



The Square Orange

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SMART Marketing

There's an old saying in business: "If you don't sell, a frightening thing happens - nothing!"

Yet, selling is only one aspect of marketing. Marketing ensures that the picture you put out to your customers is met by the performance you actually produce, so that you can consistently sell to them.

SMART stands for:-

- Specific
- Measurable
- Achievable
- Result-Oriented
- Time-Deadlined.

The OTS Management SMART Marketing Workshop is a process to prepare your Marketing Plan, specially designed for Small-Medium Enterprises (SME's).

SME's often do not have

the resources to spend a lot of time and money in formulating a Marketing Plan. And yet they are exactly the type of business that needs one!

Without a focused and targeted Marketing Plan, SME's generally use the shotgun approach to marketing - all things to all customers and any customer will do. All your energies are spent



SMART = Targeted

repeating the same processes for minimal gain.

SMART Marketing pro-

duces the targeted method of marketing where your efforts are focused.

During the two full days your team will work through 6 phases:-

1. Identifying your real product or service based on customer needs
2. Identifying your markets and desired Target Market
3. Matching Customers Needs and Perceptions with your actual resources
4. Identifying your marketing activities and events
5. Developing your Action Steps
6. Finalising your Plan and rolling out time-lined Implementation.

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Special points of interest:

- ♦ Tax Office audits to focus on SME's (this page)
- ♦ If you are selling or buying a Going Concern don't be caught paying GST (page 3)
- ♦ When is compensation (not taxable) actually a termination payment (taxable)? See page 3

Rising Spectre of Tax Office Audits

The Tax Office has announced that it has raised an extra \$2 billion in revenue in the 2005 financial year from its expanded audit programs. The record total amount of revenue raised from audit activities topped \$8.7 billion.

Large businesses came under the most audit scrutiny, with 89% of the

Top 100 listed companies having some type of audit in 2004/05. This resulted in over \$4.8 billion in extra revenue.

In the small to medium (SME) business sector, audits and investigations provided the Tax Office with an extra \$3.1 billion. The Tax Office plans to focus on capital gains tax, shareholder

loans and the cash economy in SMEs in 2006. It has plans to review the operations of 800 small businesses in total.

Taxpayers should consider a prudential review to identify any exposures, and ensure that thorough and complete records are maintained to minimise disruption from any audit activity.

Vineyard Investment could be a “tax scheme”

In a recent decision, the Administrative Appeals Tribunal (AAT) has held that the general anti-avoidance rule in Part IVA of the *Income Tax Assessment Act 1936* applied to a taxpayer's investment in a vineyard.

In 1997, the taxpayer invested in a marketed viticulture project that offered future income from grape production. The day-to-day management and operation of the vineyard was carried out by the manager of the project.

For the 1997, 1998 and 1999 income years, the taxpayer claimed deductions for out-goings



Grapes, wine, or a tax scheme?

including management fees, licence costs and prepaid interest.

The taxpayer's investment was funded by a limited-recourse loan that resulted in a tax deduction of over seven times the taxpayer's initial cash outflow.

Due to the age of the vines, the taxpayer didn't derive any income from his vine plots in the first three years. As a result,

the Tax Office denied the associated deductions on the basis that there were no income-

producing activities.

The taxpayer argued that he invested in the project to diversify his income-producing investments in the long term and that the resulting tax benefit was relatively small (\$8,000) compared to taxpayer's total personal tax payable (\$99,000).

However, due to the nature and substance of the arrangement, the AAT held that the investment was more like a passive investment than carrying on a business, and held that Part IVA applied.

CAUTION: Taxpayers should be prudent when considering investment in schemes that promote themselves as being overly tax-effective.

GST Tax Credits if telephone and car partly private?

The Tax Office has recently released two Interpretative Decisions (IDs) regarding the treatment of input tax credits when calculating allowable deductions for telephone and car expenses.

Where a taxpayer is registered for GST, allowable deductions must not include any input tax credits that

the taxpayer is entitled to claim.

In regard to a telephone account used 50% for business and 50% for private purposes, the taxpayer is limited to a deduction of only the 50% related to business use. The proportion must be reduced by any associated input tax credits before an allowable deduction is claimed.

The tax law contains four methods for determining allowable car expenses. Under the 'one-third of actual expenses' method, or the log-book method, deductions are potentially available for the expense amount, net of input tax credits.

“Management Fees” taxed when billed, not when earned

In a recent decision, the Administrative Appeals Tribunal (AAT) has held that management fees charged by a taxpayer for services performed were not assessable until the fees were actually 'quantified, accepted and charged'.

In 2001, the taxpayer charged a management fee to its parent company for services rendered in the 1999 and 2000 income years. The Tax Office held that the fees were assessable in the years to which they pertained and issued amended

assessments.

The Tax Office argued that the fees

“Management Fees only assessable when entered in the taxpayer's accounts and became recoverable”

were assessable as the taxpayer was in a position to sue for payment as the services had previously been

provided.

The taxpayer argued that the management fees were assessable income only in the 2001 income year, as this was the year they were quantified, accepted and became recoverable.

The AAT agreed in principle with the taxpayer and held that the management fees only became assessable in 2002, once they were entered in the taxpayer's accounts and became recoverable.

Selling a Going-Concern? Watch your GST clause!

The GST Act provides that the supply of a going concern is GST-free. The seller of the business does not have to account for GST on the sale and the buyer does not have to fund the GST component. Further, as stamp duty usually applies to the GST-inclusive sale price, the stamp duty liability is reduced.

In a recent case, the seller of commercial property (subject to a lease) was required by the Tax Office to account for GST on the sale. Although the buyer and seller were registered for GST, the contract signed between the parties did not state that the parties had agreed that the sale was the supply of a going concern.



The GST Act requires that both parties must 'agree in writing' that a supply is a going concern. The absence of such a clause resulted in the seller having to account for GST on the sale. Consequently, the seller had to remit GST to the Tax Office

and was not in a position to recover this cost from the purchaser, as the contract did not contain any 'GST recovery' clauses.

The case highlights the importance of considering and documenting GST implications when negotiating a sale price, so that the exemption will apply. Parties to a contract should not presume that oral communications, intentions and post-contractual actions will make up for the absence of an agreement in writing.

In order to ensure that the seller is not left with a GST liability, it is vital that the taxpayer negotiating a sale of a going concern ensures that the agreement is in writing.

Payment not compensation but a taxable termination

In a recent decision, the AAT has found that a payment made to a taxpayer by his former employer was an eligible termination payment (ETP) as the payment resulted from the termination of the taxpayer's employment.

The taxpayer had entered into a deed of release with his former employer, and received a \$3.1 million termination payment in relation to continual hurt and abuse suffered during the period of his employment. The Tax Office held that this amount was assessable income.

The taxpayer argued that despite the wording of the deed, the pay-

Compensation payments are capital and thus not taxable; lump sum payment for "hurt and abuse" during employment held not compensation but part of taxable termination payment

ment was not made as a result of his termination, but rather as compensation for the hurt and humiliation caused by the former employer. The taxpayer argued that the amount was a capital payment, not an ETP, and was not assessable

income.

The AAT held that the hurt and humiliation described did not meet the definition of 'personal injury' required to exclude the amount from the ETP definition.

In addition, the AAT rejected the taxpayer's appeal on the basis that the purpose of the payment was to secure the taxpayer's resignation. Consequently the payment was considered to be a taxable ETP.

TIP: Taxpayers should be aware that special taxation rates apply to ETPs depending on type and duration of employment.

Tax Diary

There are not many dates in October, as the lodgement of the September BAS is not due until November (11th for paper lodgements, 25th for electronic lodgements:-

21 October:- Payment of the Annual PAYG Instalment (PAYGI). Lodgement of the form is only required if you use the rate method to calculate the PAYGI, or intend to

vary the ATO estimate.

31 October:- Lodgement of Income Tax Return for all entities where 2 or more past returns are outstanding as at 30 June 2005.



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OTS Management is a quality and value driven boutique consulting and accounting company that provides organisational development services to commercial, growth-oriented Small and Medium Enterprises who require business services, advice and coaching.

We give our clients comfort in their decision-making by providing them with our experience and independent advice that saves them time and helps them grow. Unlike other accounting services companies, our clients have significant contact with our senior people.

We meet our own high expectations in order to exceed the expectations of clients.

Our services include:

- *Change Management consulting*
- *The Zest Factor - find the zest in your organisation*
- *Strategic & Business Planning*
- *SMART Marketing workshops*
- *Team Development workshops*
- *Performance Management Systems*
- *Zest Tests - Business Diagnostics on your organisation*

The Juice

If you are old enough you will remember a time when "Made in Japan" meant cheap, poor quality goods. The pressed tin, badly painted toy.

Yet with the likes of Sony and Honda today, "Made in Japan" today means the best, innovative quality product.

What made the change?

It was not the culture, which some people think, although Japanese cultural discipline may have contributed to the application of the principles.

It was the process minded, quality-driven theories of an American



Go for Gold in whatever you do

called Edwards Deming.

In the 1950's Deming was invited to Japan to preach and convert the corporate culture of Japanese industry to one of Continuous Improvement.

That's a term people recognise today as a "new" management in-word. Yet Deming's theory of Continuous Improvement and

Quality Circles, prac-

tised to this day under different names and theories, was espoused in the 1950's..

The basis of the theory is devastatingly simple - as individuals, we are most satisfied only if we grow. As organisations, we are at our best only if we grow.

"Growing" means chasing Quality continually so that you are always looking at what it is you do and asking yourself the question "How can I do this better?"

Indeed, the process is not so simple - it involves an audit (what we call a Zest Test) of your current processes and procedures, an analysis of it's strengths and weaknesses, the clarifying of needs and desired outcomes, then taking action - trying, testing, measuring, and improving.

Yes, you may need our assistance to put in a Quality Control or Continuous Improvement culture in your organisation, but how easy is it to start each morning asking yourself. "What can I do better today than I have ever done before?"