Nexia Australia and New Zealand

Next newsletter

Summer 2021/22

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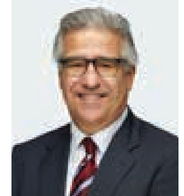
Chairman's Statement



Mal Di Giulio
Chairman

As we look to 2022 and beyond, one has to wonder if 2021 presented more questions than answers, our march toward a new normal somewhat unsettling but also, affirming. 2020 was the year of uncertainty, world leaders and topical experts clamouring to contain and better understand the scourge that is COVID-19. It appears that our way forward now is through high vaccination rates, to which, Australia has responded admirably.

In something of a positive segue, in 2021, Nexia International showed that by honouring its core values, good things can and will happen. Our emphasis on relationship building and the provision of high-quality services saw our global network become the 8th largest accounting network in the world. Furthermore, lead by former Nexia Australia and current Nexia International Chairman, Ian Stone, our network won the prestigious Network of the Year award at the Digital Accountancy Awards 2021 event. The award recognises Nexia's delivery of initiatives promoting our brand proposition, virtual knowledge sharing and technological adoption and innovation. We couldn't be prouder of our collective efforts.

Australia's economy in 2022

The Reserve Bank of Australia (RBA) appears cautiously optimistic by the prospect that inflation is tipped to rise to pre-pandemic levels and remain inside its target band. However, this scenario assumes a wage growth rate of 3%, requiring a delicate balancing act. We shouldn't automatically assume targets will be met but for business planning, this provides helpful guideline moving forward.

Supply chain management has become a hot topic of conversation. The past two decades have seen organisations focus on developing financially efficient supply chains, where COVID demonstrated the importance of deep supply chain thinking.

A phenomena labelled "The Great Resignation" may be upon us. In short, professionals (predominantly) in the 30-45 age bracket are feeling the effects of burnout on their mental health, and en masse, will resign looking for better work-life balance. Effectively, employees are looking for more flexible working arrangements which include the option to perform work remotely. Literature suggests these employees (arguably, all employees) place significant emphasis on how an organisation treats its employees and the continued development of organisational culture.

Australia is tipped to suffer an employment skills shortfall of some 830,000 workers by 2024, our formerly high migration rate masking over some of the structural imbalances in not only our labour market but also, training and education systems. For instance, the mining sector is facing a serious deficit in mechanics, which for those who've visited a mine site, understand the significance of such a shortage.

With the call for more flexible working arrangements and the installation of remote working opportunities, the subject of excessive screen time and its effects are beginning to materialise. Through COVID-19, the use of social media applications, messaging, video conferencing and online team networks, became dominant factors in how operations continued, and how people stay connected through socialisation efforts. Nonetheless, how we choose to (or not) use screens, connecting with both clients and contemporaries, will prove instructive. As I like to say, get out from behind the screen to in front of it—your clients will thank you for it.

(Almost) forgotten anti-avoidance rule is about to get your attention

Anyone with trusts in their affairs needs to be mindful of a number of anti-avoidance regimes. National Tax Director, David Montani, discusses one in particular that possibly has the widest application, but has received the least attention. Until now, that is.

David Montani
National Tax Director

Anti-avoidance shadow over trusts

For the vast majority of you, trusts would feature in your affairs. Accordingly, you need to be mindful every year of a number of anti-avoidance and integrity regimes, or at least your tax advisor needs to on your behalf. Since it was enacted over 40 years ago, section 100A of the *Income Tax Assessment Act 1936* has cast a shadow over trusts, but hasn't directly spooked the taxpayer community as much as it perhaps should have.

The reason for this could be that every case decision on this section – except the most recent one – involved promoted schemes. However, the ATO will soon release a ruling that will certainly demand our attention.

Narrow name, wide application

Perhaps another contributing factor to the limited attention given to section 100A over the years is the label the mischief being targeted ended up with – "Trust stripping". It sounds like one of those notorious promoted tax-avoidance schemes from the 1970s – and that's exactly what it was. However, even those who would never even consider such schemes could still find themselves falling foul of this anti-avoidance regime, with resulting exposure to higher tax bills, penalties and interest.

"Every-day" example of potential to offend s100A

The best way to explain the targeted tax mischief – and illustrate how section 100A can have a wide application – is by way of an example.

John and Mary have a family trust, which derives income from whatever source – perhaps they run a business through the trust, maybe it owns their share of a company, or perhaps it earns passive investment income. The trust has a net profit of $500,000 for the year, which is appointed to beneficiaries in the usual manner as follows:

	$
John	180,000
Mary	180,000
Adult child 1	70,000
Adult child 2	70,000
Total	500,000

By capping the appointed income to John and Mary at $180,000 each, they stay just inside the 39% marginal tax bracket, and thus don't get into the top personal tax rate of 47%. Their adult children are at university, and each earns about $12,000 per year from a casual job. The $70,000 appointed to each of them therefore enjoys the remainder of the tax-free threshold, and the 21% and 34.5% tax brackets. The tax impost on the two lots of $70,000 is around $18,000 each – $36,000 in total. The trust pays out $18,000 on each child's entitlement to cover their tax bill, leaving $52,000 owing to each.

All perfectly normal so far.

Now, how has the tax planning worked out? If the combined $140,000 appointed to the children had instead been appointed to John and/or Mary, it would have borne 47% tax – about $66,000. However, appointing it to the children bears only $36,000 tax, saving $30,000.

But here's the thing. The trust still owes that remaining $52,000 each to the children. They are entitled to demand payment of the balance of their respective entitlement at any time. However, imagine there was an understanding with the children before appointing the income that they would not call upon their remaining profit entitlement. That means there is effectively an additional $104,000 ($52,000 x 2) available that John and Mary could take.

Once John and Mary have drawn funds from the trust such that their own $180,000 entitlement each is exhausted, what happens when they starting dipping into that $104,000? Typically, the trust is now making a loan *to* them – interest-free and with no repayment terms. The relevant parts of the trust's balance sheet might ultimately look like this:

ASSETS	**$**
Loan to John/Mary	104,000
LIABILITIES	**$**
Entitlement owing to child 1	52,000
Entitlement owing to child 2	52,000
Total	104,000

So, let's recap. John and Mary appointed $140,000 of the trust's profit to their children, paid down their entitlement by $36,000 to cover their tax bill, but there's an understanding they won't call upon any of their remaining $104,000. John and Mary then take those funds from the trust (as a loan) and use them for their own benefit. The bottom line is that John and Mary get their hands on income that was assessed to their children, and there's an extra $30,000 in their pocket from the tax saving.

Sound too good to be true? It might well be.

Enter section 100A

The above situation could possibly fall within the anti-avoidance rules in section 100A. The reason is that the understanding between the parents and children might be regarded as a "reimbursement agreement". This is just a label – no actual reimbursing of any kind is required. Broadly, a reimbursement agreement is where a trust appoints income to one person, but someone else gets the benefit of it, and there is a purpose of achieving a tax saving.

The effect of section 100A applying in the above example is that the trustee of the trust is assessed to tax on the $140,000 at 47% in place of the children's original assessments. You might think that outcome is okay – if the ATO ever happened to conduct a review – as it would put John and Mary in the same position they would have been had the trust appointed the $140,000 to them in the first place, as they would have paid 47% tax in any case. However, there is the matter of penalty tax, which could be up to 50%, and the imposition of interest. Also, there is no time limit on issuing such assessments under section 100A.

There are any number of possible situations that could offend section 100A, but the fundamentals are the same:

- Trust appoints income to A (eg, someone on a lower income tax rate)
- Under an arrangement, by one means or another, B gets the benefit
- The overall tax impost on that income is less than it would have been, had the trust appointed that income to B
- The tax saving was the purpose of the arrangement.

Exception – ordinary family or commercial dealing

There is an exception to the application of section 100A, which is where the arrangement is entered into in the course of "ordinary family or commercial dealing". Note that that is not saying the arrangement terms themselves must constitute such a dealing. Rather, the requirement is that the arrangement – whatever the terms are – *came about from* ordinary family or commercial dealing. In other words, *what* is done is not the issue; the issue is the *process* that gave rise to what was done.

It is likely easier to identity arrangements arising from "ordinary commercial dealing", but there is uncertainty as to what constitutes "ordinary family dealing".

ATO ruling pending

The ATO has been working on a long-anticipated ruling on section 100A, which is expected to be released soon. Rulings are not law; they are merely the ATO's opinion. However, they often set out a good discussion of the subject and inform us on the ATO's position on that subject.

The completion of the ruling was likely delayed due to the disruption caused by the COVID-19 pandemic. It might also have been further delayed due to the need to consider that abovementioned most recent case, *Guardian AIT Pty Ltd v Commissioner of Taxation* [2021]. In this case, it was determined that there was no reimbursement agreement in place, and what did occur was entered into in the course of ordinary family or commercial dealing in any case. The ATO has lodged an appeal against the decision, so that will likely delay the ruling even further.

When finalised, it is hoped that the ruling will provide practical guidance on where the ATO believes the line is drawn between circumstances that will and won't offend section 100A. In particular, we are very keen to know their views on what constitutes "ordinary family or commercial dealing". It is also hoped that the ATO will set out appropriate reasons and support for their views and where they draw that line.

We will certainly have more to say when a draft of the ruling is issued.

Liabilities - current or non-current? *That* is the question

Martin Olde, Nexia Australia Technical Director, examines the IASB's amendments to the classification of liabilities.

Martin Olde
Technical Director

Companies have for many years struggled to correctly classify certain bank loans and borrowings as either current or non-current liabilities. One of the complaints I often hear is that the classification of liabilities is a rules-based assessment that does not reflect management's expectations or the likelihood of repayment.

Accounting standards required that an entity must have an unconditional right to defer settlement of a liability for at least 12 months after balance date for it to be classified as a non-current liability. Without this right an entity might be unable to avoid having to repay the liability within 12 months of its reporting date.

It would be unusual for an entity's right to defer settlement of a liability for more than 12 months to be unconditional – there would usually be some trigger or event (no matter how likely) that could require earlier repayment. The International Accounting Standards Board (IASB) amended this requirement in 2020 by replacing an 'unconditional right to defer' with 'a right to defer' and attempted to clarify how an entity assesses whether it has the right to defer settlement of a liability when that right is subject to compliance with specified conditions (often referred to as 'covenants') within 12 months after the reporting date. According to the 2020 amendments, an entity has a right to defer settlement only if it *would have* complied with covenants based on its circumstances at balance date, even though compliance is only required after that date. So even with the 2020 amendments, the IASB applied a hypothetical, rules-based test which ignored the likelihood, or management expectations, of repayment within 12 months.

Not long after the 2020 amendments were made, different interpretations of how those rules would apply in practice started to emerge.

The IFRS Interpretations Committee attempted to clarify the IASB's 2020 amendments by issuing a series of examples to illustrate how they would work in practice. Unfortunately, that just made matters worse. One of the examples IFRIC gave was:

> *"A company has a loan repayable in five years. The loan includes a covenant requiring a working capital ratio above 1.0 on 30 June 2022. The loan becomes repayable on demand if the ratio is not met at that specified date.*
>
> *The company reports on 31 December 2021. At that date, the company's working capital ratio is 0.9. Management expects to meet the minimum working capital ratio by the date on which it is required (30 June 2022).*
>
> *At the reporting date, the company would not have complied with the covenant required within 12 months of that date — it has a working capital ratio of 0.9; the covenant requires a ratio above 1.0 on 30 June 2022. Applying the 2020 amendments, the company does not have a right to defer settlement at the reporting date — and thus classifies the liability as current."*

A consequence was that the 2020 amendments would require an entity to classify a liability as current even when, at the reporting date, it has no contractual obligation to repay the liability within 12 months and was not expected to breach its covenants at the future testing date. The above scenario could occur quite frequently, especially for businesses with seasonal operations and cash flows. Once practitioners started to realise that the 2020 amendments did not appropriately resolve the problems with the original standard and may not faithfully reflect an entity's liquidity and working capital, the IASB was forced to revisit the standard once again in its latest Exposure Draft ED/2021/9 *Non-current Liabilities with Covenants*.

So, is it third time lucky?

In some situations although an entity may have no contractual obligation to repay a liability within 12 months of the reporting date, the entity's right to defer settlement is not absolute — the liability could become repayable within 12 months depending on whether the entity complies with covenants after the reporting date. The IASB now acknowledges that in such situations it is impossible to know at the reporting date when the liability will ultimately be repayable.

To require such liabilities to be classified as current when it could equally be argued they should be non-current challenges the concept that financial statements should faithfully present the substance of transactions and events in a way that is neutral and free of error.

As a result, the IASB has now proposed two alternatives:

1. Where an entity is required to comply with covenants and conditions on or before balance date it would classify liabilities as current or non-current based on its compliance with those covenants at balance date. For example, if an entity had to meet a working capital or EBITA covenant at year end and it met those tests at year end, the liability would be classified as non-current. If it failed the test, the liability would be classified as current unless it had received a waiver from the lender before balance date; or

2. If an entity is required to comply with the condition only within 12 months after balance date (for example, a covenant based on the entity's financial position six months after the end of the reporting period), that condition does not affect whether the liability is classified as current or non-current. However, it would have to present separately those non-current liabilities subject to covenants on the face of its balance sheet and disclose information relating to those conditions in the notes.

On the face of it this seems a more sensible outcome. Covenants that are to be tested on or before balance date will identify if the entity has passed those tests and whether the borrower has a right to defer settlement for more than 12 months after balance date. Where a covenant is only tested at a future date, the liability could be classified as non-current but is presented separately from other liabilities on the balance sheet and additional disclosures will provide information relating to those conditions and how the entity expects to comply with them in the future.

Nevertheless, we still harbour some concerns with the new proposals. It is common for Australian retail banks to include 'material adverse change' or similar clauses within their general lending terms and conditions. Events or conditions giving rise to a material adverse change is usually determined by the lender and generally represents a default event which permit the lender to require immediate repayment of outstanding balances.

A lender's assessment that a material adverse change exists can occur at any time and is not limited to a single annual assessment. In addition, the lender should have a reasonable basis for that assessment and does not have absolute discretion to require repayment of the loan at any time. A broad reading of the IASB's proposal suggests that these clauses should not affect the classification of borrowings as non-current liabilities. But there is some uncertainty based on the IASB's specific drafting of the requirements and we will be asking the IASB to clarify how its proposals would apply to material adverse change clauses. We encourage our clients to review their borrowing agreements and consider how the classification of those borrowings could be affected by ED/2021/9. Submissions on the IASB's exposure draft close on 21 March 2022.

Will the IASB's 2022 amendments finally result in a sensible financial reporting outcome for Australian corporate borrowers? As my mother would often answer when we were kids, "we'll see".

Beyond the Numbers

Introducing our new monthly newsletter to help you navigate through the **latest in financial reporting**.

Our news updates are carefully selected and summarised to bring you the latest developments from local and international standard setters and regulators.

Visit https://nexia.com.au/news/beyond-the-numbers-edition-1 to see our inaugural edition and subscribe to start receiving updates straight to your inbox.

Managing rising interest rates

Fran Hughes
Head of Financial Solutions - Perth Office

Home lenders may soon face the grim reality of rising interest rates in 2022, as it is anticipated the Reserve Bank of Australia will have to make a dreaded move to a rate rise sooner rather than later. The RBA had scheduled rate hikes towards the end of 2023, however with a sharp rise in inflation in the December 2021 figures, economists are predicting the Reserve Bank of Australia will be forced to lift interest rates as early as May.

Rising house prices, rocketing fuel costs, and costs of goods have contributed to the spike in inflation. The Australia's Consumer Price Index rose by 1.3% in the three months to December, bringing inflation for the full 2021 year to 3.5%, which is above the RBA's medium-term target range of 2-3% inflation.

Like many Australians, if you are a proud owner of a home mortgage, here are five smart strategies to optimize current low interest rates and pay down debt sooner.

Monitor your affordability

Leading mortgage broker eChoice[1] suggests that as a rule, home loan commitments should represent no more than 28 per cent of household income. Anything above that amount, the average earner might find their financial situation stretched. In the current environment, the average monthly home loan repayment of $2,489 sits on the high side at 36 per cent of the average household income, with any increase in interest rates only or rising cost of living putting a homeowner at risk of falling prey to mortgage stress. Monitor your affordability by utilizing the mortgage calculators on https://moneysmart.gov.au/.

Make extra repayments

Take advantage of the current low interest environment and get ahead on your mortgage by making repayments as if you had a loan with a higher rate of interest. A general rule is to factor in an interest rate of 5 percent.

The Governor of the Reserve Bank[2], Philip Lowe, had announced that the RBA aims to maintain its current low interest rates until 2024. With a looming threat of an earlier interest rate hike, use this time to curb your debt levels with any extra money directed to pay off your mortgage sooner, hence protecting the household budget from higher interest rate shocks.

In addition, consider switching a monthly repayment commitment to fortnightly. By paying half the monthly amount every two weeks you'll make the equivalent of an extra month's repayment each year (as each year has 26 fortnights).

Build up a cash reserve

Building up a cash reserve within an offset account could see you reduce the amount of interest you pay and help with paying off your mortgage faster. Whether the cash funds come from a windfall, savings or annual bonus, it pays to store it as a buffer for future rate hikes.

Shop around

With interest rates on the rise, it pays to shop around. Useful websites such as www.canstar.com.au or www.finder.com.au provide comparisons against your existing home loan rate. Special rates as low as 1.79 per cent have been advertised. Work out what features of a home loan suit you, and tailor a mix of fixed and variable portions of your mortgage to give you certainty on your repayment commitments over the short to medium term. Before switching loans, consider the exit costs. It may be worthwhile negotiating a competitive interest rate with your existing bank first or switching to a principal and interest loan.

Seek advice

When in doubt, seek the advice of a mortgage broker or financial planner. The insight and guidance of a subject matter expert can go a long way to giving you comfort and assistance in achieving a better financial outcome as well as putting your mind at rest about the future.

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[1] Source: https://www.echoice.com.au/guides/whats-the-average-australian-home-loan-size/

[2] Source: https://www.rba.gov.au/media-releases/2021/mr-21-22.html

Dr Steve Burroughs Foundation

Founded in 2016, the Dr Steve Burroughs Foundation's (DSBF) mission is to provide support to improve the social, economic, and well-being of Indigenous Australians in remote communities.

We spoke to Dr Steve Burroughs, the Foundation's namesake, about his journey and how DSBF has grown to be so successful – particularly during a global pandemic.

As Director and Chair of the Dr Steve Burroughs Foundation, Dr Burroughs – or Dr Steve as he likes to be called – has decades of experience partnering with Indigenous communities and their supporters.

His dedication to helping remote Indigenous communities achieve equity in health, housing, and self-sufficiency has proven to be exemplary, so much so that the Foundation chose to name itself after Dr Steve.

When it was founded in 2016, the Foundation would receive small items which it would then distribute to remote communities in need. As word spread of the impact it was having and more supporters became involved, it was soon receiving hundreds of pallets worth of goods at a time.

Dr Steve says that while the COVID-19 pandemic has presented many challenges, it has also – somewhat paradoxically – been a time of tremendous growth for the Foundation, thanks to its generous donators, including corporates Bonds, Ikea, and Sheridan.

"The Foundation has grown exponentially in the past two years. In our first year of operating, we turned over around $20,000 worth of retail merchandise, while in 2021 we turned over a staggering $1.6 million worth," said Dr Steve.

"It's thanks to fruitful networking opportunities which has led to the formation of some of these very powerful partnerships."

In late 2021, the Foundation held a breast screening program in Yarrabah, one of the largest Indigenous communities in Australia.

"In the lead up to this screening day, through the generosity of Bonds, we were able to send pallets of bras to encourage women to take part in the day. This initiative meant that any women that had a mammogram that day would receive a free bra," Dr Steve said.

"We had five times as many women turn up for a potentially lifesaving mammogram than the previous year's event. The most eye-opening aspect of this initiative is that for some of these women it was the first time they had ever had a mammogram.

"The impact that one donation – whether it be large of small – can have on so many less fortunate people is truly amazing.

"It's thanks to corporates and generous Australians who donate and volunteer that the Dr Steve Burroughs Foundation is able to continue to have a positive impact on so many Indigenous Australians. There's certainly no shortage of Australians willing to donate either their time or goods to the Foundation.

"Another example of the power of generosity can be seen in Nexia Australia, who have generously donated thousands of hours work to the Foundation.

Nexia are at the forefront of all Foundation activity – they not only assist with day-to-day activity, such a maintaining accounts and transparency, but they also assist which much more complex tasks including securing our recent DGR status.

"There is no way the Foundation could operate without Nexia. They offer tremendous guidance and expertise, which means the Foundation can continue to offer support and good to those who need it the most.

"I always know that I can count on the Nexia team to assist myself and the Foundation."

The Foundation's partnership with Nexia is thanks to Dr Steve's longstanding relationship with chartered accountant and partner with Nexia Australia, Mark O'Shaughnessy – who is also a director of the Foundation.

Dr Steve Burroughs
Director and Chair
Dr Steve Burroughs Foundation

Auckland

Our Auckland office has a longstanding relationship with the Franchise Association of New Zealand and was proud to sponsor the 2021 National Franchising Survey, which came out in December. Amongst those surveyed, it was encouraging to see employment intentions continue to be high and consumer confidence appears to be increasing.

Christchurch

Our Christchurch office will welcome six graduates in February, with four joining the Business Advisory team and two joining Audit.

In 2021, the office recruited two graduates, which has been typical in previous years. Hiring six graduates across two services lines this year however, shows how the firm is growing and investing in talent.

The Christchurch team strongly supported Movember in 2021, with most of the men in the office growing some facial hair to support this great cause. Team Nexia raised an impressive total of almost $7,000.

Melbourne

After 14 years as Managing Partner of our Melbourne office, Paul Dal Bosco has decided it is time to hand over the baton and herald a new era of innovative management and growth.

The Melbourne office is pleased to announce that both Paul Clements and Vito Interlandi have stepped up from the existing Partner Group to become joint Managing Partners of Nexia Melbourne.

Sydney

Following exceptional work from staff over the past financial year, our Sydney office congratulates the following staff members on promotions that came into effect January 2022;

- Christine Atencia – Associate Director, Financial Services
- Winson Liew – Associate Director, Taxation Consulting
- Andrew Keane – Associate Director, Taxation Consulting
- Jessica Tran – Manager, Business Advisory
- Yianni Tsathas – Manager, Business Advisory

Milestone Anniversaries in Sydney

Our Sydney Office have celebrated a number of milestone staff anniversaries in recent months, including:

- David Homer (16 years)
- Yan Yang and Julie Mason (17 years)
- Frank Savino (19 years)
- Garvin Jones, Catina Paino and Anita Forder (21 years)
- Dom Speranza (31 years)
- Neil Hillman and Stephen Rogers (43 years)

Two major award wins for Nexia at the Digital Accountancy Awards 2021

Nexia International (Nexia) has been named Network of the Year, at the Digital Accountancy Awards 2021 and Kevin Arnold, Nexia's CEO, has received the Lifetime Achievement Award.

The network has had tremendous growth over the years and celebrated its position of rising one place since the previous year to become the 8th largest global accounting network, as measured by fee income.

To read the full press release, please visit the Nexia International website.

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