CLELAND HANCOX
CHARTERED ACCOUNTANTS

"WHERE SUCCESS BUILDS SUCCESS"

spreadsheet

Newsletter for Cleland Hancox Limited

Summer 2010

KO TO KOUTOU HOA I ROTO I NGA MAHI — YOUR FRIENDS IN BUSINESS

"We wish our clients, colleagues and friends a Merry Christmas and a Happy New Year!"

Gift Duty To Be Abolished

The Minister of Revenue, Peter Dunne, announced that the Taxation Bill introduced in Parliament on 23 November 2010 abolishes gift duty from October 2011. Watch this space!

Major Changes To QC/LAQC Regime

It would be fair to say that the biggest stir up in the May 2010 budget is the announcement of changes to the QC/LAQC regime. The draft legislation is expected to be enacted by 31 December 2010. Based on this legislation the following matters need to be considered:

Existing Qualifying Companies (QC's)
A major change to the budget announcement is that existing QC's can remain in force until the government has completed their review of the dividend regime for closely held companies. This review is expected to be completed by the end of 2012. As always, existing QC's cannot attribute losses to shareholders and any profits are taxed at the company tax rate. The benefit of a QC is the ability to pay capital dividends tax free.

Existing Loss Attributing Qualifying Companies (LAQC's)
Shareholders have until 30 September 2011 to review their current structure without incurring a tax cost. Essentially, shareholders of existing LAQC's have the following options:

• Do nothing - the existing LAQC will automatically become a QC. The change being any losses will remain in the company and can be carried forward and offset against future taxable income earned in the company, i.e. losses will no longer be passed through to shareholders to offset against other income. Any company profits are taxed at company tax rates. This could be a good option if the company is making profits now or will make profits once depreciation on buildings ceases. Until the dividend regime review is completed any dividends will still need to be passed through to beneficiaries of Trust shareholders.

• Elect to be a standard company before 31 March 2011 which means exiting from the QC/LAQC regime will apply from 1 April 2010. This can be done at no tax cost.

• Become a Look Through Company (LTC). A unanimous election is required by the shareholders. This is a new type of entity and comes in force on 1 April 2011. From a legal perspective the LTC is a company. However, for income tax purposes the company is treated as if it is a partnership. Any profits are taxed in the hands of the shareholders at their marginal tax rates. Included in the LTC rules is a loss limitation rule which is similar to the limited partnership rules. This means owners can offset tax losses only to the extent the losses reflect their economic loss. This is a good option if the company has significant losses. A LTC is recognised separately from its shareholders for other tax purposes although shareholders are made jointly liable for PAYE.

• Become a partnership or limited liability partnership (LLP). The partnership must be created before the end of the 2012 tax year. The partners must be the same as the shareholders in the LAQC and must have the same effective interest as they had in the LAQC.

• Become a sole trader. This option is available to existing LAQCs with only one natural shareholder.

If the shareholder/s elect the partnership, LLP or sole trader option, the following has to be done as well:

- revoke the LAQC status;

- give the Commissioner written notice on or before the date the revocation is received of the intention to become a partnership / LLP / sole trader;

- liquidate or register the company as a non active company before the end of the 2012 tax year.

The last two options are a change to a new legal entity so any loans, hire purchases, investments etc. will have to be transferred to the new entity.

There is a lot of food for thought and the legislation has not yet dealt with some minor matters, e.g. will the FBT regime apply to the look through company?

Although elections can be made on or before 30 September 2011, it will be effective from 1 April 2011. It is our recommendation to choose a structure before 31 March next year as it will simplify tax matters for the 2012 tax year. We will contact all our LAQC clients early in the New Year to review and discuss the options and transition rules that may impact.

Analysis - The First Step In The Business Turnaround Process

With Thanks to Nigel Foster, Armillary Management Limited - nigel@armillary.co.nz

"You might want to get somebody to help you to distil that information into a meaningful and useful form but the chances are you will have most of the raw data for that analysis in your head or your filing cabinet."

In the first article in this series we emphasised the importance of early recognition that there is a problem and willingness to start dealing with it. What does "dealing with it" involve?

Professionals in business improvement and turnaround generally use a 5 step process: Analysis > Management Change > Emergency Action > Implementation of Plan > Return to Business as Usual. In this and the following four articles we will briefly discuss each of these steps.

We would not expect a doctor to recommend medical treatment before the patient's illness had been carefully and accurately diagnosed. Similarly, it is not possible to prescribe remedial treatment for an ailing business until the nature of the problems have been analysed.

There are two elements of the analysis phase: analysis of the external environment and analysis of the business from an internal perspective.

Analysis - The External Environment

As leaders of small to medium size businesses you might be reluctant to embark on an analysis of the external environment, perhaps fearful that you are walking on turf which is reserved for the likes of economists and analysts. Don't be reluctant. Most leaders of even small businesses have a vast amount of knowledge of the environment in which the business operates. You might want to get somebody to help you to distil that information into a meaningful and useful form but the chances are you will have most of the raw data for that analysis in your head or your filing cabinet.

What's happening in the economy generally? Is it growing or shrinking? When might it reasonably be expected to start growing again? What's the impact of the economy on my sector? What's happening in the sector my business operates in - the market for the product or service that my business sells? Is it going to grow or shrink? Is my product or service "mature" and therefore will I struggle to increase revenues or is it young and fresh with good prospects for increasing revenues? What are my competitors doing or likely to do in the future?

Consideration of these questions and recording the answers is the all-important first step of the analysis. It forms the landscape against which the internal analysis is considered and understood.

Analysis - The Business Itself

Now turn your attention to the business itself. Again, this process might well benefit from having a third party, not close to your business, helping you to consider the key areas of your business and to come up with a critique of the business with respect to:

Business strategy - in light of all we know is our current strategy likely to be successful? How might we improve our strategy? Governance - have we got the right skills at director level? Note: even small businesses should have some independent governance even if this is at the most informal and cost effective level. Management - have we got in place the management capability to implement our plan and run the business? Operational - are we executing and delivering the right way? Financial - is our business funded correctly? Cost structure - do we really understand the cost structure of our business especially the distinction between the fixed and variable costs so that we can make informed decisions?

What can we do?

The information we distil from the two elements of the analysis enables us to address the question - what might we do to improve this business? That information enables us to make an informed assessment of the myriad of actions we might contemplate: rationalisation of products or services, price increases/decreases, elimination of areas of fixed cost, plant closures, location changes, changes to governance or management, merge with or take over the competitor.

Can we do it?

We are now in a position to stand back and ask the really hard question - can we do it? There are two elements to this question. The first element requires us to consider whether the business can be turned around to become profitable and cash flow positive, regardless of how much time, effort and money that turnaround might take. The second element asks "If the business can be turned around have we got the management, time and money to make it happen?"

The money question is critical. Things never get better straightaway. Things seldom get better without the cash position getting worse before it gets better. There is usually a need for more cash. Where is that cash going to come from? Shareholders? Bank? Other secured creditors? Support from unsecured creditors?

The final stage of the analysis step is to ensure that if we are going to proceed with the turnaround plan the providers of the cash for the turnaround are fully informed and on side. In the next article we will consider the issues of management change.

Thinking About and Co-ordinating Your Estate Planning

Estate planning may require the help of several advisors such as your lawyer, your insurance agent, your financial planner and your banker. As your accounting resource, we can help coordinate your planning by reviewing your plan with you and suggesting modifications that may be necessary to reflect changes in your personal or business financial situation, as well as tax strategies that may be appropriate to your circumstances. We invite you to talk with us about any estate planning concerns you may have. We also welcome questions concerning recent tax law changes and the effects those changes may have on your estate. Just give us a call at your convenience.

When was the last time you reviewed your estate plan? Ten years ago? Five years ago? Last year? Never? If your plan was set up years ago or your answer is never, it is definitely time to review the provisions you have made for handling your estate and providing for your family after you die. Do you even have a Will? We are amazed at how often we come across clients who do not have Wills.

By definition, your estate is your property or possessions. Your house, car, securities, business interests, cash, retirement plan benefits, anything you own that can produce income or that can be converted into cash make up your estate. Most well-thought-out estate plans make certain allowances for potential changes in economic or family circumstances. But, unless you have a foolproof method for seeing into the future, you cannot predict all the possible changes that might affect your financial situation and estate plan. A periodic review of your estate plan is essential if you want it to continue to meet your needs. Below we have listed some of the events that might trigger a review of your long-term financial and estate plans. Check any items that apply and consider the possible effects on your estate plan. Consider the effect these items have on your current income tax and financial planning as well. Planning for the distribution of your estate property is only one aspect of estate planning. Equally important is planning for the accumulation, conservation, and enjoyment of your income and property during your lifetime.

Personal Changes

You have recently married or divorced.

You have sold or purchased a home.

You recently paid off your mortgage.

You have moved to a new country.

Your spouse or another close family member has died.

You or a close family member have become disabled.

Your spouse has returned to work or has stopped working.

A new child or grandchild has been added to your family.

You wish to build a college fund for children or grandchildren.

A child or grandchild has just married or had a divorce.

You have started a fund to provide for your retirement.

You have acquired new assets of significant value.

You or your spouse have inherited valuable property or received a substantial gift.

You have made significant gifts to family members or charity, or you are considering making such gifts.

Your investments have experienced significant gains or losses.

You want to set up trusts for your children or grandchildren.

You have changed or desire to change the beneficiaries in your will or trust agreements.

Someone has set up a trust for your children and named you or your spouse as trustee.

The executor, trustee, or guardian named in your will or trust has died, or you wish to make a change.

You are considering bequests to one or more charities.

Business Changes

You have changed jobs or careers.

You or your spouse have retired.

You have formed a new business.

You have business interests or real estate that can continue to be managed by heirs.

You have liquidated your business.

A company officer or other key employee has died or become disabled.

You lack an updated buy-sell agreement that provides for the sale of your business interest when you die or if you become disabled.

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"Currently we do not get any government funding despite the fact that the majority of our referrals come from medical staff at the Waikato Hospital."

Law Commission Review Of Trust Law

The task is to review the Trustee Act and trust law in three stages:

1. The Trustee Act, the Perpetuities Act 1964 and a review of trusts law generally.
2. The Charitable Trusts Act 1957.
3. The trustee companies legislation.

The Commission will consult on various aspects, including:

- Problems with the use of trusts, including issues relating to relationship property, creditor protection, qualification for Government assistance and sham trusts.
- The variation and resettlement of trusts.
- Trustees' duties and liabilities and beneficiaries' rights, including indemnity provisions and exemption clauses and proposals to improve trustee accountability.
- The office of trustee, trust administration, the capital and income issues and court supervision of trusts.
- Trustees' powers, including delegation, investment and insurance.
- Remaining issues, including trading trusts, non-charitable purpose trusts, registration of trusts and obligations for trust advisors.

The last of these reports is expected in the fourth quarter of 2011.

True Colours Charitable Trust - www.truecolours.org.nz

True Colours Charitable Trust is a Child Health Service that provides clinical and psychosocial support for children and adolescents (birth to 18 years), who suffer a chronic, serious or life- threatening illness and their families. The service was founded and is managed by Cynthia Ward a Nurse Specialist who is recognised nationally as a visionary health provider, in the field of caring for children facing serious illness. True Colours work is specialized in that we offer 24/7 crisis intervention within the home or hospital. We also support not only the sick child but the parents and siblings as well. True Colours has the full support of, and work closely with, the medical staff including the Paediatric Palliative Care teams from Waikato and Starship Hospital's, Child Cancer Foundation, Canteen and many other health agencies to provide the best level of care to the children and families.

Currently we support families from the Waikato DHB region. The work is challenging and the True Colours staff, consisting of three clinicians and one administrator manage between 120-140 families at any one time. In May 2010, True Colours celebrated its sixth year of operation. Affirmation of the need for this service in the community is validated by the statistics. From May 2004 to Nov 2010, we have had 689 referrals. During this time 84 of the children have died, 10 passing away this year.

All services offered to the families by True Colours are provided free of charge. Our funding comes predominantly from applying for grants from Trust Organisations, fundraising campaigns and donations from businesses and individuals. Currently we do not get any government funding despite the fact that the majority of our referrals come from medical staff at the Waikato Hospital.

"Most of us have not walked in the shoes of children and young people who live with serious illness, however, there is still a great deal that we can do to support and comfort children and their families through their experiences of living with illness. The focus of True Colours model of care is about partnership with the child and family, supporting them through illness and grief".

Cynthia Ward CEO True Colours Charitable Trust.

CLELAND HANCOX

Level 3
18 London Street
Hamilton 3240, New Zealand
Telephone: 07-838 2692
Facsimile: 07-838 1667
Email: info@clelandhancox.co.nz
www.clelandhancox.co.nz

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