



TAXTALK

Start-ups in tough times can be achieved

Many of today's successful businesses began in difficult economic times.

They had to be lean, adaptable and prepared to seize opportunities when they arose. They didn't have the luxury of boom times, when mistakes could be covered up.

Tough times are full of opportunities. The following is a true story about Murray, who returned to New Zealand to look after his ailing mother, who had recently become a widow.

Murray had been working in a bank in Australia. He was single and in his late forties.

One day he was building a boulder retaining wall at home when a neighbour stopped to chat. This led to him being asked if he would like another job. Soon another neighbour, also a widow, needed some help and the owner of a house across the road wanted his garden maintained while he went to Europe for two years.

A retired friend designed a flier and 150 of these were put in letterboxes. Murray said the flier didn't work very well because he got only two permanent jobs from it. He then added "but I did actually get a couple of one-off jobs as well".

A 2% strike rate from a flier would be pretty good, he was told.

Murray has also picked up a couple of cleaning jobs. Within nine months he has built up an income of about \$800 a week. To get started, he offered a below-market rate, but this was at least better than he would have got working for wages, if he could have found a job. Gradually, he's improving his charge-out rate as his business expands.

He was lucky not to have a family to support and to be living among an aging population in a reasonably affluent area, which is precisely where his target customers could be found.

What Murray did not have was a network, but he was able to take advantage of his mother's. A network supplies you with contacts and hence referrals. He also had no special skills to offer the market, but he took advantage of the opportunities as they arose.

Why do we tell you this story? Because, in the recent recession, many people have been made redundant. One may be your friend. Why not suggest they start out on their own? This way, like Murray, they'll have lots of bosses and if one makes them redundant, it may not matter too much.

There are many business solutions to assist small businesses in achieving financial success.

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Q: How 'full and final' is full and final settlement with cheque?

A: Someone asked this of the CCH Q&A team...

QUESTION:

A client has tendered a cheque to a supplier with a letter attached asserting that the payment is "in full and final settlement" of a disputed account. The supplier has banked the cheque but responded that it does not accept the offer.

Does the banking of the cheque amount to acceptance of the client's offer and can the client use this as a defence against further action by the supplier?

ANSWER:

Unfortunately for your client the position is not so straightforward.

The simple proposition that the banking of a cheque for less than the amount claimed constitutes settlement of the larger (disputed) debt is not a final answer. The courts have clearly indicated that each case will be viewed on the facts.

The cheque's recipient (ie the supplier) must indicate or reasonably imply by its actions that it accepts the cheque, subject to the condition that it is a final payment.

Two key issues must be considered:

whether there is a genuine dispute as to the amount owing, and

if the dispute is genuine, whether there is a sufficient delay in the supplier's response that gives the client reasonable cause to assume that its offer had been accepted.

Two distinct (albeit related) principles are also at issue: the principles of "delivery" and "accord and satisfaction".

The principle of delivery

The Bills of Exchange Act 1908 defines the key principles applying to cheques as well as to other documents that come within the broad legal definition of a "bill" (albeit in often very arcane language). Section 2 of this Act defines "delivery" as the "transfer of possession, actual or constructive, from one person to another". Delivery is always a necessary part of the negotiation of a cheque but s 21(1) of the Bills of Exchange Act makes delivery the necessary requirement to make the obligation to pay on a cheque binding. Section 21(2)(b) states that the delivery may be shown to have been conditional, or for a special purpose only, but also, in conjunction with s 21(4), makes it clear that this is rebuttable.

Ordinarily the payment of a cheque in full and final settlement (sometimes referred to alternatively as satisfaction), where it is not intended to be banked unless the proposal is accepted, is therefore meant to be conditional in nature. While delivery is usually a clearcut matter when dealing with cheques, it most commonly becomes an issue where a cheque for a lesser amount is offered to settle a debt. It is accepted that provided there is accord and satisfaction, causing a new agreement to

arise between the parties, such a cheque may be conditional. Accordingly, cheques can clearly be tendered with conditions attached.

The principle of accord and satisfaction

The principle of accord and satisfaction applies when there is an offer to vary contractual payment terms (eg the presentation of a cheque in full and final settlement).

To establish accord and satisfaction there must be a genuine dispute between the parties about the amount owing to begin with. The principle cannot apply where there is no reasonable basis for a dispute.

Once it is established that there is a genuine dispute, for accord and satisfaction to exist, a "meeting of minds" must be found to exist or, at the very least, the debtor (ie your client) must have good reason to think that the creditor has accepted payment in full satisfaction of the claim.

Both parties (the party paying by cheque and the party banking the cheque) must agree, by words or by actions, to be bound by the variation on the contract terms.

Whether an accord and satisfaction exists has repeatedly been recognised by the courts as essentially a question of fact. The banking of a cheque offered in final satisfaction creates a (rebuttable) inference of acceptance by the creditor (ie the supplier in the present case) but this is not necessarily definitive or binding if it is clear that the supplier did not intend to be bound by the offer. The longer the creditor delays in rejecting the debtor's offer, the harder it is for the creditor to refute the inference of accord and satisfaction. See *Turner's Horticultural Supplies Ltd v Waitui Holdings Ltd* (1992) 4 NZBLC 102,485, *Hutt City Council v New Zealand Railways Corporation* (1997) 6 NZBLC 102,320 and *Commissioner of Inland Revenue v Kadesh Farm Ltd* (2007) 23 NZTC 21,645.

In other cases the facts have suggested that there was no such level of agreement and, therefore, no accord and satisfaction. See, for example, *Budget Rent A Car Ltd v Goodman* (1991) 3 NZBLC 101,937, *Webster Developments Ltd (in rec and in liq) v Bassili* (1991) 3 NZBLC 102,176 and *Magnum Photo Supplies Ltd (in rec & in liq) v Viko New Zealand Ltd* (1998) 6 NZBLC 102,633. See also the discussion in the recent decision in *Northland Regional Council v Giles* [2013] NZHC 3396 (where the claim fell at the first hurdle because it involved rates, which, because they are charged according to a statutory entitlement, were not subject to a reasonable dispute).

CCH Q&A DISCLAIMER: Every care has been taken in the preparation of answers. However, the Question and Answer Service is intended to provide basic guidelines and information based on given fact scenarios and is not intended to constitute accounting, tax, legal, investment, consulting or other professional advice.

Income from boarders and flatmates

With housing in short supply in Canterbury, there's a growing trend for homeowners to take in private boarders or rent out a spare room or backyard sleepout. More relevant to us, university students commonly board or flat with others. Remember, you must pay tax on any profit (taxable income) you make from this activity.

If you have tenants renting a room in your house, including flatmates living with you, you must keep records of expenses and rental income and include it on your tax return.

For boarders, there are two ways you can work out the taxable income.

- Using the standard cost method, the weekly standard cost for one or two boarders is \$254 per week for each boarder. Any income that exceeds this will need to be included in your tax return. An easy way to work this out is by using the "Standard cost home-based boarding services calculator" in the "Work it out" section at www.ird.govt.nz
- If you opt to use the actual cost method, you will need to keep records and work out the taxable income by deducting a portion of your total household expenses from the total payments received.

For more information on boarders, tenants, flatmates and what expenses you can claim, see the Rental income (IR 264) guide at www.ird.govt.nz "Forms and guides".

When missing out creates opportunities

What do you do if you've missed out on a contract?

Stu is a real estate agent. He tried so hard to sign Norm up when he was selling his house. His was the best presentation. However, he didn't succeed.

When he found this out he wrote a very nice letter to Norm thanking him for being invited to tender this time and wishing him well with the sale of his house. Norm was so impressed he has told other people.

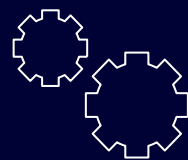
If Stu always does this (and you can bet he does), he'll inevitably get more referrals than he would have done. Stu is a top salesman. Surprised?

Amy is a top-flight caterer. She was invited to quote for a wedding. She missed out.

When she was told she had been unsuccessful, she asked (very nicely) why. She wanted to know what she could do better next time. Then, and this is the key, she sent an email to the bride and groom a short while before the big day wishing them the best.

Will she be remembered and get referrals? What do you think?

If you lose out when you've quoted, see if you can learn from Stu and Amy. Don't be sore about losing. Treat it as an opportunity to get more references.



FBT SOLUTIONS

Are you finding it a hassle to prepare your FBT returns? We have a solution for you. We can prepare and complete your FBT returns for you either quarterly or annually. Leave the hassle and stress of completing these confusing forms out of your life and let yourself concentrate on the areas of your business that you do best. Call us for a quote and more information.



WEB SOLUTIONS

Did you know that you could use an online folder to share your documents between computers and other devices? Dropbox lets you install a program on your devices and then any documents you put in your Dropbox folder will be shared across all devices! Any changes you make will be updated and you won't need a memory stick! The free plan gives you 2GB and you can earn up to 18GB.

Sign up at www.dropbox.com!



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Are you effectively managing all of your potential sales enquires? Do you have a system where you can record details of products your customers or potential customers may ask for but not currently sell? PROHUB CCM can help you with such enquiries. This system allows you to record which customers are asking for products that you don't currently sell and then generates a report which will tell you all of the enquiries and from which customers for a certain lines of products you don't currently sell. This allows you to quickly and decisively decide which new product lines you should or shouldn't take on. Call us today for more information on how this program could help you help your business prosper.

Overseas-based borrower changes from 1 April

If you have a student loan and are currently an overseas-based borrower, or if you are planning on going overseas, there are a few changes you'll need to know about that came into effect from 1 April 2014.

Two changes have been introduced to the way the IRD calculates annual overseas repayment obligations to help borrowers pay their loans off faster.

Increased repayment obligations

If a borrower's loan balance is over \$45,000 they'll now need to pay more towards their loan each year. This is to help them cover the annual interest on their loan and start repaying some of their loan principal. The new loan balance and annual repayment obligations are outlined in the table below.

Total loan balance obligation	Annual repayment obligation
≤ \$1,000	Total loan balance
> \$1,000 to ≤ \$15,000	\$1,000
> \$15,000 to ≤ \$30,000	\$2,000
> \$30,000 to ≤ \$45,000	\$3,000
> \$45,000 to ≤ \$60,000	\$4,000
> \$60,000	\$5,000

Fixed repayment obligations

Overseas-based borrowers will now have a fixed minimum repayment obligation that will no longer decrease as their loan balance decreases. Their fixed minimum repayment obligation will be based on their loan balance as at:

- 31 March 2014 (if they're already an overseas-based borrower), or
- the day of their departure (if they leave New Zealand on or after 1 April 2014).

Each year you are an overseas-based borrower, the IRD will check your loan balance at 31 March. If your loan balance has increased, your fixed minimum repayment obligation will increase (to a maximum of \$5,000) and stay at that rate until you've fully repaid your loan or you return to New Zealand and become a New Zealand-based borrower.

You may get stopped from leaving New Zealand

If you are an overseas-based borrower and haven't been meeting your repayment obligations, you may be stopped from leaving New Zealand next time you visit.

The IRD will attempt to contact you while you're in the country to discuss your loan arrears and arrange repayment. However, if you knowingly fail or refuse to make a reasonable effort to pay or make an arrangement despite having the ability to do so, the IRD can request an arrest warrant through the Courts and you may be stopped at the border before your departure.

If you are unsure or concerned about how you may be affected by this change, you should contact the IRD to discuss any outstanding obligations.

Quick Quote

The only man who sticks closer to you in adversity than a friend is a creditor.
~ Unknown



Stephen Larsen and Co

TAX AND BUSINESS ACCOUNTANTS

Important: This is not advice. Clients should not act solely on the basis of the material contained in the Tax Talk Newsletter. Items herein are general comments only and do not constitute nor convey advice per se. Changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. The Tax Talk Newsletter is issued as a helpful guide to our clients and for their private information. Therefore it should be regarded as confidential and should not be made available to any person without our prior approval.

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We care about your Business Prosperity