

## JUST ONE MORE TAX!!!

By Schon G Condon RFD

Well the tax that would never come on this watch is, at least, on the table.

Let me first of all put this article into some perspective. My own stance is that I am one with a respect for much of the current findings and research that supports the case for "Climate Change", acknowledging however that this planet has over its lifetime taken some significant swings from one extreme to another and as a consequence one thing that we must all accept is some form of change. I am also however, concerned with the fact of whether we are really focused on the critical issues. For example, what was the climate change impact of the recent spout of volcanic eruptions and is there an even greater catastrophic event capable of being predicted from the recent increases in seismic activity?

Fortunately, it will be brains with far greater experience than mine that will lead the research and formulate the debate on the various issues and my (and for many others their) responsibility not only to try to keep up but also endeavour to ensure that there is a balance to all aspects. Given the magnitude of the task it is clear that these efforts and this research will need to be well funded.

Like all things it will relate to the genuinely correct identification of the problem and then the application of the most expedient cost effective solution so as to bring timely remediation.

Now let's get back to our Carbon Tax. This it would appear is what the Government is suggesting is the most effective readily available tool to deal with the current situation, albeit that we don't know what the content or method of operation will be. The fact that it has been released without content is of less concern as it does give the country the time to provide input.

However, this is critically an issue that small to medium size businesses must focus on and has the potential of being as big if not bigger than the GST for some industries.

As with all taxes there are two fundamental issues, who will pay, and who will receive. The extending corollary to this

then becomes to whom the impost can be passed onto, and it is here that the similarities to the GST can increase.

There are many small businesses in the market that manage to survive by simply not paying their fair quantum of tax. So the improvisation of a Carbon Tax will potentially further enhance the survivability of such organisations and increase the susceptibility of those businesses complying with the law to unfair competition.

Next is where the funds are moved to. It is clear that there are some significant climate issues that need to be addressed, so if these funds are to be used to pay for the construction of eco friendly systems at fair prices; relevant, pointed and value for money research, or other relevant expenditure then the imposition of the tax, could potentially be justified. However if the funds represent monies that are lost to consolidated revenue, paid to expensive advisors for no really beneficial reason, scammed off by unscrupulous operators in a dodgy bid to fix the problem or raked off by other irrelevant institutions then the most likely long term sufferers will be the small and medium enterprises.

With a fragile economy, unstable climate, potential for interest rate increases and the likelihood of another tax SME's must seriously review their plans and ensure that an appropriate level of contingency planning has been included.

I'm sure there are businesses that have survived worse than this and I'm sure those that plan will survive this.

2011 should only get better, at least let's hope so!

Enjoy the read.

### Inside this issue:

- Sons of Gwalia – Revisited
- Liquidator Surveillance – Practice Visits and Transaction Reviews by ASIC
- Outsourcing of Accounting Services



## **Sons of Gwalia – Revisited**

By Robert Kite

---

There have been some recent changes to the legacy afforded by the Sons of Gwalia decision, however, in order to comprehend the reason for the changes, one first needs to understand the context from where the legacy commenced. In order to do so, this matter will be briefly considered from its inception, inclusive of the recent changes.

The Sons of Gwalia matter basically comes down to a decision of the High Court of Australia in January 2007 whereby by a shareholder was allowed to prove against the Company as a Creditor.

When a Company enters into insolvency, it is a requirement that the claims of Creditors are paid in full, prior to any funds being available to the shareholders. Being classed as a Creditor also allows a party to attend and vote at Meetings of Creditors.

In the case of Sons of Gwalia, Mr Margaretic purchased a quantity of ordinary shares in the Company prior to the Company being placed into Voluntary Administration. (The Company subsequently entered into a Deed of Company Arrangement ("DCA")).

Mr Margaretic, realising that his shareholding was worthless, sought to make an application to the Court to enable him to lodge a claim against the Company as a Creditor, because of the dealings in which the Company engaged in prior to Mr Margaretic purchasing the shares. In the event that Mr Margaretic was entitled to lodge a claim as a Creditor, he stood a chance of making a recovery from the pool of funds available in the Deed of Company Arrangement (which the Company subsequently entered into), where as a shareholder he would not have made any recovery at all.

In Mr Margaretic's case, he purchased 20,000 shares in the Company 11 days prior to the Company being placed into Voluntary Administration. One of the core arguments for Mr Margaretic's case was such that the Company had mislead him at the time he purchased his shares, as the Company had failed to notify the ASX of the deficiency in certain areas as is required by the Corporations Act. Mr Margaretic's argument was such that had the appropriate disclosure been made, then he as an informed investor would not have purchased the shares. Accordingly, Mr Margaretic contended that he was misled by the Company, and was entitled to damages equal to the money he paid for his shares.

The High Court ruled in favour of Mr Margaretic, and accordingly, he was entitled to claim as a Creditor in the DCA of the Company.

From Mr Margaretic's point of view, this was a significant victory on his part. But if you consider the position of Creditors generally, the admission of shareholders into the pool of Creditors will result in the total pool of Creditors increasing, and therefore, the available funds for distribution will have to be spread even thinner by the dilution of the Creditor pool.

Amendments to the Corporations Act have been passed by the Australian Parliament to rectify this situation such that shareholders will not be entitled to claim as Creditors in the future, and that their claims will remain (as they were prior to the decision in Sons of Gwalia) subrogated to the claims of Creditors.

## **On the Lighter Side...**

---

Yesterday, I answered a knock on the door, only to be confronted by a well-dressed young bloke carrying a vacuum cleaner. 'Good morning,' he says. 'If I could take a couple of minutes of your time, I would like to demonstrate the very latest in high-powered vacuum cleaners.'

'Go away!' I said. 'I haven't got any dough! I'm broke!' and proceeded to close the door.

Quick as a flash, the young bloke wedged his foot in the door and pushed it wide open. 'Don't be too hasty!' he says. 'Not until you have at least seen my demonstration.' And with that, he emptied a bucket of horse manure onto my hallway carpet.

'If this vacuum cleaner doesn't remove all traces of this horse manure from your carpet Sir, I will personally eat the remainder.'

I stepped back and said, 'Well I hope you've got a good appetite mate, because they cut off my electricity this morning.....What part of 'broke' don't you understand?'



Our congratulations to Hakki on his recent appointment as Associate. This is a reflection of the depth of his experience and the way in which he has settled into the Firm. We look forward to his further development within the Practice.

# Liquidator Surveillance – Practice Visits and Transaction Reviews by ASIC

By Hiteshi Dekhtawala

With ASIC's renewed focus in the area of Liquidator compliance; ASIC is continuing to undertake a number of projects to assess Liquidator compliance with their legal obligations and to assist them to improve overall industry performance. Amongst various projects undertaken by ASIC, this article will discuss the Liquidator Surveillance Project.

ASIC is engaging in this project to attempt to raise industry standards, and to seek to protect the interests of Creditors in any Insolvency Administration. As part of this process, ASIC is currently making visits to the insolvency practices and reviewing certain matters of the Liquidators conduct, the details of which are discussed further below.

Since April 2010, ASIC has conducted 18 practice reviews nationally. The focus of these reviews are discussed under the headings listed below:-

## **A. Practitioner Independence**

Part of the review by ASIC seeks to ensure that for the insolvency appointments reviewed, the Liquidator is free from any:-

1. Biases towards any person or group;
2. Close personal or business relationship with any person involved in the insolvency where that relationship would lead someone to suspect that they would favour the interests of that person; and
3. Position where their own personal or private interests conflict with their duties in the insolvency appointment.

## **B. Remuneration Disclosure and Approval**

ASIC is also seeking to ensure that Liquidators adopt sound remuneration practices, and their investigations seek to establish that:-

1. Well-documented files with sufficiently detailed timesheet entries are maintained;
2. Timely and well documented practitioner review procedures are in place to assess reasonableness of time charged and time written off; and
3. Regular reviews of administrations within the first 6 months to ensure timely and efficient completion of tasks.

## **C. Quality of Investigations**

ASIC are also reviewing practitioner conduct to ensure that the quality of investigations conducted by the Liquidator, are correct and are done in a manner which will benefit the Administration.

## **D. Reporting to Creditors and to ASIC**

ASIC is also reviewing the matters to establish if regular updates are being forwarded to Creditors, and ASIC (as may be required), so as to keep the stakeholders abreast of the progress of the matter.

As part of this process, ASIC are also seeking to determine if jobs are being left open for no apparent reason.

In addition to the Practice Reviews, ASIC is also responsible for conducting transactional reviews. Transactional reviews are reviews of matters of grievance which have been reported to ASIC.

In addition to the specific practice visits, since 1 January 2010, ASIC has dealt with, or is dealing with, in excess of 90 transactional reviews.

Transaction reviews typically involve ASIC acting upon complaints received from the public or other sources of information in relation to a practitioner's conduct in respect to a specific external administration.

Outcomes of transaction reviews can include:

1. Writing to the Liquidator and obtaining an explanation of possible concerns identified by ASIC;
2. Taking action due to the seriousness and immediate nature of the conduct (e.g. independence/conflict concerns, capacity concerns);
3. Commencing a surveillance visit where it appears, on available information, that a Liquidator's conduct may be of a serious or systemic nature; and
4. Deciding to take no further action where the Liquidator has taken steps to address ASIC's concerns and/or it appears, based on available information; the liquidator is adequately and properly performing their duties.

It comes as no surprise to many that the conduct of some of our fellow practitioners of recent time has done nothing to foster a positive image of our profession. If the reviews by ASIC result in better practices being adopted across the industry, it can only be seen as a good thing for the profession, creditors, and the stakeholders.

## Outsourcing of Accounting Services

By John Chand

---

Outsourcing or offshore outsourcing is where an organisation, most commonly a business enterprise, engages an external organisation in a different country to carry out some of its labour intensive service administrative functions, for example, data processing and customer support.

The trend for Australian business enterprises to use offshore outsourcing has grown at an alarming rate since its early beginnings when, by outsourcing IT services, call centres and other administrative process to lower labour cost countries, substantial savings could be achieved.

There are four basic areas of offshore outsourcing:

1. ITO - Information Technology Outsourcing
2. BPO - Business Process Outsourcing covers things like running call centres.
3. RDO - Research and Development Outsourcing
4. KPO - Knowledge Process Outsourcing covering things that require a higher knowledge base such as Finance, Accounting, Engineering and Investment analysis.

KPO is the newest form of offshore outsourcing and is set to become increasingly popular in Australia as business enterprises follow their UK and US counterparts and begin to outsource a wide range of white collar jobs which require a skilled personnel base.

As identified in a study by KPMG in 2008, the "offshoring" of financial services is growing in both strategic and operational significance as shareholders of financial institutions, particularly in the current environment, seek a flatter expense base, by reducing labour costs, whilst striving to improve productivity.

Though the advantages of outsourcing financial services seem rather straightforward, i.e. lower costs, there are several disadvantages, which include:

- The security risks of sending confidential information to a different country.

- Ensuring that the timing and quality of service to be provided is of an expected and sustainable level.
- The loss of managerial control, as the work is performed in a different country.
- The further loss of control when collaborating with third party service providers.
- Underestimation of the running costs involved in KBO.
- Ensuring that the time taken to review the work outsourced combined with the costs of outsourcing the work costs less than it would for the work to be done in Australia.
- In relation to Accounting Firms outsourcing some service, their customer's views in relation to foreign workers handling their confidential information.
- Also in relation to Accounting Firms and the services they provide, taking into consideration their customer's views in relation to paying an Australian Firm Australian prices for work, which in turn is done overseas for non-Australian prices.

The last disadvantage listed above raises a serious issue regarding KBO, particularly in relation to the disclosures made to clients regarding the use of KBO for accounting work. Not only does it beg the question as to whether these circumstances are being disclosed in the first place, but also what charge rates are being used for the services performed by the overseas parties.

It is inevitable that more and more businesses will consider the outsourcing of financial services, including accounting, due to the cost saving benefits. However, for businesses to achieve the cost saving benefits of outsourcing they must first evaluate the structure of their businesses and how to best incorporate outsourcing. This is a much more difficult task and many small to mid-sized businesses will need to go through a third party known as an outsourcing agent to accomplish this.

As the outsourcing of accounting services is in its early stages, its effect on the accounting profession is yet to be seen. What is certain is that it will undoubtedly change the profession, in particular what, where, and by whom accounting services are being performed.

---

Level 6, 87 Marsden Street, Parramatta  
Level 6, 321 Pitt Street, Sydney  
443 High Street Penrith  
PO Box 1418 Parramatta 2124  
Email: [enquiries@condon.com.au](mailto:enquiries@condon.com.au)

**City/Parramatta** (02) 9893 9499  
**Bankstown** (02) 9708 6622  
**Liverpool** (02) 9602 7889  
**Penrith** (02) 4722 9699