trialbalance

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The official newsletter of NZ CA Limited

NZ CA
An Association of Independent Chartered Accountants

In this Issue

Employee or contractor?

The IRD recently published a guideline to help employers understand how they distinguish between whether an employer is utilising the services of an employee or an independent contractor. The IRD distinguish between the two by assessing the description provided in the given contract/ agreement and applying the following common law tests:

1. Control. How much control does the employer have over the employee or contractor? The more control an employer has, the more likely IRD will deem the person to be an employee.
2. Independence. How much independence does the employee/contractor have in undertaking his/ her duties? The more independence the person in question has, the more likely he/she is to be a contractor.
3. Intention. What is the intention of the two parties in regard to the nature of the relationship and services to be provided?
4. Fundamental. Considers if the contractor is self-employed and the contractor's tax status – how is he/she paying tax, directly or via the client, and his/her legal identity.
5. Integration. Is the work fully integrated into the workplace, or removed from the business's day to day operations? The more integrated the work is, the more likely the person in question is an employee.

If you are unclear whether you have hired an employee or contractor or wish to hire either/or, please contact us.

Course : KnowHow Limited

Success and succession

Retirement plans have been put on hold by many business owners over the last five years. This highlights the need for investment both inside and outside the business.

80% of businesses listed for sale do not sell and yet most SME owners consider their business as their superannuation policy. Combined with this, business sales realise only 42% of the owner's expectations. Why? It comes back to planning.

So... what do you need to do to ensure successful retirement from your business?

- Have a clearly articulated vision for how you want your business to look – start with the end in mind.
- Break your long term plan down into manageable steps along the way.
- Always keep an eye on progress – what you can measure you can manage.
- Identify early, your options for sale or succession for the business – keep your options open.
- Ensure profits and your lifestyle are sufficient to allow you to invest outside the business.
- Prepare a transition plan for someone to take over your roles. Do yourself out of the job and reduce the reliance on you.
- Prepare the sale documents early so you can identify the shortcomings in your presentation and have time to improve.

If you want to maximise your retirement fund and ensure you can sell your business, start now. Work with your adviser to get ready to go.

Source: Sudburys Limited

Instant karma will get you on social media

They say a person with one bad experience will tell 15 others. It used to take time for the bad news to spread, now it's instant and there sure are more than 15 people who can find out about the bad experience once it gets published on the web.

Never has it been more important to watch the quality of your service.

Play it safe if you get a complaint. Bend over backwards to send customers away happy, even if they seem unreasonable. Just make sure you are too full to accept another booking from them.

Poor business practice is going to be harder to hide. Watch your reputation or risk it being exposed in the social media community.

Give-away reminders

Why give away branded pens? Does this work as a promotional tool?

The BNZ certainly thinks so. How many BNZ pens do you have, and how often do you see other people with them or use them yourself? Give-aways remind the recipient, regularly, of your existence. The more difficult it is to remember you, the more useful the give-away. You might be a specialist in your field, but once you've delivered your service, you're likely to be forgotten unless you can provide a reminder, like a pen. If you're an irregular or seasonal supplier, (such as delivering firewood), your give-away will help you to be remembered next time.

The longer your give-away lasts, the longer you'll be remembered. Fridge magnets are a favourite give-away for this reason. Give-aways work because people are loath to throw out something of value.

A couple of clever examples include a nail file for someone providing products for women, and a plastic device with a small blade for cutting articles out of newspapers. Be imaginative and you might come up with an excellent give-away idea.

Motor vehicle mileage rate

Inland Revenue has reviewed the motor vehicle mileage rate for expenditure incurred for the business use of a motor vehicle. The mileage rate of 74 cents per kilometre for the 2011 income year has been increased to 77 cents per kilometre charged for the 2012 income year. This applies to petrol and diesel fuel vehicles. The mileage rate does not apply to motorcycles.

Never assume your ACC bills are correct

Errors in ACC bills are not uncommon. Check the invoices you receive.

Typical examples include:

1. Your ACC category can be changed. For example, accounting practice might suddenly appear as administration.
2. If your personal wages plus your company salary come to more than about $110,000 a year, you could break through the maximum levy threshold. Inland Revenue supplies ACC with your company salary figure. There appears to be no system for matching this with any other wages you have received. The sum of the two incomes could exceed the maximum ACC income threshold. For example, you might have earned consulting fees of $70,000 and have shareholder remuneration from your company of $80,000. Both amounts are likely to be levied by ACC, even though the total is well over $110,000.
3. If you are ceasing business you are likely to get a provisional assessment for the next year. You need to get this cancelled.

You can split your ACC bill into different classifications only if you are actually running two or more distinct businesses through the one entity. You should check the rules on the ACC website if you think you qualify.

For example, if you employ office staff and you are a builder, ACC levies on office staff wages have to be levied at the rate for builders.

Strangely, if you are in a partnership and one partner does the office work while the other is working in a higher risk occupation, the office worker is allowed to use the office worker classification, while the other is not.

(Note: we have said 'partnership'. This dispensation does not apply to companies.)

Buying a business? Don't forget human capital risk

The chances are that if you are buying a business in New Zealand then you will be buying a Small to Medium Enterprise – that is the business will have between 3 – 50 employees and a turnover of $250,000 to $10,000,000.

The research highlights that one of the most substantial risks that face SMEs is the loss of its key people. A business that is profitable and solvent can quickly become a sinking ship without its most vital asset – human capital.

You will be taking on risk by the very act of buying a SME. Don't increase your risks by failing to undertake and implement prudent risk management at the outset.

Human Capital Risk Checklist

Shareholder Buy and Sell Agreements
If you are buying a business with other investors, make sure you have sought legal advice on your shareholders agreement for the buy and sell of shares following major events such as death or serious incapacity.

Key Person Risk
As a new owner you may not be the 'key person' on day one, but inevitably there will be someone who has the expertise or business know-how that is vital to the businesses success. When doing your due diligence on the business, include in your assessment the reliance on key individuals and the steps the business has taken to manage the potential downsides.

Business Debt
Bank funding for the purchase of a business will typically require you to provide personal guarantees and to put up your personal assets as security. You may also find that you have to provide guarantees over leases and supply agreements.

Unfortunately, you can't buy insurance to protect you against business failure from bad decisions or poor management but you can protect against serious events to key people that could cause the business to fail leaving you exposed to default on your debt.

Triplejump's Key Person analysis process will assist you to understand where and why the business is vulnerable and the extent of the potential financial risk, enabling you to make informed decisions about how to manage the downsides.

Source : Triplejump

Avoid making loans between companies

If you are operating two or more companies, try to avoid making inter-company loans. Unless the shareholdings in both are identical, you will usually need to charge interest to the borrowing company.

If you don't, the value of the interest can be deemed as a dividend, which leads to tax complications. The best thing to do, if you want to move money between companies, is to take money out of the lending company as your drawings (assuming you have a sufficient credit amount in your current account) and lodge it into the borrowing company as an advance from you, the shareholder.

One thing you should never do is pay one company's bills, by withdrawing money from the other company's bank account. It usually creates a lot of accounting work and can be avoided by a transfer of funds, as described above.

Look through company (LTC) 'alert'

As many of you will already be aware, the look-through company (LTC) regime applies for income years commencing on or after 1 April 2011. The LTC regime effectively replaces the qualifying company (QC) and loss-attributing qualifying company (LAQC) regimes. The ability for shareholders to claim losses through an LAQC ceased from this time and LAQCs automatically became QCs with effect from 1 April 2011, unless an election was made to enter the LTC regime or to transition to a sole trader or partnership.

The new LTC rules are quite complex and the IRD are still making changes to the legislation some 16 months later. The broad principles behind the LTC regime are as follows:

- An LTC is transparent for tax purposes. Income, expenses, gains, losses and tax credits pass through to the shareholders of the LTC and are taxed at the shareholders' marginal tax rates. Income tax is thus not payable at the company level.
- What is important, however, is that in regards to the third parties, the LTC is still a company, meaning that the shareholders enjoy limited liability in the same way as if the LTC was a normal company.
- Losses from an LTC can be offset against other taxable income derived by the shareholder(s) or carried forward. The amount of losses that can be claimed by shareholder(s) is limited by the so called "loss limitation rule" which, as the name suggests, limits the amount of losses a shareholder can claim. The purpose of the rule is to limit the amount of a shareholder's loss to amounts actually at risk to the shareholder.
- A further consequence is that (tax free) capital gains derived by an LTC belong to the shareholder(s) not the LTC, (no issues arise in distributing such gains), as is the case with normal (non QC) companies.

Whilst the rules are complex, like LAQCs, an LTC is an appropriate vehicle for trading or investing and there are in fact significant benefits in using an LTC, especially in the context of offshore investment.

If you would like further information on the benefits and uses of an LTC, please contact your NZ CA Chartered Accountant.

Source – nsaTax Limited

Tax refunds

The IRD has issued a reminder that any tax refunds paid in error must be sent back. The department expects the money back within 15 days (that does not mean working days, it means two weeks) and threatens penalties and interest charges if you hang on to the money for any longer.

Pause before you bank that IRD cheque. If you allow IRD to credit refunds to your bank account, be extra vigilant. What if you check bank statements only once a month, if at all? Consider insisting that they send you a cheque.

Australian rental properties – urgent attention

In the Australian Government's 2012-13 budget it says "The Government will remove the 50 per cent capital gains tax (CGT) discount for non-residents on capital gains accrued after 7.30pm (AEST) on 8 May 2012. The CGT discount will remain available for capital gains accrued prior to this time where non-residents choose to obtain a market valuation of assets as at 8 May 2012". New Zealand residents who own property in Australia, need to get it valued as at 8 May 2012.

Look-through Company (LTC) owners may be liable to pay ACC levies

On 1 April 2011, Inland Revenue introduced a new structure called a Look-through Company (LTC) as one of the options available to replace the Loss Attributing Qualifying Company (LAQC). LTC owners may become liable to pay ACC levies, depending on their status. Owners may also be eligible for compensation (up to 80% of the LTC liable income and other income) if they are injured and unable to work.

Bereavement payments to widows

Reasonable lump sum payments made by a business to the widow/widower of a recently deceased employee are not taxable in the widow's hands. This is because he/she is not an employee and the payments are not made in respect of past employment. Neither is the payment classified as a fringe benefit. The payments can be tax deductible to the employer. A number of circumstances would dictate the tax deductibility of the payments and, if so, for how long. These circumstances would include:

- Any relevant provision in an employment contract
- The position held by the deceased
- The type and size of the business

The issues will be how much and how long such a payment will be considered to be sufficiently linked to the running of the business to be deductible.

Tax calendar

September 28

2nd Instalment 2013

Provisional tax (December balance dates)

October 29

1st Instalment of 2013

Provisional tax for those who pay GST twice a year.

(All March balance dates)

November 28

1st Instalment of 2013

Provisional tax

(June balance dates)

"Anger dwells only in the bosom of fools."
Albert Einstein

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Changes in Particulars

Please remember to let us know of any changes in:
* Physical address * E-mail address * Phone and/or fax numbers * Shareholdings * Directorships * Trustees
Or anything else that may be relevant.