



DECEMBER 2020

The Principals and Staff of Graham & Dobson thank you for your continued support during 2020. We hope you are able to take some time for rest and relaxation this summer after a rollercoaster of a year – this Christmas let's pause, celebrate what's gone right and thank the people we rode with.

The offices of Graham & Dobson will be closed from 4.00pm on Wednesday, 23 December and will re-open on Thursday, 14 January 2021 at 8.30am.

SNIPPETS

IS THE GRASS GREENER OVER THE DITCH?

Australia has recently released its 2020-21 Federal Budget where they plan to combat the effect of Covid-19 by investing in infrastructure, job creation, asset write-offs and personal tax cuts. In an effort to greatly boost job creation, Australia has implemented a job hiring incentive credit where businesses will receive \$100 or \$200 per week for each employee hired, depending on their age and businesses - taking on new apprentices or trainees - will be eligible for a 50% wage subsidy.

Australia's approach of increasing the low-middle tax bracket thresholds (similar to what National proposed) means eligible taxpayers will receive tax relief of up to \$2,745 each to encourage spending and stimulate the economy. Conversely, Kiwis will face a new top tax rate of 39% effecting 2% of New Zealanders and generating \$50 million of annual revenue. Australia has also extended its \$150,000 asset write-off deduction until 30 June 2022 for businesses with a turnover of up to \$5 billion. Our threshold has been increased to \$5,000 until 17 March 2021, then \$1,000 thereafter.

Meanwhile New Zealand's Labour Government continues their plan to keep New Zealand moving by investing in people, small businesses, infrastructure, and global trade.

FARMSTRONG

Farmstrong is a nationwide initiative designed to help promote farmer wellbeing with the skills and resources to

live well, farm well. It is generally acknowledged that wellbeing increases or decreases, dependent on what you can do and how you think. The business of farming presents a unique set of pressures and challenges, most hard to predict or control, be it unforeseen climatic events, fluctuating commodity prices, and ever-changing compliance regulations. Keeping in shape mentally and physically can help build resilience to enable farmers, growers, and their staff to keep farm life in perspective and therefore grow their positivity.

In June this year, Farmstrong turned 5. Key to the initiative's uptake so far has been the willingness of farming folk to share their stories and insights, the popularity of Farmstrong's ambassador, Sam Whitelock, the 18,000 farmers and growers who have been involved in a range of ways and the short, informative (and fun) videos such as Time Out, Health Check and Farm Fit on Farmstrong's website www.farmstrong.co.nz



REDUCE, RECYCLE, REFOLD

You know you've reached the peak of flexible working when you can fold up your desk and carry it home. The Refold desk is the flagship product of a Wellington based company of the same name. Made in New Zealand from 100% recyclable cardboard and weighing in at a highly portable 6.5kg, it comes as a sit-down or stand-up desk and slots together in two minutes. "Not everyone has the luxury of a dedicated home office space, this gives them the ability to pack it down and store it away" say the co-founder Fraser Callaway. Refold was launched by three university grads in 2014 – refold.co



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BUSINESS HEALTH CHECK

Annual leave sorted? Working out how much an employee gets paid for taking a day off on annual leave will depend on what they have earned in the previous 12 months and consideration of the days and hours the employee has actually been working in the weeks leading up to the holiday request.

Know your public holiday obligations? Boxing Day and the second of January fall on a Saturday this year. So, if you have an employee who wouldn't normally work on Saturday, their public holiday entitlement is transferred to the following Monday. If your employee would normally work on Saturday, then they get their public holiday entitlement on Saturday (the calendar date of the public holiday). If they work their normal Saturday, they get time and half and a day in lieu.

Casual labour helping out over summer? You are reminded that the minimum wage rate of \$18.90 plus holiday pay of \$1.51 applies to all employees aged 16 and over, who are full time, part time, fixed term, working from home and paid by wages, salary, commission or piece rates.

Need money to tide you over a completely different future business landscape? The Government has made changes to the Small Business Cashflow Loan Scheme:

- Applications for the loan can now be made until 31 December 2023, an extension of three years
- No interest is charged if the loan is repaid within two years – an extension of one year
- The loan can now be used for costs others than core operating costs – e.g. capital expenditure.

If you already have such a loan the changes will be made unilaterally to existing loan contracts by 31 December 2020. At this stage all other aspects of the loan scheme remain in place, including the maximum amount that can be borrowed set at \$10,000 plus \$1,800 per full time-equivalent employment. Only one amount can be drawn down.

Still relying on arrangements put into place during COVID restrictions? You may have been unable to properly formalise arrangements with suppliers, customers, landlords/tenants, or others that needed to be quickly put in place as the outbreak with its constraints unfolded. It is important you formalise these now and this will reduce the risk of potential confusion or disputes later down the track.

Where are you at with your Business Continuity Plan? You certainly learnt a lot about adjusting your business to the COVID 19 environment. Now is the time to reflect on that and write up or update your BCP accordingly. This means your business will be well placed to respond if or when another event occurs.

Workers on call? Zero-hour contracts no longer exist. If you plan to have staff on call, you must:

- Give them at least some guaranteed hours of work
- Specify the notice period that applies to cancellation of a shift
- Provide reasonable compensation for time on call or when a shift is cancelled outside the notice period.

Finally check your business strategy and set-up. Now is a great chance to review these, along with funding arrangements, cash flow and balance sheet solvency - an area where company directors have specific responsibility

SHAREHOLDER AGREEMENTS - THE CORPORATE 'PRE-NUP'

Thinking of the Government's flexi-wage self-employment scheme and wishing to start your own business? Maybe you've dreamt up an idea with a friend. Maybe you need to bring someone in with the expertise, contacts or capital to get it off the ground. While there are plenty of good reasons to go into business with other people, let's be honest – relationships are tricky.

That's why even people in love often document their relationship by way of a "pre-nup" in case of heartbreak down the track. This kind of "hope for the best but plan for the worst" mentality is well-advised and equally applicable to your business relationships, which will no doubt start off enthusiastically. However, the combination of work, stress, time, effort, money and life in general can be lethal to both your working relationships and your business. A shareholders' agreement is essentially a corporate "pre-nup". It can help to clarify the framework and structure of your business from the start and to foresee, manage and guide you through pressure points as and when they eventuate.

The process of negotiating a shareholders' agreement should be constructive in terms of how exactly the business will be operated and can reduce the risk of a dispute arising in the first place. Start how you mean to continue by clearly setting out the parameters of your business relationship in writing.

Some of the key matters to discuss and agree include:

- What is the ownership split?
- How will the business be funded initially?
- What about future capital requirements?
- Who is contributing what (i.e. money, skills, labour, equipment)?
- What are your respective roles in the business? Will you both work in the business or is one of you more of an investor?
- What is the level and frequency of remuneration for shareholders working the business (cash flow/profit permitting)?
- Who makes decisions and who is in control? Are there limits to that decision-making power (i.e. what require unanimous agreement and what can be done without the consent of your co-founder)?



- What are your obligations as a shareholder? What happens if someone materially or persistently breaches those obligations?
- Will shareholders be required to personally guarantee the lease, bank loans or credit arrangements on behalf of the company? This can be difficult where co-founders have an imbalance of personal assets.
- How can new people join the business and how can existing people get out? Having an agreed exit mechanism is essential.
- What are the restraint arrangements both during and after involvement with the business?
- What is the dividend policy (i.e. is a certain level of dividend payment intended or is this subject to board discretion)?
- Are there pre-emptive rights? If they are not exercised, are there any restrictions on who can you sell your shares to (i.e. competitors)?
- What happens if either of you dies or becomes incapacitated? Aside from the grief, you probably don't want to suddenly be in business with your co-founder's husband.
- To fund the purchase of your co-founder's shares in the event of death or incapacity, insurance arrangements could be considered.
- What happens in the event of a disagreement? There must be a dispute resolution procedure to ensure there is a way to resolve it and move forward one way or another.

These are just some of the matters to consider – a shareholders' agreement should be tailored to suit the nature of the business and the aspirations and expectations of the founders from the outset. Not only will this help to avoid future issues, it supports sound business practices and can also make investment in or acquisition of the business more attractive to third parties in the future.



All things going well, you may never have to look at the fine print again. But even best laid plans can go awry. If they do, the business relationship can rapidly sour and place the business at risk of failure as the focus shifts to the dispute. While it is not a silver bullet, your shareholders' agreement is the first port of call and gives you a map to navigate stormy seas. Without one though, it can be virtually impossible for people to agree a way forward and the business can languish or die in the meantime.

THE NEW TOP MARGINAL TAX RATE

Labour's election campaign promised no income tax changes for 98% of New Zealanders; however a new top marginal income tax rate of 39% for individuals earning

over \$180,000 will be implemented – expecting to raise \$550 million of revenue a year.

For some of us this provides a sense of déjà vu, as we remember when we previously had a 39% tax rate from the 2001 to 2009 financial years. We saw disputes in the courts regarding the requirement to pay fair market salaries, legislation requiring income to be attributed to individuals and various policy statements from Inland Revenue. As differences in tax rates widen, it impacts behaviour by incentivising tax planning to minimise application of top tax rates. Currently, there is little difference between the top tax rates, 33% for trusts and individuals and 28% for companies.

It also leads to further inequity within the tax system because it is typically employees who are unable to alter how they are taxed, whilst business owners have greater flexibility to alter how their income is taxed.

For example, a distribution of accumulated income from a trust that has already been taxed at 33% may be distributed tax-free to a beneficiary who has a marginal tax rate of 39%. Individuals with investment income may also be further incentivised to invest in Portfolio Investment Entities instead of shares, where the top tax rate is capped at 28%. Conversations are likely occurring right now regarding whether shares in companies should be moved from personal ownership into trusts – and whether this is tax avoidance?

Companies will also face further costs with a 39% tax rate. Companies that currently pay fully imputed dividends at 28% are also required to withhold tax at 5% in order to reach the 33% marginal income tax rate. This withholding tax liability is likely to increase to 11%, which may place constraints on company cash flow or prevent dividends from being paid altogether. This will place further pressure on tax administration to keep accurate, up-to-date records as individuals on lower marginal tax rates may be entitled to tax refunds comprising the additional tax withheld.

Ultimately, this policy provides an opportunity for individuals to explore their different options to ensure efficient tax planning. However, utmost care should be taken when restructuring one's affairs, in order to avoid undesirable consequences such as the breach of shareholder continuity resulting in the loss of imputation credits or tax losses, or potentially undertaking a tax avoidance arrangement.





CLASSIFIED
"WANTED DESPERATELY
BY A LONELY SCOTTISH FISHERMAN
– A WIFE"

MUST BE YOUNG AND PRETTY WITH A GOOD SENSE OF HUMOUR.

PREPARED TO HAVE SEVERAL CHILDREN.

GOOD, CHEAP, NO NONSENSE COOK.

ABLE TO GUT AND PREPARE FISH, CRAB AND LOBSTER FOR MARKET.

MUST BE ABLE TO SAW LOGS, CUT PEAT, SET FIRES AND GENERALLY RUN

A NEAT AND TIDY HOME AND BE ABLE TO MAKE AND MEND NETS

AND LOBSTER POTS IN SPARE TIME.

WOULD PREFER A BOAT OWNER, PREFERABLY ONE

ABLE TO BE WORKED BY ONE MAN AND A BOY.

PLEASE SEND, IN THE FIRST INSTANCE, A PHOTO OF THE BOAT

TO BOX NO 43, WEST WOOD, MORAR STATION BUILDINGS,

STATING THE AGE OF THE BOAT AND INSURANCE COSTS FOR INSHORE FISHING.

