



ATO ALLOWS DEDUCTIONS IN CERTAIN INSOLVENCY SITUATIONS

Our apologies for those of you in the know.

The focus of this newsletter is to make it more broadly known that there are certain expenses in various insolvency situations which the ATO now allows as deductions, including those paid by the stakeholder.

We acknowledge that the source of much of this material is from an article by Browne & Co in the IPAA September journal.

Readers will be aware that frequently a Voluntary Administration followed on by a Deed of Company Arrangement is used not only to keep the company alive but to avoid the type of actions that are only available to a liquidator on a liquidation of the company. More often than not, these actions are aimed at directors and include:-

- Civil remedies against offending directors for breaching the insolvent trading provisions of the Corporations Act.
- Recovery of Unfair Preferences
- The unravelling of Uncommercial Transactions

Where a Deed of Company Arrangement is negotiated, to avoid the potential exposure for a legal action, creditors would agree to the proposals more often than not, where the amount to be contributed by the exposed party would be less than the legal action would cost them if they lost.

The reason for this is the inherent uncertainty involved in any litigation.

The existence of an allowable deduction by amortising the contributions by a shareholder over 5 years also adds to the incentive for a deal to be done.

Other examples where expenses have been allowed as deductions by the ATO include:-

- Where a member personally pays for the liquidation or deregistration of a company there is the opportunity to deduct that cost in equal proportions over a five year period.
- Expenses for accounting and legal services provided to stakeholders during an administration process.
- The cost of legal advice during and in relation to the defence of an insolvent trading action.
- The cost of taxation consulting assistance in the lodgement of taxation returns during the administration period.
- The fees for Forensic Accounting Services undertaken for the director, public officer or shareholder.
- The cost of a tax agent used by a director in respect of personal tax penalties arising from a company not paying its taxation debts.
- The allowable deductions for costs paid by a stakeholder in shutting down a business or entity is extended to a partnership or a trust in which the stakeholder was a partner or a beneficiary respectively.

As ever we welcome all your insolvency related enquiries.



NEWS WITH CLOUT

Offering Corporate & Personal Solvency Solutions

October 2006

Apart from Formal Insolvency Services at Clouts we also Offer:-

Orchestrating Informal Arrangements with Creditors

Monitoring Businesses in Workout Situations

Conducting Negotiations with Secured & Unsecured Creditors

Business Risk Minimisation Reviews

Forensic Accounting Assignments

Business Valuations

Internal Control Reviews

Small Business Courses

Official Website

www.CloutAssociates.com.au

Contact Details

Tel: 02 6652 3288

Fax: 02 6651 9393

Email: admin@cloutassociates.com.au

Clout & Associates Representatives

Morgan Chubb

Email: mjchubb@cloutassociates.com.au

David Morgan

Email: dmorgan@cloutassociates.com.au