



WELCOME

Welcome to the Winter 2009 issue of our newsletter. As well as the gloomy winter weather (which has been great for the skiers), some commentators and economists are still predicting a gloomy economic outlook.

This has been reflected in the move by the Government to delay the already legislated personal tax cuts, until "such time as economic and fiscal conditions allow a reconsideration." With a surplus not expected until 2017, one can assume these conditions are unlikely to occur before then.

If you have been affected by the downturn, it is important to talk to us about it. It could be to use our expertise as a sounding board for a change in strategy or idea you have, or to work with us to prepare budgets and cashflow projections.

June balance date clients will receive their annual questionnaires shortly. Please ensure that all information is supplied to allow for the smooth completion of your annual accounts and tax returns.

We do get particularly busy at this time of year, so we encourage you to get your information to us early, to avoid delays.

Keep safe and warm over the winter months.

Best wishes
Glen White

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SURGICAL & MEDICAL SYSTEMS A CUT ABOVE



Business acumen can be acquired; but there's no substitute for youthful enthusiasm, a positive attitude and a charismatic personality.

Dire predictions met Darren Wederell's plans five years ago to set up his own business. The Christchurch born and bred electrician was ready to branch out on his own into a specialist steriliser equipment business, but only his father-in-law and Leech and Partner's Brett Dudley confirmed his belief that his proposal to establish Surgical and Medical Systems Ltd, would succeed.

"The first thing my American father-in-law, who is a very successful businessman, said to me, was to find a good accountant. He said to go and talk to at least six, until you find one who understands what you want to do and who you can relate to well. He said skills are one thing, but you need someone to be honest with you, and with whom you can communicate clearly and receive good advice," says Darren, who established his company, with his wife, Amy, in 2004.

"We did exactly that and we found Brett Dudley, who was professional, personable, and took us seriously. At the start it was all about getting ourselves off the ground, because I had no accounting background, and Leech supported us with MYOB."

Established as a business maintaining medical sterilisation equipment, in just 12 months SMS had taken over two agencies bringing specialist sterilisation equipment in from Australia.

"This was a huge step up for us. We had to learn about foreign exchange dispersal, our space requirements changed, and at that time Leech and Partners encouraged

Pictured clockwise from left: Damian working at a steriliser; Amy & Darren Wederell; the Surgical & Medical Systems Christchurch team.

us to purchase our own offices at Ferrymead."

The speed at which the business has grown has been hugely exciting, with the employment of six staff and new branch offices in Dunedin and Auckland.

Darren says his hands-on understanding of the equipment itself, as well as all aspects of the business details, the fact that its quality standards have been recognised by ISO 9001 accreditation, and that clients increasingly seek his company's expertise, is very rewarding.

"To me, knowing every aspect of my system, taking the time to learn it thoroughly, I feel I can now delegate it, and that our growth will be on going. We're now looking at primary care as our next big market opportunity.

"Our success has come in being so specialised and doing what we do so well," he says.

SMS supplies, services and validates all sizes and types of sterilisers, from small bench-top to large pre-vacuum models. It trains steriliser users on the safe and compliant use of their sterilising equipment and provides a range of high quality consumables.

"It's a high pressure environment," says Darren.

"When equipment malfunctions for any reason, our response is critical."

SMS clients include many District Health Boards throughout New Zealand, private surgical hospitals, medical practices, clinics and laboratories.

FAMILY TRUSTS - A GENERAL OVERVIEW

■ What is a Family Trust?

A Family Trust is a private arrangement created when a person (called the Settlor) transfers assets to other nominated persons (called the Trustees) upon the understanding that the Trustees will only use those assets for certain purposes specified by the Settlor.

The terms of the arrangement between the Settlor and the Trustees is recorded in a document called the Trust Deed. The Trust Deed describes how the Settlor wishes the assets to be managed by the Trustees and who is to benefit from them (the Beneficiaries).

A Family Trust does not create a separate legal entity. The Trustees become joint owners of the assets and can invest funds, buy and sell property, raise mortgages, operate bank accounts and generally do all the things which an individual person can do, so long as they act in accordance with the powers set out in the Trust Deed.

Usually the Trustees purchase assets (often from the Settlor). The Trustees will not normally have sufficient funds to purchase the assets, so they will sign a document acknowledging that they owe the vendor a sum equivalent to the value of the assets purchased. This document may be a mortgage or a simple acknowledgement of debt depending on the circumstances. Sometimes though, cash gifts are made to the Trust (usually by the Settlor).

If assets are purchased by the Trustees, with the purchase price left owing as a debt, there are two immediate effects:

- a) Any increase in the value of the assets belongs to the Trust, but the debt owing to the Settlor

remains a fixed figure; and

- b) Any income arising from the assets belongs to the Trust and need not be balanced by interest payable on the debt due to the Settlor unless the Settlor requires this.

In addition, it is possible for the Settlor to gift up to \$27,000 every year without gift duty in reduction of the debt owing by the Trustees. If there are two Settlers (for example, a husband and wife), the maximum annual duty-free sum is \$54,000.

Under a Family Trust, the Trustees generally have an absolute discretion to decide what payments from income or capital are to be made and the beneficiaries or beneficiary to whom the income or capital is to be paid. This is called a Discretionary Trust.

Nevertheless, the Settlor, having sold assets to the Trust, would usually be in a position to require interest payments (or debt repayments) to be made in priority to any discretionary payments to the beneficiaries. The Settlor may also express a preference as to who should receive a benefit from the Trust.

■ Why set up a Trust?

You may wish to set up a trust for any one or more of the following reasons:

- a) protection of your assets from creditors
- b) protection against Matrimonial Property Act, Property (Relationships) Act, or Family Protection Act claims
- c) management of assets, especially where someone is unable or no longer wishes to manage their affairs because of infirmity or age

- d) simpler administration of a deceased's estate (by the transfer of assets to a Trust prior to death)
- e) protection against estate duty should estate duty be reintroduced (and against any alternative tax or duty which may be imposed)
- f) possible taxation savings arising from the distribution of income to a wide range of beneficiaries
- g) maximisation of your entitlement to rest home subsidies and other benefits.

■ Taxation of Trust Income

Income earned by a Trust is taxed either as Beneficiaries Income (income distributed to a beneficiary on that basis) or Trustees Income (income retained by the Trustees within the Trust).

Beneficiaries Income is taxed in the hands of the beneficiary at his or her marginal rate of tax, with the exception that the income of a minor from a Trust is now taxed at a flat rate of 33%. Trustees Income is also taxed at a flat rate of 33%.

■ Trust Administration

The administration of a Trust need not be complicated. Nevertheless, accurate financial records must be maintained to enable proper information to be available to the beneficiaries and to enable tax returns to be completed. All Trustees should be involved in the making of any decisions of consequence and professional advice must be sought if doubts in any area arise.

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BUYING AND ON-SELLING SECTIONS - NEW IRD RULING

A recent ruling by the IRD Adjudication Unit has implications for anyone buying a section and on-selling it before the title is issued.

The IRD ruling could significantly change the taxation consequences for certain land sales.

Take a couple who planned to retire to Otago and signed up to buy a section in an uncompleted subdivision. The otherwise unconditional agreement they signed to purchase the section was subject to title.

After two years the title had not been issued. Meanwhile the cost of building in the area had risen and the value of the couple's superannuation fund was not as high as they expected. It was not viable for them to build, so they decided not to move and to sell the section.

A buyer was found and an agreement signed, subject to the first agreement. Under this second agreement, the sale settlement was to occur immediately following the purchase settlement.

Eventually title was issued. The couple settled

the purchase of the section and then on-sold it to the new purchaser on the same day. A modest gain was made which they treated as a capital gain.

Some time later, routine audit activity by the IRD identified that the section was bought and sold on the same day and a full audit was begun.

The IRD Adjudication Unit says where sections are purchased and the plan has not been deposited, the contracts are conditional upon the deposit of the plan. Accordingly, no interest in land is acquired until the plan is deposited. Therefore, if a taxpayer signs up to buy a section and sells it before the plan is deposited, any gain is taxable income.

Scott Mason, Principal Taxation Consultant with WHK Taylors, a taxation specialist firm in Dunedin says had the taxpayers entered into their agreements with the intention of selling the properties, his company would have agreed with the IRD that the transactions should have been taxable.

"However, in each of these cases, the taxpayer has acquired the respective sections for their own personal use, and there has been a change of circumstances leading to the sections being on-sold prior

to title being issued.

"We submit the IRD's approach ignores Parliament's intentions completely, in relation to both the purpose of the provision and the way in which the terms of the ITA 2004 and ITA 2007 are defined."

He says the current tax rule and its predecessors were introduced to impose tax on property speculators. "Those sections were never designed and have never been applied - until now, it would seem - to taxpayers who eventually decide, or are forced by circumstances, to sell their land. Parliament chose to define 'land' extremely broadly and inclusively as including any interest in land, whereas the IRD seeks to narrow that definition to mean only one component, being the legal interest in the land, and ignore previously achieved interests.

"We consider that the general approach accepted throughout the country until now should continue to apply. That is, a taxpayer acquires an interest in land when an equitable interest in the land passes to them."





DIRECTORS' DUTIES LIKELY TO BE SCRUTINISED

With the recession and company profitability and financial performance coming under pressure, it is likely the actions of directors will come under the microscope in the event of insolvency.

The key duty of directors under Section 135 of the Companies Act is in relation to reckless trading. A director must not agree, cause or allow the business of the company to be carried on in a manner likely to create substantial risk of serious loss to its creditors.

If a company becomes insolvent and is placed into liquidation, a liquidator for that company will consider whether the directors are in breach of this duty and should be personally liable for some or all of the loss to creditors.

The million dollar question is: at what point should a company cease trading? This will depend on the nature of the company and circumstances but Mr Justice Young provides some assistance in a recent Court case where he stated:

"No one suggests that a company must cease trading the moment it becomes insolvent (in a balance sheet sense). Cessation of a business may inflict serious loss on creditors and, where there is a probability of salvage, such loss can fairly be regarded as unnecessary. The cases, however, make it perfectly clear that there are limits to the extent to which directors can trade companies while they are insolvent (in a balance sheet sense, to which I have referred) in the hope that things will improve. In most of the cases, the time allowance has been limited to a matter of months."

A liquidator will look at when the directors should have ceased trading and assess the notional loss to creditors had the company been placed into liquidation

at that point. Legally the directors will be liable for the difference between the loss to creditors at that point, and the loss to them at the time the company ultimately goes into liquidation.

If the loss when it should have ceased trading is \$300,000, but the ultimate loss to creditors in the liquidation is \$1.5m, then the directors are potentially liable for the \$1.2m difference. This is the starting point. The Court may discount the figure, but the final figure can still be a large one.

Whether a company has reached this point is often difficult to determine. If in doubt, directors should obtain expert legal and accounting advice, which can provide a defence under the Act.

In most cases where directors are found liable for reckless trading the Courts have been highly critical of a lack of proper corporate governance and inadequate accounting systems. The Board of Directors' failure to discharge its duty under Section 194 to maintain proper accounting records, is often cited alongside Section 135 in reckless trading cases.

All directors are potentially liable for reckless trading, even a non-executive one, who may be unaware of the precariousness of the company's financial position.

Directors concerned about the viability of their business and ability to pay creditors in the future, should obtain professional advice. The advisers need accurate financial information - their advice will only be as good as the accuracy of the information provided.

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New Associates

The Directors are pleased to announce the appointment of Julie Inwood and Chris Smith as Associates of Leech and Partners.



Julie is well known by a large and diverse variety of clients who have had many dealings with her over the 19 years she has been with this firm. In addition to her accounting expertise, Julie also manages the Ashburton office.



Chris is an experienced accountant with expertise in a number of specialist accounting areas. He has been with the firm for three years and works from the Christchurch office.

Ideas flow at Entrepreneurs' Summit

Tony Dillon, a client of Leech & Partners, an ex-Londoner and energetic entrepreneur, took part in the Entrepreneurs' Summit in Auckland last month. Organised to kick start New Zealand's productivity, the summit was high powered, spawning innovative ideas which impressed Finance Minister Bill English.

Tony is passionate about New Zealand, and since arriving from the UK last year, has established several products and services businesses, from his home base in Marlborough.

For more information please refer to: www.kre8.co.nz

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NIKOLA & LOUISE STRIDE OUT FOR CHARITY

It's a long way to New Brighton on foot as Nikola Muir (right) and Louise Mitchell (left) discovered on Saturday, March 28.

The Client Manager and Christchurch office administrator were stepping out in the Christchurch Star's City to Surf fun run - 12kms from Cathedral Square to Queen Elizabeth II Park.

Now in its 35th year, the event started in 1973 with 2900 participants.

This time a crowd of 15,000, walked or ran the route, the two Leech and Partners' employees completing it in 2 hours 11 minutes.

"We hadn't done any proper training but we made it, and it didn't really feel like 12kms," said Louise.

Nikola gathered a few blisters on the way, and Louise retired for an afternoon nap afterwards.

Money raised from the fun walk went to the Canterbury West Coast Air Rescue Trust.



BRIEFS

Energy efficiency award comes south

Radford Yarn Technologies has won the top award in the Energy Efficiency and Renewable Energy Awards.

The Christchurch company and Leech client, whose felted yarns feature in designer rugs owned by Madonna and Jennifer Aniston, took the honours for installing New Zealand's first specialist wood pellet boiler at its Islington factory - producing hot water for felting and hot air for yarn drying.

The award ceremony was held in Auckland last month when it was revealed that the combined carbon dioxide savings by all finalists was nearly 665,000 tonnes, equal to taking more than 200,000 vehicles off the road for a year.

The Big Day Out

The office doors were closed on April 29 when Leech and Partners held a conference and training day at the Methven Resort Hotel.

Newer staff members were introduced to the history, structure and culture of the company; existing systems were reiterated and reinforced; and everyone participated well in a 'think tank' on new systems and fresh ideas. The directors have agreed to review the ideas with a view to implementing many.

There were also team bonding and communication exercises, with the unique help of the Court Jesters who encouraged with innovative and amusing tasks.

The day away from the office is intended to ensure our team is providing the best possible service to our clients, with smooth efficient service and knowledgeable assistance - every time.

New office heating

A new heating/air conditioning system has been installed in the Christchurch office, creating an improved environment for staff and clients. Staff worked out of temporary premises on the ground floor and in the board room for a few weeks, but everything is now back to normal. Our apologies if you suffered any inconvenience during this period.

Sandihurst Pinot Noir wins gold

Sandihurst Winery has won gold at one of the world's most prestigious and influential independent wine competitions. The West Melton winery's 2007 Central Otago Pinot Noir took the award at the International Wine Challenge, which this year attracted 9000 entries.