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Thomas Noble & Russell
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CANBERRA PUTS COMPANY DIRECTORS ON NOTICE

ROWAN TRACEY
Director, Business Advisory Services
PERTH

Company directors need to ensure all taxation and superannuation payments are compliant as they may soon face even greater personal financial consequences.

Changes in the Treasury Laws Amendment (Combatting Illegal Phoenixing) Bill 2019 which has recently been passed by both houses of the Australian Parliament will strengthen the Australian Taxation Office's powers to pursue directors and make them personally liable for outstanding company debts.

This will make it critical for directors to be fully aware of the financial state of their companies and whether or not their business is paying all of its taxation and superannuation obligations on time.

When the legislation comes into effect, directors will no longer be able to backdate their resignations to avoid becoming personally liable for outstanding tax debt and/or unpaid superannuation payments, for example.

The primary purpose of the legislation is to further stamp out the practice of Phoenixing, which is a legal loophole that allows companies that owe money to creditors, including the ATO, to be wound up, and then the directors set up an almost identical company to effectively wipe out the debt.

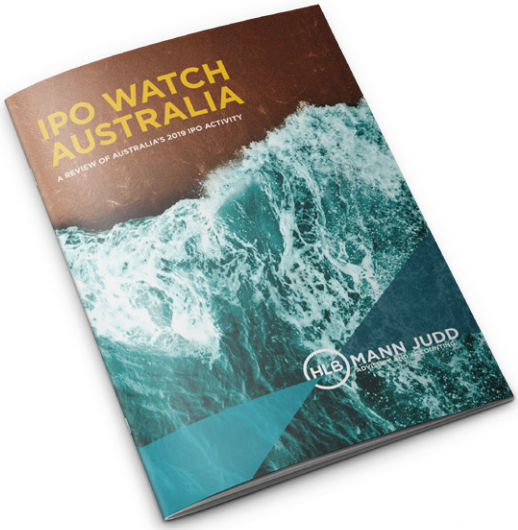
While the laws have a practical impact to safeguard the Federal Government's bottom line and a flow on effect to help protect other creditors such as suppliers and employees, other elements may burden companies, particularly small businesses.

The Bill received Royal Ascent on February 17, 2020, with some components of the Bill to come into effect from 1 April 2020.

Contact the author: rtracey@hlbwa.com.au

STRONG 2019 IPO MARKET PERFORMANCE UNLIKELY TO CONTINUE

MARCUS OHM
Partner, Corporate & Audit Services
PERTH



While the number of IPOs in 2019 was down on the previous year, listings overall performed better than in 2018.

The latest HLB Mann Judd IPO Watch report indicates there were 62 new listings on the ASX in 2019, down from 93 the year prior. The year's IPO activity was a return to the levels seen between 2012 and 2015, when the average was 61 new listings a year.

The fall in listings in 2019 resulted in a decrease in total funds raised during the year compared to previous year. In 2019, $6.91 billion was raised, down 18 per cent on 2018 when $8.44 billion was raised.

The total funds raised was also affected by the fall in the number of very large companies listing, with the largest capital raising in 2019 achieved by Tyro Payments (ASX: TYR) achieving $925 million. In contrast, in 2018 there were a number of $1 billion-plus companies listing, and the three largest IPOs of the year raised $4.75 billion between them.

Despite the drop in the number of IPOs and the total funds raised, there was an increase in the average amount raised and also an improvement in subscription rates; the average amount raised in 2019 was $112 million, up from $91 million in 2018, reflecting the fact that there were fewer small cap listings over the past 12 months.

There was a significant reduction in the number of small cap IPOs in 2019 – just 28 compared to 72 in 2018, reflecting a 'move to the middle', or fewer listings at both the very small and the very large ends of the market.

Small cap companies made up just five per cent of the total funds raised, and 45 per cent of all new listings, compared to a five-year average of 66 per cent. The IPO Watch Report cited the materials sector as the main driver of this decline, with only four listings – compared with 15 – recorded for the corresponding prior period.

While the year was notable for the number of IPOs that were shelved or withdrawn, those that did list performed well. The pulled float by Latitude Financial, and others including Retail Zoo and Onsite Rental Group, highlighted some of the challenges of going public, but overall in 2019, new entrants performed well, particularly compared to the previous year.

The average year-end gain across all companies was 34 per cent, and the average first day gain was 24 per cent.

Looking ahead, the pipeline for IPOs is somewhat subdued, with only 13 companies applying for listing to the ASX at the start of 2020, down from 17 the year before, and significantly down from 37 at the start of 2018.

Materials stocks make up the majority of the proposed listings (six), and notably there are no proposed IPOs of any significant size. The pipeline is soft, reflecting the challenging conditions in the IPO market.

Contact the author: mohm@hlbwa.com.au

"While the number of IPOs in 2019 was down on the previous year, listings overall performed better than in 2018."

R&D TAX INCENTIVE CHANGES REINTRODUCED

MARIANA VON-LUCKEN
Partner, Tax Consulting
SYDNEY

The 2018 budget changes to reduce the research and development (R&D) tax incentive has been reintroduced with some minor changes that companies should be aware of.

The amended incentive now applies to the 30 June 2020 R&D claim, but importantly, if a company is claiming the R&D tax incentive for the 30 June 2019 year, there are no changes.

Effective from 1 July 2019, for companies with an aggregated annual turnover of less than $20 million, the refundable R&D tax offset will become 41 per cent (being the company tax rate of 27.5 per cent plus 13.5 per cent R&D premium). The refund will be capped at $4 million per annum (except for clinical trials), with the remainder to be carried forward as an offset.

Also from 1 July 2019, companies with an aggregated annual turnover of $20 million or more, an R&D premium will be introduced that ties the rates of the non-refundable R&D tax offset to an incremental intensity (or percentage) of R&D expenditure as a proportion of total expenditure for the year.

The marginal R&D premium will be the company's tax rate (either 27.5 per cent or 30 per cent) plus progressive R&D incremental intensity premiums, including:

- 4 percentage points for R&D expenditure up to 4 per cent R&D intensity premium;
- 8.5 percentage points for R&D expenditure above 4 per cent to 9 per cent R&D intensity premium;
- 12.5 percentage points for R&D expenditure above 9 per cent R&D intensity premium.

Additionally, the $100 million R&D expenditure threshold has been increased to $150 million, allowing larger companies access to the R&D concession and be rewarded for eligible activities.

The government will also implement a series of compliance, enforcement and administration changes to improve the integrity of the R&D tax incentive. Although the majority of taxpayers do the right thing, some claimants, spread across all industry sectors, have engaged in behaviour such as incorrect self-assessment of eligible R&D activities, exaggerating their expenditure claims, 'pushing the boundaries' of the interpretation of the R&D definition and engaging in other forms of non-compliance.

Separately, the Small Business and Family Enterprise Ombudsman has reviewed the application of the R&D tax incentive to small businesses and has made various recommendations in relation to the administration of the R&D tax incentive. Further information on the outcome of the review is likely to be made public shortly.

Contact the author: mvonlucken@hlbnsw.com.au

THE ART OF PURPOSEFUL BUSINESS CONVERSATIONS

JUDE LAU
Partner, Audit & Assurance
MELBOURNE

Over the summer break, I read Bernie Shakeshaft's *Back on Track* and *Severed Dreams Reconstructing Your Purpose*, by Chad Porter. Both books impressed upon me the importance of finding, knowing and living your purpose in life, including your interactions in business.

The most impressive aspect about Porter's story was how a 14-year-old budding junior sports star, who became an amputee, went on to discover his gift of inspiring others to find the strength to preserve and fulfil their purpose.

Driving back to work in January, I was listening to the radio and the presenters were interviewing a professor who said the cause of many issues in the workplace is due to a communication breakdown.

Communication breakdown within the business environment is a major problem, and it prompted me to reflect on the following:

- As a business owner and family man with two kids, I spend on average 70 per cent of my waking hours communicating, making effective communication all the more critical
- The most common cause of issues within business is, more often than not, due to poor, improper communication or, as I like to call it, not achieving 'meeting of the minds' at the start of the conversation
- The associated costs from poor communication both in dollar terms and lost productivity is significant – 70 per cent of 16 hours is 11 hours 12 minutes. Imagine wasting all that time on a daily basis?
- Is communication training being provided fit for purpose?

The concept of purposeful conversations in business is simple. It's about ensuring the purpose for each conversation is clearly articulated and understood.

Being honest, respectful and professional is also a key factor. By this, it means that it is important to address the key points of the conversation with courage and conviction. Afterall, we are duty bound to be genuine and honest when communicating all news (both good and bad).

In today's fast paced world of the internet filled with apps and electronic gadgets, criticisms are easily and readily posted/published/shared/commented on.

People tend to have greater courage and convictions when they don't have to eyeball the other person. I believe honest, face-to-face interaction is a non-negotiable in order to have purposeful conversations and in reducing communication breakdowns in business.

Contact the author: jlau@hlbvic.com.au

MULTINATIONALS PREPARE FOR HYBRID MISMATCH RULES

ALEXANDER KING
Director, Tax Consulting
SYDNEY

Australia's hybrid mismatch rules, which came into effect from 1 January 2019, are complex and capture a broad range of payments to overseas recipients.

Australian members of multinational groups should consider the application of the hybrid mismatch rules to ensure they are not adversely affected.

The hybrid mismatch rules were developed by the Organisation for Economic Cooperation and Development (OECD) to prevent multinational corporations from avoiding income tax or obtaining double tax benefits through hybrid mismatch arrangements.

Broadly, a hybrid mismatch arises where entities exploit differences in the tax treatment of an entity or instrument under the laws of at least two tax jurisdictions to defer or reduce the overall cost of income tax. Common hybrid arrangements may result in one of the following:

- A deduction/ non-inclusion mismatch: where a payment is deductible in one country, but receipt of the payment is not assessable in another country; or
- A deduction/ deduction mismatch: where one payment is deductible in two countries.

The rules neutralise the effects of hybrid mismatches for Australian taxpayers by cancelling deductions or including amounts in their assessable income.

An imported hybrid measure can also apply to deny deductions for payments made by Australian companies which do not themselves create hybrid outcomes, but which fund hybrid mismatches further up a chain of entities.

When implementing the hybrid mismatch rules, the Australian government went beyond the OECD's recommendations and added a targeted financing integrity measure. This rule is designed to prevent offshore multinationals from circumventing the hybrid mismatch rules by routing investment or financing into Australia via an entity located in a no or low tax jurisdiction.

The integrity rule can apply to deny Australian related-party interest deductions on interest payments to foreign jurisdictions that tax the interest income at a rate of 10 per cent or less. Even where a debt deduction is denied, withholding tax will generally still apply to the interest payment.

The integrity rule will impact lending into Australia from tax havens that do not impose income tax. It will also impact more common funding jurisdictions, such as Singapore or Hong Kong, which do not tax foreign income that is not remitted onshore.

Although aimed at aggressive structuring by multinational corporations, the application of the hybrid mismatch rules is far-reaching. There is no minimum threshold, so the rules apply to all companies, regardless of their size.

The rules also catch a broad range of payments (including payments for services, interest, royalties and rents) and can apply to payments between both related parties and unrelated parties.

Taxpayers must self-assess whether the hybrid mismatch rules apply and, if necessary, complete the appropriate disclosures in their income tax return. Consequently, taxpayers are required to have a detailed knowledge of their global structure, as well as an understanding of the foreign income tax treatment of related entities and instruments.

To avoid any potential adverse impact of the rules applying, taxpayers should consider whether they can unwind or restructure existing hybrid arrangements with reference to the ATO's guidelines, which outlines restructures it considers to be 'low risk' and to which the Commissioner would not seek to apply Part IVA.

The hybrid mismatch rules have effect for income years commencing on or after 1 January 2019, with no grandfathering or transitional rules available for pre-existing arrangements.

Therefore, to determine the risk of the hybrid mismatch rules resulting in the denial of deductions, or additional assessable income, Australian members of multinational groups should be reviewing all their arrangements to determine what actions, if any, need to be taken.

Contact the author: aking@hlbnsw.com.au

"The integrity rule will impact lending into Australia from tax havens that do not impose income tax."

AI – AN INVESTMENT OPPORTUNITY?

JANE CROMBIE
Head of Investment Research
BRISBANE

Artificial Intelligence (AI) is a term that's now ubiquitous in everyday conversations, but exactly what is it, how does it work, and importantly, what's it worth?

AI is a branch of computer science concerned with developing machines which can think and work like humans. AI systems learn, solve problems, and perform tasks which normally require human intelligence.

AI, along with robotics, automation, the cloud, and the internet, is forecast to re-write the global technology landscape.

AI is currently present in activities such as Google searches, product recommendations from Amazon, and online travel bookings. Netflix uses predictive AI technology to make viewing recommendations based on customers' choices, interests and behaviour. Google Maps uses data feeds to predict the time for your daily commute, often before you even ask for it.

AI technology is being used extensively within the following sectors:

- Healthcare – personalised medicine, medical image analysis, and robotic surgery
- Business and finance – fraud prevention, credit assessments, and stock trading
- Education – plagiarism checks, essay grading, and delivery of personalised, adaptive learning
- Law – legal research, automation of documents, and forecasting of litigation outcomes
- Manufacturing – automation of assembly lines, quality control, and predictive maintenance.

As an early stage industry, AI raises several areas of concern. To date, there are few regulations governing its use, leading to potential for abuse. For example, hackers can use sophisticated AI to gain access to sensitive networks and security systems.

Ethical and legal questions may also arise. For example, should the AI in autonomous vehicles be forced to make an instant decision about minimising damage or loss of life in an accident scenario?

Concerns have also been raised about the threat AI poses to jobs, although some commentators suggest the exponential growth of the industry means more jobs will be created than eliminated.

In terms of investment, exposure to the AI theme is currently possible via shares in technology giants including Apple, Alphabet, Facebook, Netflix, and Microsoft. Suppliers of inputs such as semiconductors and other hardware also stand to benefit from the industry's growth.

Access to this market sector is available through managed funds, which may have an allocation to technology or disruption, exchange traded funds (ETFs) which focus on themes such as robotics, fintech, or cybersecurity, and technology start-ups. As more companies embrace AI, the investment universe will become even larger.

Contact the author: jcrombie@hlbqld.com.au

QUALITY FINANCIAL ADVICE MORE OF A CHALLENGE THAN EVER

MICHAEL HUTTON
Head of Wealth Management
SYDNEY

With financial adviser numbers falling in the wake of the Federal Government's Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, the risk is that many Australians will miss out on financial advice altogether.

The events of the past few years mean that financial planners will have to work even harder to ensure Australians don't miss out on the advice and assistance they need.

Many advisers are leaving the industry for various reasons, including education pressures, compliance burdens heightened by the Hayne Royal Commission, and the big banks closing down their financial advice arms in order to mitigate risk.

As a result, there's extensive fragmentation of the financial advice industry, with many advisers seeking new licensees or getting their own license.

Even more concerning is the likelihood many Australian's will miss out entirely on accessing quality financial advice. People will find it more difficult to get personalised financial advice, and with the cost of providing advice rising, it also poses a challenge for advisers to run viable businesses without passing the cost onto the client.

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The complexity of the financial environment, including tax and superannuation rules, is also increasing, making it more necessary for people to seek professional help to ensure they fully understand their financial position and obligations.

Good financial advice covers a wide range of wealth issues - super, other investments, interaction with tax, estate planning, cashflow planning, insurance needs, debt management and retirement plans.

While there has been discussion in recent years about the use of technology, and the rise of robo-advice, this will unlikely fill the gap; financial advice requires empathy, understanding and intuition, traits which technology are unable to provide.

The challenge for advisers is to find a way to repair the trust that has been damaged following the Royal Commission and show Australians the value of the advice they're able to provide. We believe that professional services firms, such as HLB Mann Judd, are well placed to meet the standards expected of financial services firms during the Royal Commission. There is no doubt that extra obligations will be placed on the provision of financial advice, and we welcome the increased professionalism that this will bring to the industry.

Contact the author: mhutton@hlbnsw.com.au

PARTNER APPOINTMENTS

HLB Mann Judd Adelaide and Wollongong have recently appointed partners to their audit, assurance and corporate advisory and business advisory and tax consulting divisions respectively.

Travis Rickard
Partner, Audit & Assurance & Corporate Advisory

Travis Rickard has been appointed as partner in the audit and assurance and corporate advisory division in Adelaide. Mr Rickard is well-respected in the South Australian business community and brings significant expertise to the firm. His appointment means that the growing audit practice will be able to better engage with existing clients, and also enables increased independence through audit partner rotation.

Paul Apolloni
Partner, Business Advisory & Tax Consulting

Paul Apolloni has been appointed as partner in the business advisory and tax consulting division in Wollongong, bringing the number of partners in the firm to five. Mr Apolloni has been with HLB Mann Judd since 2013 and has over 13 years' experience in the areas of business advisory, taxation consulting and self-managed superannuation funds.

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CONTACT

The HLB Mann Judd Australasian Association comprises a number of independent accounting firms in Australia, New Zealand and Fiji.

MEMBER FIRMS

ADELAIDE
T: (0)8 8133 5000
E: mailbox@hlbsa.com.au

AUCKLAND
T: +64 (0)9 303 2243
E: mailbox@hlb.co.nz

BRISBANE
T: (0)7 3001 8800
E: mailbox@hlbqld.com.au

FIJI
T: +679 670 2430
E: info@hlbnadi.com.fj

MELBOURNE
T: (0)3 9606 3888
E: mailbox@hlbvic.com.au

PERTH
T: (0)8 9227 7500
E: mailbox@hlbwa.com.au

PERTH INSOLVENCY WA
T: (0)8 9215 7900
E: mailbox@hlbinsol.com.au

SYDNEY
T: (0)2 9020 4000
E: mailbox@hlbnsw.com.au

WOLLONGONG
T: (0)2 4254 6500
E: mailbox@hlbw.com.au

REPRESENTATIVE FIRMS

HOBART / LORKIN DELPERO HARRIS
T: (0)3 6224 4844
E: mail@ldh.com.au

LISMORE / THOMAS NOBLE AND RUSSELL
T: (0)2 6621 8544
E: enquiries@tnr.com.au

NEWCASTLE / CUTCHER & NEALE ASSURANCE
T: (0)2 4928 8500
E: cnmail@cutcher.com.au

SPOTLIGHT ON... ADELAIDE

As the first in a series of regional profiles, HLB Mann Judd Adelaide's Mike Rowe provides a synopsis of the continuing evolution of the SA-based business, including the firm's priorities and growth strategy throughout 2020.

I've been with the Adelaide firm for over two years now, and having worked in CFO roles and as a corporate adviser, the partners specifically brought me in to "corporatise" their business model.

As professional advisers, we constantly remind our clients to work on the business, not in the business, so the move made sense.

We have now established a framework that enables the partners to play to their strengths and passions – which is spending quality time with their clients and collaborating with other partners to solve complex client issues and challenges.

We have made some other changes, too. I have always found that setting and achieving targets is the key to a high performing business. There are many parallels with sporting teams and a business team is very similar. Set the target, achieve it, set a new target and then repeat! Each year, the business has been improving on all the performance indicators we have set.

We have developed a strategy built on the pillars of creating a great culture, a great brand and growing the business. And growth is not purely financial. Growth for us is growing the mindset of our team and providing more relevant services and expertise to our clients.

It's been a massive transformation project. We've done a lot of work around understanding and respecting one another and the individual roles we all have to play, as well as in the way we communicate with each other. We've fostered a culture that's one of encouraging people, which is an incredibly rewarding and satisfying outcome, and one that will continue to serve the business well over the coming months and years.

In terms of our own business focus, like many of our clients, we're a small to medium sized business so we can't spend thousands on innovation. It means we need to be resourceful and we are finding ways to empower our team to deliver new ideas that we can introduce to our clients.

Innovation for the sake of innovation is missing the point. Innovation has to be both relevant and within the reach of our clients. A good example of that is our plan to hold more in-house events this year to inform clients of what they could be doing to improve the performance of their business.

HLB Mann Judd Adelaide is renowned for its tax and accounting offering, and our family business team also has an excellent reputation. We have a wealth management and property management division, which is quite unique, and our business services team is driving solutions around advisory.

Our audit and corporate advisory team also deal with ASX listed, not-for-profits and large family businesses. While our offering and expertise is comprehensive, we also offer a company secretarial, CFO and business sales service. We're engaged in a number of initiatives in this space which assist businesses that are experiencing growth, scaling up, exporting and preparing to sell. Our objective is to use the data and financial insights to drive business strategy.

We are the principal partner, with Business SA (SA Chamber of Commerce), of the Export Ready Program. This program is designed to help businesses looking to export to take that first step into the global market. We present a workshop on costing, pricing and risk management in taking your product, service or technology into a foreign market.

We've also developed a relationship with Austrade and Export Finance Australia on a program called the HLB "Pay it Forward" Series. Those in the export arena have an opportunity to learn from some of the best local exporters and model their businesses accordingly. Successful and well-known exporters are invited to present and discuss issues relevant in the exporting trade.

It's a unique offering which is driven from the values of trying to help SA businesses succeed which, as a professional service firm, is what we're here to do.

Contact the author: mrowe@hlbsa.com.au