

# BusinessPlus+ Newsletter



## INDEX

Goodbye 2013! .....	1
Characteristics Of A Well Run Business – Part 5 .....	1
What's It Mean? .....	2
Government Grants And Assistance For SMEs .....	2
Personal Property Securities Register (PPSR) .....	3
The Recruiting Process To Get Great Team Members .....	3
The Recruiting Process To Get Great Team Members (continued) .....	4
Business Entities – Discretionary Trust .....	4

## Issue No 98 – December 2013

Merry Christmas and best wishes for 2014!

### Goodbye 2013!

At the start of 2013, most business operators were hoping that, by the end of the year, there would be a clearer picture. We had a long, eight months election campaign and a change of government. Then there was quite a lot of inactivity, from the government's point of view, as it spent its time unscrambling what it had inherited. Thus, people have become very anxious of the outcome of the reviews the government is currently undertaking.

Interest rates are generally not expected to decrease any further, even though the unemployment rate has increased to 5.8%. However, interest rates will probably start to increase in 2014 when, hopefully, market place activity will increase.

The exchange rate is at a far more comfortable level at present, but many exporters and Australian based tourism organisations would like to see the currency move to around 85 cents to a US dollar. This will cause some higher prices and concerns for importers. The government is to release its mid-year fiscal review prior to Christmas. This will give some indication of the massive budget problems confronting the government.

2014 will kick-off with the Personal Property Securities Register (PPSR) becoming fully operational by the end of January. There are some extreme consequences from this legislation for the unaware. In this edition, we have commented on some of the risks confronting business operators, if the PPSR is ignored. Whilst the intention of the legislation was to consolidate many different pieces of legislations, from different jurisdictions, into one national register, the Personal Property Securities Act (PPSA) has introduced some unbelievable traps for small business operators, who are not conversant to the registration requirements. The transitional period for the PPSA ends on 31<sup>st</sup> January 2014. If you have agreements that existed prior to 30<sup>th</sup> January 2012, or were created after 30<sup>th</sup> January 2012, under a security agreement that existed prior to 30<sup>th</sup> January 2012, and continued to exist after that date, we recommend you seek legal advice, well prior to 31<sup>st</sup> January 2014.

A continuing concern for businesses is cashflow management. The key areas are to reduce investment in debtors, stock and work in progress.

If you have concerns on any aspect of management of your business, and your plan for 2014, please do not hesitate to contact us.

### Characteristics Of A Well Run Business – Part 5

#### Management of Costs

The management of costs is an ongoing problem for small business operators. The process commences with purchasing key products, required for your business, at the right price, receiving the goods you paid for and then carefully checking the quality of the products. Part of the cost control process includes:

- Appropriate security, where the goods are stored.
- Obtaining support from key suppliers:
  - making specialist staff or personalities available to help in sales promotional campaigns; and
  - advertising/marketing contribution by suppliers.
- Analyse purchases – identify if too many small orders are being placed, which can incur extra freight costs.
- Labour efficiencies need to be continually monitored.
- Discuss waste management with team members.
- Discuss productivity with team members, and identify areas where they might be able to improve their productivity.

## Characteristics Of A Well Run Business – Part 5 (continued)

Many businesses have found it quite beneficial to benchmark their labour costs and other operating costs with similar organisations, to gain an insight into areas where costs might vary from one business to another.

Calculating gross profit percentage, on as many product lines as possible, can also be a significant tool, to assist with the identification of excessive costs.

There are many key overhead expenses, which require continual management, to try to reduce costs. These could include:

- Electricity – would your business benefit from an energy audit?
- Telephone – perhaps use Skype or have discussions through webinars, to reduce telephone costs.

A CCH survey, earlier this year, identified ‘management of costs’ as the major concern of 1,018 business owners, who participated in the survey.

If you would like to have a discussion with us on strategies to reduce your costs, please do not hesitate to contact us.

## What’s It Mean?

**Net Profit Percentage of Sales** – Measures the net profit, before tax earned on each dollar of sales and indicates how well an entity controls overheads. Overheads should be monitored to ensure that unnecessary expenditure is avoided.

## Government Grants And Assistance For SMEs

### Commercialisation Australia – Overview

Commercialisation Australia is a federal government program offering merit-based competitive assistance for eligible SMEs. The basic prerequisite is that a business or an inventor has developed a product, process or service, which is new, and the business or inventor would like to obtain assistance to ‘commercialise the product, process or service’.

Businesses, which are invited to participate in the Commercialisation Australia program, must be companies; however individuals, partnerships or researchers are able to apply and, if accepted, must then form a company for the purpose of the agreement documentation with Commercialisation Australia.

Commercialisation Australia supplies grants under four distinct streams. These are as follows:

- Specialist Advice and Services – grants of up to \$50,000, on an 80% grant basis (applicant's turnover under \$10M)
- Experienced Executives – grants of up to \$350,000, on a 50% grant basis, over a two-year period, to assist with the appointment of an experienced executive (applicant's turnover under \$10M)
- Proof of Concept – grants of \$50,000 – \$250,000, on a 50% grant basis, to enable the company to test the commercial viability of the product, process or service (applicant's turnover under \$10M)
- Early Stage Commercialisation – grants of \$50,000 – \$2M, for a company to develop a new product, process or service, to the stage where the product, process or service can be taken to market (applicant's turnover under \$50M)

If you're developing a new product, process or service, and you are interested in applying for a grant from Commercialisation Australia, we can assist you in submitting the grant application. If you would like to have a discussion, please do not hesitate to contact us.

### Research And Development

If your company conducted research and development, and spent in excess of \$20,000 on that research in the year ended 30th June 2013, then you can register with AusIndustry so you can claim the Research and Development Incentive when you lodge the income tax return for the company. The incentive is a 45% refundable tax offset of the eligible research and development expenditure incurred by a company with a turnover of under \$20M.

If the company is trading at a loss, then you are able to receive a cash refund of the amount of the research and development incentive within 30 days of lodging your company's income tax return.

The company's records need to clearly demonstrate the necessary direct link between eligible research and development activities and expenditure being claimed as research and development.

The registration with AusIndustry has to be no later than 30th April 2014, or the date of lodgement of the company's income tax return, whichever is the earlier.

If your company's turnover is over \$20M, the incentive is a 40% non-refundable tax offset of the eligible research and development expenditure. There is no cash refund.

Research and development expenditure could also give you opportunities for applying for a Commercialisation Australia grant, which is available for companies that have developed new products, processes or services.

If you would like to discuss research and development activities conducted by your company, for which you can claim Research and Development Incentive, please do not hesitate to contact us.

## Personal Property Securities Register (PPSR)

Even though certain aspects of the PPSR seem very unfair to the legitimate owner of goods, the two-year transition period ends on the 31<sup>st</sup> January 2014. Unfortunately, media reports would indicate that many SME operators have not familiarised themselves with the implications of the legislation.

The Personal Property Securities Act (PPSA) introduced some very significant changes in commercial law, which will affect most people operating a business. The legislation applies to a wide range of business transactions, including:

- sale of goods on consignment;
- sale of goods with serial numbers (including motor vehicle);
- supply of goods using hire purchase agreements;
- lease agreements;
- supply of goods with Retention of Title agreement (Romalpa Clause);
- goods stored in someone else's possession;
- goods sold on your behalf by retail;
- equipment renters;
- mixed goods;
- cattle on agistment;
- tradesman's plant and equipment;
- temporary work on a construction site (eg form work, scaffolding and other plant and equipment); and
- many other transactions.

The Romalpa Clause, which has been a very common Retention of Title clause, is no longer, in itself, effective against a third party claim, unless the Romalpa Clause has been re-drafted by a solicitor in the last two years. If you don't have a current Romalpa Clause, you supply goods on a Retention of Title basis, but do not receive a signed 'terms of trade', you lodge a 'financing statement' with the PPSR, and your customer gets into financial difficulties and a receiver or liquidator is appointed, then you will most likely lose out. Before any sale of goods on credit are made to a customer, it is recommended you take the following steps:

1. Ensure you have up-to-date 'terms of trade', which includes the Retention of Title Clause, and clauses dealing with the PPSA. These documents should be drafted by your solicitor.
2. Ensure these terms are signed by the customer.
3. Register a 'financing statement' under PPSR.

The key is to ensure each of these steps is completed before you supply the goods.

A new term has been introduced – 'Personal Property Securities Lease (PPS Lease)'. A PPS Lease covers the situation, where goods, plant and equipment, form work, scaffolding, etc, are left on someone else's property. There are certain procedures that need to be undertaken if you're going to protect yourself, in the event that a customer (eg a builder) gets into financial difficulties and a liquidator or receiver is appointed.

The PPSA is based on New Zealand legislation, which was introduced in 2002. There have been a few court decisions on the PPSA. When judgements were handed down by the courts, there has been a strong emphasis on the necessity for owners of assets to ensure they are appropriately registered under the PPSR. One case involved 'leased portable buildings', which were not registered under the PPSR by the owner. As a result, the court held that the mortgagor had the right to sell the portable buildings to recoup their losses, even though the mortgagor was not the legal owner of the portable buildings.

The transitional period for the PPSA ends on 31<sup>st</sup> January 2014. If you have agreements which existed prior to 30<sup>th</sup> January 2012, or were created after 30<sup>th</sup> January 2012 under security agreement which existed prior to 30<sup>th</sup> January 2012, and continue to exist after that date, you would probably have a 'Transitional Security Interest'.

A 'Transitional Security Interest' (TSI) is an interest in personal property that, in substance, secures payment or performance of an obligation, which existed prior to the 31<sup>st</sup> January 2012. If you are a secured party, with respect to a TSI, which is not yet registered on the PPSR, you need to register it on the PPSR before the midnight on the 31<sup>st</sup> January 2014 (Canberra time), to take advantage of 'temporary perfection' and preserve the priority status of your transitional security interest. If you don't do this, 'temporary perfection' for the TSI will not apply from 1<sup>st</sup> January 2014. Registration of a TSI is free.

If you have not yet had a discussion with your solicitor on the potential impact the PPSR can have on your business, we suggest that you do so urgently. If you would like to discuss the operation of this legislation with us, please do not hesitate to contact us.

## The Recruiting Process To Get Great Team Members

The recruiting process, to get great team members, is very important. In the last edition, we discussed recruiting great team members. Businesses need to adapt to a significant change, which has occurred relative to advertising for new team members. That change is the extraordinary growth of online sites, such as Seek. The popularity of these sites has caused a dramatic shift from classified advertisements in newspapers. The effect of this is to shorten the recruitment cycle, as experts seem to agree that advertisements on online sites should be placed on a Monday or a Tuesday, to get the maximum utilisation of the online job board, and offers far greater reach than most newspapers, during the working week. Time is very important. Potential team members are looking for quick responses because, at the same time, they may have lodged applications for other positions.

Another key aspect of modern recruitment is that you need to keep the applicants informed on what to expect in the interview process. An area that employers should be very careful with is to ensure a courteous response is sent to all applicants. Remember that applicants could be potential customers of your business and, if they have had a bad experience during the application process, it could influence their thinking and they could also make critical comments about your business, utilising social media.

## The Recruiting Process To Get Great Team Members (continued)

In summary, to recruit great team members, businesses need to be utilising online sites, supplying interesting information that has been thought through from the WIIFM (What's In It For Me), from the applicant's point of view. Make sure the recruitment process does not 'drag on', and the applicants are kept informed throughout the process.

If you have any questions relative to recruiting great team members for your organisation, please do not hesitate to contact us.

## Business Entities – Discretionary Trust

A discretionary trust is a very common vehicle for use by families, for business operation. Every discretionary trust needs the following:

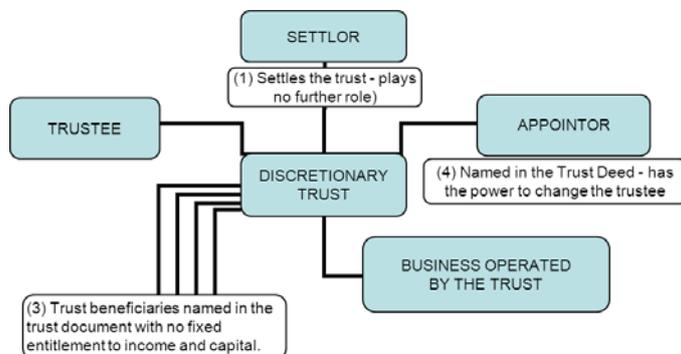
- **Settlor** – the person who establishes the trust and signs the trust documents. The settlor should never be a beneficiary under the trust.
- **Trustee** – can be a company or, at least, two individuals. The trustees are responsible for all day-to-day activities of the trust.
- **Trust Deed** – sets out:
  - the objects of the trust;
  - borrowing powers; and
  - what the trust can do;
  - the names of the settlor, beneficiaries, trustee and appointor.
  - investment powers;
- **Beneficiaries** – beneficiaries can be divided into a number of groups:
  - Primary beneficiaries
  - Secondary beneficiaries
  - Tertiary beneficiaries

A discretionary trust, through the trustees, can conduct a wide range of business activities.

The discretionary trust has to prepare an income tax return for the activities of the trust, and show the distribution of the taxable income of the trust to the beneficiaries. In a discretionary trust, the trustee utilises its own discretion as to which of the beneficiaries will receive the income of a trust. The beneficiaries have to include their share of distribution from the discretionary trust in their own income tax return, and pay income on their total taxable income.

In normal circumstances, the discretionary trust does not pay income tax. However, it may have to pay income tax if the trustee has not distributed the taxable income. Tax is paid at a penalty rate of 46.5%.

The flowchart of a discretionary trust is as follows:



### OFFICE CLOSURE

The office of Alan Lewis Accountants will be closed over the holiday season from 23rd December until we return on Monday, 6th January in the New Year. We wish you all a safe and happy Christmas.

It has been a pleasure serving you this year and we look forward to continuing the relationship in 2014.

### An Important Message

*While every effort has been made to provide valuable, useful information in this publication, this firm and any related suppliers or associated companies accept no responsibility or any form of liability from reliance upon or use of its contents. Any suggestions should be considered carefully within your own particular circumstances, as they are intended as general information only.*



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