Be Informed

STRATEGIC THINKING | TAILORED ADVICE | INTEGRATED SOLUTIONS

— The tax advisers guide to part IVA
— What women want – financial advice for women
— ‘Capital gain’ deemed to be a revenue gain – why intent is important
— Developing a high powered mind
— Employee fraud – the red flags
— Executing your responsibilities
— Taxing times or overdue reform?
— Target practice – maximising the value of an acquisition
— 5mins with… Mark Laucke
— Demystifying enterprise-wide risk management

The spring edition
A message from the Managing Director

Welcome to the spring edition of Be Informed

It is again my pleasure to welcome you back to our latest edition of Be Informed, which contains a collection of articles that we consider to be business informative, current and topical for our clients and friends.

In this issue we explore the impact that the change of Federal Government is likely to have on future tax laws and policies. Whilst these changes are yet to be passed by the Senate they will potentially have a significant impact on all businesses.

Our dear friend and long standing client Derek Leddie provides his insights on using both meditation and yoga to improve resilience and creativity amongst senior executives. Our Directors have been working with Derek and Samantha over the past six months and have found there has been a considerable positive impact amongst the team.

Our article on maximising the value of acquisitions is also a recommended read as businesses have the potential to gain a competitive edge at a time where merger and acquisition activity is at a low.

We are also delighted to announce that, Greg Travers, our Head of Tax, has written a book titled ‘The Tax Advisers Guide to Part IVA’ which will be published by The Tax Institute shortly. In writing this book Greg has further illustrated the esteem in which he is held by industry bodies for explaining complex issues in a way for all to comprehend.

As always, I appreciate your thoughts, if you have any feedback about this newsletter or any of our services, please contact me directly at Nikolas.Hatzistergos@williambucknsw.com.au. Whilst we always ensure that our information is accurate and well researched, advice tailored to your own situation should be obtained. Please contact your client Director of choice to discuss your specific circumstances.

Best Wishes

N.T. Hatzistergos
Managing Director

The tax advisers guide to part IVA

We are excited to inform you that Greg Travers, our NSW Head of Tax has authored a book titled ‘The Tax Advisers Guide to Part IVA’ which will be published shortly by The Tax Institute.

Part IVA is a general anti-avoidance provision in the income tax laws. It contains the rules that the Australian Taxation Office (ATO) apply to distinguish between legitimate tax planning and unacceptable tax avoidance.

The tax implications of every transaction and the effectiveness of all tax planning is ultimately determined by Part IVA. In a way, it is the most critical provision in the whole of the tax laws.

The Government has recently passed the most significant amendments to Part IVA since it was first enacted in 1981. The amendments are a reaction to a series of court cases that the ATO lost and which, in the view of the Government, exposed issues with the way in which Part IVA was being applied.

The need for these amendments and their impact on taxpayers will be debated for years to come. What is certain is that the amendments fundamentally alter the playing field when it comes to tax planning and choosing tax effective commercial options.

There has been a lot of technical and academic analysis of Part IVA but little focus on the practical aspects that impact on taxpayers every day. That is the gap that Greg’s book is intended to fill. The book is one of the most comprehensive publications available on Part IVA.

The publication of this book continues William Buck’s history of being at the forefront of the tax profession and sharing our knowledge and expertise with others in our profession and the broader business community.

As well as authorising this new book, Greg and the tax team at William Buck are regularly invited to present at conferences and events by The Tax Institute, the Institute of Chartered Accountants and other bodies. They are particularly well regarded for their ability to explain complex tax issues in an understandable and practical way.

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Pictured above: Nikolas Hatzistergos, Managing Director

PAGE 2 _THE WILLIAM BUCK NEWSLETTER
Worldwide, women are increasingly making the key financial decisions – yet research shows they are often held back by a lack of confidence in their investment knowledge.

Can financial advice help bridge the gap?

It’s been dubbed ‘The Female Economy’ – the emerging trend of women increasingly more making the majority of spending decisions.

Women now control around $20 trillion in annual consumer spending globally1. In the United States, 80 per cent of consumer purchasing decisions are made by women2. Closer to home, women make up 46 per cent of Self-Managed Super Fund (SMSF) trustees3.

But while women are making leaps and bounds in terms of managing their finances, research shows they are often held back by a lack of confidence in their investment knowledge.

A recent survey showed that just over 20 per cent of women feel very confident that they have a good financial plan for the future. At least six in ten worry about their financial future at least monthly4.

This lack of confidence is complicated by broader market factors that can often leave women in a more financially disadvantaged position than men. Women typically earn less than men, yet live longer.

Many also experience punctuated career cycles meaning they are underprepared for retirement. When they do retire, the average payout is 43 per cent less than their male counterparts5. For small business owners, the statistics are particularly stark. Around 53 per cent of self-employed females – that’s 700,000 women in Australia – do not contribute to superannuation6.

Of course, the true value of advice goes beyond a single financial plan. It’s found in the ongoing relationship between the client and advisor, where the advisor guides, mentors and supports their client to achieve their financial and lifestyle goals.

Education is another key ingredient of good advice – the advisor’s ability to make the complex simple and encourage confidence in financial decision making. The end result – heightened confidence in personal finances – is of course positive for the individual. But it’s also good for the global economy, with full participation from both women and men reported to produce stronger economic growth, social cohesion and prosperity8.

1 The Female Economy', Harvard Business Review (Blog), 2009
2 Why Women Mean Business', Wittenberg-Cox & Maitland
3 Female SMSF trustees narrow gender gap', Financial Standard, 2013
4 Westpac Women’s Markets Survey, 2011
5 Get on board for Super Equality, Fin Review 2012
6 Australian Women Chamber of Commerce & Industry survey
7 KPMG Econtech: Value Proposition of Financial Advisory Networks, 2009
8 Removing barriers to women’s participation fuels economic development', UN Women

This creates a risk that many women may outlive their savings and be unable to manage their current lifestyles in retirement.

Together these factors highlight the need for good planning early on – both to increase women’s confidence in investing and also to achieve financial security that’s on par with that of men.

The role of advice to help bridge this gap is key. Women and families who obtain financial advice are reported to be happier, wealthier and have more control over their finances than those who don’t. A recent survey by KPMG found that Australians who have a financial planner saved more and have a greater investment balance than those who do not get advice7.
‘Capital gain’ deemed to be a revenue gain – why intent is important

A recent case has shown that a taxpayer’s intent at the time of purchasing a property can have a significant effect on the final tax outcome.

Where a rental property has been held for over 10 years, few taxpayers would expect to pay tax on the full amount of the gain on disposal. In these circumstances, taxpayers would expect to have made a capital gain which (having been held for over 12 months) would be eligible for a 50% discount.

In a recent decision by the Full Federal Court, however, the length of time a rental property had been owned was deemed less significant than other factors in deciding the tax outcomes. Rather, the Court looked at the original intent of the taxpayer and determined the gain on sale to be ordinary income (not a capital gain) to which no capital gains tax discounts could be applied.

Understanding assets and gains
An asset will generally fall into one of three categories each of which will result in a different tax outcome on sale as shown below:

A capital asset
A capital asset is generally acquired for the purpose of deriving an ongoing stream of income from the use of the asset (even though a gain may be made on the eventual sale of the asset). The disposal of a capital asset will give rise to a capital gain or capital loss.

Trading stock
The term trading stock applies to any assets traded in the ordinary course of business. Proceeds from the sale of trading stock will be assessable on revenue account.

An asset used in a profit making scheme
These assets are generally acquired with the intention of deriving income or profit from the sale of the asset. Gains or losses on disposal will be assessed on revenue account.

The distinction between each of these categories is crucial in determining the tax outcomes arising on sale. A capital asset may be eligible for discounts or concessions which reduce the assessable amount of any gain on the eventual sale. Where a resident, individual or trust has held a capital asset for greater than 12 months, they will generally be eligible to reduce the assessable amount of any gain on disposal by 50%.

Conversely, the sale of trading stock or an asset used in a profit making scheme will be on revenue account as the intention is to derive income or profit from the sale of the asset. Generally the entire amount of a revenue gain will be assessable.

Why intent is important
The recent August case highlights the importance of the taxpayer’s intent in determining the categorisation of assets and their tax treatment.

In the August case*, a small strip of shops was acquired in the late 1990s. Shortly after acquiring the properties some of the shops were leased to a supermarket operator, a hairdresser, and a butcher on five-year leases with options to extend the lease. Prior to leasing the properties some renovations and extensions to the properties were required.

During the early 2000s, surrounding land including land previously used for car-parking, was acquired by the taxpayer. Additional shops were constructed on these properties and leased to restaurants on five-year leases (with options to extend the lease).

Shortly after the last of the shops was tenanted, the taxpayer entered into discussions with a real estate agent regarding the best way to dispose of the properties. After a lengthy process, the properties were finally sold in early 2007.

Although the shops had been held for a significant period of time, the Commissioner of Taxation (and ultimately the judges in the Full Federal Court) was not satisfied that the shops had been acquired as long-term capital assets.

Instead, they found that it was more likely that the properties had been acquired as part of a profit-making scheme with the principal intention being to develop, tenant and sell them for a profit. Accordingly the sale was not deemed to give rise to a capital gain and therefore not eligible for a 50% discount.

In coming to their conclusion, the judges considered two factors as being crucial:
05 — Developing a high powered mind

Most businesses aspire to building a highly talented, ultra efficient, creative and resilient senior management team. Yet many indicators suggest that the corporate mind is under intense pressure and struggling to cope with stress. Derek Leddie and Samantha Graham are this edition’s guest columnists, exploring how meditation can help build resilience and assist in developing a high powered mind.

In Australia, more than $133.9 million was paid in benefits to workers who made claims relating to workplace stress during the 2004/2005 tax year. Indicators suggest that this is significantly increasing. Talk with your senior team and many, in a quiet moment, will admit that they are struggling.

The last 20 years has seen a plethora of corporate wellbeing programs introduced. From full day innovation workshops, to motivational seminars and corporate team building exercises; we’re witnessing a range of programs designed to deliver smarter, integrated, healthier, creative workforces.

In stressful situations, having meditation tools can allow you to pause and use the breath to calm the nervous system rather than reacting instantaneously. After just a short time, people can allow you to pause and use the breath to calm the nervous system rather than reacting instantaneously.

While holding an asset for a considerable period of time may seem to indicate that it is a long-term capital asset, the intention of the taxpayer at the time of acquisition (and throughout the ownership period) is the more crucial aspect.

Documenting the intent and purpose prior to the acquisition and throughout the holding period is important if the matter is challenged by the Commissioner of Taxation. Factors to address include:

— How is revenue or profit to be generated from the asset?
— What is the likely holding period and do the surrounding facts support this intention?
— What does the loan documentation say? Arguing that an asset is held on capital account if your mortgage documentation suggests that the property is being held for a shorter term property development is likely to be a challenge.
— How much development or redevelopment of the property is required and how close to the time of sale will this occur?
— When did you first engage the services of a real estate agent in relation to the proposed sale of the property? Even though a sale may not take place until years after first contact with an agent, the engagement of a selling agent may be sufficient to indicate the intention of the taxpayer.
— Consistency of accounting treatment. Where a taxpayer changes the treatment of an asset from being on revenue account to capital account in the years leading up to sale, the change would need to be consistent with the surrounding factors and intentions.

Should you require assistance in determining the tax treatment of an asset sale, please contact your local William Buck advisor.

Dr Samantha Graham has trained many people in the skill of meditation. Samantha has developed her own approach to mediation called Freestyle Meditation.

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04 — 'Capital gain' deemed to be a revenue gain – why intent is important (cont.)

— Prior to acquiring the properties the taxpayer had sought considerable advice and assistance from a friend who was a successful property developer. The friend explained in detail how he had been successful in buying, developing, leasing and then selling property. The Court believed that the taxpayer was looking to emulate this approach; and

— The value and sale of the shops was investigated in detail once the last of the shops was tenanted. The judges felt the most plausible explanation for this was that it was part of a profit making scheme of purchasing, developing and securing long-term tenants and then selling the property.

How does this case impact on taxpayers?
The August case provides an important reminder that care needs to be taken when classifying an asset as being on capital account or revenue account. Ultimately, the taxpayer has the burden of proof in demonstrating their position is correct. Where possible, detailed advice on the likely tax treatment should be sought prior to acquiring an asset.

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*August v Commissioner of Taxation [2013] FCAFC 85
Employee fraud — the red flags

In 2012, Australian businesses lost over $372 million to fraud, 75% of which was committed internally. It is estimated, however, that the true cost of employee fraud to the economy could run into billions of dollars.

Many businesses, both large and small, overlook basic control procedures, leaving the door open for opportunistic employees. Recognising the most common types of fraud and how to spot them could save your business a lot of time, money and heartache.

The most common types of fraud include:

- Manipulation of source data including pay rates, new suppliers or employees and bank accounts.
- Falsifying invoices and expense claims.
- Electronically transferring funds into personal accounts.
- Receiving ‘kickbacks’ from suppliers.
- Creating unauthorised accounting adjustments to the financial statements.
- Misappropriating company assets or inventories.

A typical fraudster
Unfortunately, due to the nature of employee fraud, the typical fraudster is usually a long-term employee who is in a position of trust. Often the business owner or management team do not adequately oversee or are unaware of what the individual’s duties involve.

In harder times we tend to see an increase in fraud as fraudsters find it easier to rationalise their actions and are more motivated to engage in misconduct to maintain their own lifestyle requirements.

Preventing fraud
The best way of managing fraud is to prevent it. If we take the payroll function as an example, segregation of duties becomes exceptionally important. If we assume that a payroll officer is able to create employee records in the accounting system, input their pay rates and process payroll electronically through the business’ bank account, then the door is open for this employee (if so inclined) to commit fraud.

When a fraud is detected, there is generally a flaw with the business’ internal controls.

He or she could simply adjust their own pay rate or create a false employee with their own bank account.

A more robust system would involve a segregation of duties. For example, the human resources manager may be responsible for creating new employees and the finance manager may be responsible for approving all bank transactions.

Some simple measures to enhance your internal controls include:

- Ensuring that employees processing transactions are unable to access, create and amend source data within the system and are unable to access and process physical payments.
- Enforcing independent authorisations and approvals specifically around the bank reconciliation process, creditor payments process, credit note issuance and expense claims.
- Ensuring physical restrictions are in place with regard to accessing cash, cheques and valuable assets or inventories.

Moreover, having a well communicated and clear fraud policy in addition to procedures to detect fraud is paramount to prevention. Employees are less likely to commit fraud if they know that the business undertakes regular monitoring of their records such as:

- A regular review of source data.
- Intermittent review and sign-off on departmental staff details and supplier details by operational managers.
- Regular analysis of management reports.
- The use of computer based audit techniques that can identify discrepancies within your accounting system and source data.

Red Flags
Some of the red flags that business owners should look out for include:

Key people never taking leave
The majority of fraudsters work alone. Many are afraid to allow another staff member to take-over their responsibilities for fear of being caught out.

Results that don’t meet expectations or trends
It’s important to be aware of trends in your industry and to stay on top of forecasted results. Where there is no reasonable explanation for a fall in results a fraud may have been committed.

Poorly documented transactions
Poorly documented or delayed reporting could be indicative of the misappropriation of assets.

Late bank reconciliations
Some cases of fraud may be particularly complex, involving the creation of false suppliers or manipulating underlying payment details. Where bank statements are reconciled late, matching transactions can be more difficult.

Keeping on top of reconciliations will allow you to more easily detect a fraud before it runs out of control.
Many people think it’s a compliment to nominate a family member or loved one as the executor of their estate. The reality, however, is that the duties placed on the executor can be challenging, demanding and time consuming. This additional responsibility may be more of a burden than a privilege at a time when someone is grieving a loss. Careful consideration should be given when appointing an executor or agreeing to act as an executor to an estate.

What is an executor?
An executor is appointed by the maker of a Will to carry out the directions specified in the Will, and administer the estate. An executor can be an individual or a trustee company.

An executor must comply with a number of legal requirements as specified in each jurisdiction. Failure to do so could lead to personal liability.

What are the duties and responsibilities involved?
Locate the Will and notify beneficiaries
The executor must locate the deceased’s original Will and notify any beneficiaries.

Preserve the estate
The executor must identify all assets in the estate and ensure that they are safe and adequately protected. Should an asset be damaged through action or inaction, the executor will be personally liable. There have been circumstances where the executor has been personally liable for assets that have been stolen or damaged.

The preservation of the estate can become particularly complex where the deceased was running a business.

Obtain Probate
Probate is a legal process by which the Will is validated and authority to administer the estate is given. It is often necessary to apply to the Supreme Court in your state to obtain Probate.

Identify and value all assets
The executor must identify all assets in the estate and verify their values. This is done by making the necessary checks with institutions such as banks, building societies, insurance companies and share registries. In some circumstances (particularly where there is the division of an asset such as a business or property) an independent valuation may be required.

Lodges a final income tax return
Before a deceased estate can be distributed the executor may need to lodge a tax return to the Australian Tax Office on behalf of the deceased.

Pays creditors
Any outstanding debts must be paid prior to the estate being distributed to beneficiaries. As part of the process of obtaining probate the executor must prove that he or she is aware of all outstanding debts.

The order in which debts are paid will be dependent on whether the estate is solvent or insolvent. In neither case, however, is it up to the executor to determine whether a particular debt has priority over another debt. In the case of an insolvent estate, funeral arrangements, Probate and administration fees will be paid first.

Distributes the estate
Following the payment of any creditors, the executor will distribute the assets to the estate’s beneficiaries. The executor may also be required to establish a trust for a beneficiary under the age of 18 or a beneficiary who is mentally incapacitated.

Dealing with contests
The executor may also need to defend the estate in circumstances where the Will is contested. Anyone wishing to make a claim against the estate must do so within twelve months of the deceased person’s death.

Considerations when appointing an executor
The role of an executor can be very demanding. It is important that the individual appointed has the necessary legal, accounting and taxation knowledge to comply with both the legal requirements and your wishes.

Some points to consider when appointing an executor include:
— Does the individual have the necessary legal and accounting knowledge to undertake the task?
— Could there be a conflict of interest between the executor and any of the beneficiaries?
— Could the appointment place an unnecessary burden on the chosen executor?
— Have you made your wishes clear in your Will?

For more information please contact your local William Buck office.
A number of measures implemented by the previous Government will be repealed, while other measures which were announced but not yet implemented will be discontinued.

We’ve reviewed the available information on the new Government’s plans and identified some of the key elements that you need to be aware of.

It is worth remembering that of the measures that formed the core of the Coalition’s campaign, it is difficult to assess when (and whether) they will be passed by the Senate and to what degree the announced plans will be amended.

The mid-year economic and fiscal outlook (which is scheduled for release in November but may be delayed until the new year) is likely to provide much more detail on these measures and in particular, the time from which they will take affect.

**Corporate**

**Company tax rate**

It is expected that the company tax rate will be reduced to 28.5% from 1 July 2015. This is currently expected to apply to all corporate taxpayers, large or small.

**1.5% levy on large companies**

To fund the Paid Parental Leave (PPL) scheme (see below), the new Government plans to impose a 1.5% levy on all companies with a taxable income of more than $5 million. This is forecast to affect approximately 3,000 companies.

The intent is that combined with the company tax rate cut outlined above, a large company that is subject to this levy will not pay any more tax than they are presently paying.

The owners of affected businesses, which will include many ‘mid-size’ private businesses, will suffer an increase in the effective tax rate paid on business profits of the companies that they hold shares in.

There is not a lot of detail on how the funding aspect of the PPL scheme will work and it is quite likely that the mechanism as currently announced will be amended somewhat before it is implemented.

**Carry-back of company tax losses**

The new Government intends to repeal the tax loss carry back measure which was introduced in the 2012 Federal Budget and enacted in June 2013.

This measure allows companies to carry back up to $1 million of losses from the current financial year to offset tax already paid in respect of preceding years.

Introduction of this measure (announced in the 2012 Federal Budget and enacted in June 2013) brought Australia closer in line with many other countries which have similar (although usually more extensive) loss carry back rules.
The abolition of these rules is not so much due to the new Government disagreeing with the tax policy but rather that the change was funded from the revenue of the Minerals Resource Rent Tax (MRRT) which it intends to repeal.

Fringe Benefits Tax (FBT)
The new Government has declared that it will not proceed with the previous Government’s announced changes to the FBT regime which removed the statutory formula method for determining the FBT applicable to motor vehicles.

Small business
Instant asset write-off and accelerated depreciation for motor vehicles
Small business owners will be disappointed by the proposed removal of two valuable tax concessions:

— The instant asset write-off which allows small business taxpayers to claim the entire cost of an asset (including motor vehicles – see below) less than $6,500 as a deduction in their tax return.

— For motor vehicles costing $6,500 or more, the rules provide an immediate write-off for up to $5,000, with the balance being depreciated under a concessional ‘pooled’ depreciation rate of 15% for the first year, and 30% thereafter.

Grants
Research and development (R&D) tax
The R&D tax incentive scheme will be reviewed. The review is likely to include a reversal of the plans to abolish the R&D incentive for entities with a turnover of over $20 billion and a push for companies to make profits from their Intellectual Property as seen in the United Kingdom.

Export Market Development Grants (EMDGs)
It is expected that the EMDG program will receive further funding, starting with an initial instalment of $50 million.

Individuals
Paid parental leave (PPL)
The PPL scheme proposes to provide new mothers with 26 weeks of paid parental leave at their actual wage (capped at $150,000 per annum) or the national minimum wage (whichever is greater). The plan would allow a new father to access the paid leave if the mother did not, but the payment would be based on the mother’s income.

It is estimated that the scheme will cost $9.8 billion and will largely be funded by a 1.5% levy placed on larger companies (see above).

Following concerns that new mothers are disadvantaged in respect of their superannuation, the new Government has proposed that compulsory superannuation will continue to be paid on top of the PPL.

It is proposed that the PPL be introduced on 1 July 2015.

School kids bonus
The school kids bonus introduced in last year’s budget will be abolished. The bonus currently pays $820 a year for every high school child and $410 for every primary school child.

Private health insurance rebate
The new Government has vowed to reinstate the full health insurance rebate ‘as soon as fiscal circumstances allow.’

Self-education expenses
The new Government has indicated that it will not be proceeding with the proposed $2,000 cap on self-education expense deductibility.

Carbon pricing and the mining tax
Two of the most contested new laws implemented by the previous Government have been pledged to be abolished by the new Government in its first term. These are the carbon pricing mechanism (the carbon tax) and the Minerals Resource Rent Tax (MRRT).

The low income super contributions will be discontinued as it formed part of the MRRT package, and the MRRT will be repealed.

ATO super clearing house
The Government plans to streamline employer superannuation reporting and ‘cut red tape’ by implementing a superannuation clearing house through the ATO.

Minimum pension
Minimum pension payment levels will be reviewed to ‘assess their adequacy and appropriateness in light of current financial market conditions.’

If you are concerned about how any of the measures above will effect your tax planning, please contact your local William Buck office.
Target practice – maximising the value of an acquisition

With merger and acquisition activity at near-decade low levels, there is an opportunity for businesses to buck the trend by adopting an acquisitive growth strategy.

Financial performance

Targets may be profitable or unprofitable but in each case the acquirer must be confident that the acquisition will add value post-completion. Some acquirers may purposefully seek targets which are in financial distress in order to obtain a bargain with the belief that they have the ability to turn the target’s performance around.

It is essential, however, to gain an understanding of the underlying reasons which have contributed to the poor performance and the subsequent implications. These factors must then be carefully assessed to ensure that they do not permanently prohibit the target’s ability to generate profits and growth in the future.

Target size

Determining the size of the acquisition target will depend largely on the experience and resources of the acquiring entity. Generally speaking, where experience and resources are limited, smaller targets should be pursued.

The attractiveness of an acquisition should not solely depend on the size of the potential target. Ensuring that the target reflects the objectives of the acquisition strategy will be of greater importance, and subsequently, factors such as market share or synergies may be more significant than size.

Management and key staff

When reviewing a potential acquisition target, it is important to assess the capabilities of management and key staff and look at ways in which their skills can be used to fill gaps in the current business’ capabilities.

It is vital that the management and key staff required to ensure the future success of the business are willing to remain with the company subsequent to the acquisition. Conversely, it is important to look at functions or job roles which may overlap post-acquisition and have a redundancy strategy in place if required.

Cultural compatibilities

Differences in corporate culture is one of the major factors contributing to the failure of mergers and acquisitions. As such, cultural issues should be carefully considered prior to entering into any transaction.

Depending on the level of integration proposed, cultural compatibility may or may not be essential to the success of the transaction. Where there is a low level of integration required, the transaction is unlikely to cause any significant culture shock to employees and synergistic cultures may not be essential to the success of the transaction.

Where there is a high level of integration, culture shock can be a big problem which may eventually lead to key employees feeling unsatisfied and leaving the organisation.

Businesses willing to change their mindset from rationalisation to acquisition could, in the current market, gain a competitive edge by taking advantage of low market prices and a lack of competitors in the buyer’s market.

Few businesses succeed, however, when pursuing growth for growth’s sake. An effective acquisition should be tied to the business’ strategic objectives.

When assessing an acquisition target, it should increase the value of the business whether directly in the case of increased earnings or indirectly in the case of achieving economies of scale.

Some of the more common characteristics sought when selecting a potential acquisition target are discussed in the table.
Achievability of forecasts
Careful consideration must be paid to any forecasts (financial or otherwise) which may be relied upon in making decisions regarding the transaction, particularly where they are prepared by the target or on behalf of the target.

Financial forecasts may often be unrealistic and can fail to take into account delays as a result of the transaction going ahead.

Intellectual property
Mergers and acquisitions can be useful strategies for obtaining intellectual property, such as trade secrets and patents, complementary to existing assets.

It is important that sufficient due diligence is carried out to ensure that intellectual property is protected, that the target holds full title to these assets and that they are not subject to any restrictions which may inhibit the intended benefits of the transaction.

Price and terms
Where the acquisition target is highly attractive it can be easy for the acquirer to get carried away in the negotiation process. A transaction should not be carried out at any cost to the acquirer. It is important to maintain an objective perspective and ensure that a fair price and suitable terms can be agreed with the potential target’s owners.

Each acquirer will have its own individual characteristics and requirements. When selecting a potential acquisition target it is essential to refer back to the unique objectives sought in the acquisition strategy and pay close attention to the acquisition profile established.

If you are considering pursuing an acquisition strategy or are interested in any of the issues raised in this article please contact your local William Buck office.

Determining the size of the acquisition target will depend largely on the experience and resources of the acquiring entity.
A rare combination of entrepreneurial spirit, historical sensitivity and grit has seen Mark Laucke re-invent the Laucke Flour Mills brand.

You won the Central Region 2012 Ernst and Young Entrepreneur of the year award, how does it feel to be called an entrepreneur?

When you consider that I am 63 years old it’s quite an accolade!

Until the award I’d never really thought of myself as an entrepreneur – I was just a miller. Working through the application process forced me to review every aspect of the business and myself.

What I’ve learnt is that an entrepreneur is an entrepreneur regardless of the size of their business, their industry or their background.

An entrepreneur is not simply a successful businessman - it can be damned easy in some areas to get lucky and get rich. Entrepreneurship is about vision and perspective, and outcomes as measured by the ability to achieve success despite severe obstacles arising along the way – it’s achieved consequent to putting in a lot of hard work and effort.

Laucke Flour Mills was founded in 1895 by your grandfather, Friedrich Laucke, a migrant from Germany – would you consider him to be an entrepreneur?

He must have been an entrepreneur for him to do what he did.

He arrived from Germany after a stint of compulsory naval service “to see the furthest ends of the earth”, and was soon without a penny to his name. By fate, he bumped in to his German former employer as he was about to depart, and so found a job as a miller. He had broken both his feet and then contracted Rheumatic Fever and yet even so he worked two jobs. Within four years, he had taken over a distressed flour mill in Greenock, survived a boiler explosion, installed new technology in the form of a Producer Gas engine, consolidated and soon started expanding across South Australia.

Any person that has the gumption to leave the comfort and familiarity of their home and set up a new life; experiencing a new environment, language and political system, and overcome enormous hurdles must have had something special about them.

It’s often said that family businesses are resistant to change yet in the last twenty years Laucke Flour Mills has reinvented itself, how did this come about?

When my grandfather died my father and uncles took over the business and life became very comfortable, but often with comfort comes inertia.

My father once told me ‘Son, one day this will all be yours’, but could not explain what this meant. In reality, there was no vision for the business, no understanding of its financial position or even knowledge of who owned the shares.
Then, as a teenager, a customer told me they bought flour from Dad because he was a nice guy, even though the flour was not good. Further, I recognised that the family bakery sector on which we then relied was dying. At that time I knew that fundamental change was needed.

My cousin, Condrod, was of similar mindset, so we took control of the family business. Ten years later in 2000, we separated as planned into two separate businesses: Flour Milling and Feed Milling. Although Laucke Flour Mills is now a fourth generation business, enormous changes have been implemented and a business model has been developed which has completely re-invented the business from a simple milling business that was a generation behind its competitors to become a food manufacturer which is now perceived as an industry and market leader.

The business has changed not only culturally but also in terms of ownership – has this presented any challenges?

Not at all. In the early nineties we were approached by a number of multi-nationals looking to take over the mill. That was the catalyst for generational change. Condrod and I solicited three offers then made our own bid matching the best offer that we received.

Our cousins were more than happy to sell us their shares, knowing that the business was our passion and that they were then released to pursue their own interests. Our advisor, Grant Wilson, made the whole process really simple, sensible and fair.

Then in 2004 I saw the opportunity to realise my intention to have our flour milling business become, as planned, a nationally significant business through the purchase of another mill in Bridgewater, Victoria. Condrod was not in favour because from his perspective feed milling offered the business the best chance to grow. Again, Grant made the whole process straight forward and equitable. Although he raised concerns that acting for both Condrod and I may be a conflict of interest, we both knew it would not be a problem and said so without hesitation – he had our best interests at heart.

It was all organised like a military operation and timed to the minute. On my way to sign up for the new acquisition, I was signing the final Laucke documentation on the airport check-in counter and stamping the documents using my own blood as ink – how fitting!

Becoming the sole shareholder, I realised that I missed the robust board discussions we’d had as a family business. Although I didn’t need shareholders, I needed a Board. In 2004, I set up an advisory board with Grant and a third director Murray Najar, which has been invaluable. Together we form a great partnership.

You mentioned earlier that entrepreneurship is defined as success in spite of obstacles, what challenges have you faced?

The biggest challenge for us has always been competition. The flour milling industry reached a peak of numbers in the 1870s and has been extremely competitive ever since, with those industry-founding millers falling by the wayside or becoming part of larger businesses ever since. We’re now the last of the original family owned flour milling companies in Australia.

Therefore, tough competition has moulded who I am and what I do, so I have always shaped the business to cope with such competition, and risk-managed every facet of the business.

Even so, in 2004 over a period of about nine months, a competitor attempted to drive Laucke Flour Mills out of business by offering products to all our customers at prices that were below cost. Our business development and international expansion came to a standstill while we defended our core business.

We advised our key customers that we could not price match, but significantly reduced prices, then cut costs and pruned every aspect of the business so as to focus on those customers that appreciated the value that we provided. Understanding our commitment to them and appreciating our quality and service, we retained the loyalty of most customers but profits disappeared and losses mounted.

We survived by doing very well what we had adopted as our business model, and by having sound advice from Grant and Murray.

In the decade since then, we took the opportunity to build on that foundation, rebuilt the business according to our vision, consolidated the business, and eliminated debt.

Significantly, we have had our endeavours recognised and appreciated by everyone with whom we interact. Our profile is high, and we stand poised to potentially triple our business consequent to the current redevelopment of our Bridgewater Milling operations.

What's the best part of your role at William Buck?

I enjoy working with people and helping them achieve their goals. In the tax space, this could be achieving a positive result on a transaction or with the ATO for a client. For my team and others that I work with at William Buck, I really enjoy seeing them succeed and feel like I have contributed, even in some small way, to this.

What advice would you have for someone seeking a career in tax?

You need to have confidence in your abilities, but also know your boundaries. Tax can be an extremely complicated area with lots of ‘grey’ spots. Knowing where to draw the line is critical. It’s also really important to remember that most people aren’t ‘tax people’, so even the most complex work we do needs to be communicated in a clear and practical way so that people can understand how it affects them.

Why did you decide to write ‘The Tax Advisors Guide to Part IVA’ book?

We’ve always aimed to take a leading position in the tax profession and this is another example of that. The changes to Part IVA are a big issue in tax circles and will become a real issue in the broader business and taxpayer community once people come to recognise the impact of the changes. I got involved with the Tax Institute when the original exposure draft of the legislation was released to try and provide a ‘mid-market’ perspective on the changes as the focus to that point had very much been on the big end of town. Through the expert panels and presentations I participated in, it became clear that people didn’t understand how Part IVA was going to impact on them and their clients. The effectiveness of all tax planning is ultimately determined by Part IVA.

Name: Greg Travers

Position: Director

Division: Tax Services

Years at William Buck: 14
Demystifying enterprise-wide risk management

The reality is that risk is present in every business. A risk is defined as the effect of uncertainty (either positive or negative) on a business’ objectives. Viewed through this perspective, it is undeniable that risk management affects all businesses whether large or small. Moreover, it is intrinsically connected to a business’ strategy and its ultimate success or failure.

Whose responsibility is risk management?
Risk has traditionally been viewed as something to be addressed by only a few key individuals in a particular area. With the view that risk affects the objectives of a business, however, it is clear that it affects every function and operation of a business.

Put simply, the identification and effective management of risk is everyone’s responsibility. Adopting an enterprise-wide risk management (ERM) approach ensures that everyone in an organisation takes risk management seriously. It promotes structure, process and a level of conformance within the organisation to ensure that risk is approached systematically and continually reviewed.

What is ERM?
ERM involves a proactive holistic view of a business’ risks across every level and business unit. An effective ERM model is tied directly to the business’ strategy and specific objectives. It involves outlining the business’ appetite and tolerance to risk and identifying key areas of uncertainty that could affect the objectives of every business unit.

Under an ERM model, risk is not restricted to one individual or group of individuals but rather is the responsibility of all as shown in the table on the right.

ERM as a tool for growth
Risk in itself is not bad: negative consequences arise when it is mismanaged, misunderstood or mispriced. When fully embraced, risk and a risk management program can create opportunities to grow and to add value.

The greatest benefit of implementing an ERM approach is the way in which it aligns every function of the business with the same objective – the organisation’s business strategy.

<table>
<thead>
<tr>
<th>Function</th>
<th>Responsibilities</th>
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<tr>
<td>Board of Directors &amp; CEO</td>
<td>— To be ultimately accountable for all risks.</td>
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<td></td>
<td>— To periodically review risk management practices and related policies.</td>
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<tr>
<td>Senior management</td>
<td>— To design, implement, and maintain an effective risk management framework.</td>
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<td></td>
<td>— To develop policies and procedures.</td>
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<td></td>
<td>— To establish and monitor the risk appetite and report regularly to the board of directors.</td>
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<td></td>
<td>— To promote a risk-aware culture.</td>
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<tr>
<td>Business units</td>
<td>— To identify, assess, measure, monitor, control and report risks to senior management.</td>
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<tr>
<td></td>
<td>— To manage relevant risks within the framework established by senior management.</td>
</tr>
<tr>
<td></td>
<td>— To ensure compliance with policies and procedures.</td>
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<tr>
<td>Support functions (i.e. Legal, HR, IT, etc.)</td>
<td>— To provide support to business units in developing and enforcing policies and procedures.</td>
</tr>
<tr>
<td>Internal Audit &amp; Compliance</td>
<td>— To monitor and provide independent assurance of the effectiveness of the framework.</td>
</tr>
<tr>
<td>Risk management personnel</td>
<td>— To coordinate the establishment of the framework and provide risk management expertise.</td>
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</tbody>
</table>
The responsibilities of various stakeholders in risk management include:

**Board of Directors & CEO**
- To be ultimately accountable for all risks.
- To periodically review risk management practices and related policies.

**Senior management**
- To design, implement, and maintain an effective risk management framework.
- To develop policies and procedures.
- To establish and monitor the risk appetite and report regularly to the board of directors.
- To promote a risk-aware culture.

**Business units**
- To identify, assess, measure, monitor, control and report risks to senior management.
- To manage relevant risks within the framework established by senior management.
- To ensure compliance with policies and procedures.

**Support functions (i.e. Legal, HR, IT, etc.)**
- To provide support to business units in developing and enforcing policies and procedures.
- To monitor and provide independent assurance of the effectiveness of the framework.
- To coordinate the establishment of the framework and provide risk management expertise.

**Internal Audit & Compliance**
- To monitor and provide independent assurance of the effectiveness of the framework.

A business with a well-established ERM model could expect the following benefits:
- Clarity around the transactional aspects of an organisation’s risk management program.
- A reduction in overall costs.
- Improved decision-making and greater comfort at the Board level.
- Improved communication as ERM forces divisions and people to talk and communicate and helps to break down individual silos. This contributes both to a better understanding of risk overall and facilitates the flow of information to senior management and the Board.

When fully embraced, risk and a risk management program can create opportunities to grow and to add value.
Board talk

Key issues affecting corporate boards, family boards and the boards of not for profits

ASIC focus on phoenix activity
The Australian Securities and Investment Commission (ASIC) has announced that it will target directors of failed companies in a campaign to stamp out Phoenix activity.

Phoenix Activity is the fraudulent act of transferring the assets of an indebted company into a new company to avoid paying creditors, employee entitlements or tax.

As part of the surveillance, ASIC have identified a target group of 1,400 companies, largely from the building and construction, labour hire, transport, security and cleaning industries.

Within that group they are paying close attention to almost 2,500 individuals who were directors at a previous company when it failed or ceased to be directors shortly before they were wound up.

Mid-sized businesses going for growth
Company directors should be focussed on growth – not ‘bunkering down’ with cost-containment strategies according to a recent survey by American Express.

The Australia-wide survey of 1000 small business owners found that 73% had taken actions to ‘future proof their business’. However, ‘future-proofing’ strategies differed from business to business, generally falling into two camps; cost containment or growth.

The research revealed that 50% of those that focussed on improved product or service offering enjoyed increased profits, as did 57% of those that invested in heightened marketing activity.

Jason Fryer, Vice President of Small Business services at American Express suggests that company directors should be leaning on their management team to develop strategies for growth and innovation in their product offerings.

The digital revolution in the board room
As more and more applications go ‘online’ or into ‘the cloud’ the global community is finding new ways of doing business. What was traditionally, the domain of the IT professional is now, out of necessity, entering the arena of the boardroom and becoming a core focus of company strategy.

As with all strategies, your digital strategy should begin with clear objectives. It can be easy to be tempted to ‘keep up with the Jones’ however, the implementation of new technology must be aligned to the company’s overarching goals.

Back-end infrastructure, policy controls and clear project frameworks must be established from the outset. Additionally, like all change projects, the assembly of a cross functional team can often assist in developing a comprehensive strategy that takes into account all aspects of your business.

While it’s not expected that company directors know their ‘GNOMEs’ from their ‘GIMP’s’ a basic knowledge of your company’s IT systems is essential to succeeding in today’s business environment.