

taking care of bu\$ine\$\$



APRIL 10

Welcome to our first newsletter for 2010.

If you are anything like us at Vazey Child you enjoyed a nice relaxing Christmas break and tried to put last year behind you. With the summer well and truly behind us, we now start thinking about the new financial year and the challenges which face us this coming year.

The economy is showing some signs of improvement but expect things to take some time before they fully recover. **In this issue we discuss the importance of having a business plan, changes to debt recovery and discuss cheques issued in full and final settlement. We also touch on tax issues with Qualifying Companies and**

the impact of long-term resthome care. We have also introduced some additional payment options for the payment of our professional fees.

We would also like to announce that **we have joined NZCA**. This is a group of 30 independent chartered accountancy firms from around the country. We made the decision to join this group to give us access to a range of resources which we hope enhances our practice. This includes access to practice management initiatives and specialised staff training.

Qualifying Companies 01

Business Plan 02

Cheaper Debt Recovery and Contract Enforcement 03

Payment options 04

Long-Term Care Hits 7% at 65 05

Cheques in Full Settlement 06

01 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 five 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.

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.

02 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 crises.
- 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.



03 Cheaper Debt Recovery and Contract Enforcement



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 five 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.

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.

04 Payment Options

You will have noticed a slight change to our monthly invoices. We have introduced three additional methods to assist you in paying your accounts with us; eftpos, credit cards and feesmart. These are now identified on each invoice and statement.

CREDIT CARDS

We are now able to accept VISA and MASTERCARD payments either over the phone or in person.

FEESMART*

Feesmart is a monthly payment option we offer clients who prefer to fund their professional fees over a six month or twelve month period. Utilising feesmart allows clients to manage their cashflow more effectively.

*Some conditions apply.

7:501.26	Fixed as
7:501.61	Person
7:501.67	Non de

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

06 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 debtor's 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.

Creditors 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.

More info: Philip Child, Colin Vazey, Paul Dickey, Trish Goodwin, Craig Blomfield, Peter Shaw.

vazey child

Chartered Accountants & Business Advisors

Services: Accountancy, Business Recovery, Commercial Finance, Corporate Finance, Investment Advice, Financial Planning, Personal and Corporate Tax, Services for growing businesses, Business Planning, Valuation, Management Accounting.

3 London Street | PO Box 911, Hamilton
Tel: 07 838 2169 | Fax: 07 838 3322
admin@vazeychild.co.nz
www.vazeychild.co.nz

Disclaimer: The information contained in this newsletter is of a general nature and should be used as a guide only. We recommend to clients that they consult a senior representative of the firm before acting upon any information contained herein.