

Tax
Talk

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Not the boss of you

Right now I have four files on my desk that are clients wanting to incorporate their business. Two clients want corporations for contract employment. One is a truck driver who tells me that everyone he talks to wants him to be incorporated before he hires on.

The other is a software developer. He's actually the son of a trucking owner/operator client of ours. He's been offered work in another province and incorporation is one of the conditions of the job. Why are these guys being asked to incorporate?

I've talked a lot about the benefits of setting up your business as a separate legal entity. In these two cases, though, the companies doing the hiring want a worker without the strings attached. Legally, they don't want an employee.

Having an employee carries all kinds of obligations, including having to hold or report funds for EI, Canada Pension Plan (CPP), and workers comp, and following a variety of rules for hiring and dismissal.

Payments to a contracted worker are reported as normal business expenses, not payroll, and are deducted against the business's income.

The worker is responsible for keeping his own records, paying his own income and self-employment taxes, and

insuring himself should he become injured. As an incorporated "independent" worker, are you prepared to file HST returns and corporate tax returns? If not, are you prepared to pay someone like me to do it for you?

By making this a business-to-business relationship rather than an employer-to-employee relationship, all the government policies and agencies that traditionally police employment and labour standards are circumvented. You say you hauled a load and the carrier didn't pay you?

Don't complain to the Labour Board. This is a dispute between two businesses. You'll have to take the carrier to small claims court.

Real benefits

Incorporating should be part of broader plan for your business and not simply a condition of a contract.

Consider the next client on my desk, a longtime owner/operator who a couple of years ago decided to get his own authorities and go out on his own.

We discussed incorporating but at the time he decided to continue as a sole proprietorship. Maybe it was just too much change and too much money all at once.

Well, he's had great success and two months ago added another owner/operator to his fleet. More trucks means

more risk so he wants the extra liability protection that a corporation can provide. Good plan. His only regret is that he should have incorporated sooner. He'll have to re-apply for some of his operating authorities. It's not the end of the world but it means re-paying fees.

If you need to incorporate so your employer can shift responsibilities on to you, ask yourself what's in it for you once the contract is over?

The last file is quite a nice success story. Dad started his trucking business 20 years ago and his two sons have been working with him for the past three years. Each boy has his own truck as an owner/operator through Dad, the carrier. All three

operate as sole proprietorships.

Everything is going well and now, thinking longterm, they want to incorporate.

They can sell their trucks to the corporation at fair market value and have any loans assumed by the new company. They will all become directors and officers of the company and each can be paid a salary for their time spent working - which will be great as Dad eventually slows down and reduces his salary accordingly.

The difficulty lies in the share ownership. Each share gets a vote and he who owns the most shares wins.

So will Dad insist on 51% and continue to rule the roost? Or will he relinquish control and agree to 33% ownership for everyone? At least that way it takes two of them to agree on any issue or major decision.

We'll talk it through and I'm confident they'll work it out.

If you need to incorporate so your employer can shift some of its responsibilities on to you, be my guest. But ask yourself, what's in it for you once the contract is over?

The common thread between my last two files is that incorporation is part of a well-reasoned business strategy. They're incorporating because it makes more sense for them than for anyone else. ●

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