## Tax debts Trigger Companies to go Insolvent

By Lisa Micallef

Many companies are continuing to hold off their tax liabilities, which often has resulted in companies being forced to appoint an external Administrator.

According to the Australian Taxation Office, there is over $10 billion outstanding in collectable liabilities, most of which comprises the business sector.

Numerous businesses carry some degree of debt baggage. Some directors delay paying the Australian Taxation Office the companies PAYG and GST liabilities, and may disregard penalty notices. However many directors are unaware that failing to pay their taxation liabilities is the biggest trigger for companies becoming insolvent.

This may result in the appointment of an External Administrator to examine the companies' affairs and assist stakeholders to determine the most suitable direction for the companies.

Each year over 7,700 companies go into Voluntary Administration, and the numbers have increased each year.

Directors should not avoid the early warning signs of financial difficulty. If this situation arises, take early action and seek professional financial advice before it is too late, as directors could be held personally liable for tax liabilities owed by their companies.

If your business isn't doing as well as it previously had, don't think that overnight your business will miraculously accelerate. It may be time to re-evaluate the company's goals and objectives and find new and realistic strategies to achieve those goals.

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**Editor: Sveta Shao**

**Environmental Awareness**
We have decided to trial a new eco paper and would welcome your feedback on its suitability and effectiveness.

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# ON THE BEAM

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## Happy Birthday, and What a Pricing Strategy!

By Schon G Condon RFD

Interesting combination you say, well yes, but both whilst very separate are extremely important.

Dealing firstly with the birthday, it is hard to believe that it's been twelve months since we separated from our previous firm on 1 October 2006. It has been a very busy but rewarding year adapting to our new image and direction. We did not re-badge until January 2007, but the ground work started this time last year. To give adequate recognition I must applaud the efforts of all of the team at Condon Associates for the effort they have put in and we are all excited about our future. Would you expect anything else from FIT practitioners?

It would also be remiss of me not to mention all those that have sought our advice, guidance and assistance over the year for without you we would have no purpose. We, as a team, thank you all. Further we certainly look forward to assisting you into the future.

Over the next few months there will be a few more exciting events, but I'll let you know more about these in future issues of "On the Beam" as they unfold.

So now let's consider pricing strategies. Has anyone ever considered insolvency as a pricing strategy?

I was recently listening to a programme on ABC Radio where they had a group of senior international bankers and other relevant professionals discussing a number of issues surrounding modern international banking. I was driving at the time and consequently was not in a position to take detailed notes, but am seeking to get a copy of the programme.

After discussing items such as the growth of banking, its role and responsibilities, its key role in the growth of the global economy the topic moved to that of the many new financial products that were being created essentially on a weekly basis. At this point two distinct sides evolved. Put simply, one surrounded the creativity and ingenuity aspects of the new products leading up to the opportunities they created, whilst the other was that much of this development represented recklessness and irresponsibility. As I believe I am insufficiently informed to pass a qualified judgement I do not intend to seek to do so here.

It was however during the short debate that followed that a statement was made that left me somewhat bewildered. In essence, one of the biggest issues being faced in dealing with these new products was how to accurately determine an appropriate pricing structure for them because of the uniqueness of the products and an inability to determine their true value to the customer or end beneficiary.

The solution offered by one party was that we (the market) needed more bankruptcies (a term that appeared to be used in the more international sense i.e. meaning insolvencies, rather than the Australian personal financial manner) so that the institutions were more able to accurately determine the "real" value of the products in the market place.

In taking such a stance I wonder what provision the proponent is making to cover all of the ensuing losses by creditors, employees, customers, governments and owners when the "bankruptcy that we had to have" is experienced. The construct that insolvency be used as a pricing tool is certainly new to me, and there are many people I have dealt with that I do not believe would accept "incorrect pricing of the financial products" as an acceptable reason for failure.

Certainly such an approach will bolster the turnaround industry significantly as I think the actual fallout sought or accepted will be more preferably described as a "difficult period of trading" rather than an "outright collapse."

Certainly it represents interesting food for thought. Please, enjoy the read.

### Inside this issue:

- *Tax debts Trigger Companies to go Insolvent*
- *Riding the wave of easy credit*
- *Reverse mortgage options for retirees*
- *$40 million = small beer for one of Australia's top five richest men*

## $40 million = small beer for one of Australia's top five richest men

By: Robert Garofano

A $40 million fine looks to be imposed on one of Australia's top five richest men ("the rich man"), for price fixing.

The media has been quick to describe this penalty as "the highest fee ever paid by an Australian company" (Schwab, 10 October 2007) while Victorian Premier John Brumby has claimed the penalty to be "very heavy".

Although it may be the highest fine ever imposed on an Australian company, it may not pose as much of a financial threat to "the rich man", as some are making it out to be.

"The rich man" is believed to be worth a conservative $5.4 billion (BRW). Thus, a $40 million fine represents 0.75% of his net worth.

For the purposes of comparison, consider the prosecution brought against another person for his involvement in several cases of insider trading. A fine of $130,000 was imposed on this person, representing 0.45% of his net worth.

Further, the Australian Bureau of Statistics states the "average Australian" below the age of 35 has a net worth of $166,600. If, for example, a 30-year-old "average Australian" was caught travelling at 62km/h in a 50km/h zone, they would receive a fine of approximately $250, representing 0.15% of their net worth.

On a relative basis, "the rich man's" fine for price fixing would have as much bearing on a billionaire as a "handful of speeding fines" would on a 30-year-old "average Australian" (Schwab, 10 October 2007).

Notwithstanding the above, and in the interest of fairness, the penalties faced by the rich man and the inside trader, along with alleged offenders in general, should not be directly influenced by the net worth of same. Instead, consideration of the damage caused by the breach of the law should play an important part in deciding on the intensity of the prosecution (Schwab, 10 October 2007).

Despite being an Australian record, a $40 million fine also seems little when compared with the penalties imposed overseas. Consider these examples:

**1996:** Archer Daniels Midland (Agribusiness conglomerate) fined $US400 million for price fixing;

**1997:** Haarman and Reimer Corp agreed to a $US50 million fine to settle a claim for price-fixing;

**1999:** F. Hoffmann-La Roche Ltd fined US$500 million for its involvement in a price fixing conspiracy which concerned US$5 billion worth of commerce products. "One would expect that the Visy/ Amcor collusion would have been on a similar, if not greater scale" (Schwab, 10 October 2007);

**2003:** WorldCom fined US$750 million for accounting fraud to the effect of US$11 billion; and

**2004:** Microsoft fined US$613 million for abuse of market power (Schwab, 10 October 2007).

## Don't become the next Statistic!

By David Iannuzzi

There has not been a weekend paper gone by over the last few months which did not mention "Record Eviction Rates", "Bankruptcies Increase", "Mortgagee in Possessions" etc.

Rather than re-hashing the statistics so many of us have read, we should note the following warning signs (and yes, most are dead obvious) leading to a battle affecting the hip pockets of all the parties concerned:

- An increase in phone calls requesting payments;
- Missing mortgage repayments;
- Using abnormal sources of funds to meet re-payments e.g. withdrawals as a Director from Company related funds (another topic in itself).
- Applying for new credit card and utilising credit to meet overdue payments;
- Working ridiculous hours of over-time;
- Ignoring demand and default notices;
- Visits from the Sheriff; and
- Bankruptcy Notices.

In most cases, waiting for a Sheriff or Legal Officer to deliver the unfortunate news may be too late and will cause undue emotional and financial stress. Add to this the necessary legal costs which in most cases must be incurred to obtain a result and you have all the right ingredients to create another statistic.

In recent times, we have come across all of the above warning signs resulting in a range of outcomes – the most devastating, dealing with a family or a ready to retire couple selling the Australian dream.

If you or your Client have ticked off more than 3 of the above (in particular the last item), you may be adding to the stats so often publicised. However, do not despair, there are options available to minimise exposure for all. We encourage and invite all queries concerning any issue raised within and will do all we can to lead you in the right direction.

*Need more information....visit our website*

***www.condon.com.au***

## Riding the Wave of Easy Credit

By Ian Niccol

Sydney is on a huge wave of easy credit causing the number of bankruptcy matters to dramatically swell.

The Insolvency and Trustee Service Australia have reported that personal insolvency in Sydney, in particular western Sydney has increased significantly since 2002-2003. The main reason for this trend is due to excess use of easy credit.

Following the housing boom many consumers became asset rich, but are now fast becoming cash poor. On the back of their capital gain, consumers have borrowed against their equity to fund a lifestyle beyond their means. Many bankrupts are reporting excess use of credit facilities as the main reason for their financial position.

Listed below are typical symptoms of easy credit fatigue:

- Transferring credit card balances to other credit cards, without canceling each card;
- Refinancing short term debt with other short term debt;
- If your mortgage payments are exceeding 30% of gross income;
- Constantly increasing the limits on credit facilities in order to pay for necessities;
- Paying interest only;
- Entered into informal payment arrangements with several credit providers;

So, how do you ride this wave without toppling over the crest into higher debt, or being dumped into the bubbling ocean of personal insolvency?

Debt management is the key to navigating the easy credit wave. There are various agencies who can provide free financial counseling and support for people in financial distress, both government and community based.

If you feel as though you can relate to any or many of the above symptoms, it might be time for you to consider seeking some advice. That is where the above agencies can help.

If you are still unsure, or would like further assistance and details, feel free to contact this office, or visit our website at www.condon.com.au and click on the links section for further contact information.

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## Reverse mortgage option for retirees

By: Esma Refik

Once you get to a certain age you can qualify to receive a reverse mortgage, what is that you might ask? It's a system that allows you to borrow cash against the value of your home. It is great because you can receive money and not have to make repayments until you move into care, sell your home or die. You are eligible for a reverse mortgage if you are over 60 years old and own your own home. The lender will generally allow you to borrow between 15% and 40% of the value of your home.

Over time the fees and interest you would ordinarily pay are added to the loan balance and you're charged interest on the interest which is built up to the total amount you owe. Subsequently there is a risk that the amount of the loan may increase to a point where it is more than the value of your home (negative equity). Some reverse mortgage products guarantee that if this happened you wouldn't have to pay more than the value of your home (a no negative equity guarantee). This protection is only valid if you meet the requirements of the loan, for example, if you repair and maintain your home to a standard set by the lender.

The Following are some pros & cons of reverse mortgages

### Advantages

- You can access cash as a lump sum, a regular stream of income or a combination of both
- You don't need a current income to qualify.
- You get to stay in your home and keep ownership.
- You usually don't have to make any regular repayments while you live in your home.

### Disadvantages

- Interest rates are usually higher than average home loan rates.
- If you are the sole owner of your home and you move or die, anyone who lives with you may not be able to stay in the home with you.
- The loan may affect your eligibility for a pension.
- There is no way to know for certain how much you will owe at the end of the loan.

The reverse mortgage option maybe able to assist you or someone you know, however speaking to a financial advisor will ensure if it is the best option for you. It is imperative that you obtain independent legal advice on the loan agreement and the mortgage document.

This article is not legal advice.