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## **Mini-Newsletter following the Mini-Budget**

*This mini newsletter sets out some practical financial implications of the NSW Mini-Budget, potential consequences of a failure to inform ASIC/ATO of a change of address and the consequences of new reforms to the Family Law Act.*

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### **STAMP DUTY NSW MINI-BUDGET**

11 November 2008 was Remembrance Day. It was not only the 90<sup>th</sup> anniversary after WWI, but will also be remembered for the NSW State Government's Mini-Budget said to be a spoonful of bad medicine to protect the State's AAA credit rating. It contains a raft of amendments to various fees and duties and scrapped or deferred various infrastructure projects and community benefits. I set out below a summary of the land tax and stamp duty consequences:

- with effect from the 2009 land tax year, a new premium land tax marginal rate of 2% applies to taxpayers with total taxable landholdings above \$2.25m;
- with effect from 1 January 2009:
  - stamp duty on documents that were assessed at \$2 (e.g. copies of documents) increases to \$10;
  - stamp duty on a documents that were assessed for \$10 (e.g. apparent purchaser/real purchaser trusts) is increased to \$50;
  - stamp duty on a declaration of trust is increased from \$200 to \$500;
- abolition of duty on transfer of unlisted securities has been deferred from 1 January 2009 to 1 July 2012;
- abolition of mortgage duty has been deferred from 1 July 2009 to 1 July 2012;
- amendments are to be made to the "land rich" provisions, effective from 1 July 2009 eliminating the need for landholdings

to comprise 60% of the unencumbered value of all property.

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### **DIRECTOR PENALTY NOTICES – BEWARE THE CONSEQUENCE OF A FAILURE TO NOTIFY YOUR CHANGE OF ADDRESS TO ASIC/ATO**

As cash flow tightens, some companies face an inability to meet obligations to remit withholding PAYG tax to the ATO. At Parry Carroll, we have recently observed a dramatic increase in inquiries and instructions from directors who failed to notify ASIC of a change of address and now face personal liability for penalties imposed upon them by the ATO equivalent to the unpaid withholding PAYG tax, in circumstances where they either did not receive the notice or received it more than 14 days after issue by which time the penalty was imposed.

If a director receives a Director Penalty Notice (pursuant to Section 222AOE of the *Income Tax Assessment Act 1936* (the "Act")) ("DPN"), the director must take one of four specific actions within 14 days of issue or the director will be personally liable for the debt by imposition of a penalty.

The actions a director can take to avoid the penalty and have no personal liability are:

- pay the debt in full;

- enter into an instalment arrangement agreement under Section 222ALA of the *Act* to repay the debt;
- appoint a voluntary administrator; or
- appoint a liquidator.

The 14 days is a strict time limit. The ATO has no discretion to extend the period.

The ATO only needs to give notice and this can be done "by leaving it at, or sending it by post to, an address that appears from [ASIC or ATO] documents to be, or to have been within the last 7 days, the person's place of residence or business."

The DPN is deemed to be received by the director on the day it was posted by the ATO.

It is of no consequence that:

- the company disputes the tax liability;
- the director did not receive the DPN or it was brought to the director's attention after the 14 day period i.e. the director was away on holidays, it went via the director's accountant's office and was not acted upon; the director didn't open his mail; it was redirected from the director's earlier address but it took more than 14 days to get to the director or it was lost in the post.

Directors are liable to ensure their address recorded in the ASIC register and notified to the ATO including any place of business remains up to date and any change of address is recorded.

There is no penalty imposed at all if one of above four options takes place within the 14 days period. The consequence of failure to comply with the DPN may result in a significant personal debt to the ATO with potential subsequent recovery against the director's personal assets or home, garnishee of any bank account or even bankruptcy.

We urge all directors and their advisers to ensure that any change of address is immediately notified to the ATO and ASIC (including any change of business address) and in the event a director receives a DPN, to **act immediately**.

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## **PROTECTION OF PROPERTY MISTRESS MAYHEM – NEW REFORMS TO THE FAMILY LAW ACT**

The *Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008* was passed by the Senate on Monday evening amending the *Family Law Act 1975* to provide for de facto couples to access the federal family law courts on property and maintenance matters. The legislation describes a de facto relationship as an opposite-sex or same-sex couple living together on a "genuine domestic basis". It also stipulates a de facto alliance can exist even if one of the partners is legally married to somebody else or in another de facto relationship. The general concept of co-habitation has also been removed under the amendments.

Under reforms to the *Family Law Act*, de facto partners together for two years will have the same rights as married couples to seek spousal maintenance claims in federal family law courts. Maintenance, as distinct from child support, may be ordered to be paid by an ex-partner when the other partner is unable to support herself or himself adequately after separation.

A wide interpretation of these amendments may enable a mistress in a +2 year relationship with a level of financial reliance upon her partner to make a claim for spousal maintenance under the reforms.

One way to address the reforms would be for the parties to enter into a domestic relationship agreement limiting or waiving any claim against the other party.

The amendments may also open the door for insolvency practitioners or creditors of one party to such a relationship to now also seek orders under the *Family Law Act* in any property settlement as an interested party or to claw back assets following a property settlement.

The amendments also impact upon financial agreements between married couples and superannuation splitting.

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