

Defending husband and wife companies

Sometimes it seems the Inland Revenue is at war with small family companies, the constant changes in the tax rules and new interpretations confuse one and all. The latest battle has been fought in a tax tribunal case concerning Arctic Systems Ltd, where the taxpayer lost on the casting vote of the tribunal chair. This has been widely reported as costing husband and wife companies huge sums in extra tax.

We believe the significance of this case has been exaggerated as the Inland Revenue cannot use the judgement to attack other companies until the appeal against the case has been decided in a higher court. However we are recommending some changes to companies where most of the work is performed by one spouse and the dividends are paid to both, just to be on the safe side.

Directors

If the non-working spouse is not a director of the company he or she should be appointed as one so that all the strategic decisions concerning the business can be taken jointly. It would be useful to have a record of these discussions that may cover matters such as; should the company pitch for a certain contract, what suppliers should it use, and how should the business be marketed. These minutes will help show that both partners are significantly involved in the business, and one cannot be said to 'gift' income to the other.

Share rights

Where one spouse holds preference or 'B' class shares that do not have the same rights as the shares held by the other spouse, the rules of the company can be changed to make both types of shares have equal rights. The Inland Revenue will be unable to argue that one spouse only receives dividends because of the generosity of the other spouse.

Assets

If there is spare cash in the company you could consider buying some equipment or holding the funds through unit trust investments. The value of company shares will then be derived partly from the value of the assets held and not totally dependant on the future income of the company.

Please come and talk through any planned changes in these areas before taking action.