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# LOCATION

## the key to success

We've all heard the phrase "location, location, location". It applies just as much to business location as it does to your home.

**I**n business, you want to be in a location that attracts customers, whether it's through a shop front or an attractive office space.

Finding the right place is important. In fact, it might be the most important business decision you make. So it's worth doing your homework thoroughly, as you're looking at a big investment.

Some of the key considerations are as follows.

Ensure you can afford it. It might sound obvious, but many business owners sign a lease or sale agreement based on what they hope their bank account will look like, not what it is. It's always best to work within your budget. Don't forget the cost of utilities, such as electricity, phone and internet.

Get a real estate agent or broker who understands and has good experience of commercial real estate. You need to sit down and talk with them so they know what will suit your needs.

They should help you with inspections and sale or lease negotiations.

Is the site as good as it sounds on paper? You'll often

get inflated figures quoting foot traffic data or such as access and office quietness. It pays to walk around the site or park there at different times to find out for yourself. Are competitors close by, or a noisy workshop? Can your staff and your customers park nearby, and is it close to public transport?

Talk to your potential neighbours. They know the area best. A good question might be whether they are happy where they are, or looking to move out. Your neighbours might also become advocates for your business, so nurture them.

They might have similar customers, so you might be able to partner with them to offer complementary services. Imagine a party hire business next to a cake shop.

And lastly, don't forget to insure your property, whether you're leasing or owning. If something does happen, you'll be pleased you were insured.



# Cracking down on CARTELS

With cartels continuing to rear their head in New Zealand, the Commerce Commission is on a mission to boost business awareness of how to avoid and how to spot anti-competitive conduct.

**P**ut simply, a cartel is where two or more businesses agree not to compete with each other to increase profits. This conduct can take many forms, including price fixing, dividing up markets, rigging bids or restricting output of goods and services. The end result is that consumers are deprived of a fair deal that can flow through to higher prices and a reduction of choice and quality.

Over the past six years, the Commission has prosecuted 11 cartel cases across markets ranging from livestock, cardboard packaging and waste oil through to real estate, air freight and timber. In many instances, cartels have been formed as a result of businesses being ignorant of the law, Head of Competition Katie Rusbach says.

"It doesn't matter whether businesses set out to break the law, even attempting to strike an agreement not to compete with each other, whether it's acted on or not, is illegal under the Commerce Act. It also doesn't matter if the agreement is formalised in writing or just an understanding," says Miss Rusbach.

"One of the common denominators we have seen in cases is that discussions between competitors can often be triggered when they meet at industry association events. It's important that businesses understand the risk of engaging with competitors on matters relating to their respective commercial positions or plans. Advisers, like accountants and lawyers, play an important role in protecting their clients and are often uniquely positioned to spot the red flags that could suggest their client is at risk of, or involved in, cartel conduct."

## Red flags

The following red flags could suggest businesses are at risk of, or involved in, cartel conduct:

- Sharing pricing information with competitors
- Allocating customers or contract types with competitors
- Sharing commercially sensitive information with competitors
- Secret or fictitious payments to or from competitors
- Agreeing retail prices with a wholesale customer when both businesses also sell at the retail level

- Communicating with competitors about the main contract during tenders
- Joint bidding with competitors to reduce the amount of bidders in a tender
- Not bidding in a tender as a result of communications with a competitor
- Restricting the production of a product or service in conjunction with competitors
- Cooperating with competitors to exclude others from markets

Businesses can be at risk of being involved in cartel behaviour for a number of reasons, such as a lack of knowledge of the law and reckless behaviour all the way through to rogue employees or officers reaching deals in secret. Businesses may also be victims and could be getting ripped off if there are cartels operating among their suppliers.

Under the Commerce Act, businesses and individuals can face large financial penalties if they have been part of a cartel. Individuals can also be banned from running a company and legislation is now before Parliament that would criminalise hard-core cartel conduct.

Specific forms of cartel behaviour prohibited under the Commerce Act are:

- Price fixing (including bid-rigging)
- Restricting output
- Allocating customers, territories or other areas of a market (also known as "market sharing")

Not all agreements between competitors are harmful and some may fall under several exceptions which clearance can also be obtained for.

Exceptions to prohibited cartel behaviour are:

- collaborative activities
- vertical supply contracts
- joint buying and promotion agreements

All businesses should follow careful processes when interacting with competitors; if businesses are uncertain, legal advice is strongly recommended.

For more information on competition law and how to comply visit the Commerce Commission's [website](#) to view factsheets, guidelines and a series of informative animations.

## KiwiSaver – 5 key features of changes

- Additional KiwiSaver contribution rates of 6% and 10%
- Maximum contribution holiday to be reduced to one year
- Contributions holiday to be called "savings suspension"
- Over 65-year olds to be allowed to opt in to KiwiSaver
- Removing the lock in period, which currently affects members who join between the ages of 60 and 65. Applies from 1 July 2019. The other four bullet points apply from 1 April 2019. The lock in period is to be removed because the kickstart \$1000 contribution has gone. Those who have joined KiwiSaver over the age of 60, will remain locked in.

## Entity for owning rental property

The availability of losses for setting off against other income is most likely going to disappear from 1 April 2019. Therefore, a family trust now becomes a viable option. Have a talk to us about the best structure.

## Deemed dividends

Deemed dividends arise when there is a transfer of value from a company to a person resulting from the shareholding relationship. Excessive remuneration is an example. However, generally, where the shareholder is also an employee, you are likely to have an FBT situation as opposed to a deemed dividend. The FBT rules take precedence. Where the transfer of value is between companies which are part of a wholly-owned group, no deemed dividend can arise.

## New rules for PAYE

Say goodbye to filing your PAYE returns monthly (or twice a month for bigger organisations).

From 1 April 2019 you will have to send in details of your PAYE within 10 working days of paying your staff. It is two working days for filing the return if filed electronically, (please remember provincial anniversary days are classed as a working day) or within 10 working days if you are a paper filer. If your combined deductions from salaries and wages are \$50,000 or more per year, you will also be expected to file your PAYE returns online. For smaller firms, there will be an alternative of putting in two returns per month.

## Payments for babies born or due from 1 July

From 1 July 2018 the Government started weekly payments of \$60 per child, known as Best Start, until the child reaches the age of one.

To qualify, a baby had to be due on or after this date. Therefore, if it was born a little early, it could still qualify. Best Start can be extended to three years for families with a household income of less than \$79,000.

Anyone eligible will be able to apply through the Department of Internal Affairs SmartStart website when they register their baby's birth.

The paid parental leave has been extended to a maximum of 22 weeks from the same date and subject to the same condition about the baby being expected by that date. There is an increase in the number of "keeping in touch" hours from 40 to 52. These hours allow an employee on parental leave to stay connected with their employer and perform work from time to time.

# Home business requires **discipline**

Running a home business has some great rewards, but it requires planning and discipline if it's going to be successful.

If you're thinking about starting a home-based business, or about bringing an established business into your home, here are a few things to consider.

## Will you isolate yourself from your clients?

If your clients are used to visiting you, you'll likely have to meet them somewhere else. A good local café is ideal, but talk to the owners about a table that's quiet. You might have space available at home, but ensure it's quiet, office-like and out-of-bounds of family. Make sure visitors have somewhere to park.

## Can you separate business from home?

There are always distractions at home. There's washing to go out, dishes to be done or a garden to tend. Stick to business during business hours. When children come home from school, can you still lock yourself away until the end of the working day? Will you feel obliged to deliver or collect children to or from school? Does the family understand you can't be interrupted at certain times of the day?

In the 21<sup>st</sup> century, there is more of an expectation of sharing household chores. If your partner is working outside the home, or a stay-at-home parent, will you feel you have to take your turn preparing the evening meal? Chores such as this will eat into your working day in a way which would not apply if you were working away from home.

Setting the guidelines around chores, family

and "work" time is one of the most difficult things to do when you start working from home, but one of the most important.

## Do you have the space?

If you're crammed into a spare bedroom or garage, you won't last. Set aside or create the right space for your business.

Can you walk past the office directly to bed? There's always the distraction of checking work emails or finishing a piece of work before bed. Chances are you'll be there much longer than you intended. Shut the office space door at the end of the day and leave it closed.

Can you walk past the fridge without opening it?

It's a distraction that few home-based business workers consider. Many have put on weight because they can eat when they feel like it!

## Do you have room to expand, with new staff or storage?

Think about the future. If you want to keep the business at home, how can you expand? It might be adding an extra room, or using one vacated by a child now leaving home.



## Never too old?

Just when we have been coming to grips with the Millennials (Generation Y) whose world has been shaped by technology, we have Generation Z coming into the market and growing up in a digital world of political and financial turmoil.

However, a recent USA survey showed the most successful entrepreneurs tend to be middle-aged, with 50-year olds twice as likely to start up a successful business as 30-year olds. And 60-year olds fared even better!

The study concluded that older people have more experience, execute well, and have developed skills and relationships. In recent years we have noticed a trend for older buyers seeking second, or third, careers in business ownership.

## Get rid of email prompts - and keep working

We've talked in the past about emails distracting you from your important business. There's always the temptation to check an email as soon as it lands.

However, it's a better habit to check emails, and respond if necessary, at regular intervals that suit your work flow – perhaps every hour or two hours.

Most email programs, however, automatically prompt you when an email comes in.

It's distracting, so turn off the prompts (or shut down the email program until you're ready).

To turn off prompts in Outlook (the most common email program), go to File > Options > Mail > Message Arrival.

The four boxes will be ticked, so just untick them.

## A going concern

For a business to be a going concern it must be capable of being run by the buyer with the equipment used by the seller.

A simple example of this is the sale of a taxi business. Arguably, it should include the car. Bearing in mind the taxi licence is the fundamental asset, Inland Revenue might take a more lenient attitude to this type of omission. However, the safe course is to stick to the letter of the law.



“Nobody made any money being paid once for a job they had to do twice.”

– Len Southward, engineer

## Tax calendar

September 28  
Second instalment of  
2019 Provisional Tax  
(December balance dates)

October 29  
First instalment of 2019  
Provisional Tax for those  
with March balance dates,  
who pay GST twice a year.

November 28  
First instalment of 2019  
Provisional Tax for those  
with June balance dates

## Quick cash flow tip

### Buy Used Equipment, Not New

Used equipment in good condition can generally do the necessary work as well as a new piece of machinery. If you need equipment, search the local advertisements and auctions in your area, specifically looking for companies whose assets have been foreclosed and are being sold by the lender.

You may be able to buy quality, used equipment for savings up to 80% off the price of new equipment, without a comparable degradation of capability.

### Something to think about

“Money is like a sixth sense – and you can't make use of the other five without it.” William Somerset Maugham



# The missing ingredient in business planning

Running a business can be stressful and all-consuming. When owners do take time out to work on the business all too often risks to human capital are overlooked. Let me share two examples of such risks with you.

**W**here there are two or more owners in business significant problems may arise if one suffers a catastrophic event (ie death or total and permanent disability- both of which remove the owner from the business).

Owners are key to the business. The issues which arise relate to ensuring business continuity - how will the role that owner plays in the business be covered, and how will the remaining owners secure the ownership of that owner's shareholding for themselves?

The future ownership issue is crucial. Without an appropriate agreement in place, these are some of the potential pitfalls:

- They could end up with an unsuitable business partner in the deceased owner's spouse or other family member
- The estate or disabled owner could sell that shareholding to any willing buyer, including a competitor
- What value is attached to the business? Certainly, if the valuation is done after the fact then the value has already been impacted- to the detriment of the estate or the disabled owner
- Even where a business is valued, is there a mechanism in place to ensure the valuation is regularly updated
- Even where a shareholder's agreement or company constitution grants the remaining owners the first right to purchase that shareholding, they are not compelled to do so- let alone offer the fair price for it
- And how will the purchase be funded?

Without a properly funded agreement the simple fact is the business may end up being sold or closed down. By ensuring the bases are covered in an agreement, certainty of outcome can be provided for all. The disabled owner or estate is able to extract fair value of the asset, that may have taken years to build up, because a proper valuation

has been done and regularly reviewed; and a structure has been put in place to ensure transfer of the shareholding against payment of the purchase price. Funding it through the simple and cost-effective method of an insurance contract also means the owners do not need to use personal resources, borrow money or sell business assets to fund the purchase.

Securing ownership is just one part of ensuring business continuity. The other major concern is what impact will there be on the revenue of the business through the loss of such a key person? With this risk to human capital, it is even the temporary incapacity of a key person that could cause havoc to the financial viability of the business. Planning for this enables the owners to know, for example, who is key, what impact their loss would cause to the business, how long it would take before that impact is felt, and whether that person replaceable and- if yes- how long and at what cost to have a replacement in place and up to speed. Having a plan simply means owners know who is key and how much is at stake. Again, using the simple and cost-effective method of an insurance contract, they can have the funding in place to give them breathing space to make decisions.

What are the chances of such an event happening? Research out of Australia showed that, where there are 4 owners in a business, there is a 77% chance that one of them will die or be totally disabled before age 65. And as for the impact on a business, ACC research in 2006 showed that 67% of businesses that stopped trading did so due to illness or injury to a key person. Those are not odds one should want to "challenge", especially when the risk can so easily be remedied.

[www.momentumfinancial.co.nz](http://www.momentumfinancial.co.nz)

## Rental losses law change coming

**T**he law is to be changed regarding rental losses. For many years, investors in property have had a tax deduction, against their other income, for losses on rental property. Starting from 1 April 2019, residential property owners will no longer be able to set off their losses as previously.

The losses will accumulate and be carried forward to offset future rental profits.

The details are yet to be worked out. For example, if you have several properties, some making profits and others making losses, will you be able to offset the losses against the rental profits? Also, under the current proposal, these rules are going to be applied to residential property and not commercial property.



## Mischief of family trusts

**W**e often act for a family with a variety of Estates and Family Trusts that own considerable assets.

Example:

Most of the siblings that will benefit when Mother dies live overseas in 3 different countries. Mother is terminally ill.

If the Estate and Trust assets are distributed, tax estimated at over \$3.5m will apply.

We can solve this tax problem for the family by restructuring the Trusts and Estates. Assets under Mothers Will as a legacy will be received principally tax free in these countries.

If you have a trust with beneficiaries living overseas they could inadvertently suffer similar taxing fate.

From discussions with the Legal Fraternity, there is not a wide understanding of this problem, if any.

Through our affiliation via NZCA with RSM international connections, we are able to access advice in over 100 taxing jurisdictions worldwide, and with that advice structure the ultimate distribution or loan of NZ assets to those living overseas in a tax effective manner.





## Are they an employee, or an independent contractor?

The above question is an important one, as the answer dictates your rights, obligations and duties towards your workers. If your worker is an employee, then their relationship with your business is governed by New Zealand employment law and their written agreement. However, if they are a contractor, then New Zealand employment laws do not apply to that relationship. If you get the relationship classification wrong, you may be exposing your business to significant liabilities.

Interestingly, our law states that any description of the relationship made by the parties is not determinative.

This means that despite the fact that a worker may have an employment agreement with your business, it does not necessarily mean that the worker is, in fact, an employee.

### Determining contractor vs employee:

When determining whether or not a worker is an employee or a contractor, the law identifies that you need to think "about all relevant matters". As this is a

broad requirement, a few considerations are outlined below, to think about when determining whether your worker is an employee or a contractor.

- 1 Look at how the relationship has operated in practice. For example, does the worker take annual leave, sick leave, provide you with medical certificates when they are unwell and away from work, etc.
- 2 Does the worker effectively work on their own account and control their own work?
- 3 What was the relationship intended to be?
- 4 Industry practice.
- 5 How is the worker treated for tax purposes?
- 6 How is the worker paid? For example, does the worker submit an invoice, or do you pay them a wage or salary?

### Considerations:

It is important to remember that health and safety laws apply to both employees and contractors. As an employer, you must ensure that the workers who are associated with your business are given the highest of protection against harm to their health and safety. As you

will all be aware by now, this includes taking proactive steps to protect your people.

You also need to keep in mind that worker relationships may evolve over time. Just because your worker is a contractor today, doesn't necessarily mean that the law wouldn't view them as an employee down the track, if aspects of that relationship were to change. You need to monitor your relationships with your workers to ensure that you don't expose your business to further liabilities. Some of these liabilities may include:

- Accrued leave entitlement;
- Unpaid PAYE tax;
- Penalty up to \$20,000 for no employment agreement;
- And much more!

### What to do:

Regularly review worker relationships and classifications, and obtain advice whether or not the business has a risk of exposure to liabilities.

*Source: Davenport Harbour Lawyers*

## Get ready for PAYDAY filing

Since 1 April 2018, employers have been able to file payroll information every payday. Payday filing will be compulsory from 1 April 2019. Here's what you need to know.

### Does payday filing apply to me?

All employers will need to switch to payday filing by 1 April 2019.

If you're a New Zealand employer paying more than \$50,000 PAYE and Employer Superannuation Contribution Tax (ESCT) per year, you'll need to file electronically through payroll software or myIR from 1 April 2019.

If your total PAYE/ESCT is less than \$50,000 for the previous year ended 31 March 2018 you can either:

- file online, or
- by paper returns (but only from April 2019).

### How is payday filing different?

Currently, employers file employee earnings and PAYE information with Inland Revenue every month, regardless of how frequently they pay their employees. Under payday filing, this information will be reported to Inland Revenue

every time your employees are paid.

Instead of submitting an employer monthly schedule, you'll need to submit an employment information schedule after every payday.

Collecting payroll information more regularly will help Inland Revenue offer increased certainty about employees' tax obligations and entitlements.

### How does payday filing work?

There are three ways you can file online:

- direct from your payroll software
- by file upload in myIR, and
- on-screen in myIR.

You may find payday filing easier if you use payroll software, because this allows your payroll information - including salary, wages, PAYE and other deductions - to be automatically sent to Inland Revenue at the same time as you pay your employees, which could save you time. If you submit employment information directly from your payroll software, you'll still need to submit an employer deductions form (IR345) and

arrange payment. The due dates for paying and submitting the IR345 stay the same.

### How to prepare for payday filing

If you already use payroll software, ask your provider how they can support payday filing. Ask if you can file from your software or file upload in myIR. Your software needs to be compatible with payday filing by 1 April 2019. Chat with your provider about the changes and see how they're planning to be ready.

You'll have two working days after your payday to file the returns (or ten working days if you're filing on paper). Payment due dates for PAYE and other deductions won't change.

### How to register for payday filing

If you file direct from payroll software, you don't need to contact IR to start payday filing - just make your first submission and you'll have begun payday filing. For either of the options using myIR, you should call Inland Revenue on 0800 377 772. They'll register you and work through the process with you.



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# Complying with the AML/CFT legislation

If you have recently tried to start a new investment or open a bank account, you would have been required to prove your identity, location of residence, and perhaps proof of your source of funds. These requirements are all part of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (Act). This Act has now been widened (via the Anti-Money Laundering and Countering Financing of Terrorism Amendment Act 2017) to include lawyers from 1 July 2018 and accountants from 1 October 2018. Real Estate agents will also be subject to this legislation from 1 January 2019.

#### The purposes of the Act are to:

- detect and deter money laundering and the financing of terrorism (ML/FT);
- maintain and enhance New Zealand's international reputation by adopting, where appropriate in the New Zealand context, recommendations issued by the Financial Action Task Force (FATF); and
- contribute to public confidence in the financial system.

According to the Ministry of Justice, an estimated \$1.5 billion is laundered in New Zealand every year and the penalties for non-compliance by accountancy practices are severe (up to \$5m).

#### Effective from 1 October, we will need to:

- appoint an AML/CFT compliance officer within our practice;

- have a written risk assessment and AML/CFT programme which contains policies and procedures, and get them audited, generally, once every two years;
- Meet additional regulatory reporting obligations.

All new clients who are engaging us to provide 'designated activities' as listed in the Act will be required to provide confirmation of identity and address plus source of funds (or wealth) in certain circumstances.

For existing clients where we provide 'designated activities', there is no need to collect additional details if we already have sufficient information on file. However, as a matter of course and particularly if your situation changes, then we will need to go through with you the proof of identity, address and, where necessary, source of funds (or wealth) process. The level of detail and proof we need will be determined by whether you engage with us as an individual, company or family trust.

We apologise for the inconvenience these new processes may cause, but we are obligated to comply with the Act. We will work as hard as we can to streamline the process and minimise your frustration with being asked for proof of identity, and other information described above.

[www.strategi.co.nz](http://www.strategi.co.nz)

### 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.

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