

Health Adviser

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The sale of the century - or is it?



When selling your practice, it is not the most desirable time for practice owners to demonstrate their “Kiwi DIY” ability.

For many they are selling their second most valuable asset beside their home. You wouldn't attempt to sell your home without professional advice, so why would you sell your business without professional advice from both your chartered accountant and lawyer?

Surprisingly many attempt to go it alone. Almost 100% of the time these heroic efforts come unstuck, often resulting in greater professional costs for both seller and buyer, let alone embarrassment and stress for the seller. If you sign up to an agreement to sell, you are legally bound by the terms unless the buyer is benevolent enough to agree to an alteration. In many cases a buyer will not agree to variations if it means greater cost to them.

Many believe that the biggest hurdle to overcome is agreeing a selling price. Whilst that maybe the case, make sure you enter negotiations fully armed with sufficient knowledge of what your practice is really worth. Time and time

again we hear of practitioners assessing the value of their practice based on what their neighbour sold theirs for. Unless you have an indepth knowledge of the financial position of your neighbour's practice we would not suggest using the local rumour mill as a reliable database of practice values. Typically practitioners often rely on anecdotal information of what practices may have been selling for five to ten years ago and fail to get up to date information on the current value of their own practice.

The second most common mistake is failing to understand exactly what you are selling. This may sound surprising, however a large proportion of practices are owned under complex structures which can mean that the “sale of your practice” is not as straight forward as perhaps first thought. For example, your personal company may own the goodwill and yet the chattels may be owned by a company involving all the practitioners in a group. The lease of premises may

also be under the group company. In fact, you may well have to get the permission of your fellow shareholders before you can even contemplate closing the deal of the century. When thinking about selling, it might be a good time to revisit the shareholders' agreement signed so many years ago, and remind yourself of what your obligations are.

If the chattels, goodwill and lease are not all held by the same entity, you will be dealing with more than one transaction, ie two or more sale and purchase agreements. This is an example of the potential complexity of some transactions and the need for

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good professional advice to make sure everything goes smoothly. The next question is usually, “am I selling a going concern?” Most people automatically assume they are. However in our experience given the complexity of many practice structures, more often than not, they are not selling a going concern for GST purposes. The impact of that can be significant, particularly for the seller if the wording of the agreement does not give you the ability to seek the GST retrospectively from the buyer. You could be left handing over one ninth of the sale proceeds to the Government.

What else can go wrong?

- No lease in place for the premises or having the lease in the wrong name. The transfer of the lease will be key to qualifying as a Going Concern for GST purposes.
- No management services agreement between practitioner’s own company and group entities which may employ staff and provide facilities.
- Lack of employment contracts; failing to consult with staff.

- Failing to give adequate notice to locums who may have significantly longer notice periods than a typical employee.
- Taxable depreciation recovered arising on sale of chattels.
- Landlord won’t agree to an assignment of the lease to the buyer.
- Some of the chattels being sold are subject to charges arising under finance leases or HP arrangements.
- Loss of imputation credits due to a significant change in shareholding of a company.
- Loss of Loss Attributing Qualifying Company status (LAQC status) due to failing to re-elect LAQC status and failing to notify change in shareholding to IRD within the required time period.
- Losing ability to carry forward tax losses as a result of a significant change in shareholding.
- Not understanding what circumstances a Deed of Accession and extension of insurance cover is required.

- Lack of clarity around ownership of any monies owing to the vendor by either the PHO, ACC or patients at time of transfer.
- Failure to get a prospective buyer to sign a Confidentiality Agreement to cover your privacy whilst you are disclosing confidential business and financial information to them. Remember that not every approach will result in a sale, so you need to protect your confidentiality.
- Finally, remember that if a company sells goodwill to an associated entity that can also create unwanted taxation consequences, hence the need to consult early on any proposed sales.

Getting your chartered accountant and lawyer involved during the sale process is key to minimising stress for yourself and maximising the final sale price that can be extracted. Engage the professionals to do what they do best and then you can get on with ensuring the transition process for patients and staff is as smooth as possible.

Aged residential care service review

The aging of New Zealand’s population poses profound challenges for our society.

This social phenomenon is already beginning to impact a myriad of social services, with perhaps the most obvious being aged residential care.

New Zealand currently provides approximately 34,000 beds for a population of over 65s that numbers some 500,000. As the population over 85 is forecasted to increase by more than 40% in this decade, substantial demand for residential care seems likely. The challenge is determining how New Zealand can meet the needs of consumers of these services in an environment that is sustainable both for funders and providers of care.

The cost of providing services in residential care is high. In New Zealand

these services are largely government funded. This combination of high costs, large increases in likely demand and the significant role of government funding presents a significant challenge for our nation. There is a shared commitment by government and providers of these services to addressing funding requirements, policy tradeoffs, and service delivery options in the sector.

The 21 District Health Boards in New Zealand (DHBs) and the aged residential care sector are aware that better data regarding incentive structures and best practices in service delivery are necessary to ensure that New Zealand can meet the needs of its aging population. This awareness has prompted the DHBs and aged residential care providers, to join forces to undertake a service review of the aged residential care sector, as part of the overall consideration



and planning that will need to apply to services for older people and New Zealand’s wider older people’s strategy.

This service review is being undertaken by outside consultants, and up against some stiff competition, was recently awarded to Grant Thornton.

The review process is rigorous, and encompasses a balanced approach based on a financial survey to develop performance benchmarks and a costing model for delivery of services in the

sector, as well as supply and demand forecasting, consideration of models of care and workforce requirements to determine options for efficiently meeting the care needs of older people in the future.

The review objectives are to;

- indicate the costs for fair and reasonable service delivery models provided by an efficient and effective provider; and

- assess the current and future demand for services against the current and future service delivery models of care available, and indicate the resources required to meet such demand.

With an established reputation (both local and international) in the aged residential care and health sectors Grant Thornton is delighted to have

been awarded the job of conducting this review. It will take around 12 months to complete and is likely to influence government policy and private investment decisions in the sector for years to come. Grant Thornton is proud to be involved in the review and is committed to providing the best outcome within the scope of the project.

More help for wounded companies this time around

Having witnessed the carnage that followed the 1987 sharemarket crash and having worked with many clients through the present prolonged recession, the one big difference is that the ambulance that was forever at the bottom of the cliff from 1988 to 1992 attending to casualties, is now spending much more time at the top of the cliff.

Yes, there are still companies receiving mortal wounds, but this has been more a battle based around nursing the casualties back to health than digging graves.

There are several reasons for this, but perhaps the most important has been the willingness of the banks to work with distressed businesses to try and help them through these rough waters rather than pushing them under and into receivership.

However, early intervention is still critical. Individuals and companies in trouble, when talking with their advisers and banks, must be brutally honest about their situation. Hope is not a strategy.

Many businesses that are surviving and slowly starting to recover today would never have made it this far post '87.

Why the difference? There are probably five key reasons. In 1987 the New Zealand banking system was far less robust than it is today. Even with what has happened to banks globally this time round, New Zealand has never got close to the BNZ bailout necessary back in the late 80's.

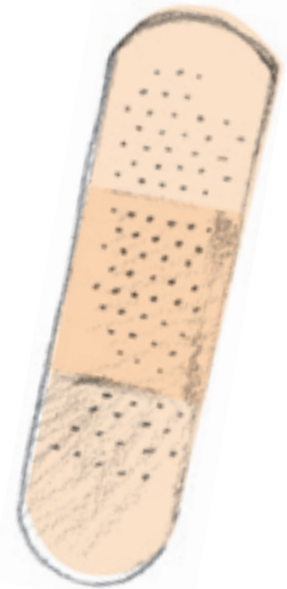
The recent demise of many finance

companies has meant that both the banks and companies have had to work together this time around as there are basically few or no alternatives.

In the 1980s banks concentrated more on market share rather than the quality of loans. True also in recent times although those focusing on market share acquisition are the ones hurting the most this time round. Compared with 20 years ago, there were more second-tier lenders around this time who took the major hits, thereby cushioning the banks.

The sharemarket had a Wild West reputation in 1987 with poor regulations, controls and lack of transparency compared with today where it is already starting to regain the ground lost over the last 18 months. The same could almost be said of finance companies in the 21st Century.

The final, and perhaps most important factor, is that there are still plenty of client advisers around today who experienced the grief of 1987 and who have learned from it. When the 1987 crash occurred, the only other similar occurrence had been the Great Depression of the early 1930s, but that had been 50 plus years earlier.



Post 1987 it was all about selling assets because the company was in receivership. Today, thanks to the willingness of the banks to work with their clients, business advisers have more tools available to them to assist clients in addressing the challenges faced by both the business and the people involved.

While these are extremely conservative times, you have to learn to take calculated risks, as after all, that is what business is about – risk and reward, although sometimes people don't get the reward for the risk taken.

Should we ever encounter such tough times in the years ahead, the accountants and business advisers that have helped companies plot a safe course through today's difficult economic conditions, will be even more battle-hardened and appropriately skilled to push the ambulance even further back from the cliff edge.

SMEs to benefit from new standards

Compliance relief could be at hand for small and medium-sized entities in New Zealand if they are allowed to take immediate advantage of a new standard that has just been published by the International Accounting Standards Board (IASB).

The new standard, aptly named International Financial Reporting Standard for Small and Medium-sized Entities (IFRS for SMEs), provides a substantially simplified set of accounting principles that would be suitable for many businesses that operate locally and internationally, as well as many public sector entities and not-for-profit organisations.

The release of this standard is very timely because the Ministry of Economic Development and the Accounting Standards Review Board have just released discussion papers outlining future financial reporting obligations for SMEs in this country.

Some might say that what the IASB has just released does not go far enough to reduce the costs of compliance, but it does provide a useful platform to discuss what New Zealand should do next when

it comes to financial reporting.

Sentiments in New Zealand mirror those in Australia. Over 90% of the clients who attended our recent IFRS seminars held in Auckland, Wellington and Christchurch indicated that 83% of respondents were in favour of a move away from all the complexity present within a full set of International Financial Reporting Standards (IFRS) financial statements.

It took the IASB more than five years to complete this SME standard which is about one-tenth of the length of full IFRS. The number of potential disclosure items will be nearer to 300 than the current 3,000 to respond appropriately to user needs and still be faithful to the financial principles it was using to develop IFRS.

Any move away from current practice to what the IASB has just released for SMEs will, of course, require careful consideration. Despite these challenges, Grant Thornton believes any short term disruption will be outweighed by the longer term benefits.

Notwithstanding we have Differential Reporting, hopefully New Zealand standard setters will quickly move to allow non-listed companies to replace the cumbersome full IFRS suite of accounting standards with the much more simplified IFRS for SMEs accounting standard if they so wish.

For IFRS advice contact specialist Mark Hucklesby on **(09) 308 2534** or via email **mhucklesby@gtak.co.nz**



If you require further information on any of these topics or would like details on other accounting matters, contact your local Grant Thornton office:

Auckland
Level 4, Grant Thornton House
152 Fanshawe Street
Auckland 1140
T 09 308 2570
F 09 309 4892
E info@gtak.co.nz

Wellington
Level 13, AXA Centre
80 The Terrace
Wellington 6143
T 04 474 8500
F 04 474 8509
E info@gtwn.co.nz

Christchurch
Level 9,
Anthony Harper Building
47 Cathedral Square
Christchurch 8140
T 03 379 9580
F 03 366 3720
E info@gtch.co.nz

www.granthornton.co.nz

Double tax agreement

A new double tax agreement between Australia and New Zealand took a major step forward with the signing of an agreement in June, that once in force, will replace the existing 1995 double tax agreement. The agreement will come into force once both countries have given legal effect to it, which in New Zealand will occur through an Order in Council, expected to be signed later this year. Once passed the new agreement will provide relief in three main areas:

1. Lower Withholding Tax on certain dividends

The standard withholding rate on dividends will stay at 15%, but will reduce to 5% for an investing company that has at least a 10% shareholding in the company paying the dividend. The rate will reduce to 0% if the investing company holds 80% or more of the

shares in the other company and meets other criteria.

2. Lower Withholding Tax on Royalties

The withholding tax payable on gross payments of royalties will be reduced from 10% to 5%.

3. Pensions

Pensions that would be exempt in the home country will be exempt in the other. Lump sum pension benefits will be taxed only in the country in which the pension is sourced, not in the country to which the pensioner has retired. Currently, there is a problem of pensions that are tax-free in one country but taxable in the other, which arises when pensioners move across the Tasman.

Health Adviser - Electronically

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