

Talk Back



Victoria Wright
Legal

We are in challenging but also exciting times where having access to useful information that can really point you in the right direction is now more vital than ever. Here are our hand picked Business Talk experts – ready and willing to give you the inside track. Be inspired and make sure you pick their brains!

Victoria Wright Legal

Q I want to change service providers – I don't need to worry about TUPE, do I?

A This area of law is complicated and is covered by the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), which apply not only to the sale/transfer of a business, but also to a service provision change where the activities carried out by a provider on your behalf, are then carried out by another contractor instead.

If there is an organised grouping of employees at your provider whose principle purpose is carrying out activities on your behalf, that group of employees will transfer to the new contractor; unless the employees themselves object. Employees dismissed before, or after, the transfer of the contract, for a reason connected with the transfer, will be viewed as automatically unfair.

What are the practical consequences of this legislation?

If the reason you want to change provider, is that you are not happy with their staff, you run the risk of ending up with the same employees transferring to your new contractor. If your existing provider's staff amount to an organised grouping of employees (they don't have to spend 100% of their time on your business), the new contractor may have to take on considerably more employees from your existing provider than needed.

Even if your current contract has only been in place for a few years, your new contractor may have to take on your existing provider's staff with many years' employment – making redundancy and notice payments expensive.

Under TUPE, it is the new contractor's responsibility

to honour the existing employees' contracts (or terminate them via a compromise agreement).

However, in practical terms, the new contractor may well want you to indemnify them for the additional costs involved, especially where due to long service, costs are disproportionate to the value of contract.

There are contractual steps you can take to mitigate these potential problems, but the message is simple, you should seek legal advice before committing to outsourcing activities or changing service providers.

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Bob Francis Marketing

Q We do not know how long the recession will last, so how can we ensure that our business will survive?

A Green shoots are apparently appearing all over the place. Or the recession will last till 2011. Whichever statement is correct you need to undertake a number of tasks to ensure that your business survives.

One of these is marketing. Cutting back is too easy. However there is plenty of evidence from previous recessions showing that a company that continues with its marketing will be stronger when the recession ends. However you need to take a hard look at what types of marketing you do to ensure that you get "more bangs for your buck." When we work with clients like you, we start with identifying specific goals. We then undertake an analysis of the products or services you offer to ensure that the right

messages and benefits are communicated to the right types of clients. Carrying out a S.W.O.T. analysis will help you to understand how you can achieve your goals. Finally we help you produce and implement an action plan.

Areas such as PR are often overlooked but this is a very cost effective (mostly free) method of getting your brand across. Many companies forget the power of email marketing and do not actively manage their website to increase enquiries. There are a number of activities that you can carry out mostly without cost to make better use of your site.

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Paula Tomlinson VAT and Accounting

Q It looks like I'll be making a loss in my business this year. Will I be able to get any tax relief for this loss?

A The short answer is 'Very Likely!' The longer answer involves considering:

1. Your prior years income and profits
2. Any other income received in the same year
3. Your anticipated future income and profit levels

This will enable you to maximise your tax repayment or reduce your future tax payments. Where different tax rates apply, this will affect your optimum claim.

Maximum flexibility is available to sole traders/partners, particularly those in the first 4 years of trading, or when a partner joins a partnership, where tax paid on past salary, redundancy, or rental profits, for example, may be refunded.

You may arrange the use of your losses to ensure you don't waste your personal allowance, currently £6,475, and may even be able to offset them against a personal capital gain, such as a property disposal.

As a sole trader/partner, regardless of your claims for income tax and capital gains tax purposes,



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your loss will reduce your future Class 4 national insurance contributions. And you may use the same loss to reduce your income for Tax Credit purposes potentially increasing the payments made to you.

These main rules were recently enhanced for a short time giving longer standing companies and sole traders/partners the ability to carry back losses of up to £100,000 for an additional 1 or 2 years against earlier trading profits, worth a further tax repayment of up to £40,000.

If repayment of past tax isn't available, your loss may always be carried forward indefinitely to reduce the tax you pay in later years, for when those profits return.



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Malcolm Fillmore
Insolvency

Q Our turnover and profits have dropped and we have had an approach from a competitor in a similar position suggesting we merge. What are the pitfalls to look out for?

A It is said that a problem shared is a problem doubled! We have seen several businesses recently where a merger was not thought through and failed catastrophically. So the short answer is move cautiously.

Take time to get to know each other's business and see where you compete and where you compliment – not only customers and products but also personally. If one of you prefers sales and the other admin or production, that's a good start. Make sure you know what each other's aspirations are for the business.

Do get a good firm of accountants to go through the books to identify commercial and legal issues and conflicts. Work with them to prepare a full merger business plan, identifying the cost savings that the merger can achieve.

It's better to form a new company to take over the existing businesses – that way you will not be liable for any old problems in your merger partner's company. Each of you is then responsible for winding up your old business's affairs.

Agree the respective values of the business and assets transferred – if you want to have a 50:50 company, adjust the difference in values through the shareholders' loan accounts. Get a proper shareholders' agreement drafted – preferably by a solicitor or accountant with good commercial experience, who will know what issues to look out for. Shareholders' agreements are only ever consulted when problems arise so make sure they're comprehensive.

But, it's a marriage and if you're used to running your own business your way, you may have to change and adapt – so think long and hard before committing. And take advice from those who have seen it go wrong!



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Alex Steele
Recruitment

Q I am the MD of a small business and as the market is picking up I need to make a key hire and want to outsource the process to professionals, as I do for my accounting and legal requirements. I know about the traditional recruitment methods but think I need something more specialist. How do I decide which company to use?

A There are a number of options most common of which are agencies supplying CV's with a fee being paid only when an individual is hired. The Agency method is low risk financially but can be challenged by the real possibility of time and effort

wasted in wading through inappropriate CV's received, as you have no guarantee that candidates will be screened properly.

One alternative, not generally considered by smaller businesses is a retained Search service. Contrary to the general view, this is not exclusively for large budget businesses. Smaller businesses can be deterred from considering Search services by the misconception that a retained Search is an expensive alternative to the success based process. It is not the case and the smaller business decision maker may take the view that the cost is justified for the tailor made service received in return.

In these recessionary times there is another misconception that as there are huge numbers of people on the market it is therefore a solely buyers i.e. employers market. Not true as the really good candidates may not be on the market in the first place so will need even more 'searching' plus the volume of CV processing will be even greater than usual

I would advise you to judge tenders and pitches on the following criteria:

1. Insist on meeting all those likely to be involved in the conduct of the assignment. Would you be inspired to join your business if you met these people?
2. Feel confident that these individuals would add value to the process. Do they have a feel and understanding of your business? Do they share the passion? Can they sell it?
3. Be flexible and open to new ideas, but you are buying their expertise, so make it work for you.
4. Ensure that all Candidates, particularly those who are unsuccessful, will be treated professionally and courteously as the recruitment process (particularly Search), is a PR/Marketing opportunity.



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