



Companies Office Tinkering's

Sometimes taking a self-help approach to business can end up getting you into a big load of trouble. Some people think they can save money by taking action just on the opinions or suggestions of others rather than accessing professional advice. Some people don't understand the wider implications of what can seemingly be a little inconsequential event.

Recently, I came across a situation where a Company Director thought they could save some tax by changing the shareholding in their company from being wholly owned by themselves to splitting the shareholding 50/50 with their partner. They had been talking with a 'mate' who does it to save tax. So, they went onto the Companies Office website and simply changed the shareholding to 50/50.

Perhaps a quick telephone call to their Chartered Accountant could have saved them a big headache. The company is a closely held company, not an LAQC or a Look Through Company.

Any changes of shareholding need to consider the following:

- 1) Imputation credits (ICA's) - a change of more than 33% shareholding means ICA's will be lost.
- 2) Losses carried forward – a change of more than 49% shareholding means losses carried forward will be lost.
- 3) Has the value of the shares been transferred at market value. If not, then the IRD can assess the value of the shares and if the shares are transferred at less than this value, gift duty could be assessed.
- 4) Has the transfer of shares been a scheme or undertaking to reduce taxation? Are there commercial reasons or real reasons other than the reduction of tax. The arrangement could be seen to be tax avoidance and ignored for tax purposes.

Failure to complete appropriate director and shareholder minutes can result in fines imposed for not complying with the Companies Act 1993. Director's are also liable if they fail to correctly:

- a) Document share valuations;
- b) Complete agreements for sale and purchase of shares, and;
- c) Complete valid share transfer forms.

Furthermore, the onus of proof is on the taxpayer to show that what has occurred is not a scheme or undertaking to avoid tax. We must remember that the records of share transfers are public record with the Companies Office.

The reason for any shareholding changes needs to be understood. What is the purpose? What are the alternatives? Has a Chartered Accountant reviewed the situation to ensure the correct structure and the process to effect any change has been completed appropriately?

If you think an expert is expensive, wait until you hire an amateur. It's best to leave the tax stuff to the professionals.

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June 9, 2011



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