corporate or the business level. What's a typical activity that you might be involved in there, in the forensic accounting way?

ML In terms of corporate litigation, it's where you get a situation where two parties have contracted together for their own mutual self interest, one breaches the contract or one misleads another party into a contract and suffers a loss or damage, and our role is to identify what that loss and damage is valued at.



QANTAS INFLIGHT ENTERTAINMENT

PS And I guess also when business partnerships, kind of, break up, it's a bit like a marriage breaking up and there's a requirement there to fully understand the value of the business?

ML Absolutely, Peter. The disintegration of a business partnership is no different to the marriage breakdown between the husband and the wife. The assets have to be valued, a fair value has to be determined and accepted by both sides, or challenged in court.

PS We're talking to Mark Lipson, a Forensic Accountant with Sothertons.

It sounds so dramatic doesn't it? Forensic Accountant. Do you also act on behalf of the tax office, or do you act against the tax office on behalf of clients?

ML We've done a little bit of both. In more recent times, Peter, my firm Sothertons Melbourne has been representing taxpayers who have found themselves in a lot of trouble with the Australian Taxation Office, and it's our job to try and make sense of the allegations that have been made by the Australian Taxation Office and bring some rationality to that whole litigation.

PS Do you think many business owners are creating problems for themselves because they're not good at actually recording what assets they have, and the change and the evaluation of these assets?

ML I think that's certainly true of the small to medium size companies where they don't necessarily have elaborate infrastructure to record and maintain asset values on the balance sheet, so they do run a risk when transactions do go off the rails. They do run a great risk that they're unable to support their side of the story in those particular matters.

PS And what about the cases of those small and medium sized business? They have a very poor demarcation between what is business money, and what is family money?



- ML Unfortunately that does happen considerably, particular in family law where often the husband and the wife form corporate entities, or they operate through family trust, believing that even though they've restructured their business, that it's their business and they can utilise the funds as they see fit. Unfortunately corporation law basically provides the husband and wife, or the directors, with certain duties and responsibilities which sometimes there is a blurring between personal interest and corporate interest.
- PS It was often said that if you're going to stow your money away from your business, the best place to do it is in your superannuation fund because it's very hard for creditors to get the money out of the superfund. Does this still stand as a pretty safe way of storing your money and your wealth?
- ML Well, I think people should utilise superannuation in an appropriate manner. I suspect that some individuals will try and exploit whatever loopholes to whatever advantage that the superannuation arrangements have in this country for them. But in the main we find that superannuation is managed very well and it's applied by business owners, not necessarily with the intention of defrauding their creditors.
- PS It's a really sneaky criminal who used superannuation to get around. [laughter]
- ML Peter, I think there's been some high profile cases in the last few years where that has occurred, but in general we rarely see superannuation being used in that way.
- PS Mate, it's a very interesting topic. If people want to learn more about it, what's your website?
- ML It's "www.sothertonsmelbourne.com.au"
- PS Mate, thanks for joining us on Talking Business.
- ML It's a pleasure, Peter, thank you.



Directors' Personal Liability for a Company's Tax Debts

In tough economic times there is more pressure on companies to pay their creditors on time. But this is often not possible as the cash is simply not available.

As a result some creditors are paid late (or not at all). The ATO is one creditor that is low on the list of priorities for payment because it is often slow to chase outstanding debts.

Insolvent trading is something that will affect more and more companies this year as revenue falls. Employers and directors need to be aware of the harsh penalties and obligations that may be imposed on those responsible for insolvent trading by a company.

Non-Payment of PAYG Withholding

When trading conditions are tight many companies do not remit PAYG withholding amounts to the ATO because they do not have the money or because they use it to pay suppliers in priority to the ATO. Employers often believe that the ATO will take a while to chase them for these amounts, and by this time, they would have paid any late PAYG payments.

What many employers are not aware of is the harsh penalties and obligations on companies and directors who do not remit their PAYG withholding amounts to the ATO on time. In addition to the employer company being liable for penalties under the **Taxation Administration Act 1953 ("TAA")** the directors of the company may be personally liable under the **Income Tax Assessment Act 1936 ("ITAA 1936")**.

Section 222A0B of ITAA 1936 requires directors who do not remit PAYG withheld when it becomes due ("due date") to either come to an arrangement with the ATO in relation to payment, place the company into the hands of the administrator or begin winding it up. If s.222A0B is not complied with on or before the due date specified in a notice issued by the ATO each director of the company is personally liable to pay to the Commissioner, by way of penalty, an amount equal to the unpaid amount of the company's liability in respect of PAYG amounts that have been deducted and not remitted to the ATO.

Non-Payment of PAYG Withholding (continued)

It is important that all directors of companies understand that if the company has deducted PAYG but does not remit it to the ATO by the due date, any person who was a director of the company during the time it was deducted to the time it became due for payment to the ATO, may also be personally liable to pay the amount.

Are you Up To Date With Your Employees' Superannuation Contributions?

Generally speaking directors will not be made personally liable for a company's unpaid superannuation guarantee charge. However, if a director has borrowed money from the company the ATO can serve a notice on the director under s.260-5 TAA requiring the director to pay the outstanding amount of SGC. This applies to any third party that owes money to the company and where the company has a 'tax related liability' as defined. The third party is not required to pay more than the amount they owe to the company.

In many family company situations the company has lent money to the owners who are also directors. As a result those individuals are at risk if the company does not pay a 'tax related liability', such as SGC, on time.

Insolvent Trading

A company will be defined as insolvent under the Corporations Act 2001 when it cannot pay its debts when they fall due and payable. The Corporations Act has a number of provisions that can make directors personally liable for the debts of the company.

Under the s.588G, directors can be made personally liable when the company continues to trade and incurs further debts (e.g. a tax debt), once there are reasonable grounds for suspecting that the company is insolvent. In situations where the company becomes insolvent and there are reasonable grounds for suspecting insolvency, the director has a positive duty to prevent the company from incurring further debts, including tax related debts. In the situation where the company is the trustee of a trust, the directors of the trustee company can be made personally liable for the liabilities of the trust under s.197.

There are defences to insolvent trading that are available to directors. Some of these require quick action.

Directors of companies need to be vigilant in ensuring the tax liabilities of the company are paid on time otherwise they could be personally liable for payment of the company's debt. It is important for directors to seek legal advice as soon as they become aware the company has a problem. Further, directors need to consider undertaking asset protection strategies to limit personal losses should they be held personally liable.

Robert Warnock, Principal,
Macpherson & Kelley Lawyers, www.mk.com.au



WORK IS A RISKY BUSINESS

The Australian Safety and Compensation Council statistics for the period of July 2006 to June 2007 demonstrate workers employed in blue-collar jobs have the highest probability of a fatality in the workplace.

The statistics compiled by the council in 2006-07 identified an increase in the overall number of workplace deaths since the figures began to be compiled in 2004. The total number of notified workplace fatalities for the period was 162, an increase from the 157 deaths reported in the previous year.

The data illustrates the majority of workplace fatalities occur in the 35-44 age group, which is also the largest demographic within the workforce, however, workers aged 55 years are overrepresented accounting for 41 per cent of workplace fatalities.



Is Your Industry Considered High Risk?

Five major industry groups accounted for 70% of all workplace deaths in 2006 – 2007:

- Mining
- Construction
- Agriculture, Forestry & Fishing
- Transport and Storage
- Manufacturing



WorkSafe / WorkCover organisations provide detailed information identifying high risk workplace activities for workers within a wide range of industries.

Fatalities within the Mining industry most often occur as a result of workers being hit by falling objects, vehicle accidents, workers being crushed between moving and stationary objects, explosions and falls from heights.

High risk workplace activities within the Construction industry include working at heights, working with electricity, handling hazardous substances and operating machinery. The environmental risks at a construction site which could also result in a fatality include structural collapse and roadside traffic.

Major high risk activities identified within Agriculture, Forestry and Fishing are the forestry activities of falling hazardous trees both



mechanically and manually and log extraction.

The majority of fatalities within the Transport and Storage industry are as a result of vehicle accidents, however deaths have also been reported following workers falling from the top of their trucks whilst loading, securing or checking loads.



Additionally, within the Storage industry the hazard of being hit by moving or falling objects contributes to the reported workplace fatalities.

Within the Manufacturing industry the main factor contributing to workplace fatalities is inappropriate use of forklifts, powered mobile plant, equipment and machinery.

The exact number of workplace deaths within each of the high risk industry groups is uncertain as Safety Representatives within these industries have identified an under-reporting of fatalities to occupational health and safety authorities.

What are the Most Common Causes of Fatalities in the Workplace?

The statistics compiled by the council identified the most dangerous occupations involve workplace activities of driving or operating machinery.

Workplace Activity	Number of Fatalities
Vehicle Accidents	30
Being hit by moving or falling objects	29
Falls from a height	28
Contact with electricity	13

Which Industries Have the Lowest Risk of a Fatality?

Three industry groups reported a rate of zero fatalities in 2006 – 2007:

- Finance
- Health and Community services
- Communications services

WorkSafe Victoria identifies within these industry groups the majority of workplace injuries are shortterm injuries such as sprains/strains and musculoskeletal disorders from performing manual handling tasks.

Summary of Fatality Statistics

Industry	Number of deaths per 100,000 workers
Mining	8.8
Agriculture, Forestry & Fishing	6.4
Transport & Storage	5.3
Construction	3.5
Personal & Other	2.3
Recreational Services	2.1
Government Administration & Defence	1.6
Manufacturing	1.4
Electricity, Gas, Water	1.2
Wholesale Trade	0.4
Property & Business	0.3
Retail	0.2
Accommodation, Cafes etc	0.2
Education	0.1
Finance	0.0

What can Employers do to Minimise Risks Within the Workplace?

Implementing a comprehensive Risk Management Program within your workplace can assist with significantly reducing potential risks. The Risk Management Program should include the processes of identifying, assessing and controlling risks within the workplace. For example, documenting Safe Work Method Statements (SWMS) for tasks performed within the workplace and training employees will assist in managing and controlling the risk.

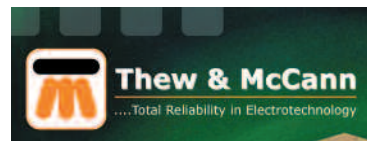
Also, risk control measures implemented should be monitored and reviewed to ensure the control measures are adequate in terms of being effective in reducing the risk of injury.

The various state WorkCover authorities have developed initiatives targeting a reduction in workplace fatalities and publications are available outlining Occupational Health and Safety legislation for workplaces. Numerous industry specific publications have also been developed outlining common hazards and the risk management process. ■

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

Sothertons Client Profile

Thew & McCann Pty Ltd,
a client of Sothertons
Brisbane, is a company specialising in the supply of materials and equipment to the electricity supply and allied industries.



Sothertons Brisbane has provided accounting and taxation services to the company over a long period of time and has been on hand to assist the company in its growth and development.

The company began operation in Brisbane in 1967. Now located at Cleveland, southeast of Brisbane, Thew & McCann has a purpose-built factory for the manufacture and distribution of products to customers throughout Australia and the southwest Pacific region. Through successive periods of growth, the company now services customers in all Australian states and territories.



Thew & McCann, Managing Director Peter Pearce said, 'The Thew & McCann claim under its logo, 'total reliability in electrotechnology', is no idle boast. The company has built its reputation for reliability over nearly six decades, supplying materials and equipment to the electricity supply and related industries.'

Founded in Sydney in the late 1950s by Lance Thew and Harold McCann, the Thew & McCann name became synonymous with overhead line technology throughout NSW, and in 1967 Lance and Harold recruited Norm Pearce from the Sydney County Council Electricity Board to open a Queensland branch in Brisbane.

Shortly after setting up in Queensland Norm bought out the company and has since not looked back with his son, Peter Pearce, recently taking over as Managing Director.

'Over the past decade, there has been a historic shift in the company's market position. From being primarily a sales and distribution business, Thew & McCann is now an established manufacturer with products designed and built in Australia for local conditions, and supported by extensive testing.

The company has become a market leader in portable earthing equipment and insulated high voltage operating sticks. Imported portable earthing equipment is rarely available in standard configurations which are suitable for the unique operating requirements of Australian utilities. From overhead lines to indoor substation

applications, T-Mac® portable earthing equipment can be assembled in the exact configurations required by a variety of customers in different parts of Australasia.' Mr. Pearce said.

Mr. Pearce commented that of particular note, is the development of the patented T-Mac® switchgear portable earthing system in 2003, subsequently followed by the introduction of other new products under this brand. T-Mac® insulating operating sticks are fully made in Australia to the requirements of international standards, but likewise meeting all local requirements.

As representative of a number of well-respected international companies, Thew & McCann has access to the numerous and varied resources of its principals to provide a high degree of ongoing technical support to customers. www.thew.com.au ■



BEWARE – Tax Refund Scam

The Tax Office has issued two separate but related media releases warning taxpayers of two e-mail scams purporting to offer a tax refund.

The scams operate by requesting a taxpayer's credit card and personal details. Generally, the subject heading of the emails are titled:

- **Get refunds on your Visa or Master Card;**
- **Notification – Please Read;**
or
- **Australian Taxation Office – Please Read This.**

The Tax Office DOES NOT send e-mails requesting personal information including credit card details.

Individuals who receive emails of this nature should immediately delete them. ■

