

GOOD DECISIONS OR WISHFUL THINKING

THIS MONTH JONATHAN KAPLAN EXPLAINS WHAT YOU CAN DO TO MINIMISE RISKS ASSOCIATED WITH ATO OBLIGATIONS.

ALTHOUGH some doubt exists as to its origin, there is a proverb ascribed to the Chinese that goes something like this: "May you live in interesting times." It is often referred to as "the Chinese curse", a more powerful one being: "May you come to the attention of those in authority".

Not something you would lightly utter, on the off chance that it becomes a reality. You might just find your life a little challenging thereafter.

You could do without the wild fluctuations of the world stock markets, foreign debt crises, rampaging anarchy in the UK and, even here at home, rising unemployment, plummeting retail sales and polls showing little confidence in the government.

Certainly interesting times....and arguably a curse as well.

Do you ride out the storm or become a jibbering mess and just curl up in the foetal position? I guess it all depends on whether you have managed your affairs well in the past and put in place proper structures to deal with difficult times or whether you have run your business on the "wishful thinking theory".

Clearly wishful thinking is not an acceptable business or financial tool. By definition it is described as the

forming of beliefs and making of decisions according to what is pleasing to imagine instead of by appeal to evidence or rationality.

Donald Lambro, an American journalist, described wishful thinking in terms of a number of cycles: "the fantasy cycle", being a pattern that recurs in personal lives; "the dream stage", which occurs where one embarks on a course of action which is unconsciously driven by wishful thinking, and when all may seem to go well for a time; the "frustration stage", which occurs where make-believe can never be reconciled with reality; the "nightmare stage", which arises as things start to go wrong and there is a more determined effort to keep the fantasy in being; and finally the "explosion into reality"...which occurs as reality presses in and everything goes wrong, the fantasy finally falling apart.

Sound familiar? If it does, it's time to consider more scientific tools to conduct a financial and legal due diligence in an attempt to minimise the potential of any issues arising which might have the effect of your business going "pear shaped".

In just one example of this I recently had the unpleasant task of advising a long-standing employee of an apparently good business which had been placed into voluntary administration. Reason? The ATO had not been paid GST by the employer and nor had the employer paid the employees' superannuation. The ATO issued a Director's Penalty Notice (DPN). It seems to have been a case of the owners living beyond their means, getting caught on the treadmill of debt and using the daily takings for personal use. It's quite easy



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to fall into the trap. Nevertheless, it's one matter where creditors of the business extend their exposure and continue supplying in the hope that they'll get paid in the end.

Amendments have now been made to the tax law to cater for superannuation transgressions by companies. Under this new legislation a director who receives a DPN will become personally liable for their company's failure to pay employee superannuation. It is intended that this new legislation will act as a deterrent to employers who seek to utilise employees' superannuation

money for their own personal benefit.

What can you do to manage your business that minimises the risks associated with ATO obligations?

Keep accurate records to be able to calculate GST and employee superannuation entitlements; Pay these amounts by due date; As a director, ensure that you are aware of the dates for payment and ensure that proof of payment is provided to you by the employee whose task it is to do so; Seek an extension if you are unable to make payment on time; If you are financially stressed and cannot make payment seek legal advice on the available options.

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