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*Only those who dare to fail greatly can ever achieve greatly.*

*Robert F. Kennedy*

## Business plan

Have you got one? How long since it was reviewed?

If you do not have a business plan, or if yours is out of date, it may be time to consider drafting a new business plan.

Benefits of Business Planning:

- The process focuses the team on looking at future developments.
- The process focuses the team on enhancing services to customers, which often results in profit improvement.
- Staff involvement results in more effective implementation as they "own the ideas" and are therefore more willing to implement the plan. Morale often lifts due to this teamwork.
- The process enables clear communication of business development direction and focus.
- The process makes you stop and review the whole business (the 'big picture' in its entirety), rather than a 'piece-meal' approach of decision making forced by crisis.
- A plan based on who will do what and by when creates an action orientation in the business.

Some practical suggestions regarding the preparation of a Business Plan:

- Go through the process annually.
- Involve staff.
- Treat yourself to somewhere special to do it



away from work (the 'retreat' concept).

- Have staff and management put their thoughts down on paper before the meeting so that people are prepared.
- Use a business plan questionnaire as a guide.

April/May is a good time to undertake a Business Planning Review.

### Budget/Financial Projections

Incorporated in the business plan will be financial budgets (Budgeted Profit and Loss, Cash Flow and Balance Sheet). These budgets will usually be for a one year period with a longer 5 year plan available as a supplement. It is essential that all businesses have at least this component of the business plan. Now is the time to be preparing your 2010 Budget.

## Tax Changes for Trusts Extended Period to Allocate Beneficiary Income

With application from the 2009-2010 income year, the definition of beneficiary income has been amended to extend the six month period within which a trustee must allocate income. Trustees will have until the later of the end of the six month period, or the period within which the

trustee either files or is required to file a return to allocate income as beneficiary income.

Effectively this allows trustees twelve months from balance date to allocate income as beneficiary (assuming a 31 March balance date).

Trustees should refer to the governing trust deed to ensure the deed permits a later allocation of income - many deeds stipulate that income should be accumulated to capital if not allocated within six months of year end.

*Source: NSA Tax*





## Qualifying companies – does yours still qualify?

The Qualifying Companies (“QC”) regime can provide significant benefits such as the ability to distribute capital gains tax free without liquidating where the company has no imputation credits and in the case of loss attributing qualifying companies (“LAQCs”), the ability to attribute tax losses to shareholders.

However, there are a number of requirements that need to be satisfied on an ongoing basis in order for companies to retain their QC/LAQC status. Failure to meet any of the criteria generally results in a loss of QC/LAQC status from the beginning of the income year in which the failure occurs. Companies can therefore cease to be a QC/LAQC with retrospective effect which can result in the company or shareholders taking an incorrect tax position and being exposed to shortfall penalties.

Some of the qualifying company requirements include -

- All shareholders must have a valid QC election in place at all times agreeing to be personally liable for their share of the company’s income tax liability.
- If shares are transferred to new shareholders (such as a transfer to a family trust) then the new shareholders must file QC elections within 63 days of the share transfer.
- Where shares are transferred on the death of a shareholder, the incoming shareholder must file an election within 365 days.
- In the case of a trust shareholder, all trustees must have filed QC elections. A change in trustees therefore requires a new election to be filed by the incoming trustee.
- All company shareholders must also be QCs.
- The company must have 5 or fewer shareholders.
- Dividends including capital dividends paid by a QC to a trust shareholder must be allocated by the trustees to beneficiaries and cannot be retained by the trustees.
- A QC cannot derive more than \$10,000 of foreign sourced non-dividend income per year.
- In the case of LAQCs, all shares must carry the same rights to vote and receive distributions from the company.

With 31 March approaching, we strongly recommend that you check that any QCs continue to meet all of the eligibility criteria. This is particularly important if you intend to make capital distributions or attribute LAQC losses in reliance on the company being a QC/LAQC.

If a company is deemed to have exited the QC regime, there may be an opportunity to re-elect into the regime with effect from 1 April. In some cases qualifying company election tax may be payable upon re-entry which makes re-electing prohibitive.

The implications of entry and exit will need to be discussed with your accountant and carefully considered before any decisions are made.

*NSA Tax Limited - Graeme Carruthers*

## Positive customer complaints

Customer service, service with a smile, go the extra mile, exceed expectations...

We have heard all the catch phrases before but what happens when our service falls down resulting in a complaint. Dealing with complaints well is paramount to a business’s reputation. Of course the ideal is to not get complaints but in the real world, no matter how hard we try, complaints can occur.

### Picture this real case study...

A telecommunications company installs a new telephone system for a stock broking firm. The firm has 80 stockbrokers plus their administration staff. The business relies on telephones as its life blood.

The communications company works hard all weekend to install the telephone system. It does a great job cleaning up, has personalised instruction sheets on each desk ready for the staff to arrive on Monday morning. Great customer service and exceeding expectations is important after all!

Monday morning comes. The technicians are on site to make sure the morning runs smoothly. All 80 stockbrokers arrive at work and at 8.00am the market opens so they all pick up the phone at the same time. The phone system haemorrhages, grinds to a halt and restarts - again and again and again. Everyone is cut off, unable to make calls.

So how would you deal with such a dire

situation? How should you deal with the situation?

The communications company had a representative on site 24 hours a day from the moment the issue occurred (Monday morning) until Thursday evening when it was fully rectified. They fronted up to the board of the stockbroking firm, acknowledged the problem, accepted the responsibility and proposed a plan to rectify the situation.

They could have hidden behind the manufacturers as they had been given prior confirmation that the system could cope in the environment it was going into but they chose not to. Blame was put to one side, the focus was on getting the issue resolved. The stock broking firm went on to be the communication company’s biggest advocate. The stock broking firm would not deal with any other company as they were so impressed.

We can learn from the case study. When you get a complaint do you acknowledge the issue or get defensive. Do you own the complaint? Put a process in place in your business for handling complaints well. Make sure complaints are responded to quickly and take them seriously. Put blame aside and get the issue resolved. How your company handles complaints should be a memorable experience for your customer.

Deal with complaints well and you will turn that customers frown upside down and gain a customer for life.

*Source: Sudburys Limited*

# Cheaper debt recovery and contract enforcement

From 1 November 2009, it became cheaper to recover debts and enforce claims worth less than \$200,000.

On 1 November 2009, the new District Court Rules came into force. These radically overhauled the way District Court cases are run. The new rules provide a range of proceedings for resolving disputes.

Parties are encouraged to quickly exchange their key arguments and evidence so that they can reach settlement with minimal court involvement. Parties that don't settle will be allocated a procedure that is proportionate to the complexity, size and value of their dispute.

## The Key Changes

- Most cases follow a standard procedure, including 90 minute judicial settlement conferences and the new procedures of short and simplified trials;
- The initial claims and document exchanges will occur with minimal court involvement;
- The traditional statement of claim procedure will now only be available for specifically excluded proceedings (such as defamation and admiralty cases) or with leave for urgent or precedent setting cases where settlement could never be appropriate;
- Debt collection will primarily be default judgement based - summary judgement

is the 'sacrificial lamb' of the new rules;

- Interlocutory applications will be strictly controlled and mostly unavailable without leave;
- Discovery largely disappears and parties will no longer be required to disclose documents adverse to their case; and
- There will be a new range of "fill-in-the-blanks" user-friendly forms, available on the internet.

## Making the Most of the New Rules

The new rules mean that proceedings will mostly be quicker and cheaper. Parties should have a clear indication of the issues in the proceeding and their respective chances of success within 60-90 working days.

The threshold for bringing cost-effective claims in the District Court has been lowered. Defendants are less able to delay and the balance of costs in the proceeding will shift forward to the simpler information capsules from the traditional discovery process.

Since 1 August, the Disputes Tribunal's monetary jurisdiction has also been extended. The Tribunal can now hear claims up to \$15,000 or \$20,000 with the consent of all parties to the proceeding.

*Source: Receivables Management (NZ) Limited*

# Long term care hits 7% at 65

Seven per cent of those aged over 65 are in long-term residential care. Most would be over 75.

The odds of being one of them gets higher as you get older.

Long term care is expensive. Your assets will be used to pay for that care unless you have them in a family trust.

If you are interested in using family trusts, don't wait until it's too late. It's generally best to keep all your investments in your trust.

Loss-making rental properties might be an exception.

Over time some clients get slack about who owns what. Assets pile up in their own name when they should have been owned by the trust.

Then one of the couple has to go into long-term care and there is a scramble to see how much money (if any) can be rescued.

If you have a family trust, be vigilant and make sure all significant investments are put into the trust as they arise.

Currently, if one of a couple has to have long-term care, the other can keep the home they live in, the car they use and \$95,000. That's not a lot is it?

# Associated persons changes - have you kept up to date?

A tax bill was passed in October last year which made significant changes to the definitions of associated persons and related persons applying for income tax purposes. The definition of associated persons for the purposes of the land taxing provisions was significantly widened and those changes apply to land purchased on or after 6 October 2009 or to land improvements commenced after that date. All other changes apply from 1 April 2010.

For persons who are in the business of dealing in land, developing land or erecting buildings, these changes could have a significant impact for persons associated with the dealer, developer or builder. The land taxing provisions contain "tainting" rules which potentially tax persons associated with land dealers, developers or builders on capital gains derived from investment properties sold within 10 years of acquisition.

Tainting issues have traditionally been addressed by creating investment entities

which are not associated with the entity undertaking the dealing, developing or building activities. The old associated person's definition applying for the purposes of the land taxing provisions was quite narrow and therefore relatively easy to break. The new definition applying post 6 October 2009 is significantly wider and in most cases nearly impossible to break.

This means that in most cases, the traditional structures employed to deal with tainting issues will no longer be effective. We strongly recommend that you seek advice on how these changes may affect you before purchasing new investment properties or making improvements to existing properties.

The replacement of the old "related person" definition with the significantly wider associated person's definition effective from 1 April 2010 could potentially have an even greater impact on company restructures. While companies can distribute capital gains tax free on

liquidation, this is not generally the case where the capital gain is derived in a transaction with a related person resulting in the distribution of the gain being taxable as a dividend. The current definition of related person is relatively narrow and therefore easy to break, however, the new definition applying from 1 April 2010 will be virtually impossible to get around.

If you are planning any restructuring involving companies where a transfer of assets at market value could result in capital gains being derived then you should take advice now. While the related person gain issue may be able to be dealt with in other ways, breaking the related person definition is often the preferred option.

There is a limited window of opportunity to undertake restructures before the rules change on 31 March 2010 but time is of the essence.

*NSA Tax Limited - Graeme Carruthers*

# Cheques in full settlement

Sometimes a debtor will send a cheque for payment of a lesser amount than the invoice stating that it is "in full and final settlement".

## What is the law on this?

If a debt is disputed then acceptance by the creditor of a lesser amount expressed to be "in full and final settlement" extinguishes the debt.

## What is acceptance by creditor?

Acceptance can be implied by the banking of the cheque. This is seen as strong evidence that the creditor has accepted the debtor's offer of payment.

## What can a Creditor do?

If a creditor wants to claim the remainder of the debt then it must, at the same time or as soon as possible after banking the cheque, write to the debtor saying the payment is not accepted as full and final settlement and the balance of the debt is claimed.

It is important that this is communicated straight away, in some cases communication sent

less than a week later was too late.

Debtors sometimes try to force the issue by placing conditions on the payment. One example is that the debtor sends a cheque stating that it is in full settlement and if it is not accepted the cheque must be returned. In these situations banking the cheque and writing to the debtor saying it is not accepted as full and final settlement will leave it open for the balance to be claimed. However, there is a danger that by banking the cheque instead of returning it as requested, the debtor could argue the creditor has converted the debtors money improperly. Creditors need to be aware of this when they are deciding whether or not to bank cheques tendered in this manner.

It may be prudent to err on the side of caution, return the cheque and sue for the total debt.

Creditor's need to remember the above applies only where there is a dispute over the debt. If the debt is undisputed then the creditor can pursue the remainder of the debt in any event.

# Early payment discount for new businesses

New businesses can claim a 6.7% discount for paying their tax early.

1. The discount applies only to sole traders or partnerships.
2. The discount will not be taxable income.
3. The tax has to be paid by the last day of the taxpayer's financial year (for most firms this is 31 March).
4. The income must be predominantly from business.
5. The maximum amount on which the discount is paid is 105% of the final tax (known as Residual Income Tax).



**Marshall Heaphy**  
CHARTERED ACCOUNTANTS

## Directors:

Sue Merriman  
Fergal O'Gara

## Staff:

Caroline Pitt  
Tony Gibson  
Glenda Duncan  
Robert Griffiths  
Tessa Williams  
Tina Schlager  
Rose Johnson  
Amanda Toal  
Vicky Hunt

## Contact:

129 Tainui Street  
PO Box 193  
Greymouth

Phone: (03) 768 7186  
Fax: (03) 768 7724

Email:  
info@marshallandheaphy.co.nz

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