

ON THE BEAM

The AAT concurred and ruled in favour of Ms Sheikholeslami that the calculation of her liability for income contributions should be based on the exchange rate applicable at the time of the assessment.

Furthermore, the AAT explained that the liability of a bankrupt to pay an income contribution does not arise until there has been an assessment and the bankrupt will have to pay the contribution in Australian dollars at the time of assessment. Therefore, it would be logical that the amount paid be based on the conversion rate at the time the money becomes payable. This will ensure that bankrupts pay an appropriate income contribution whilst retaining sufficient reserves to meet living expenses. The AAT also noted that the income assessed shall be the bankrupt's net of tax income if the bankrupt was taxed overseas.

The AAT's decision contrasts with the general principles observed in the Income Tax Assessment Act 1997 (Cth), which provides that income must be converted to Australian dollars at the time the income is derived/received. The AAT's decision was based on the view that the decision is "the most logical and convenient for the fair and just operation of the Bankruptcy Act".

Further references are available on request.

References:

Administrative Appeals Tribunal. (2011). Sheikholeslami and Inspector-General in Bankruptcy [2011] AATA 670 (28 September 2011). Available: [http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/AATA/2011/670.html?stem=0&synonyms=0&query=title\(Sheikholeslami%20and%20Inspector-General%20in%20Bankruptcy%20\)](http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/AATA/2011/670.html?stem=0&synonyms=0&query=title(Sheikholeslami%20and%20Inspector-General%20in%20Bankruptcy%20)). Last accessed 9 January 2012.

Murray, M. (2011). Foreign income assessments in bankruptcy. Available: <http://www.ipaa.com.au/default.asp?menuid=212&artid=1082>. Last accessed 9 January 2012.

Condon Update

Whilst completing the final stages of a Degree in Music Hayley jumped into a suddenly created gap that had opened up in our Marketing area and very quickly settled in and made a significant impact on our activities. It gave Hayley an opportunity to see and experience the business

world from a very active view point. Unbeknown to me during this period there were serious forces from the dark side that have been quietly working their way into her head space, and I must now admit that I am unable to prevent her from commencing a career in LAW????????????????????

One door closes but another will open. So we proudly and passionately say farewell to Hayley (LAW???) and wish her well with her new career (LAW????). Notwithstanding my subtle attempt at humour, may I pass on a significant and sincere thankyou from us all.



The newest member of the Business Development Team - Lyn.

Correspondingly, we are very proud to welcome Lyn Dong into the Condon Group family. Lyn, a graduate of the UNSW School of Marketing, has recently returned to Australia after working in a senior marketing position in Beijing. We look forward to seeing Lyn take over the reins and further assisting in the development of our important relationships with our friends and colleagues. Welcome Lyn.

Welcome to 2012! Certain to be an Interesting Year ...already!

By Schon G Condon RFD

Well welcome to 2012, I trust you have had a happy and safe holiday period.

We march into 2012 with possibly more already said about this year than any other year in recent history in fact there is a dedicated website to the predictions of 2012! For those interested in watching things unfold feel free to go to www.2012predictions.net, I should also point out at this stage that this site has nothing to do with the Condon Group in any way.

In leaving 2011 there were many people that were confirmed in their belief that 2012 would be the year that insolvencies and liquidators would reign supreme. I am confident that it will not be an easy year and that there will be many financial issues to surmount, but it will also be a year of opportunities for those that are either properly positioned or willing to take the risks that will go hand in hand with the returns.

The fact that this will be a difficult year was confirmed for me on virtually my first day back. I have feared the real potential of a double dip not just because of fears emanating from Europe and the U.S. but also because I grow increasingly concerned that very few people have learned any genuine lessons from what we have experienced over the past five years.

When I have clients come in to see me initially I take the information they give me on face value. I then confirm or verify this information in the sequence in which the detail is important to me. Some are surprised at this approach, but as I am quick to point out; feed me garbage and the corresponding advice will be rubbish, i.e. useless. Correspondingly if we create information systems that are not factual then why put any faith in them at all. The importance of the information

system is the power that accurate information gives the user, there is no power in such a document if it merely says 'we came first' or 'we are the best!'

The Financial Review ran the story of the Superannuation Fund IT provider that had, in simple terms, blown its costs out on the system that it had developed which was merely funded by the issuing of shares to the relevant superfund's who in turn happen to own the IT supplier.

On the other hand, in a potentially real world, the Super Funds would be demanding performance under the existing contract, then threatening legal action to recover under any available insurances, with the provider at least potentially considering insolvency if not actually entering it. Don't get me wrong, I'm not suggesting that the IT entity should be wound up, but I seriously question the appropriateness of recording what appears to be an expense as an investment.

Why my reservation? Well it is two-fold. Firstly, I have lost count of the number of people that have come through our doors with marvellously valued assets that in reality were worth nothing. They had been living in dream land well before they arrived on our door step. So focus on reality not bluff because at the end of the day the only one you bluff is yourself. Secondly, we are endeavouring to achieve a low cost settlement with the wife of one of our bankrupts in order to avoid the significant costs associated with seizing the family home. If we are successful it will see Creditors paid in full.

So why is this an issue? Well our dedicated and fortunately patient wife is trying to draw down on those funds that she is now entitled to withdraw from her super fund. Alas, the super fund has put every obstacle in her way and alas the resolution is now measured in months not weeks. Maybe

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they have to sell some of the IT Company first? We will get there, trust me.

In the same paper the Tax Office is quoted as stating "More insolvencies and less tax" so they have left it until the New Year to make their prediction and this should be the potential end of what has been the two speed economy. The time when all those businesses that have barely survived admit their true financial state as cash flow will not carry them.

What a paper to open on day 1 of the new business calendar year!!

Whatever the challenges, whatever the strains that are thrown at everyone this year, rest assured there will be answers, solutions and options. They may not all be pleasant but many will support survival and revival.

We look forward to once again assisting our clients with their concerns and financial woes this year. So lets get into a great 2012.

Enjoy the read.



The Financial Crisis Isn't That Bad?

By Sadia Alam

The Economic crisis is no surprise. It was anticipated once the "Housing Bubble" burst during 2001 in the US. However, the underlying question is, "Can the Financial Crisis be a Positive thing?"

From a scientific perspective, it will be almost impossible to suggest that the economic crisis will cause a healthy environment as it takes on such a pessimistic view. But by looking at the current financial crisis, there is sure to be some, if not many, positive aspects that we can utilise efficiently to bring about an optimistic atmosphere.

It is brain straining to suggest any positive effects of such a catastrophe, but one affirmative outcome is definitely evident, and that is the "increased levels of relationships between

Worldwide Economies". The crisis is not a burden just upon one economy's shoulders, but all those economies that have any ties with the falling economy. In consequence, in order for these economies to protect themselves, a unified group is naturally formatted to take the weight off that one economy. During this process, new relationships are developed whilst old ones are strengthened. From a long term perspective, this can be advantageous especially in terms of trade.

The second point to consider is that laws and regulations will be revisited by bodies such as each individual Economies National Government as well as International Bodies such as the Group of 20 (G20). Living in such a fast paced world, one law cannot properly facilitate all domains of the business world. Formation of Laws and Regulations is especially essential if the Law or Regulation was put into place to regulate previous recessions. Let's face it; we have come a long way since the Great Depression. With the innovation of highly proficient new technological gadgets and unique business propositions entering the markets, regulatory bodies need to be consistent and up to date with setting out proper and suitable laws to oversee these rapid changes. A unified system is not efficient enough to manage the diversified areas of businesses in today's environment. The crisis is an eye opener for these regulatory bodies and suggests that on one hand, although laws and regulations need to be strengthened; there should also be some room for freedom in order for these businesses to practice more freely. Too much regulation can limit so many activities for a business, especially those related with making profits. This is one reason that pushes businesses to rebel and ignore regulations. We are living in a "Money Hungry Making Business World", and therefore we should cater for that!

This last positive outcome will mainly attract all those environmental groups who have been fighting for so long to achieve a healthy environment for the future generations. Financial crisis often results in decreased levels of usage of renewable and non-renewable resources. Closure of factories such as in China, has led to reduction in the level of resources used and technologies that remit or discharge harmful polluted particles into the environment, which in consequence contribute towards Global Warming. To solve the problem of Global Warming, the introduction of the Carbon Tax in Australia in late 2011 resulted in a public outcry. At least we can be sure that by businesses being environmentally friendly through the reduction in producing harmful toxins into the environment, individuals will not be compelled into paying extra levels of taxes from their pockets in order to prevent an unhealthy economy. Therefore the Financial Crisis evidently contributes towards preventing Global Warming from worsening.

By seeing the glass as half full and not as half empty, the Financial Crisis can be handled more competently to bring an even better outcome on the day that it ends.

Further references are available upon request.

The End of an Era? Eastman Kodak Company

By Robert Thyer



Rumours circulated in the United States of the possible Bankruptcy of the Eastman Kodak Company ("Kodak"), the iconic photographic equipment manufacturer. The Wall Street Journal reported that Kodak engaged restructuring solicitors and advisors in addition to preparing briefs for submission to the Federal Bankruptcy Court. On 20 January 2012 Kodak sought protection under Chapter 11 of the United States Bankruptcy code in the hopes of restructuring the Company.

The majority of the problems that Kodak faced were the culmination of market conditions that have been eroding Kodak's cash flows and market share since the 1980's. Poor adaptation to market conditions, in particular to foreign competition, digital cameras and most recently digital camera phones have all but exhausted the Company's profits.

According to market insiders speaking to the Wall Street Journal, Kodak aggressively attempted to sell patents held in their portfolio in order to give the Company the much needed working capital injection it so desperately needed. However, potential investors backed away from the deal and Kodak had no other alternative but to file for Bankruptcy.

Kodak did not confirm or deny the comments, stating "[Kodak] does not comment on market rumor [sic] or speculation." But as growing evidence mounted Bankruptcy became inevitable rather than an option for the Company.

It will be interesting to see how the situation develops over the coming weeks or months.

Even the biggest organisations can run into trouble, if you think you or your company may be in trouble, call us and we can find a solution that will be viable for your needs.

Further reading:-

Spector, M and Mattioli, D 2012, "Kodak Teeters on the Brink " Wall Street Journal, 5 January, viewed 9 January 2012, <<http://online.wsj.com/article/SB10001424052970203471004577140841495542810.html>>

Assessing Foreign Income in Bankruptcy

By Maggie Lau

A decision was made by the Administrative Appeals Tribunal of Australia ("AAT") on 28 September 2011 in regard to the rate of currency conversion to be used in income assessments when a bankrupt derives foreign income: *Sheikholeslami v Inspector-General in Bankruptcy* [2011] AATA 670.

Ms Sheikholeslami worked as a Professor in the United Kingdom during her first year of bankruptcy and was paid in Pounds Sterling. For the purposes of assessing Ms Sheikholeslami's liability, her income for the period was required to be converted from Pounds Sterling to Australian dollars. The issue which arose was whether the exchange rate to be applied in the income assessment should be that at the time her income was derived or that as at the date of the issue of the income assessment. Significant fluctuations in the currency rates meant that her liability for income contributions would be more than four times higher if an average monthly exchange rate was used as opposed to the exchange rate at the time of the income assessment. There is no provision in the Bankruptcy Act 1966 ("the Act") which specifically deals with the issue of the exchange rate to be applied when making an assessment of when foreign income should be converted into Australian dollars for the purposes of making such an assessment. There has also been a lack of case law and Tribunal consideration for guidance.

Ms Sheikholeslami's Trustee applied an average monthly exchange rate for the period in conducting the income assessment. Ms Sheikholeslami requested the Inspector-General in Bankruptcy to review her Trustee's assessment. However, the delegate of the Inspector-General adopted the same methodology as Ms Sheikholeslami's Trustee. Ms Sheikholeslami subsequently appealed against the decision by the delegate of the Inspector-General and argued that there is no entitlement in the legislation for the Inspector-General, or Trustee, to average exchange rate variations in respect of an income contribution period.

Furthermore, Ms Sheikholeslami's Counsel referred to Section 139W of the Act, which states that the Trustee must make an assessment of "the income that is likely to be derived, or was derived, by the bankrupt", and of "the actual income threshold that is applicable to the bankrupt when the assessment is made" [emphasis added]. As the Act makes specific reference to the actual income threshold "applicable when the assessment is made", it would be logical that the income of the bankrupt be converted to Australian dollars at the time of the assessment.