

Year In Review & Ahead

Over the last year, Hall Chadwick has risen to the challenges of an ever-changing business environment.

As a nation we have continued to perform as one of the most outstanding economies of the world. With a high level of growth, low-inflation and low-interest rates, our economy is more vibrant than ever before, with record lows in unemployment and strong national growth in company gross profits.

Yet, perhaps more than ever, 2004 was a year in which Australia strengthened its economic ties with other nations. The Australia-United States Free Trade Agreement was passed and strong moves were made to further our economic partnership in the form of a free trade area between Australia, New Zealand and the Association of South East Asian Nations. This promises more new jobs and increasing the global competitiveness of our businesses.

At Hall Chadwick, the year of 2004 will be remembered as one of solid growth.

Melbourne and Western Australia expanded their Business Recovery and Insolvency client base and look forward to building their client portfolio in the coming year. The industry of "helping others in trouble" is always in demand.

Our Adelaide firm celebrated 12 months in their new offices with all staff having settled-in. The year went fast and finished well for all the Port Adelaide supporters with the clubs first AFL flag – see page 6 for more about SA's footy fever.

More than 250,000 people were affected by changes to stamp duty in NSW, many of which turned to the Hall Chadwick Tax division looking for specialist advice. In 2005, this division looks forward to helping clients deal with proposed changes to superannuation laws and property investor taxes and consolidating referral bases including ones with other accounting firms.

2005 presents Hall Chadwick with new opportunities and challenges.

In this issue, Sydney Partner Bob Elliott warns against the proposed reforms to the Financial Transaction Reports Act.






The new legislation looks likely to impose a greater burden on professional advisers (see page 2 for more). The imminent changes to the Act reflects Australia's penchant to adopt international law (the act follows precedent established by the British legal system) – without perhaps assessing the full consequences. The issue remains so pertinent that this article has already been published in BRW.

Further changes that reflect Australia's ties with our global neighbours include the new International Financial Reporting Standards (IFRS). These new requirements came into effect at the beginning of January, bringing significant changes to both the way companies report their financial results and to many organisations' bottom line. All states are already active in assisting clients to adopt these new standards.

Looking nationally, planning is beginning for June, when a choice of Superannuation Funds becomes available to many Australians for the first time. These changes present an opportunity for clients to take control of their superannuation investments, have unlimited choice as to where they invest their funds and to consider the options available to them in the 2006 financial year. To find out which Fund is appropriate for individual needs and circumstances, all interested clients should speak to Hall Chadwick for access to leading professional advice.

Whatever 2005 holds for the national and international business community, Hall Chadwick looks forward to being able to assist our clients through planned, and unexpected, financial changes and challenges.

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Some Trends Should Not Be Followed



Bob Elliott
Managing Partner,
Hall Chadwick, Sydney

Accountants Global Network (AGN) held a conference in Madrid, which raised concerns that the UK Proceeds of Crime Act 2002, which criminalises even those advisers who inadvertently aid Tax evasion, will be introduced to Australia.

A key paper presented at the Madrid conference outlined how UK rules impose a greater burden on professional advisers, and may fundamentally affect their relationship

with their clients and the taxation authorities. If these UK laws were to be adopted in Australia, accountants would find themselves having to report their clients to the authorities if they suspected they were involved on any level in tax evasion or money laundering, or else face criminal charges.

The act states that if the adviser is not actively involved but inadvertently aids money laundering, they can be deemed to have not been 'suspicious' enough, and can still be found to be at fault. This is the part that makes honest advisers nervous. Even if the client has approached their Accountant to create a clean breast of things with the tax department, the accountant or other non-legal adviser would have to immediately report their client.

Legal practitioners have limited privilege but non-legal advisers do not get that "get out of jail free" leeway. The adviser would not be able to inform the client of his intention to report them or that he had reported them, and would be bound to continue to consult to them until the authorities advised otherwise.

Under the Act which was introduced because the UK government believed that professionals were not taking the money laundering seriously enough, the adviser has to report any suspected unfavorable activity to the police by way of a Suspicious Activity Report (SAR).

The adviser is not allowed to tell the client and the police will tell them within two weeks as to whether they can continue to act for their client.

Where tax evasion is the only crime identified, the police (The UK National Criminal Intelligence Service) will inform Inland Revenue.

There is no distinction between domestic or foreign tax evasion. If Australia follows its past trend towards adopting UK law, then it will not be long before this Act is introduced to Australia. Given the current climate of changes in terms of civil liberties due to terrorism and Australia's penchant to follow the UK or US leads, the general consensus at the conference was that it is only a short time before the Act will be adopted through out Europe and in Australia.

The Act is the latest in a series of anti-money laundering legislation, which first dealt with drug offences (Drug Trafficking Offences Act 1986), expanded to terrorism (Prevention of



Terrorism Act 1987) and then to crime in general (Criminal Justice Act 1993). In 2002 the Act was extended to include all acts of Tax evasion.

Many professionals in the UK and throughout Europe believe that the act essentially does little to decrease illegal activity and may in fact encourage it.

A client may now be motivated to conceal matters from their adviser, and where as in the past the taxpayer may have reached an appropriate settlement with the tax authorities, the money will now end up being criminalised. The Act makes it even more difficult for Accountants to give advice and will impact both on client relationships and on the profession's relationship with the tax authorities.

Delegates at the conference were told the UK NCIS is now criticizing the Professions, which they previously castigated for under-reporting, for now putting in 'trivial' reports in self-defence.

Further, if the client seeks advice from a lawyer in solving his situation, rather than from an accountant or tax adviser, he will not be reported.

Ironically, the new legislation of disclosure will have no effect on those few professional advisers who are actively involved in money laundering, because they'll keep offending anyway. In view of the emerging experience in the U.K. – which it is feared could spread also to Europe – legislators in Australia should be thinking ahead in this area, and learning from what appears to be a lack of considered foresight in Britain.

For further information on this issue please contact Bob Elliott in Sydney on (02) 9263 2600. Alternatively, contact your local Hall Chadwick office.



Directors Duties...Business Failure

**“To open a shop is easy,
to keep it open is an art ” Confucius**



Stan Traianedes
Director of Insolvency Services,
Hall Chadwick, Melbourne

What is Business Failure

The term business failure usually is associated with economic or financial loss leading to the cessation of operations either voluntarily or not but typically because of insolvency.

What is Insolvency?

According to the Corporations Act: *A person is solvent if the person is able to pay all the person's debts as and when they become due and payable.*

However case law suggests :

1. A “Balance Sheet” surplus of assets does not infer solvency ;
2. Commercial realities are relevant in considering what resources are available to a company to meet its due liabilities;
3. Solvency is to be determined on a cash flow basis using resources at the debtor’s command, including unsecured borrowing;

Starting a business - Is it For You?

The leading cause of financial failure is poor management. Evaluation of management style, risk tolerance and business knowledge, is essential to identify the skills and limits a person has to deal with commercial life. New entrepreneurs bring to the venture their personality and character with all the respective strengths and weaknesses and can struggle for years for little return to the point where ordinary trading risks become major hazards.

Do you have what it takes ?

- a confident attitude ?
- taking reasonable risks?
- sufficient management or technical skill?
- sufficient capital that you are prepared to risk losing?
- seeking professional advice?
- ability to make decisions?
- physical and emotional stamina to run a business?
- a business plan?
- spousal support in your business ambitions?

Running a business - The Commercial and Legal Hazards

Running a business requires planning, management, and financing. Business hazards in this context mean the financial risks arising from normal commercial activity that may affect a business’s solvency such as:

1. The adequacy of finance to fund operating expenses
2. The choice of operating structure
3. Compliance with regulatory authorities

4. Insurance
5. Superannuation
6. Tax obligations
7. Workers’ Compensation
8. Employee claims
9. Legal Issues

Habits of Ineffective Business People

Once a business reaches a ‘comfort zone’, management tends to avoid previously acceptable risks, losing the capacity to respond to change. Common habits are:

1. Never read documents.
2. Seeking professional advice is unnecessary.
3. The business structure is not understood.
4. Insurance is unnecessary .
5. Staff are expendable.
6. Maintaining records wastes time.
7. The best results always come from the minimum effort
8. Technology is always reliable.

Causes of Financial Distress

Often the symptoms of financial distress arise late and from omission or neglect and should not be considered as “early warning signs”.

Internal factors are generally within the control of management.

Examples are:

1. Poor management
2. Inadequate financial controls
3. Undercapitalisation
4. Lack of information

Examples of external factors are:

1. High competition
2. Regulatory compliance
3. Declining markets
4. Economic conditions

Other indicators that should call for further investigation:

Bank facilities

- Overdraft is at the limit or placed in reduction.
- Dishonoured cheques.
- Further security is sought for the existing debts.

Creditors

- Overtrading
- Difficulties making payment to creditors
- Suppliers withhold supply
- Debts are beyond normal terms

Debtors

- Customers delay payments.
- Infrequent invoicing
- Poor collection practices

Director's Duties...Business Failure

continued

Management

- Managing by crisis
- The business lacks information
- Can't make decisions

Taxes

- Unpaid deductions .
- Unfiled returns.
- Penalties imposed
- Directors' penalty notices issued

Finance

- Under capitalisation
- Large cash injection is required.
- No further credit available

Legal actions

- Creditors have obtained judgments
- Statutory demands served
- Strategies for Addressing Financial Stress

Obtaining accurate and timely financial information is essential to examine issues of solvency and performance. Reports should include:

- Gross profit margin
- Cash flow and cash position
- Aged Debtors and Creditors schedules
- Budget vs actual reports
- Interim Profit and Loss reports

Sales analysis

Business failure can be avoided by good management and planning. Once financial information has been compiled, some strategies to address financial difficulty include :

1. Defer payments cycles
2. Prepare receipts and disbursements schedule
3. Prepare a statement of current position
4. Consider additional equity funding
5. Determine the Company's value against being wound up
6. Negotiate forbearance from creditors
7. Enter into informal debt settlement proposals
8. Consider converting claims into equity interests
9. Consider merger strategies
10. Consider undertaking an informal work out
11. Appoint an external administrator



A Foreign Take



David Kenney
Partner,
Hall Chadwick, Sydney

Foreign share investment is becoming increasingly common as Australian investors seek to diversify portfolio bases. But the desire to expand beyond borders means one must remain fully aware of relevant taxation laws.

Two fundamental issues arise from foreign share investment: the tax treatment of dividends received, and capital gains derived from eventual sale.

Most local residents tend to invest in companies that are based in countries holding tax treaties with Australia.

The ideal is to prevent double taxation of both income and capital gains – handily achieved via “real” taxation being applicable in only one country.

Under Australia’s tax treaties, dividends paid by a foreign company are imposed with a one-off take known as foreign withholding tax. The rate is generally capped at 15%.

The treatment of capital gains derived from the sale of foreign shares is usually subject to tax being paid in Australia, rather than the country in which the foreign company resides.

When an Australian resident receives a dividend from a foreign company they are required to include the payment in their yearly assessable income. The foreign dividend needs to be “grossed up” for any offshore withholding tax that’s already deducted.

This means that foreign tax already paid has to be included in an individual’s tax return. Australian tax is then imposed on the “grossed up” amount, with a credit allowed for the already paid-out foreign component.

In cases where foreign tax paid exceeds Australian tax payable, an excess foreign tax credit arises. An Australian resident can carry these excess credits forward for a maximum of five years, writing them off against foreign income during that period.

To better illustrate, let’s say an Australian resident receives an \$85 dividend from a UK company, which has been subject to dividend withholding tax at the rate of 15%. The Australian resident individual is obliged to gross the dividend up to \$100, pay tax on \$100 and then receive a \$15 foreign tax credit.

Foreign share investments can additionally result in foreign based losses being generated. A foreign loss arises where deductions incurred in deriving foreign income outstrip incomings. This type of situation invariably arises when an Australian resident borrows money to acquire shares in foreign company, with dividends derived amounting to less than the interest expense. The ability to offset foreign losses against local income is not straightforward. To the extent losses relate to financing costs, the loss can generally be offset against local income, however other deductions associated with foreign income are generally quarantined and can only be offset against other current and future foreign income of the same class.

The realisation, or cashing in, of foreign share investments can produce either capital gains or losses. Such gains are important for Australian tax purposes as local resident are subject to capital gains tax worldwide. That’s because capital gains from the sale of foreign share investments are deemed to be foreign income. The upshot is that foreign capital gains additionally qualify for local tax credits in respect of foreign tax paid. But there are exceptions to this general rule. Where an Australian resident derives a capital gain from the sale of foreign shares acquired before September 20, 1985, or on shares acquired after 1985, upon which foreign tax has not been paid, the gain will not be treated as foreign income. Subsequently a foreign tax credit won’t be available.



Thus, local tax is imposed on “net” capital gains derived by Australian residents. The net capital gain is determined by applying capital losses (domestic or foreign) against domestic capital gains, their capital losses (domestic or foreign) can be deducted against all capital gains. Remember it’s the net figure that’s included in the assessable income of an Australian resident.

With foreign share investments becoming commonplace in the Australian marketplace these days, understanding the complexities of tax planning laws is of paramount importance in ensuring optimum returns.

For further information on foreign share investment please contact David Kenney in Sydney 02 9263 2600. Alternatively, contact your local Hall Chadwick office.

Don't Work for Your Super



Gino Malacco
Partner,
Hall Chadwick, Sydney

Recent amendments which came into force from 1 July 2004 now allow individuals under 65 who are not employed to make contributions to superannuation. This opens up significant tax planning and investment opportunities that were previously unavailable to non working individuals.

Prior to the amendments, Trustees of complying superannuation funds could only accept contributions

for superannuation from members if the member satisfied the "work test". The "work test" required the individual to have been employed, or self employed, for at least 10 hours in a week, sometimes in the past two years. The new rules which are in force do not require this "work test" to be satisfied, meaning any person under the age of 65 can contribute to superannuation.

The removing of the work test for superannuation contributions allows for significant taxation and investment opportunities for non working individuals under the age of 65 who wish to obtain the advantages of investing in super. These advantages include:

Obtaining deductions for superannuation contributions up to the individual's aged based limit, regardless of whether they have worked or not.

Investing in an environment which taxes earnings at a maximum rate of 15%. Enabling access to pensions after retirement age at significantly favourable tax rates.

Deductions for superannuation reduce taxpayers income from higher, or the highest, tax brackets to a lower more tax effective environment. Obtaining an income tax deduction on a contribution can effectively reduce the maximum rate of tax on income derived from 48.5% to 15% in the year in which the contribution is made.

Income streams derived via pension payments when a pension has commenced also provides significant taxation benefits, including income derived within the superannuation fund being exempt from income tax.

Taxpayers who will particularly benefit from the change in legislation to allow contributions to be made can include any of the following:

Individuals who derives significant investment income, for example, dividend and rental income. Individuals who receive distributions from Family Trusts Individuals who have large amounts invested outside superannuation who wish to accumulate income and growth in a more tax effective environment.

Recent amendments have also been made which affect the accumulation of benefits after age 65. Individuals between the age of 65 and 74 no longer need to satisfy a weekly work test. Provided the individual has worked a total of 240 hours during the previous financial year ending 30 June, benefits may remain in accumulation phase in a superannuation fund.

It is important to consult with your local Hall Chadwick office to determine whether it is beneficial to utilise the new rules in relation to superannuation changes for non working individuals and how other legislative changes may affect you and your super.

For further information on superannuation, please contact Gino Malacco in Sydney 02 9263 2600. Alternatively, contact your local Hall Chadwick office.

AFL Footy Tipping Competition Winner

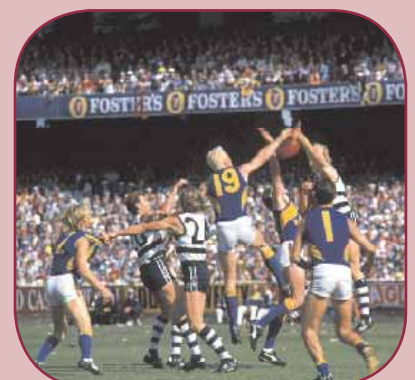
Pio De Corso
Partner,
Hall Chadwick, Adelaide



Captured here is Adelaide Partner Pio De Corso presenting Natalie Sfera, the winner of the 2004 AFL Footy Tipping Competition, with the first prize.

Natalie, the Financial Controller of Sfera's Gourmet and Function Centre, was thrilled at being this years winner. Her year was topped off by watching her favourite team Port Adelaide win this years Grand Final.

Well Done Natalie!



How Leadership Travels

*Ruth Simon
Corporate Services
Hall Chadwick,
Melbourne*

Being a cadet of Hall Chadwick, and also attending university at RMIT, I have learned three important things: the impact of the youth of today, how to develop myself as a leader and how to make a difference globally. To expand these ideals, I decided to join AIESEC, a student-run organisation at RMIT University. I found that AIESEC is a group which I can relate to and share a similar vision with other students. AIESEC has the organisational values of activating leadership within the youth, living diversity, enjoying participation and striving for excellence. I have been a member of AIESEC for almost one year and have had many accomplishments such as:

- Finance Director for RMIT
- Finance Representative for Victoria in National Conferences
- Member of Incoming Exchange core group
- Attended regional, sole university and national meetings events and conferences
- Have co-ordinated graduate exchanges.

AIESEC originated as a French acronym for "Association Internationale des Etudiants en Sciences Economiques et Commerciales". Today, we no longer use this acronym, as our membership has grown to encompass a much wider range of disciplines than merely economics and commerce.

AIESEC is an international, non-political, non-profit, student-run, independent, educational foundation. Students and recent graduates of institutions of higher education comprise AIESEC, which does not discriminate on the basis of race, colour, sex, sexual orientation, creed, religion, national or ethnic origin.

Its core work is to facilitate international traineeship exchanges and support activities that provide practical learning experiences for trainees and that facilitate the learning of members and other stakeholders.

Present in over 800 universities in 89 countries and territories, AIESEC enables young people to discover and develop their potential to have a positive impact in society. Towards this aim, AIESEC has run more than 350 conferences, provides 3,500 work abroad opportunities, and offers over 5,000 leadership positions to its members each year. Together with a focus on building personal networks and exploring the direction and ambition of their future, AIESEC has an innovative approach to engaging and developing young people.

AIESEC's partner organisations, literally thousands from all sectors, look at AIESEC as a way to support the development of young people and to have access to high potential young talent from around the world.



*AIESEC students at a stakeholder event in Queensland
(Ruth Simons is standing third from the left)*

Since 1948, AIESEC has been an international youth association that aims to promote social understanding, entrepreneurship and youth leadership in the broader community. For the last forty years, AIESEC in Australia has been one of the top performing countries in the AIESEC network. It is present in 16 of Australia's top universities and has a dedicated member base of nearly 500 of the most proactive and talented university students in the country.

AIESEC was founded at RMIT in 1971. It was the sixth local committee to be admitted into AIESEC Australia, and was announced Developing Local Committee of 2004 in Australia.

In 2004, AIESEC RMIT has raised four traineeship positions: at RMIT International, Mezzanine, and two within the Victorian government. It has filled these positions with a German, a Filipino, a Hungarian and a Briton. AIESEC has also placed four members overseas: to Canada, the Netherlands and Germany. Members have developed personally and professionally.

As a member of AIESEC RMIT I have been able to take an active role and have begun my 'AIESEC experience'. I was given the opportunity to take a leadership role in AIESEC RMIT. I have been able to lead teams in different areas, plan, take decisions, speak in public, and turn my ideas into action. I have had the opportunity to apply my skills in sales and marketing, customer service, recruitment, evaluation, budgeting, planning, project management and presentation. I have developed my self-awareness and personal vision. AIESEC has given me the space and support fundamental questions such as "What is important to me?" and "How do I want to contribute to the world?" AIESEC has helped clarify and expand my ambitions through mentorship, personal vision exercises, goal setting and an inspiring environment. I can see a stronger and more holistic view of the world. It enables me to more easily incorporate new perspectives,

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How Leadership Travels

continued

see interdependencies, and identify ways to positively impact any given situation. I continue to be part of AIESEC because I know that it will provide me and other young people with experiences that will not only develop our potential as individuals, with a clear purpose of having a positive impact on society.

I believe that Hall Chadwick will benefit from a program such as this. Terry Sheehan, a noted RMIT Business Faculty academic stated that "RMIT Business has been involved in AIESEC for many years. AIESEC as an international youth organisation is viewed in a positive manner, particularly in its involvement in leadership development. Hall Chadwick is a well known accounting services firm that might be an appropriate link for RMIT." Hall Chadwick Melbourne is highly regarded amongst universities and secondary schools for the fact that it offers cadetships and co-operative placements. It is also now being commended for considering AIESEC as a program that can run through the firm. Hall Chadwick Melbourne, as a potential stakeholder of a program, means that it will be able to increase its profile, attract top talent, be part of a network of 89 countries and support AIESEC's efforts in enabling young people to develop and discover their potential.

In my view, what makes AIESEC different from other student-run organisations is that it gives students a different experience — the AIESEC experience which is an edge over other young people and what drives them to play valuable roles within their workplaces and communities. AIESEC continues to change me into a better person and to be able to reach my potential and this has helped in the development of me as an employee at Hall Chadwick.

If you would like more information in regards to the AIESEC program please contact Ruth Simon, Corporate Services, Hall Chadwick Melbourne on 03 8625 5200. Alternatively, contact your local Hall Chadwick office.

If you would like to receive this Hall Chadwick newsletter by email, identical in format and colour, then please contact Kylie Beaufoy at kbeaufoy@hallchadwick.com.au.

Alternatively, National Newsletter can also be viewed on our website.

IMPORTANT This is not advice. Clients should not act solely on the basis of the material contained in this Newsletter. Items herein are general comments only and do not constitute or convey advice per se. Also changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. The Newsletter is issued as a helpful guide to clients and for their private information. Therefore it should be regarded as confidential and not be made available to any person without prior approval.

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 Hall Chadwick

Chartered Accountants & Business Advisers

Other publications available from Hall Chadwick include:

Tax News:

News, views and tactical tips for individuals, small, medium and corporate enterprise (produced quarterly).

Finprobe:

Latest updates on debt recovery and insolvency-related issues (produced quarterly).

Best Practice:

Best practice management advice and information for Australian schools (produced quarterly).

Corporate Adviser:

Corporate advice and planning, legal and accounting updates for corporate enterprise, (produced quarterly).

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