

# BusinessPlus+ Newsletter



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## Issue – August 2016

### Do You Want To Form An ESIC - Part 2?

Have you developed a new product, process, service, organisational or marketing methodology and you'd like to raise capital so that you can commercialise your idea? If so, an Early Stage Innovation Company might be the way to go. Traditionally, it has been very difficult for companies to raise capital from investors. The only way for small companies to raise capital was via Section 708 of the Corporations Code, which imposed a limit of \$2M from a maximum of 20 investors every 12 months.

The Early Stage Innovation Company (ESIC) legislation has now changed that so that companies, which qualify as an ESIC, can raise any amount of capital subject to individual investor limits:

- Sophisticated Investors - \$1M in twelve months per company
- Section 708(8)(c) of the Corporation Code states "it appears from a certificate given by a qualified accountant no more than six months before the offer is made that the person to whom the offer is made then:
  1. has net assets of, at least, \$2.5M or
  2. has a gross income for each of the last two financial years of, at least, \$250,000 a year.

This person is deemed to be a sophisticated investor. All other investors are classified as retail investors. The maximum investment that a retail investor can make to an ESIC is \$50,000 in 12 months per company.

To be deemed to be an ESIC, companies will have to pass two out of three tests:

1. The first test, which we've called the Provisional Test relates to the number of years since the company was incorporated (normally three years, but could be six years in some cases).  
Expenditure and income last year (expenditure under \$1M, income under \$200,000 - not including income from an Accelerating Commercialisation Grant).  
The company cannot be registered on a Stock Exchange.
2. The second test is the Gateway Test which was summarised in Part 1 of this article. If the responses to the Gateway Test do not produce, at least, 100 points, then the company needs to consider the third test group, known as the Principles Based Test.
3. The Principles Based Test asks five questions which each require a positive answer relating to:
  - 3.1 Is the company genuinely focused on developing for commercialisation, improved products, processes, services, marketing or organisational methodologies?
  - 3.2 Is there high growth potential?
  - 3.3 Potential to scale the business.
  - 3.4 Address a broader than local market?
  - 3.5 Competitive advantage?

If these questions can each be answered positively and appropriate records are kept to support the answers and, in the case of the Principles Based Test it will probably be very beneficial for the company to have briefed an external consultancy on the company's products and ambitions and for the external consultant to have reviewed the company's plans and to have produced a report which can be used as part of the process for determining whether the company is an ESIC.

If you are thinking about your company being assessed as an ESIC or forming a company that could be deemed to be an ESIC, we will be very happy to have a discussion with you in relation to the assistance that we can offer to your company as part of this self-assessment process.

## Investor Opportunities With ESIC

A massive tax opportunity exists for people who are willing to take a risk on early stage investments. The recent changes implemented from 1<sup>st</sup> July 2016 give early stage investors, both residents and non-residents, a tax offset equal to 20% of the amount invested and upon the sale of the investments. Capital gains may be able to be ignored, subject to time limitations.

To qualify, you need to firstly purchase new shares in a company that's an ESIC. This means the company needs to pass five tests:

1. To be incorporated in the last 3 years, 6 years in some circumstances.
2. The company must have expenses under \$1M in the previous income year.
3. The company must have assessable income under \$200,000 in the previous income year.
4. The company shares must not be listed on a stock exchange.
5. Pass a 100-point Gateway Test or Principles Based Innovation Test.

It's recommended that an investment is only made in a company that has professionally undertaken the self-assessment process and has supporting documents or has a ruling from the ATO as to its eligibility to qualify as an ESIC.

Persons investing in a company are mainly limited to sophisticated investors, a person with gross income over \$250,000 per annum for the previous two years or net assets of at least \$2.5M and have a sophisticated investor certificate issued by a qualified accountant or someone who has paid at least \$500,000 for the qualifying shares. For those who are not sophisticated investors, they are only able to invest up to \$50,000 per annum to be able to access the tax concessions.

The tax offset available is 20% of the total amount paid to acquire the shares but is capped at \$200,000 for sophisticated investors and \$10,000 for Angel investors.

The CGT concession means that any gain or loss will be ignored on the investment as long as the investment is held for at least 12 months and less than 10 years.

This is a wonderful incentive for people to invest in ESIC for both the tax offset, which is available, and the CGT concessions.

## Export Market Development Grant Applications - due by 30th November 2016

Export Market Development Grant applications relative to the year ended 30th June 2016 are required to be lodged with Austrade by the 30th November 2016. Applications can be lodged by Australian residents irrespective of the type of business entity that has an Australian Business Number and who are the owners of eligible goods, services, individual property rights or know how that have been exported. Eligibility requirements are that the business' income must not exceed \$50M in the grant year. The business must have incurred, at least, \$15,000 of eligible export expenses. The applicant has to be the principal for the export activity. The grant payments are calculated at 50% of allowable export market development expenditure.

First time claimants of the Export Market Development Grant can combine two years of expenses to meet the minimum expenditure requirements.

If you would like our assistance on the preparation of an Export Market Development Grant application, please do not hesitate to contact us.

## "Exporting News" From EFIC (Export Finance Insurance Corporation)

EFIC is a specialist financier that delivers solutions for Australian companies to enable them to win business, grow internationally and achieve export success.

EFIC is Australia's Export Credit Agency operating on a commercial basis and partners with banks to provide financial solutions for:

- small and medium enterprises that are exporters
- Australian companies in an export supply chain;
- Australian companies looking to expand their business operations overseas to better service their clients;
- Australian companies operating in emerging and frontier markets.

EFIC commercial operations for exporters includes:

- loans
- guarantees
- bonds; and
- insurance products

Comments from SME Exporter Index:

- Small business exporters continue to be optimistic about the future, with 37.6% of exporting SMEs positive about growth in the next year.
- SME exporters are exhibiting longer term offshore growth ambitions, with 41.3% planning to establish new subsidiaries abroad from 2017 or beyond.

## "Exporting News" From EFIC (Export Finance Insurance Corporation) (cont'd)

- Access to finance remains difficult for more than half of the small business exporters surveyed expecting even greater difficulty for sourcing finance for overseas business activity in the next twelve months.
- One in four small business exporters view China as their most important market by revenue ahead of the USA and India.
- In response to the Free Trade Agreements with China, Japan and South Korea and a weaker Australian dollar, one in five SMEs intend to establish new overseas operations within the next six months, while a further 5.2% intend to do so within the next year.

If you would like to have a discussion with us in relation to exporting and the Export Finance Insurance Corporation, please do not hesitate to contact us.

## Retail Pricing Strategy To Achieve Better Results - Part 1

There are a number of common fallacies relating to price setting. These include:

- price is the only thing about which customers worry
- low priced products are more successful in a recession
- it is best to set your prices at the same level as your competitors
- price low to gain market entry and once market entry has been obtained then increase prices
- ask your customers what the price should be and price at the prices that they have told you

Whilst customers are concerned about prices, it is not the only thing that customers consider when deciding whether to purchase goods or services from a particular business. Astute customers tend to choose suppliers primarily for reliability. Other factors that enter into the buying decision include:

- quality of product
- technical and backup services
- reputation of the retailer
- brand associations
- location of the retail business
- guarantees that are issued by the retailer
- refund policy and attitude to refunds

Successful retailers know their customers and understand why particular customers are buying from them as part of the evaluation of the price setting equation. Rather than just looking at what competitors are charging the sound business practise is to determine what the required selling prices are for a retail business to cover its costs and earn a reasonable profit.

This segment will be continued on the next edition.

If you would like to discuss retail pricing strategies, please contact us.

## Your Competitive Edge Is Important

One of the key things that business operators should do is prepare a list of the business' competitive advantages. You cannot be all things to all people; you need to determine the activities within your business that are your strong suite and then ensure that you regularly play to your strengths by highlighting your competitive edge.

In developing a competitive edge, consideration should be given to these items:

- Make sure there is differentiation from your products to what your competitors offer. This could be in value added products that are included in the deal:
  - some extra service that you're providing?
  - does your business have happy customers?
  - how did you create happy customers?
  - can you create a lot more?
- What benefits does your business offer to your customers that other businesses cannot? This might be specialised knowledge and service that is readily made available. It might be accessing unique products or designs. Have you introduced a referral system whereby happy customers are able to refer other friends and colleagues to your business? Does your team know the business' competitive edge and are they encouraged to play to these strengths as often as they can?
- Have you discussed the "moment of truth" when the team member comes into contact with a customer?
- Are you able to deliver extra services by way of arrangements that you've made with suppliers and distributors to source special products or host events and, in so doing, offering an extra WOW factor to your customers.
- Identifying and then refining your competitive edge can really contribute to your business' overall success.

## Vehicle Financing For SMEs

Do you have problems with arranging finance for your vehicles? If you require several vehicles, you will require a large amount of money to be able to purchase them, which can be difficult to raise at times. Vehicle financing or hire purchases are cost-effective ways of obtaining the required vehicles.

A special webinar on financing of business vehicles is available. [Click here](#) to view the webinar.

## Managing Difficult Employees

Unfortunately from time to time most business operators encounter a difficult employee. How you handle that situation is very important for the employee and the business. In the first instance it's necessary that management observes warning signals. If an employee is not performing and is causing difficulties, send a letter to the employee inviting the employee to attend a meeting. Include an indication that the employee can invite a friend or union representative to attend the meeting. Make sure the minutes of the meeting are minuted and that a copy of the minutes are sent to the employee and the person who accompanied them to the meeting.

Employers need to be aware that every action relative to issuing warnings to employees could result in a Fair Work Australia review and, for that reason, it's very important that a fair process has been established. It is the employer's responsibility to ensure that an adequate file record is maintained so that there is a paper trail which would include any warning letters, minutes of meetings, written documents on matters that other people have commented on relative to this issue.

Employer representatives are continually stressing the necessity for employers to maintain appropriate records on employee matters.

## Firm, Fair And Strong Leadership Is Vital

Answers from team members about what they knew to be good leadership, prepared by the Leadership Academy, identified these items:

- Clearly give the reasons for and the purpose of assigned tasks.
- Give regular and adequate feedback and coaching, if necessary.
- Openly discuss issues and listen to ideas and suggestions.
- Give recognition for good work.
- Show an interest in other-than-work activities.
- Be friendly, open and honest.
- Be consistent in dealing with team members.
- Be competent, enthusiastic and committed to do what they say they will do.
- Set a good example by leading through their actions.

If you would like have a discussion relative to leadership issues, please don't hesitate to contact us.

## Risk Management – Issues For SMEs

- Larger businesses need to be aware of the consequences of not complying with a number of laws relative to dealings with smaller businesses such as unconscionable conduct.
- Businesses need to be aware of the operations of the Australian Competition and Consumer Commission (ACCC) relative to dealings with the public and other businesses.
- Businesses should regularly monitor whether their activities are likely to result in a claim that the business is not abiding by environmental rules because the cost to defend such an action can be very expensive.

### An Important Message

*While every effort has been made to provide valuable, useful information in this publication, this firm and any related suppliers or associated companies accept no responsibility or any form of liability from reliance upon or use of its contents. Any suggestions should be considered carefully within your own particular circumstances, as they are intended as general information only.*

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