

The carbon tax and small business

Prof. Neville Norman



Chartered Accountants Business in Focus
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In this edition, we focus on superannuation. Not surprising, really, if you consider how important super has become to everyone's financial situation. One interesting aspect is the rapid rise in the number of court cases over super, following disputes about who owns what and where the proceeds should go. Superannuation expert Peter Bobbin of Argyle Lawyers brings us up to date.

We'll also hear from Anna Carrabs of William Buck, about "Stronger Super" reforms.

Then, let's not forget the newly announced carbon tax. Are you tired of the political bantering? Angry about potential imposts on business? Will it really make any difference? Economist Professor Neville Norman assesses the bigger picture in the context of Australia's recent growth figures and what it all means – for you or your clients.

Paul Niederer, chief executive of ASSOBS, tells us how that organisation works to bring together businesses seeking capital and investors looking for companies with good prospects. It's an alternative to a bank loan or a public float, and is achieving some impressive results.

And, as the Fair Work Act becomes a major part of business life, HR specialists the Munro Group has some advice and warnings on how to stay out of trouble with the new legislation.

Talking of staying out of trouble, Tax expert Michael Jones, of Cummings Flavel McCormack, has some valuable reminders for your clients about who the ATO will be targeting this financial year; while Lincoln Stock Doctor CEO, Elio D'Amato, assesses the state of the sharemarket as negative sentiment drives the market up, down and all over the place.

And then, words of wisdom from veteran businessman Ernest Rodeck, now in his nineties but alert to the challenges facing the Australian economy and the guiding principles of business, which are as relevant today as when he emerged from a wartime internment camp and set up an iconic Australian furniture company.

Enjoy the CD!

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THE ESSENTIALS

August 2011

Track 2

Superannuation In The Courts

Peter Bobbin, Argyle Lawyers

- There's so much money at stake in superannuation now - no wonder court cases are rapidly rising in number
- There's a difference between the larger super schemes and SMSFs in the handling of these cases. Those involved in larger schemes can take their complaint to the trustee who must follow a grievance procedure and if that fails, there's the Superannuation Complaints Tribunal. Those involved in a DIY / SMSF case can only go to the State Supreme Court. The latter is a much longer and more expensive process
- Cases emerging are to do with: death and disability claims before the SCT; other SCT complaints, usually administration or account balances, death and disability in an SMSF in a supreme court; family provision claims in a supreme court
- It's important to get it right - often the solution is simple, but time and careful thought are needed
- Super can have a long negligence liability tail. Take the case of Commonwealth of Australia v. Cornwell High Court of Australia 2007, where the facts that gave rise to the negligence claim occurred more than 40 years earlier

Track 3

"Stronger Super" Reforms

Anna Carrabs FCA, William Buck

- The SMSF Consultative Committee was formed to discuss recommendations relating to SMSFs and report to the peak body reporting to the government on the implementation of the Cooper Review
- The Committee was broad-based with representation from the ATO, ASIC, APRA, Treasury, plus professional bodies and other parties
- The new regulations on collectibles and personal use assets are prohibitive, the fines are extreme, and with 5 years to comply, I would say that many people will consider selling down these investments within that period of time
- The registration of auditors is positive in that only competent auditors will remain in the profession. That provides reassurance to clients and it will also help professional bodies track the compliance of members in terms of ongoing required CPD. Registration will come with a lot of other requirements.
- The recommendation put forward relating to prohibiting in specie off-market transfers between related parties: the SMSF Committee felt this shouldn't be prohibited as this would put SMSFs at a disadvantage to other funds. The time frames should be shortened, however.
- The Committee recommended that the ATO provides guidelines on the valuation of fund assets at market value
- Auditor independence was discussed at length at the consultative meeting. It felt the standards

contained in APE's 110 are appropriate. APESB have indicated that they can provide guidelines prior to 1 July 2012.

Track 4

The Carbon Tax And Your Business

Professor Neville Norman, Melbourne University

- Both the March quarter negative growth figures and the carbon tax issue trace back to mid-2010 when the Rudd Government lost its way
- Uncertainty at home and globally contributed to the shock March quarter growth figures. But no-one should have been surprised, they were entirely predictable
- It may seem courageous to introduce a carbon tax, but the government had no choice - the Greens would have walked away and the government would have lost office
- In my opinion, the carbon tax should have been dropped altogether or it should have been priced at \$50 - \$60
- I agree with the claim that the carbon tax is the biggest tax initiative since the GST
- Industry has a year to plan for the new tax. Everyone in business needs to make forecasts and cost impacts, especially around fuel increases.
- Don't worry too much about the economy, there will be a bounce back before the new tax comes in.
- But prepare for price increases, job losses, compensations claims - all the things we dealt with 11 years ago with the introduction of the GST

Track 5

Sourcing Small Scale Capital

Paul Niederer, ASSO B

- The Australian Small Scale Offerings Board brings together small businesses seeking investors with those wishing to invest modest parcels of money
- Those parcels are \$30,000 each
- The companies are usually high growth, looking for \$600,000 - \$1.5 million but it could be up to \$5 million
- Shareholders are generally passive investors with no controls or expectations, although occasionally they may seek a mentoring role
- Investors are often friends, family, fans and followers of a business and it expands out from there
- There are 19,000 potential investors on the ASSO B database. Companies seeking investors need to show something compelling to attract the money
- An option is to borrow from the bank, but that's not so easy these days and a couple of small investors might be preferable to ongoing interest payments
- Angel investors are different, generally seeking a mentoring role and a larger return on investment
- Venture capitalists are not really in the early stage investment space anymore
- ASSO B has a Part 1 and Part 2 submission process. ASSO B sponsors can assist in the process of listing with ASSO B
- It's a simple process to lodge a business on the ASSO B website

Track 6

How NOT To Fall Foul Of The Fair Work Act

Erin Goffett, The Munro Group

- The Fair Work Act provides 10 associated National Employment Standards that also define salary and wage payments
- It encompasses 123 new Modern Awards covering terms and conditions of employment, acceptable workplace behaviour, what to pay staff and other entitlements
- When it was passed in 2009, the Act comprised some 11,000 pages of information - and it's even more extensive now!
- Yet small business continues to get caught out, on such issues as unfair dismissal, discrimination, bullying and harrassment and under-payment of wages
- If you're "dobbbed in" or otherwise found to have flouted the law, the Fair Work Ombudsman may be called in - he has considerable power
- A manager can be fined up to \$6,600 for each contravention, and a business can be fined up to \$33,000 for each contravention
- It's hard to keep up with the law, but the Munro Group offers a comprehensive document service to help small businesses.
- It talks in plain english, is customised to individual businesses, and can be constantly updated - and it's much cheaper than the penalties and back-payments you might face if you're caught breaking the law

Track 7

Perspectives On Business Success

Ernest Rodeck

- Australia IS the lucky country but we need to beware
- We need to preserve our manufacturing base to maintain a fair go for everyone
- There are risks in relying too heavily on the minerals boom for our prosperity
- The two-speed economy threatens the relatively even distribution of income here, and the "Jack's as good as his master" attitude that goes with it
- It's not so much a question of protectionism, as giving industry a fair go. At the moment it's impossible to compete with cheap imports
- We should beware of relying on China. Eventually other countries will compete with us to supply the China boom and we'll be left high and dry
- I experienced that years ago when the bottom fell out of the wool market. Prices fell by 90% within a couple of weeks and Australia fell into an abyss. I learned to work and sell hard to keep the business alive
- Personal reputation is the most important, the most difficult and the most expensive asset that you'll have. Personal reputation always goes ahead of you
- If your business hits tough times, take it on the nose. Don't be blind to reality. Trying to do something that can't be successful is crazy, yet too many people in business refuse to accept the inevitable - and end up going broke
- Treat your opposition with respect

- It's never too late to learn - learning's a lifetime occupation

Track 8

ATO Targets In 2011-12

Michael Jones, Cummings Flavel McCormack

- There's more ATO scrutiny of small to medium sized businesses these days. Many taxpayers have not had any contact with the ATO for many years, which means that if these taxpayers are subject to an ATO review, it could uncover issues that go back for years, resulting in all sorts of penalties and general interest charges
- The ATO compliance model is based on the attitudes of taxpayers towards compliance. If the ATO considers that a taxpayer is making reasonable efforts to comply with his or her tax obligations then the ATO aims to educate and assist these taxpayers get it right. If the ATO considers that a taxpayer has decided not to comply with the tax law then the ATO will use the full force of the law to deal with the taxpayer - and the ATO have powerful laws at their disposal. It's important to send the right messages to the ATO.
- At the start of each financial year the Commissioner announces his compliance program for the year - a comprehensive document outlining compliance for individuals, micro-businesses, small to medium sized businesses and big business.
- Individuals: issues around the overlap between private and work expenses: incorrect claims for the home-office, mobile phone, internet connections. Has the taxpayer sufficient documentation to justify their claim? Also, overseas income (the ATO has

- significant tracking abilities); split loans; individuals with an income of \$1 million
- Micro-enterprises: those with a turnover up to \$2 million. This sector employs 20% of the Australian workforce. The ATO focus: correct PAYG withholdings and super guarantee payments; sham contracting; Personal Services income; Internet trading; the cash economy (pay attention to your industry code and get it right); managing tax debt
 - Small to medium sized businesses: \$2 - \$250 million, employing 28% of the workforce and an increasing focus of the ATO: PAYG and super guarantee compliance; sham contracting; trusts; phoenix arrangements; international transactions; shareholder loans and unpaid entitlements; small business CGT concessions (get your documentation right!)
 - Next month: What to do if you're the subject of an ATO review

Track 9

Sharemarket Update

Elio D'Amato, Lincoln Stock Doctor

- Sentiment is driving the sharemarket in an uncertain world
- This is shown in a recent exercise by Lincoln, matching carbon-producing stocks with investor responses as details of the new carbon tax were revealed
- There are optimistic signs despite the uncertainty - China's GDP is up 9.5% for the year; a number of european countries including Italy and Greece have raised debt; and in Australia, despite talk of the two-

speed economy and drop in confidence, debt levels are solid and inflation is in check

- Companies are still operating comfortably and although there are pressures on margins, we should see some good profits in the next reporting season. Overall, though, analysts are expecting a fairly poor reporting season and Lincoln agrees
- It's annual results time. Look for companies that have outperformed their peers over the past year in this tough environment
- You need to hold the best of the best - the last thing you need is a poor announcement that will trigger a sell-off in this nervous atmosphere
- Leading up to the reporting season, we look for good news and the opportunity to get in quick before the numbers are announced. We focus, for example, on companies with new contracts. Highlighted this month, all mining related stocks: Industrea, Mineral Resources, and Ausdrill

Track 10

Managing Depression In The Workplace Therese Fitzpatrick, Beyondblue

- Depression occurs across all age groups and all levels within an organisation.
- It's important senior managers create a supportive culture - that it's OK to go for help.
- Research suggests 17% of depression is related to workplace stress.
- Symptoms that could indicate depression:
Physical changes - constant tiredness, changes in appetite, weight loss or gain, frequent sickness (colds and flu).

Emotional changes - irritability, becoming withdrawn.

- Look for changes in behaviour - is someone avoiding certain situations, arriving at work late.
- Managers are often in a good position to approach staff, but are hesitant, fearing they'll say something wrong - this is not the case.
- Don't think you need to diagnose. Think of where to go for help - e.g., an employee assistance program, GP or psychologist within the community.
- Think about the best way to approach someone - understand they might be defensive at first. Let them know you're there for them.
- Having the conversation and beginning dialog is important.
- 50% of people don't seek help as they believe there are no effective treatments.
- Medication is an effective treatment, especially for more moderate to severe depression.
- Other treatments include psychological - solution based short term therapies.
- The other key thing is lifestyle treatment - increase physical activity, focus on diet.
- Treatments differ for each person. The key is finding what works for them.
- Early intervention is very important. The earlier one gets help, the more effective treatments are.
- More information: www.beyondblue.org.au