

# MEMBERS NEWSLETTER



## April 2007

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# PRESIDENT'S LETTER

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March 2007

My fellow IAPA members, it's hard to believe the time is flying by so quickly. While my last letter was wishing you all a happy and prosperous New Year, now we are approaching the end of the first quarter of the year 2007!



In my last letter I indicated that the year was starting out with "a lot of activity." I was not exaggerating, as we are making wonderful progress on many fronts.

Our recruitment efforts are well underway. Thanks to Juergen Liebhart (Liebart & Kollegen, Stuttgart) for recommending potential new members in Romania, which is one of our targeted areas. Personal recommendations, such as this, are certainly the best way of attracting new members. Thanks also to Argyris Tembriotis (Cyprus) and Ana Martinez (BSSS) for carrying out site visits to prospective new members in Lebanon and Uruguay, respectively, and of course to Morten Clauson-Kaas for his continued efforts on our behalf in Europe. These new member applications are in process and are expected to be completed in the next few weeks.

We'd also like to welcome our new member, KMRA Audiitorbüro OÜ Tallinn (Estonia). KMRA is a four-partner firm established in 2003 and specializes in external and internal audits.

I am sorry to report that Theill Andersen (Denmark) and Scramek Hightower (Alaska, USA) resignations have been received and will come into effect at year-end. We will miss both of these firms who have made contributions to IAPA over the years.

Our Quality Committee is scheduled to meet in Berlin in May and we thank all of our members for submitting quality questionnaires and their most recent peer reviews. Very few are still outstanding and we would certainly appreciate submission of the requested material in time for the meeting. We need these items to consider how IAPA will offer support through peer review and other means to all of our members. This is an area that will not only enhance the reputation of IAPA, but that will also be a direct benefit to all of our members.

Under Member Services, don't forget that we have the European Conference in May in Berlin. Registration is now open at [www.iapa.de](http://www.iapa.de). The America's Group is meeting in Mexico City in June. I remind everyone that these regional meetings are open to all members. We urge early registration, as this is truly helpful to the fine people who host these meetings and do all of the work necessary to make them successful.

Don't forget Sydney in November! We expect registration to open in the next few weeks. I assure you I will register early for all of these and I urge you to do the same.

I am pleased to report that Ullrich Bork will be giving a presentation and lead an open discussion on our newly formed "Expatriate Services Group" at the Berlin Conference. Thank you Ullrich and Michiel Martin for spearheading this initiative.

The Technical Committee is pleased to welcome Steven Bostick and Paul Jaspar as new members representing Americas and Canada, respectively. Thanks to Stefan Herzer for volunteering to chair the European representatives. We look forward to a broad representation of membership and more volunteers are welcome. As this is still in the early stages of development, the Committee will be preparing their "terms of reference" or bylaws (as some of us refer to it) and decide how they will operate.

As we prepare for the rest of the year and begin preparation for all of these fine conferences that are scheduled, I wish all of you very smooth sailing, as many of us have our "tax busy seasons" well under way.

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Your President,

*Herbert S. Alexander*

Herbert S. Alexander

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# Membership Changes

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## New Member in Estonia

### **KMRA Audiitorbüroo OÜ**

Liimi 1

Tallinn 1062

Telephone: + 372 681 2077

Facsimile: + 372 681 2076

Contact Partner: Mrs Urve Kipper

Email: [urve.kipper@kmra.ee](mailto:urve.kipper@kmra.ee)

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## Other Membership Changes

### **Cofirec / Acteon - France**

This is the new name of Caro-Cofirec, following the retirement of Gerard Caro, the former Contact Partner. The firm continues to operate from the same address in Paris, but the Cannes office has closed.

Contact Partner: Pierre Delory

Email: [direction.cofirec@cofirecacteon.com](mailto:direction.cofirec@cofirecacteon.com)

Tel: + 33 1 53 64 68 50

Gerard Caro has joined the Past Partners Club and he will continue to participate in IAPA events.

### **Berenfeld Spritzer Shechter & Sheer - USA**

Berenfeld Spritzer Schechter & Sheer has opened a new office in Fort Lauderdale, strengthening their existing operations in Florida at Sunrise and Coral Gable. Contact details are as follows:

Contact Partner: Tracy Weintraub

Email: [tweintraub@bsss-cpa.com](mailto:tweintraub@bsss-cpa.com)

Tel: + 1 954 728 3740

### **Prosperity Advisers Pty Ltd - Australia**

Prosperity Advisers Pty Ltd has opened a new office in Brisbane, Queensland, in addition to its existing offices in Sydney and Newcastle, New South Wales. Contact details are as follows:

Contact Partner: Karl Schlobohm

Email: [kschlobohm@prosperityadvisers.com.au](mailto:kschlobohm@prosperityadvisers.com.au)

Tel: + 1 61 (0)7 38391756

## Resignations

Resignations from the following firms will take effect on 31 March 2007:

- **Theill Andersen**, Copenhagen
- **Sramek Hightower**, Anchorage

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## International/Regional Conferences

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### 2007 International Conference – Sydney Sunday 28 October / Thursday 1 November



Prosperity Advisers, as hosts of the 2007 International Conference are finalising some fantastic events that showcase Sydney and its spectacular Harbour. Themed functions include 'G'day Mate', 'Waltzing Matilda', 'A Night Under the Southern Cross' and of course a 'Wild Night Out'.

Speakers and the business forum are working towards achieving some of our conference goals of 'Providing take-home business values' and creating 'new business opportunities through International Chambers'.

We look forward to you joining us on this experience and remind you that the Four Season Hotel has some outstanding rooms with panoramic views of Sydney Harbour. A number of delegates have already taken advantage of the first come first serve basis, so join them in getting your down under adventure underway.

**EARLY BIRD SPECIAL** - register before 8 June 2007 to be entered into the draw for two Sydney Harbour BridgeClimb tickets (value AU\$350 ) see [www.bridgeclimb.com](http://www.bridgeclimb.com) for more information regarding this fantastic experience.

Further details, including the registration system which is nearing release, can be accessed via the following website address [www.iapa2007.com](http://www.iapa2007.com).

Prosperity Advisers Pty Ltd, Sydney

## **2007 European Conference – Berlin**

### **Friday 4 / Saturday 5 May**

This is a wake up call! We want you! We want you here in Berlin! Those of you who have not registered yet should do so as soon as possible. It will make the organisation of the conference much easier if you do not wait until the last moment to fax us your registration form. Details and registration forms can be found at [www.IAPA.de](http://www.IAPA.de).

As previously notified, the event will take place at the splendid Radisson SAS Hotel right in the heart of the city. The programme will offer an opportunity to see some of the sights of Berlin, but those wishing to extend their stay can register for an optional half-day excursion on the Sunday morning or a 3-day tour of the region concluding at midday on Wednesday 16 May

The event will begin with an optional one-day meeting of the Tax Forum on Friday. This year, for the first time, an Audit Forum will run concurrently with the Tax Forum - this is a new initiative which the Board hopes will be beneficial to practitioners involved in assurance work. The main programme on Saturday will include presentations by the President and European Chairman, as well as an update on PSG activity and a discussion on the future plans of the new Expatriate Services Group. External speakers will address practice management and business strategy issues, and the day will close with the holding of the European AGM.

The conference is open to all member firms, with a particularly warm welcome to those coming from outside the European Region.

Best regards  
Jens Forkert  
Duske, Becker & Sozien, Berlin

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## **2007 Americas Conference – Mexico City**

### **Friday 22 / Sunday 24 June**

The 2007 Americas Conference will be hosted by Claudia Hayek and Despacho Munir Hayek in Mexico City from 22 to 24 June. The conference will be held at the beautiful Hotel Nikko in the trendy Polanco neighborhood.

We encourage you to make your hotel reservations immediately by contacting event coordinator Karla Marquez at the Hotel Nikko. Karla may be reached by telephone at 5255 52 8387 00 or email at [karla.marquez@nikko.com.mx](mailto:karla.marquez@nikko.com.mx). A special rate of \$165 has been arranged which includes breakfast and upgraded rooms. This rate is available three days before and three days after the conference. Please reference the IAPA 2007 event. Taxes are additional. Internet booking is not available for this rate but other rates are available at <http://en.hotelnikkomexico.com>.

A 5% discount on American Airlines airfares to Mexico City from any American Airlines point in the world has also been arranged. To take advantage of this discount, please call 800 433 1790. The group name is IAPA-International Association of Practising Accountants. Flights may also be booked on [www.aa.com](http://www.aa.com) using the discount code "A3467BF".

Please note that the conference event schedule has changed. The conference will commence with an all day excursion to the magnificent Mexican pyramids and ancient ruins departing Friday morning to be followed by the traditional welcome dinner Friday evening. While delegates participate in meetings Saturday morning accompanying persons will enjoy a tour of the Museo Nacional de Antropologia. (Anthropology Museum) A city tour custom designed for the conference has been scheduled for Saturday afternoon. The tour will include visits to the main square including the Catedral Metropolitana, (the oldest and largest cathedral in Latin America) the Palacio de Bellas Artes, (a colossal white-marble opera house filled with paintings by wonderful Mexican artists) the Palacio Nacional (the grand national palace) and of course the Templo Mayor (archaeological site of the Aztec empire). Delegates will meet Saturday morning while accompanying persons will have the morning free to shop in the upscale Plaza Polonco. Sunday afternoon we will visit the Castillo de Chapultepec. The Castle houses the Museo Nacional de Historia which displays exhibits celebrating Mexican history.

We invite all IAPA members to attend. If you have any questions or need further information please contact Claudia Hayek at 5255 55 14 47 85 or [claudiahayek@despachomunirhayek.com.mx](mailto:claudiahayek@despachomunirhayek.com.mx)

Registration forms will be available shortly.

Jim Mulroy  
Chairman, Americas Region

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# Specialist Interest Groups

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## Expatriate Services Group

Ullrich Bork (KBHT Kalus + Hilger, Germany) and Michiel Martin (ESJ Accountants and Tax Consultants, Netherlands) are spearheading plans to launch the new Expatriate Services Group.

They will present their proposals during the Berlin Conference in May. Delegates will have an opportunity to offer their views as to the group's future operation and activities. A report will be circulated to all members afterwards.

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## Public Sector Group (PSG)

The Public Sector Group held their last meeting in London at the beginning of December. That provided us with an opportunity to discuss our progress and plans for 2007. We were able to introduce Ian Tait who worked with us on the DG Enterprise tender to the other (non-UK) members of PSG. He was then our guest to dinner in the evening.

We also used the meeting as an opportunity to meet with Sally Wise of UK200Group to discuss their potential representation on the PSG. The principle that any UK200Group firm could join the PSG was confirmed on the understanding that they made an equivalent contribution as the other members, including getting to know the wider membership through attendance at conferences etc. This is really no more or no less than is offered to all members of IAPA in Europe.

We were advised of another opportunity in Kosovo at the end of the year, which FW Stephens tendered for in association with Sonntag & Partners (Augsburg) and Marc Mueller (Luxembourg), for a special audit of Pristina International Airport where the combined audit and flying experience of IAPA members was able to be showcased! We found that we have two IAPA partners / managers who hold private pilot licences and also act for regional airports in various professional capacities.

Having committed to the tender we sent one of the FW Stephens' trainee auditors to Kosovo to ensure delivery against very tight deadlines. We have recently heard that Deloitte were awarded the contract - they are auditors of Pristina Airport so were well placed to understand the full scope of the work that needed to be completed under this contract whereas the other bidders could not. So much so that they got a 100% score under the technical evaluation against our 75% - quite remarkable and something we've never



seen before! And strangely their combined price and technical score was less than 1% higher than the firm who offered the best price but only scored 31% of the technical mark! Public procurement is a strange and mystical process at the best of times but then, in this case, it got even better when we heard that the whole contract had been cancelled "for reasons that could not have been foreseen when the tender was issued"!!

So we continue to monitor opportunities and await the outcome of the DG Enterprise tender which should be announced shortly. Tenacity and perseverance will prevail!!

Richard Stevens (FW Stephens, London)  
On behalf of the Public Sector Group

PSG Firms:

- Winters (London)
- ESJ (Roosendaal / Breda)
- Huygens & Co (Bonheiden/Brussels)
- IAPA Deutschland AG
- Wilkins Kennedy (Amersham /London)

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## Board and Committee News

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### European Board

The European Board held a conference call meeting on 5 February. The main points of discussion were:

- review of income and expenditure to date
- approval of arrangements for the European Conference and Tax/Audit Forums in Berlin in May
- approval of the agenda for the 2007 AGM in Berlin on 5 May
- progress report by the PSG
- update on recruitment activity

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### Americas Board

The Americas Executive Committee held a telephone conference meeting on 6 March. The main points of discussion were:

- endorsement of arrangements for the 2007 Americas Annual Meeting
- update on recruitment activity.

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### Technical Committee

Our thanks to volunteers serving on the new Technical Committee. Membership of the Committee is now as follows:

- USA: Steven Bostick (Pattillo, Brown & Hill, L.L.P., Waco)
- Canada: Paul Jaspar (Thomson Jaspar & Associates, Saskatoon)
- Europe: Stefan Herzer – chairman of European sub-section  
Ullrich Bork (KBHT Kalus + Hilger, Germany)  
Massimiliano Bonamini (Studio Bonamini, Italy)  
Alexandre Perrichon (Regec, France)  
Richard Stevens (FW Stephens, UK)

The Committee would welcome other volunteers, particularly from countries that are not already covered. If you would be willing to offer your support, please contact the CEO ([s.humphry@iapa.net](mailto:s.humphry@iapa.net)) for further details.

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## ADMINISTRATIVE NOTICES

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### Website

A number of enhanced functions have been added to IAPA's website. These are as follows:

1. **Search facility**

Visitors to the site can now search by country, city, firm name, service or specialist areas of interest.

- If you would like to indicate your firm's services (eg assurance, accounting etc.), please click on "Update your Profile" and then highlight the appropriate options in the box marked "Services".
- If you would like to indicate specialist areas of interest (eg mining, shipping, banking), please click on "Update your Profile" and enter the appropriate text under "Keyword".
- If you would like to identify your firm under an additional location (eg our member firm in Pasadena is also listed under the neighbouring town of Los Angeles), please contact the Centre ([admin@iapa.net](mailto:admin@iapa.net)).

• **Personal Expertise**

Each partner can indicate his/her personal specialism by clicking "Update my profile" and entering the appropriate text under "Expertise". This information will be visible on the public pages of the website.

• **Services**

A new page about public sector work has been added to the previously

listed services provided by IAPA's members.

- **Constitutional documentation**

IAPA's governing *Memorandum* and *Articles of Association*, the former byelaws (which still have relevance in certain areas), and the *Quality Control Policies and Procedures Manual* can now be downloaded from the "members only" section.

If you have further suggestions for improving the website, please submit your ideas to the CEO ([s.humphry@iapa.net](mailto:s.humphry@iapa.net)).

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## Country by Country Guidance Notes

Guidance notes supplied by member firms are available as listed in previous issues. The latest contribution is as follows:

- India: Summary of changes in the tax provisions in the Indian Budget for 2007 (PK Chopra)

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## Members Newsletter - June issue

The June issue of the *Members Newsletter* will be produced by Pendry White, a PR/Marketing consultancy with specialist experience within the accountancy profession. The newsletter will have a new "look" with a more attractive visual impact.

Jenina Bas, Project Director at Pendry White, will invite contributions from Contact Partners in the usual way some weeks before the publication date. She would welcome in particular any recent "success stories" demonstrating cooperative ventures that would be of interest to other members.

If you have suggestions or contributions, you can reach Jenina at [jb@pendrywhite.com](mailto:jb@pendrywhite.com).

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## Other profile-raising activity

Pendry White is also working on the production of a Prospectus promoting IAPA as a leading international association. The Prospectus will be produced electronically to “print-ready” stage for use by member firms in presenting IAPA to existing and potential clients. A parallel version will be targeted at new applicant firms, focussing on the benefits of membership in terms of global support, networking opportunities and business growth.

A new PowerPoint presentation will also be available to member firms to support their marketing activity.

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## Annual Subscriptions – 2007/8

2007/8 subscription invoices will be issued in April. Please settle your invoice promptly.

As usual, payments can be made by bank transfer or by cheque. This year there will also be an additional facility for credit/debit card payments. Full details will be printed on each invoice.

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## Staff at the Centre

Welcome to Bee Gill who joined the team in Farnham on 22 March. In her role as International Executive, Bee will support the CEO in pursuing IAPA’s strategic goals with particular emphasis on member services, quality issues, and member recruitment. Her email address is: [b.gill@iapa.net](mailto:b.gill@iapa.net).

Bee will be attending the European Conference in Berlin, so many of you will have a chance to meet her in a few weeks’ time.

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## NEWS FROM MEMBER FIRMS

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### Australia

#### Haines Muir Hill – Australia

Haines Muir Hill turned 30 in February this year. We are proud to celebrate this occasion and attach an excerpt from our latest client newsletter.

#### hmh turns 30!

February marked the 30th birthday of Haines Muir Hill, the firm having been established as "C.J. Haines Chartered Accountant" in February 1977.

Chris established the firm after stints at Peat Marwick Mitchell in Melbourne and then Touche Ross in Papua New Guinea. Returning to Melbourne, Chris worked for Nelson Wheeler (where he met Alan Muir). Acquiring a small parcel of fees from a retiring practitioner in Lower Templestowe, Chris recalls the humble beginnings of the firm.



"It was a pretty modest outfit. I had a small office behind the local solicitor in Macedon Square, Lower Templestowe. Entrance to my office was via a narrow laneway and up a couple of flights of stairs - it wasn't easy to find. There was just me and a part time girl. We didn't even have a toilet. We had to nip over to Safeway to use theirs. The good thing was I knew where I wanted to be and that was my motivation for going out on my own. I wanted to create something for myself and others who shared my passion and view on life. I remember when I took over, clients were paying \$16, \$18 or \$21 for their tax returns, depending on the complexity! Of course everything was done manually in those days. No computers or word processors and all my time records were kept on a manual card system", Chris recalls. "The good thing was I knew where I wanted to be and that was my motivation for going out on my own. I wanted to create something for myself and others who shared my passion and view on life. I didn't want to work long hours and sacrifice my family life as is common in the accounting and legal professions. I wanted to build a family friendly practice around people who had the same views. I also wanted to take on clients and establish long-term relationships which would see my firm working with our clients for many, many years. It was also my plan to be able to not only provide accounting and taxation advice,

but also help clients invest their business profits wisely to build wealth for their families and to enjoy a comfortable lifestyle. These objectives are still very important to our firm today", Chris says.

Quite a number of clients who comprised the original parcel of fees which Chris acquired in 1977 are still clients of Haines Muir Hill today. Many others who became clients during the first couple of years are still valued clients in 2007, testimony to Chris's objective of establishing long term relationships with clients.

Over the few years subsequent to 1977 the firm grew steadily. Alan Muir joined Chris Haines in practice in 1981 and "Chris Haines Alan Muir Chartered Accountants" was born. In 1984, the firm became "Haines Muir Hill Chartered Accountants", with the admission of Philip Hill into the partnership. In 1988, John Stead had joined the partnership and Steve Tyshing came on board in 2003.

Now with 5 Directors and approximately 30 staff, HMH occupies a market space very much in line with Chris Haines' original plan, servicing small to medium businesses with accounting, audit, business and taxation services and also providing superannuation, investment and financial planning advice to business owners and individuals. "It's been a great journey. So many of our clients have successful businesses and are financially well established. There is great satisfaction in knowing our firm has helped them out along the way". Asked about the most significant change in the way in which HMH operates now compared to the early days, Chris' immediate response is "email and the internet". Whilst there have been enormous developments in IT generally over the 30 years, "... the way the internet allows for the passage of information so quickly, all around the world is astonishing", according to Chris.

*(Our firm's various logos spanning 30 years)*



## Prosperity Advisers – Newcastle, Sydney, Brisbane

Prosperity has started the new calendar year with some excellent new client wins. In our first major audit win in Queensland we have been successful in a round of tenders issued by the Queensland Audit Office. We will assist them with contract auditing for Sun Water (Brisbane water authority) and Rockhampton Grammar Schools for the next three years.

Our Sydney office have successfully been appointed auditors of small cap listed mining company Chameleon Mining NL and we have been appointed auditors of nine Rural Lands Protection Boards throughout New South Wales adding to our existing seven Rural Board audits with a further four in contention. Director Megan Maybury and Associate Director Paul Horne have been experiencing a real “purple patch”.

You will all be aware of the considerable discipline, intellectual rigor and just plain hard work that are required to successfully sit and pass the Institute of Chartered Accountants (CA) exams. Prosperity have had a number of people achieve merit list ranking in the past however for the first time ever, one of the Prosperity team has come 1<sup>st</sup> in Australia. Jeremy Fox, a senior in our Newcastle BS&T team has been advised recently of this tremendous achievement and we are very proud.

My personal assistant Alex Miguel, our Special Projects Manager, Catherine Pettett and our contract conference organiser, Suzy Byrne are working feverously away to produce an outstanding 2007 IAPA International Conference (refer related item). We have already received a good number of registrations and other enquiries that auger well for a very strong attendance in October. We look forward to seeing you there.

Kind regards,

Allan McKeown  
Prosperity Advisers  
Newcastle, Sydney, Brisbane  
NSW QLD  
AUSTRALIA  
[www.prosperityadvisers.com.au](http://www.prosperityadvisers.com.au)

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## Belgium

### **SD Diensten NV – Commercial Associate**

#### **Taxation of Stock Options in Belgium**

*by Bart Bekaert (Senior Consultant) and Stefan Van Trier (Consultant) of the Tax Department of SD Worx, Tax & Legal*

For the purpose of this article, the term “stock options” always refers to stock options for which the Act of 26 March 1999 is applicable, i.e. for stock options granted as of 1 January 1999.

For questions regarding stock options granted *before* 1 January 1999, please contact us.

#### Taxable moment of the benefit

Stock options in Belgium are considered to be a taxable benefit in kind and are taxable at the deemed date of attribution.

Based on the original article 42 of the Act of 26 March 1999 (the “Act”), the stock options were deemed to be attributed on the 60<sup>th</sup> day following the offer of the stock options. The only way to avoid taxation of a taxable benefit in kind was to refuse the stock options in writing, before this period of 60 days.

Article 404 of the Act of 24 December 2002 amended article 42 of the Act in such a way that the stock options are now deemed to be attributed to the beneficiary on the 60<sup>th</sup> day following the offer of the stock options if the stock options are accepted in writing within 60 days of the offer being made.

#### Taxation at the time of attribution: discriminatory?

Employees to whom the employer allocates stock options are taxed in the same way irrespective of whether or not they are able to exercise the option.

In a recent judgment (Court of Arbitration 28 July 2006), the Belgian constitutional court ruled that the taxation of stock options at the moment of attribution is not discriminatory, even if certain conditions, which make future exercise uncertain, are imposed on the beneficiary.

The beneficiary is free to accept or refuse the stock options and receives a benefit consisting of a “chance of a gain” at the moment of grant of the stock options.

Therefore, the taxes paid with respect to the taxable benefit in kind for stock options can not be recovered if the stock options are not or can not be exercised by the beneficiary.

#### Taxable basis

The taxable benefit of a stock option is the value of the option, reduced by any amount paid by the beneficiary in order to acquire the option. This benefit is taxable at the normal progressive income tax rates (ranging from 25% to 50%, to be increased by municipal taxes).

The value of a stock option listed itself on a stock exchange is determined as the closing market (stock exchange) price of the last trading day preceding the day of the offer.

The value of a stock option that is not quoted itself on a stock exchange, will be fixed at a certain percentage of the fair market value of the underlying shares at the moment of the offer.

The fair market value of the underlying shares should be determined as follows:



For quoted shares (i.e. listed on a stock exchange), one of the following valuation methods should be used, at the discretion of the grantor of the option:

- the average stock price over a 30 day-period preceding the offer; or
- the closing stock price of the last trading day preceding the offer.

For unquoted shares, the value has to be determined by the grantor of the options subject to the approval of the statutory auditor of the company on which share options are granted, an auditor assigned by the company, or an accountant with a similar status.

The basic percentage in order to determine the taxable basis is set at **15%** of the fair market value. If the options are exercisable during more than 5 years (calculated as from the offer date), this percentage is increased by 1% per additional year or part of a year that the options can be exercised.

When the option meets certain conditions, the lump-sum valuation is reduced to **7,5%** of the value of the underlying shares at the moment of the grant. This percentage has to be increased by 0,5% per additional year or part of a year for options exercisable during more than five years.

The conditions to benefit from the reduced valuation method are the following:

- the exercise price has to be determined at the moment of the offer;
- the beneficiary may not exercise the option before the end of the third calendar year following the year of offer;
- the beneficiary may not exercise the option after the end of the tenth calendar year following the year of offer;
- the option may not be transferred to a third party, except in case of death of the beneficiary;
- the down risk of the option may not be covered, directly nor indirectly by the person granting the option, nor by a person with whom a relation of mutual dependence exists ;
- the options must relate to the shares of the employer company or another company that has a direct or indirect participation in the employer-company.

The reduced valuation rules will apply if the above conditions are either included in the general stock option plan or in an individual commitment of the employee.

In case any of the conditions are no longer fulfilled, the difference between the 7,5% (+ 0,5% per year) and 15% (+ 1% per year) valuation will become a taxable benefit in kind.

An adjustment to the taxable basis also takes place if the exercise price of the option is lower than the value of the underlying share at the moment of grant (options “in the money”). In that case this difference is added to the taxable basis.

### Social security

The benefit from stock options is exempt from Belgian social security contributions, unless :

- the exercise price of the option is lower than the fair market value of the underlying share at the moment of the offer (option in the money); or if
- the option includes a certain (i.e. guaranteed) benefit.

### Withholding taxes

When a foreign company grants stock options directly to Belgian employees, no **Belgian withholding taxes** at source will have to be withheld by the foreign company (nor by the Belgian company if it concerns employees of a Belgian company) if:

- the foreign company (grantor) does not have a permanent establishment in Belgium to which the costs related to the transaction are cross charged;
- the Belgian company does not act as an intermediary in the attribution of the benefits.

Acting as an intermediary means that the Belgian company intervenes in an active way in the attribution of the benefits (selecting the beneficiaries, deciding the number of shares available for purchase, administering the stock option plan).

### Reporting obligation

The grantor will have to report the benefit of the stock option on the individual form 281.10 (employee) or the individual form 281.20 (directors) and on the summary listings 325.10 or 325.20 of the Belgian employer.

If the options are granted to employees of a Belgian company by a non-resident company, without establishment in Belgium, the **Belgian** company has to report the benefit on the individual form 281.10 and summary listing 325.10.

If the benefit is not (properly) reported, the tax authorities could apply the so-called “secret commissions” tax fixed at 309 % of the non-reported amount. However, according to internal administrative guidelines, this secret commission will not be applied in case the tax authorities have been able to tax the concerning salary element.

### Capital Gains

Capital gains on the subsequent sale of the shares by the beneficiary will be exempted from taxation, under the normal Belgian rules applicable to gains derived from an individual’s management of his private investment portfolio.

### Stock options in a cross-border context

On 25 May 2005, the Belgian tax administration issued a circular letter which converts the OECD guidelines with respect to article 15 of the model OECD double tax treaties (incl. stock options) into Belgian fiscal guidelines. Annex I to this circular letter deals specifically with the treatment of stock options in a cross-border context.

This may give rise to specific issues, as Belgium taxes the stock options at the moment of attribution, where many countries will impose taxes at the moment of exercise.

For questions regarding this issue, please contact us (tel 09 264 02 15 - 03 220 28 33).

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## Canada

### **BHD Update**

The BHD Group continued to enjoy strong growth during the past year. The Canadian economy has maintained its steady growth and member firms have as much work to do as they can handle.

Membership in the group increased by one firm as a new member firm in Toronto joined BHD. The new member firm which joined the group is Hilborn Ellis Grant LLP. This firm was established in 1930 and has garnered a reputation of one of the best firms in the Toronto area. The firm currently has eight Partners and services a wide range of clients, with a strong public company audit group making up a significant part of the firms practice.

#### **Group Update**

The development and growth of BHD continued throughout the past year. Monthly teleconference calls have allowed the group to continue to share information and resources across the country. On a monthly basis the group now holds teleconferences focusing on accounting and assurance, tax, and IT related topics. Member firms are using this time to allow professionals within their firms the opportunity to interact with other member firms and this has fostered the transfer of individual expertise within individual firms throughout the group.

#### **2006 National Meeting**

The annual BHD national meeting was held in September 2006 in Moncton, New Brunswick. Leblanc Nadeau Bujold was the host firm. Items discussed at this conference focused on branding and marketing of BHD member firms and the national group as a whole. The difficulties of recruiting new employees is a strong underlying current for BHD members which has led to ongoing discussions through the year on attracting new staff and keeping those already in ones firm. The growth in the Canadian economy and the overall shortage of professionals in the field due to increasing demands from industry are forcing member firms to become more creative and innovative in the ways in which they attract and retain their staff. Several novel approaches have been emerging from member firms.

The BHD group will use these meetings to continue to develop its strategy for growth in the Canadian marketplace. Several new member firms are being looked at with a focus on expanding the group's presence in Ontario and strengthening the group in the Maritimes provinces. Currently BHD is

considering firms in London, Ontario, the Kitchener-Waterloo region of Ontario, and Nova Scotia.

The paperless technologies being employed by several of the BHD members was a focus at the national meeting. Paperless files are now being prepared by several of the firms in the group with most others at some point in the implementation process of this new software package. Real cost and time savings are now being recognized by those firms which have fully embraced this system and information and tips concerning implementation are shared monthly during conference calls.

Firm succession planning was another focus of the meeting. Several of the member firms in the group are about to, or have just dealt with issues of managing changing times within the partnership structure of their firms. The group continues to look at best practices in this area.

Veres Picton & Co. LLP is developing a National CA Training Conference that will coincide with the national BHD AGM. The goal of this conference is to retain professional staff. Students who wrote the Uniform Final Exam the previous year will be eligible to attend. It will be a 3 day retreat that focuses on personal management skills, client development and technical aspects as well as some fun!

### **Final Thoughts**

The BHD group looks to continue its success of the past year into 2007 and beyond. Members continue to realize the benefits of shared information and knowledge with firms from across the country. In the coming year the group looks to continue its growth and expand its network of member firms. BHD will strive to build on the success it has seen in the ongoing regular communication between its members and continue to offer member firms the opportunity to share expertise and resources with others in the group. Finally, all members within the group are working to ensure that the bottom line results they achieve are maximized along with the ongoing expansion and growth of the Canadian economy.

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## **Veres Picton & Co. LLP**

2007 promises to be another exciting year at Veres Picton & Co. LLP as we continue to move forward and grow. While the numbers are not final yet, 2006 was the most successful year to date for Veres Picton & Co. LLP, but the Partners fully expect that the best is yet to come in 2007. We have obtained new work such as oilfield service companies, hotels and professionals. As you are aware, John Veres has retired as a Partner with the firm. John will continue to maintain a presence with the firm and will work on special projects with key clients going forward. While John has many other interests and opportunities on the go we will all still have the chance to enjoy the benefits of his knowledge and expertise going forward into 2007.

John's retirement has led to some structural changes in the firm. We are pleased to announce the admission of Robert D.A Picton into the partnership effective January 1, 2007. Rob delivers a wide spectrum of abilities to our Firm to exceed our clients' expectations. His skill set includes personal and corporate tax planning, a wide range of assurance engagement experience for organizations ranging from owner-managed businesses to not-for-profits and First Nations, and a sharp understanding of clients' business needs and how to achieve them. Rob brings enthusiasm and a willingness to perform for his clients in all situations.

Alan B. Thom, CMA and Douglas Sadler, MBA have joined the ownership group of Veres Picton Inc. effective January 2007. These individuals bring a multitude of skills and experience to the Firm. Al and Doug have shown their abilities to manage and direct the day to day operations of the Firm while maintaining long-term perspective.

Hugh C. Nielson, CA, TEP has been named Director of Taxation of Veres Picton & Co. LLP. Hugh's contribution to the Firm during the past year has been invaluable and the Partners and staff have all benefited from his vast expertise and knowledge.

Christine Sinclair has successfully completed the 2006 Uniform Final Exam. Christine will be receiving her Chartered Accountants designation in the spring. Veres Picton & Co. LLP looks forward to sending at least five students to the 2007 Uniform Final Exam, our strongest showing yet. We are also pleased to announce that we will have four students beginning the CA School of Business program in early May.

We are currently renovating more office space on another floor in our building, and are pleased with the staff we have been able to hire as well as retain this past year. In the last few months we have hired a newly designated CMA and a newly designated CA. We have worked hard in the area of Human Resources and have recently begun an RRSP matching program for staff who have been with us for two years or longer. Just this month we awarded the staff with Sony DVD portable players to show our appreciation.

Veres Picton & Co. LLP hosted Craig Wright the Chief Economist with the Royal Bank of Canada last month. The seminar was attended by clients, business contacts and staff. We have also been involved in a lot of charity work such as the Green and Gold Gala as well as hosting the first annual Veres Picton & Co. LLP Icebreaker Tournament. This tournament was a shinny hockey game that raised \$10,000 for the Camp Health Hope and Happiness Society. In early February we also presented the Michael Lissey award to a newly designated CA student. This was an award that our firm started in 2002 in memory of the late Michael Lissey, a partner with our firm.

# Russia

## A.I.Audit- Service

### **Project Financing Department**

We are pleased to inform you that A.I. Audit-Service has recently opened a new project financing department to facilitate finding, evaluating, financing and monitoring the investment projects of foreign investors in Russian Federation. This is a response to frequent inquiries about investment opportunities from IAPA members and their clients.

A.I. Audit-Service encourages institutional and individual investors worldwide to submit investment declarations stating the preferred sector, form, amount of financing etc. We are able to meet the needs of every investor and find projects in various sectors of the rapidly expanding Russian economy.

A.I. Audit-Service is constantly striving to develop our partner network in regions of Russia with a favourable investment climate to provide on-site professional services and support for your investment plans. We look forward to receiving your proposals.

### **Investment Projects**

In connection with the interest some of our colleagues in IAPA and their clients have shown in investment projects in Russia, I would like to publish the first list of 15 investment projects, which our project financing department is processing at the present time. Any colleagues who are interested in these projects should feel free to contact me at any time.

1. Technopark (investment site) in the town of Kirschach in the Vladimirskaya oblast - an area of 153 hectares, utilities engineering facilities (gas, electricity supply systems, sewerage system are in place, motorway and railway place go right by the border of the site). The project is supported by the administration of the Kirschach district of the Vladimirskaya oblast.
2. Establishing industrial- logistic centers in the Moscow oblast. The project is supported by administrations of Moscow and the Moscow oblast.
3. Setting up sale and industrial development facilities at the main joints along federal motorways – a private project.
4. Construction of a warehouse and logistic centre (20 hectares) to be later sold to a special operator (20 hectares) – the town of Vidnoye of the Moscow oblast. A private project; the administration support is secured. An alternative option is possible: sale of the facilities at 50% or higher profit.
5. Sale of milk processing plant in the Volokolamskiy district of the Moscow oblast ((changing the line of business is possible).

6. Construction and maintenance (or sale to a special operator) of an office-warehouse centre (40 000 sq. m.) in Moscow – a private project .
7. Construction and maintenance of sale –office facilities (20 000 sq. m.) in Moscow - a private project.
8. Construction of industrial facilities for reproduction of meat breed sheep in the Saratovskaya oblast; administration support is guaranteed.
9. Quarrying and refining chalk and construction of a plant in the Saratovskaya oblast; administration support is guaranteed.
10. Construction and maintenance of a pharmaceutical plant in the town of Shatura of the Moscow oblast; administration support is guaranteed.
11. Construction and maintenance of brick works near the exploited field (the Samarskaya oblast); administration support is guaranteed.
12. Construction and maintenance of a mega sale centre (80 000 sq. m) in the city of Samara; administration support is guaranteed.
13. Housing construction for commercial purpose in the city of Samara; administration support is guaranteed.
14. Construction and then sale of low rise estate modeled on old districts of Moscow, including town infrastructure, in the town of Shatura in the Moscow oblast; administration support is guaranteed.
15. Sale of a plant producing metal ware in the town of Yegorievsk in the Moscow oblast (changing its line of business is possible).

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## South Africa

### **IAPA JOHANNESBURG**

See newsletter - separately attached.

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## United Arab Emirates

### **Kothari Auditors & Accountants**

Giving hereunder some of the important developments in United Arab Emirates.

#### **Ras Al Khaimah Offshore Company:**

Ras Al Khaimah, an Emirate of United Arab Emirates, has launched International Companies Regulations 2006 which will permit setting up of Offshore Company on the lines other offshore jurisdictions like British Virgin Islands, Panama, Mauritius etc.

The company name would be followed by Limited or Incorporated and will have minimum of one shareholder and one director. The RAK International Company would be permitted to undertake all the activities except carrying on business in or with persons in UAE, banking, insurance and those which are prohibited by the authority from time to time.

Further the RAK International Company would be permitted to issue bearer shares and also different classes of shares. The accounts are required to be maintained but it does not have any audit requirement or filing of accounts is not required.

Another outstanding feature of the RAK International Company is freedom to opt for any international law for dispute settlement.

Above all the cost of setting up & maintaining RAK International Company would be similar to other offshore jurisdictions like British Virgin Islands and hence would be a very cost effective tool for, international business, asset holding, inheritance planning and succession planning.

### **AED 100 billion Resort Complex in Dubai**

The Bawadi project-launched by Tatweer, a highly diversified enterprise and member of Dubai Holding, enters the hospitality industry with this AED100 billion project value.

Inaugurated by His Highness Sheik Mohammed Bin Rashid Al Maktoum, UAE Vice President and Prime Minister and Ruler of Dubai, The project will feature the largest concentration of leading hotel brands and the world's biggest hotel.

Bawadi project has been conceived with an aim to meet the forecast increase in tourists to Dubai, which is set to cross 15 million over the next few years compared to the current six million.

Over the next eight years the Bawadi project will add an additional 31 hotels to the emirate, nearly doubling the current number of hotel rooms in Dubai.

The world's largest hotel Asia-Asia will be the centerpiece of the development providing 6500 rooms. Asia-Asia is part of phase one of the developments, and will be completed by 2010 costing Tatweer US\$ 3.2 billion in hotel and infrastructure.

The Bawadi project will not only help stimulate direct growth in the tourism industry, it will also act as a catalyst to tourism dependant industries such as MICE (meetings, incentive travel, conventions and exhibitions) and the corporate travel business.



Tatweer will invest AED30 billion in hotel developments and AED10 billion for infrastructure with AED60 billion expected from private investors, the Bawadi project works out to total of AED100 billion.

The Bawadi project will develop a total of 29,200 rooms out of which 12,450 will be developed by Tatweer's 12 themed hotels and 16,750 rooms developed by investors through construction of another 19 hotels.

Bawadi will be the world's most exciting and leisure hubs that will attract leading hotel brands, entertainment centers, shopping malls, theatres, restaurants and convention centers. It will occupy an area of 10 kilometers.

A series of luxurious theme-based hotels is being planned by Tatweer such as the Desert Gate Hotels & Resorts, The Wahat Alkuttub Hotels, The Desert Beach Hotel & Resort, The Land of Arabia Hotel & Resorts, The Wild Wild West Hotels, The Africa World Hotels, The Europa Hotels & Resorts and The Pirate's Cove Hotels & Resorts.

The hotels will be completed in phases keeping up with the tourism inflow growth in Dubai. Five luxury hotels are planned to open initially by 2010 with another six hotels the following year. 2012 will see the opening of seven new hotels and seven more in 2013 and finally six new hotels will commence in 2014.

### **Largest LNG Hub Planned in Dubai**

The world's largest facility to store LNG called Dubai LNG Storage Hub will have a capacity of up to 65 billion cubic feet (bcf) said senior officials.

As the first such facility in the world with an expected total storage capacity ranging from 40-65 billion cubic feet (bcf), the Dubai LNG Storage Hub will meet the demands of the industry as LNG becomes a globally traded commodity.

To be based at Dubai Techno Park, The Dubai LNG Storage Hub is a joint venture project between Dubai Multi Commodities Centre (DMCC) and LNG Impell.

The availability of a storage facility in Dubai will enable suppliers and buyers to better manage their financial and physical supply pressures and thus ensure uninterrupted supply of LNG.

Scheduled to be completed in three phases between 2011 and 2013, the stored LNG in the facility will then be delivered to markets in North America, Europe and Asia. The first phase is expected to be completed by 2011.

### **AED 1.5 billion Investment Expected in International Media Production Zone**

The International Media Production Zone in Dubai has attracted 40 companies and the investments expected is AED 1.5 billion in industrial facilities on the completion of the project in 2007.

IMPZ is planned to be the exclusive industrial zone that will house printing, publishing and packaging industry.

The government is spending Dhs.1 billion on the infrastructure in this initiative to make Dubai the media hub. Heidelberg, Man Roland, Kimpex, Thomsun, Al Ghurair and Galadari Investments, Saudi Research and Publishing, Librias and Dar Al Watan are some of the companies that are setting up facilities.

Land is made available on long term leases and 100 percent foreign ownership of companies is allowed in the zone, the first phase of the pre-built units for printing and packaging companies will be ready for occupation by mid 2007 and land for publishing companies will be ready by the last quarter of 2007.

The project covers a total land area of 43 million square feet and the built up area will be 50 million square feet, seventy five percent of the project has already been sold out.

**The above developments shows vibrant signs of UAE Economy and the opportunities provided for business & new developments in UAE. We at Kothari Auditors & Accountants can provide with details about new opportunities and assist in formations & related services.**

For further information contact:

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## United Kingdom

### **The GBC Partnership.**

The managing partner of the GBC Partnership, Peter Hounslow, has received the significant honour of being appointed a Lay Canon of Guildford Cathedral and is to be installed by the Bishop of Guildford on 11<sup>th</sup> March 2007.

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### **UK200Group**

We avoid planned activities for members during January because most are already burning the midnight oil to achieve the deadlines on clients' tax

returns. However, we are now well into the swing of our Spring activities and very much looking forward to the lighter mornings and evenings here in the UK!

**UK200Lawyers Group** held a successful Share Schemes seminar in London in February where the key presenter was group member Robert Postlethwaite, Postlethwaite & Co, London who specialises in employee share schemes, including share options, share incentive plans and long term incentive plans (LTIPs). We were delighted with the support received from other members, their clients and professional contacts.

**The Healthcare Group** held their training day in February. The programme covered a selection of highly topical issues in the healthcare sector. 5 different specialists covered key business opportunities, legislation and practical hints that impact upon clients and potential clients trading in the Pharmacy, General Practice, Care Homes and Dental markets.

In March the **Charities Trade Group's** national training day is covering important legislative issues to be presented by top class speakers in the charity sector, giving the opportunity to keep abreast of key developments such as Charity Law Reform, Charities VAT, Finance Solutions for Charity Organisations and Public Benefit Test.

Also in March the **Corporate Finance Panel** national training day will be covering such issues as VAT & Corporate Finance Fees, Current VAT Issues for Corporate Financiers, The PLUS Market, Divorce and the Family Business and finally for Corporate Finance panel members only Acquisition Letters of Engagement.

The **Business Strategy Panel's** national training day in March is on removing wastage from the production process, entitled "How to become a 'lean' Professional Service Firm".

The **Practice Forum** for members at the end of March will be covering in depth 'Recruiting the Right People' in the morning and 'Personal Marketing, Prospecting, Networking, Getting Referrals and Closing' in the afternoon.

If you should be visiting the UK you would be welcome to attend our training events. Please contact Jenny Waight on [jennyw@uk200group.co.uk](mailto:jennyw@uk200group.co.uk) at the Centre for further details.

### **Regional Marketing Forums**

Marketing Forums for members are taking place throughout the regions offering members - customer relationship management, getting the organisation marketing focused, identifying USP's, identifying target clients, successful direct marketing, measuring and monitoring enquiries, databases, using technology for cost effective marketing, WebWatch, plus other issues introduced by attendees

## **Regional Meetings**

The various regions also hold regular meetings locally for members to discuss a range of matters. Members of the Executive attend the meetings held in the spring and early summer each year to discuss matters relating to the Group as a whole. The first of these took place in the London region on 1 March.

The full programme has now been issued for the **One Day Business Conference** being held at The Dorchester, London on 2 May entitled **winds of change ...the demographic time bomb!** The day has been planned to address the key business issues to enable efficient planning and to manage a more stable and profitable existence that will help to achieve the desired quality of life. Areas of tax, wealth management, employment, sex and age discrimination and pensions all have a direct bearing on UK economic stability and the profitable growth of businesses. The full programme can be viewed from our home page [www.uk200group.co.uk](http://www.uk200group.co.uk).

## **New Member**

### Crowther Beard LLP, Worcester, England

Based in our West Midlands region, Crowther Board is a 5 partner two office firm with a branch office in Tewkesbury, Gloucestershire. They say 'every business and every person we deal with is different. That is why we have developed a broad range of services available for both individual and for businesses including some from alliances that have been built over a number of years with other organisations'. The contact partner is John Painter FCA [www.crowtherbeard.com](http://www.crowtherbeard.com)

## **Press Coverage**

UK200Group's goal is to achieve regular press coverage in both the national and regional media. We have an excellent publishing record in the major broadsheet titles which inform and project the activities and developments of the Group to both the commercial and professional sector.

As well as UK200Group articles, storylines can include individual member firm articles where they have a strong link to the Group's activities and are newsworthy at a national level.

During 2006 we recorded 63 such articles under 'Press coverage' on our website and are delighted to be able to report we are displaying 15 articles just for the months of January and February 2007. [www.uk200group.co.uk](http://www.uk200group.co.uk) 'Press coverage'.

**Annual Peer Reviews** - all accounting firms, as a condition of their entry to membership, undergo a thorough peer review of their systems and thereafter on an annual basis.

**Excellent geographical coverage and in-depth knowledge and specialisms** - should you wish to consult one of our members either on a geographical basis or when seeking specific specialisms, either contact the Centre in Aldershot or go directly to our website [www.uk200group.co.uk](http://www.uk200group.co.uk) and simply clicking on the 'find an accountant or lawyer' from the home page and through the search facility contact can be made either on a geographical basis or via individual specialisms.

*Sally Wise*

Sally Wise  
Executive Officer  
[sallyw@uk200group.co.uk](mailto:sallyw@uk200group.co.uk)  
<http://www.uk200group.co.uk>

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## United States of America

### Alexander, Aronson, Finning & Co.

Greetings to IAPA members around the world! Alexander, Aronson, Finning & Co. is delighted to share a few highlights from Winter 2005/2006.

#### **AAF Vice President Joins AICPA Council**

The American Institute of Certified Public Accountants (AICPA) recently elected **John T. Finning, AAF Vice President**, to their governing Council. The AICPA is the national professional organization for CPA's in the United State with over 330,000 members. The AICPA sets U.S. private auditing standards and ethical standards for the profession. As a member, Jack is dedicated to helping fulfill the objectives of the Council and the AICPA over a 2 to 6 year term period.



Jack entered the accounting profession following his graduation from Boston College, from which he received a Bachelor of Science degree in accounting with highest honors. Additionally, he was the recipient of the Reverend Lyons Award for Excellence in Accounting. He began by working for a major international accounting firm, where, for ten years, he was an auditing specialist in emerging entrepreneurial businesses and nonprofit agencies. In 1981, he joined Herb Alexander and Joel Aronson to form the present firm,

Alexander, Aronson, Finning & Co., P.C.

Jack provides accounting and business consulting services to AAF's small-to-medium sized closely held business clients, as well as to its nonprofit clients. In the business area, he concentrates on serving clients in the fields of manufacturing, software, construction, and distribution. He also works with the firm's clients in the legal and medical fields.

Active in his community, Jack is involved in a wide variety of nonprofit organizations. These include: D.A.R.E. Massachusetts, where he has served as Treasurer and member of the Board of Directors; Employment Options,

Inc., where he is past-Treasurer and member of the Board of Directors; and the Easton Lions Club, for which he is past-President and member of the Board of Directors. He is also a member of the Advisory Board to the Business school at the University of Massachusetts at Dartmouth.

Jack is a member of the American Institute of Certified Public Accountants (AICPA) and Massachusetts Society of Certified Public Accountants (MSCPA). For the latter, he is President, a member of the Board of Directors and serves on its Legislative Awareness and Audit Committees.

We welcome you to visit our website to learn more about all of AAF's executives at [www.aafcpa.com](http://www.aafcpa.com).

#### **AAF Announces New Promotion**

To better serve our expanding client base, AAF recently promoted Davide Villani to AAF Manager for his hard work and commitment to AAF. Within his new role, Davide is responsible for building and maintaining client relationships, overseeing the process and flow of the engagements, and coaching and monitoring AAF staff.



Davide joined AAF in 2002 and has extensive experience in public accounting. He performs audits of various types of nonprofit organizations, including human service organizations, and is very knowledgeable with OMB Circular A-133 requirements. In the for-profit area, Davide has experience with both the audit and tax requirements for Subchapter S and C Corporations and limited partnerships. He has worked with a wide range of companies, including manufacturing and distribution.

Davide is a member of the Massachusetts Society of Certified Public Accountants (MSCPA). He graduated cum laude from Assumption College in 2002 where he earned his Bachelor's of Science degree in Accounting.

#### **AAF Celebrates Mid-Season Tax Party**

To thank AAF employees for their continued dedication and achievements during tax season, AAF professionals are gathering at Mohegan Sun in Connecticut for an annual celebration. Attendees will enjoy a fun-filled, team building night featuring dinner buffet and games.

Alexander, Aronson, Finning & Co. is a certified public accounting firm with over 30 years of experience in accounting, auditing, and business consulting. AAF provides a wide range of services including accounting and auditing, tax compliance, non-profit accounting and consulting, estate and gift planning, litigation support, succession planning, and business valuation.

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## **Wilson Elser Moskowitz Edelman & Dicker LLP – Commercial Associate**

**The Newly Articulated Danger: Auditors may incur Primary Liability for Fraud under U.S. Securities Laws**

*by Thomas R. Manisero and Peter J Larkin*

On February 26, 2007, the U.S. Court of Appeals for the Second Circuit (New York) decided in *Overton v. Todman & Co., CPAs, P.C.* that an auditor may incur primary liability under § 10(b) of the Securities and Exchange Act of 1934 and Securities and Exchange Commission Rule 10b-5 when the auditor: (1) makes a statement in the audited financial statements that is false or misleading when made; (2) subsequently learns or was reckless in not learning that the earlier statement was false or misleading; (3) knows or should know that potential investors are relying on the opinion and financial statements; yet (4) fails to take reasonable steps to correct or withdraw the opinion and/or the financial statements; and (5) all of the other requirements for liability are satisfied (such as materiality, transaction causation, loss causation and damages).

### **The Facts**

For the years 1998 through 2002, defendant Todman & Co., CPAs, P.C. (the "Auditor") audited the financial statements of Direct Brokerage, Inc. ("DBI"), a broker-dealer registered with the Securities and Exchange Commission ("SEC") and a member of the New York Stock Exchange ("NYSE"). Each year, the Auditor issued an audit report opining that the financial statements were fairly presented in all material respects.

As it turned out, DBI's financial statements for the years 1999-2002 contained a misstatement of DBI's liabilities. For 1998, payroll taxes were DBI's largest line item, and its financial statements for that year reflected a payroll tax liability of \$248,899. In 1999, the financial statements erroneously reflected a payroll tax liability of zero, without any explanation in the workpapers. The payroll taxes continued to be misstated in the 2000, 2001 and 2002 financial statements.

The payroll tax errors came to light in 2003 when the New York State Division of Taxation audited DBI and discovered that the company had not properly paid its payroll taxes for 1999 or 2000. DBI initiated an investigation and learned that its former CEO had failed to properly record the payroll tax liabilities on the company's books. DBI also retained a forensic accounting firm, which concluded that the audits were deficient and, if the Auditor had properly examined DBI's payroll liabilities, it would have been apparent that there were serious problems with the payroll liabilities.

By 2003, DBI had unrecorded payroll tax liabilities of more than \$3 million for unpaid taxes, interest and penalties. As a result, DBI needed \$950,000 in immediate capital to meet the SEC's and NYSE's capitalization requirements, and would need additional capital for operations. To obtain this much needed capital, DBI sought outside investors, which included the plaintiff, David Overton. Overton received the misstated 2002 financial statements and allegedly relied on them in deciding to invest in DBI. In January 2004, Overton invested \$550,000 in DBI in exchange for DBI stock and loaned DBI another \$1,500,000. Three months later, DBI collapsed, defaulted on the loan and was suspended by the NYSE.

Overton and another investor, Jerome Kransdorf, commenced suit and alleged that because payroll taxes were DBI's largest line item, the error demonstrated a reckless disregard for DBI's true financial position. Plaintiffs specifically alleged that the Auditor ignored five red flags that cast serious doubt on the accuracy of DBI's financial statements. The five red flags were: (1) in 1998 an auditor noted a large payroll tax payable at the end of the year, and that further analysis was required to determine if the liability was understated, but no analysis was ever done; (2) the Auditor knew that DBI had not paid payroll taxes after 1998, even though it was obvious that people were working at the company; (3) the Auditor recognized that DBI's payroll taxes dropped from \$248,899 to zero from 1998 to 1999, but never investigated the discrepancy; (4) the Auditor knew that, in 1999, employee compensation rose significantly, while payroll tax liabilities fell steeply, and did not investigate this; and (5) the Auditor knew that this trend continued in 2000, but did not investigate.

### **Prior Case Law**

Prior to the *Overton* case, the Second Circuit Court of Appeals had commented on several occasions that an auditor has a duty to correct prior misstatements in audited financial statements that foreseeably might be relied upon by investors. However, none of those prior cases presented a factual scenario where the Court could conclude that the failure to correct gave rise to an actionable securities fraud.

In 1994, the U.S. Supreme Court decided *Central Bank of Denver v. First Interstate Bank of Denver*, which held that the U.S. securities laws do not provide for a cause of action for "aiding and abetting" securities fraud. This holding significantly diminishes the exposure of auditors to securities fraud claims because the auditor's role typically is secondary to the fraud and does not support allegations that the auditor made a direct material misstatement or committed a manipulative act. However, the *Central Bank* case, similar to the Second Circuit cases, commented that liability could extend to auditors based on their omissions.

### **The Overton Holding**

After reviewing its prior decisions, the Court of Appeals concluded that auditors have a special duty to all investors who might foreseeably rely on their audit opinion in making investment decisions. This special duty does not arise in general, but only where an audit opinion covers the misleading information. Knowledge of incorrect information, such as something contained in management's discussion and analysis, would not give rise to this special duty because an audit opinion does not certify the statement.

The Court, however, makes it clear that this special duty only requires correction of prior misstatements and does not require the auditor to update the prior statements. The auditor need only correct statements that were false when made, as opposed to updating statements that were rendered misleading by subsequent events.



Finally, the Court concludes that a failure to correct a materially misleading financial statement or withdraw the audit opinion when the auditor knows or should know that the statement is false gives rise to primary liability for securities fraud. Accordingly, liability under this scenario is in line with *Central Bank*.

Accordingly, the Court of Appeals concluded that when the auditor: (1) makes a statement in the audited financial statements that is false or misleading when made; (2) subsequently learns or was reckless in not learning that the earlier statement was false or misleading; (3) knows or should know that potential investors are relying on the opinion and financial statements; yet (4) fails to take reasonable steps to correct or withdraw the opinion and/or the financial statements; and (5) all of the other requirements for liability are satisfied (such as materiality, transaction causation, loss causation and damages) the auditor may be liable for securities fraud as a primary actor. Based on this conclusion, the Court permitted the claims against Todman & Co. to go forward.

### **Lessons from Overton**

An auditor's responsibility for the accuracy of audited financial statements clearly does not end upon the issuance of the audit opinion. If the auditor learns that the statements contain an error, the auditor must take action to correct the financials and/or withdraw the audit opinion. Moreover, if the auditor learns facts that call into question the accuracy of the financial statement, the auditor should immediately inquire further because liability can attach where the auditor is reckless in failing to learn that the statement was false or misleading.

Liability is not limited to audits of publicly held companies. DBI was not a publicly traded company. Liability under § 10(b) and Rule 10b-5 arises from the use of any manipulative or deceptive device that results in the purchase or sale of any security, regardless of whether that security is registered with the Securities & Exchange Commission or traded on a national securities exchange.

While the auditor may not have an obligation to consider intervening events that render a financial statement false, the audit clearly must be vigilant in assessing whether the statements were accurate when they were issued. However, the Court of Appeals did leave open the possibility that there could be a situation where an auditor might have a duty to update audited financial statements.

Finally, it must be noted that the auditor's liability can extend far beyond the audit client where it is reasonably foreseeable that an investor may rely on the audited financial statements in deciding to purchase or sell a security.

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## **Berdon LLP**

### **General Considerations for Expatriate Tax Issues**

U.S. citizens and permanent residents who are considering a move to another country must be sure to address a number of tax considerations. These encompass their U.S. tax position, the tax requirements of the particular U.S. state in which they currently reside, and the tax rules of the country they will be moving to. While any advice must address the taxpayer's specific circumstances, here are some general considerations.

- U.S. expatriates – all U.S. citizens and, in general, permanent residents – must continue to file U.S. tax returns and continue to report their worldwide income.  
To prevent double taxation by the U.S. and the country you are moving to, you may be eligible to claim the Sec. 911 exclusions for foreign earned income and foreign housing costs, and a foreign tax credit on your U.S. tax return. In addition, the U.S. maintains tax treaties with many countries which are intended to avoid double taxation of many specific types of income.
- You need to address your state tax situation as well. U.S. states each have their own set of rules that determine whether or not you will have an ongoing state tax liability after you have relocated. For example, if you retain a state driver's license or keep your home in your state of residence, and/or are physically present in that state for certain number of days, you may be deemed to have continued your tax resident status. This generally results in a requirement that you continue filing annual tax returns and reporting worldwide income. In these situations, unlike for federal income taxes, there may not be a way to avoid double taxation if you are also taxable in the other country.
- Length of stay and timing of your move could be critical in determining whether or not you will be treated as tax resident in the country you are moving to. All countries have their own set of rules defining who will be taxable and how taxes are paid, so it is very important to seek the advice of a local tax specialist to help gain a clear understanding of the rules that will apply to your particular case. For example, you should ask about the tax rates on the various sources of income you will be receiving, such as earned income, pensions, social security, interest and dividends, capital gains, among others. Understanding how these items are taxed and the tax rates that will apply will help you determine whether or not you should make changes to your portfolio or restructure how your investments are held.
- If you are a high net-worth individual considering giving up your U.S. citizenship or permanent residency, Section 877 of Internal Revenue Code may require that you continue paying U.S. federal income tax for a number of years.

Other non-tax related issues must also be considered. For example, valid visas or entry permits might be required, most of which limit the period of time you can remain in the country legally. There may also be restrictions on whether or how you can purchase property in the new country. Further,

you should check with the U.S. State Department regarding possible health or security issues. And finally, register with the U.S. Embassy in the new country.

As you can see, it is very important to gain a clear understanding of your tax position in both the U.S. and your destination country. Anyone considering an international move should seek the advice of a financial advisor.

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