

# SAYWELLS

Chartered Accountant – Registered Tax Agent - Business Advisor

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## Changing rules for trusts

A lot of family businesses use discretionary trust structures. These have been popular because they provide both a level of risk management, separating the business from your personal assets, and are also quite tax efficient. A discretionary trust allows the trustee to appoint the income of the trust (this is typically the profit of the business) to any of its beneficiaries in the proportions that it determines from year to year. The entitlement of the beneficiary is not fixed, rather it is a decision of the trustee each year. Normally the trustee is either the key person in the business or a company controlled by this person. In a typical family situation, Mum and Dad may be the trustees or directors of the trustee company. Using this structure business owners have the flexibility to distribute income in the most tax efficient way. None of this has changed.

A common technique employed by a lot of trusts was to appoint some of the income to a related company. Normally, this was done where the other beneficiaries had received income for the year that would take them past the 30 cent in the dollar tax rate and by appointing this excess income to a company the family could limit its immediate tax cost at 30 cents in the dollar. It was also common for trusts to appoint this income to the company but perhaps not pay all or any of this income over to the company. It created a debtor creditor relationship between the company and trust which is called an unpaid present entitlement. This simply means that the company is entitled to the money but it was not paid at the time.

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## Social media: the good the bad and the ugly

Social media allows every comment, word, thought, and rant of an individual to be accessible to the world. Everyone can have a say and much of what is said is often given credence regardless of the source or weight of evidence. At its best, social media gives every David a forum to beat Goliath. At its worst, the faceless pseudonym driven world of social media can be used to destroy reputations or spread misinformation either by intent or sheer ignorance. As a business and employer, the question is, is social media a threat or an opportunity and how paranoid should you be?

### Social media and your team

Aggrieved or just plain naive employees have the capacity to turn a bad day at the office into a brand embarrassment.

Take the example of the 13 Virgin Atlantic crew members who used facebook to insult passengers (calling them "chavs") and generally complain about the airline. In a statement, Virgin Atlantic confirmed that "13 members of its cabin crew will be leaving the company after breaking staff policies due to totally inappropriate behaviour."

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## Changing rules for trusts

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Apart from limiting the amount of tax payable the main reason for employing this technique was because often the profits of the business had not fully realised into cash. Most businesses find that some of their profits can be tied up in stock, debtors, or other working capital. The profit has been made; it is just not cash in the bank at the end of the financial year. And, practically, you can't pay out profits that haven't turned into cash. Sounds sensible to most of us but the Tax Office don't see it that way.

Last year the Tax Office announced that where there is an unpaid present entitlement between a trust and a company beneficiary that continues past the financial year, they will treat this as a loan from the company back to the trust. The implication of this is that it could trigger Division 7A of the Tax Act and cause the amount to be a deemed dividend. In most cases you want to avoid this situation. Income appointed by a trust to a company after 16 December 2009 is affected by these new rules (and could affect your 2010 income tax return).

Many small businesses have used this strategy as a way of managing their tax and cash flow position and dealing with the differences between their accounting profits and available cash. There are still a number of options available to you in how you manage this situation.

*If you operate your business through a trust and have used a related company as a beneficiary, call us to discuss what needs to change and review your tax strategy and position.*

## Social media: the good the bad and the ugly

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The BBC reported the case of a Swiss woman fired by Nationale Suisse for using facebook on the day she called in sick with a migraine saying she had to be in a darkened room and could not use her computer. Allegedly, another employee alerted the company to the fact that she was using facebook that same day.

Australia is not isolated from the facebook firing phenomena. In a recent case before Fair Work Australia a hairdresser successfully won her case for wrongful dismissal after her employer fired her for, amongst other things, comments she made on facebook stating "Xmas bonus alongside a job warning and no holiday pay!!! Woohoo the hairdressing industry rocks man!!!"

In the [decision](#), Fair Work Commissioner Bissett said that "What might previously have been a grumble about their employer over coffee or drinks with friends has turned into a posting on a website .... Posting comments about an employer on a website (Facebook) that can be seen by an uncontrollable number of people is no longer a private matter but a public comment....A Facebook posting, while initially undertaken outside working hours, does not stop once work recommences."

Despite this, Fair Work Australia saw that the comments made by the hairdresser "were silly in the context of being made in a public forum" but not damaging to the hairdressing business.

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## Social media: the good the bad and the ugly

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As an employer, the question of how to protect your corporate image without impinging on your employees personal lives is vexing and remains largely unanswered. However, if the comments of an employee are shown to be detrimental to the business and the business has an active policy in place preventing employees from being publicly critical of the employer and its business, then an employer should be within their rights to pursue disciplinary action. But firing an unruly employee in a knee-jerk reaction to sarcastic comments is not enough.

The Commonwealth Bank recently came under fire for its internal social media policy released to staff in December. The [Financial Services Union](#) (FSU) released a public letter to the bank stating that the policy "...seeks to impose unreasonable restraints upon employee's use of social media channels..." and "...goes beyond conduct that could legitimately be regarded as involving damage to the banks reputation or interests." The FSU goes on to say that the requirement for employees not to "comment on, post or store any information about bank related matters", or "disparage or speak adversely about the group, its customers, employees or customers" severely restricts employees' freedom of expression. Employees who breach the policy may face disciplinary action including termination.

### Social media and your brand

Any form of investment whether it's in technology or in time needs to have a clear and measureable objective. Social media is an untamed beast. Does your business have the time and resources to measure and manage what is being said 24/7? If you have a blog or are on twitter, do you have the resources (and enough to say that is valuable) to maintain consistency? The online community are understandably cynical of business and their desire to simply spin – they can get that from the mainstream media.

The Commonwealth Bank found this out when a customer, a journalist, used twitter to vent her frustration at delays in the bank's mortgage processing centre. She then reported in [news.com.au](#) the fact that 1 hour and 17 minutes later she was "contacted by someone offering to help to solve my problem." The journalist then states that the bank had said it would continue to "reach out to customers via social networking." So, is the bank acting on twitter posts? Apparently not. Not long after this story broke, a [US blogger](#) pointed out that the tweet responding to the journalist's complaint was not from the bank "reaching out" but from a private employee who appeared to work for the bank (the tweet was from @ozdj not @CBAOnline).

There are business operators that actively use social media to their advantage. Virgin America states that it uses social media to boost its brand presence, allocating up to 70% of its advertising budget to the format. It's a good match for a business that sells the vast majority of its tickets online. In Australia, there was the Tourism Queensland's "[Best job in the world campaign](#)" that primarily used social media (as part of an integrated strategy) that attracted 8.4 million site visits.

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*Want to know more? Talk to us if you are concerned or want to know more about any of the areas covered.*

### Quote of the month

*"All you need is love. But a little chocolate now and then doesn't hurt."*  
Charles M Schulz

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