

**OKC**  
CHARTERED  
ACCOUNTANTS

**OKC** BUSINESS SERVICES LTD.  
Chartered Accountants & Registered Auditors

Holly Mews, 29A Dartry Road, Dublin 6

Tel: +353 (0)1 4967299

Email: [info@okc.ie](mailto:info@okc.ie)

[www.okc.ie](http://www.okc.ie)

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# To FRANCHISE or not to FRANCHISE

Whether or not to Franchise can be a difficult decision for many business owners -

- ➔ What is involved?
- ➔ How do I protect the core venture?
- ➔ Will I get sufficient return on my investment?
- ➔ What exactly does business format franchising entail as opposed to other expansion models?

Often, the cost and time involved in scaling ones venture depends on the complexity of the business, the proposed system and the current position. So making the initial decision as to whether franchise is right or not, can be difficult. Notably, the NFC 'National Franchise Centre' has identified key elements in this decision making process inclusive of understanding expansion models, legal considerations, financials, brand development, marketing, systemisation, intellectual property and the importance of speaking with people who have been through the process (both franchisors & franchisees).

CONTINUED OVERLEAF



# To FRANCHISE or not to FRANCHISE

Indeed, the relationships between business format franchising, licensing, agents and distributors can be muddled; however they are all forms of expansion hugely relevant to many businesses.

Franchising in Ireland has shown incredible growth over the last decade. The most recent survey shows the sector now enjoys an estimated turnover in excess of €2.5bn, employing more than 42,000 people in full time equivalent jobs, has more than 315 active franchise systems operating here and has proven itself to be a very robust business model during these difficult and challenging economic times.

The UK franchise association advised that it was worth €13.7 billion to its economy and had grown by 44% in the last decade.

Thus, it is clear that the potential for growth within the franchise sector, (despite a recessionary decline) has remained; possibly as a result of its core function- replicating successful business models in an ethical manner.

Businesses who wish to pursue such a growth model do have access to unbiased support in the form of the National Franchise Centre (NFC) which is a not for profit venture established by Limerick Institute of Technology in Partnership with Limerick Chamber.

Currently the NFC offers "Franchise START" which helps business owners/managers to evaluate their current situation and what planning is required in these key areas. The programme is 5 days in duration, and facilitates those who wish to assess the feasibility of business expansion using various models.

This programme helps to demystify the business format franchise concept, offering a true insight into the investment required in order to scale ones business. For some, franchising offers an excellent platform for expansion, however gaining a knowledge base to enter into this sphere knowingly can be an uphill and costly exercise. Franchise START is catered to those who need to determine their suitability to the model; in addition to those who need information on best practice and ethical operations.

Inversely, there are many individuals who find themselves disenchanted with employment and want to break free from the status quo. Their wish is to benefit from their own hard work and diligence. For these people Franchise has much to offer. If you decide to become a franchisee, you are investing in a proven business model which has stood the test of time- this in turn reduces the risk associated with the venture. You



also have access to a network of fellow franchisees thus you are in business for yourself but not by yourself.

Nevertheless any investment requires appropriate due diligence – meeting franchisees, knowing what you are getting for your investment- operations manuals, training programmes, marketing support... these must be clear at the outset to ensure successful ventures and well-defined expectations for both parties.

If you are considering investing in a franchise or growing your business and want support- please contact  
email: [nfc@lit.ie](mailto:nfc@lit.ie)/ Tel: 061 293550/  
[www.nationalfranchisecentre.ie](http://www.nationalfranchisecentre.ie)





**Tax Tip**

If you think you are entitled to a tax refund, why not send in your return early and obtain your refund now!!!

## THIRD LEVEL COLLEGE FEES

**Tax relief is available at the standard rate of income tax (20%) on fees paid for:**

- 1 Approved courses in approved colleges in Ireland and EU
- 2 Part- time courses on behalf of students who do not have a third level qualification
- 3 Post graduate courses in private and public funded third level colleges in non-EU member states.

A list of approved courses is available on the Revenue website [www.revenue.ie](http://www.revenue.ie). Tax relief is available for repeat years for individuals taking more than one course and for individuals already holding a third level qualification.

For 2014 the first €2,750 (Full Time Courses) and €1,250 (Part Time Courses) of fees is disregarded for tax relief purposes. Where families have two or more children in third level education on a full time basis and where both are liable to the student contribution charge, tax relief will be available on the total fees paid less the disregarded amount. The maximum relief available is €5,000. Any repayment of fees must be adjusted for. In 2015 the disregarded amount will increase to €3,000 (Full Time Courses) and €1,500 (Part Time Courses).

## PAY AND FILE SUMMARY

**The following is a summary of upcoming pay and file dates:**

### INCOME TAX

Filing date of 2013 return of income (self-assessed individuals)	<b>31 October 2014</b>
Pay preliminary income tax for 2014 (self-assessed individuals)	<b>31 October 2014</b>
On-Line pay and file date for 2013 return of income	<b>13 November 2014</b>

### CAPITAL GAINS TAX

Payment of Capital Gains Tax for the disposal of assets made between 1 January 2014 to 30 November 2014	<b>15 December 2014</b>
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### CORPORATION TAX

Filing date for Corporation Tax returns for accounting periods ending in November 2013	<b>21 August 2014</b>
Balancing payment of Corporation Tax for accounting periods ending in November 2013	<b>21 August 2014</b>

## ROS ACCESS

Revenue launched a guide for accessing ROS via a smart phone or tablet using a Digital Sub Cert in May 2014. While this will be useful for all business sectors it will be particularly efficient for those in the construction industry who need to access ROS regularly for RCT payment notifications and updating details for the Home Renovation Incentive (HRI) on-line initiative.

## VAT MOSS TBE SERVICES

New EU rules in relation to the supplies of telecommunications, broadcasting and e-services (TBE) to non- vat registered consumers will be effective from 1 January 2015. The place of supply in respect of all supplies of telecommunications, broadcasting and e-services to non VAT registered consumers will be the place the consumer resides. This means that the VAT on such supplies will be chargeable at the rate applicable in the EU Member State where the consumer resides and the supplier will have to account for the VAT in that Member State.

This is a major change for businesses supplying these services because the VAT rate applicable will be the rate of the Member State where the consumer resides and there will therefore be additional record keeping obligations.

To simplify obligations of suppliers of such services, a new scheme –Mini One Stop Shop (MOSS) will come into operation on 1 January 2015 whereby businesses can submit and pay VAT due to other EU countries via the web portal of one member state. If you are a business supplying these services, you may need to look at your billing, accounting and IT systems now to ensure a smooth transition in 2015.

## MEDICAL EXPENSES

Tax relief for un-reimbursed medical expenses incurred on behalf of a taxpayer, his family and his dependents may be claimed against the taxpayer's income tax liability. Medical expenses include:

- ➔ GP costs
- ➔ Prescription Medicines
- ➔ Hospital care including scans, treatments etc
- ➔ Payments to Revenue approved nursing homes for dependents
- ➔ Physiotherapy
- ➔ Non-routine dental and ophthalmic expenses
- ➔ Routine maternity care including Caesarean sections

Relief is granted by way of a tax credit at 20%. Nursing home expenses are relieved at a taxpayer's marginal rate. A Form Med 2 should be completed in respect of non-routine dental expenses.

**Tip:** *Typically individuals only receive up to 50% of their GP / medical costs when claimed from their Medical Health Insurer .....maximise your refund by claiming the unreimbursed amount in your tax return.*



# GET MORE OUT OF YOUR OVERSEAS SALARY

If you're working overseas, you could be losing thousands out of your hard earned pay by not getting the best exchange rates when you transfer it home.

Irish professionals are in a good position to get work overseas. Our workforce is considered highly employable in the international job market. Last year the Canadian minister of employment even visited to entice Irish workers to Canada and increased the work visa quota available for Irish citizens.

This employability is in part because the workforce is well-educated: taken from the latest OECD report on education, Ireland is the 10th best qualified country in the world with 37% of the population boasting at least a bachelor's degree. Also, it's useful that our workforce is comprised of English speakers, the international language of business.

Of note it is the boardroom that is calling, with Irish managers and senior personnel finding themselves in demand overseas. The salaries for these senior positions can be generous, often well above the hundred-thousand dollar/sterling mark.

Though, whilst lucrative, this does leave a problem; how to get currency earned abroad home. Being paid in foreign currency all too often means facing unfavourable exchange rates from most high street banks for international money transfers that can cause thousands to evaporate from salaries. This is without mentioning the bank fees for overseas money transfers, which can typically cost as much as €40 each time. This can add up to as much as €480 a year if paid on a monthly basis.

Considering that the current favourite destinations for Irish workers overseas are Canada, the US, Australia and the UK, the ever shifting exchange rates can eat up earnings. Over the past year there have been significant fluctuations in exchange rates for each of these countries' currencies. Crucially, this means what might have seemed like a great pay package to begin with could quickly diminish with exchange rate shifts. See below for the lows and highs you could have have faced if transferring salary back to euros.

CURRENCY	MARKET HIGH (past 12 months)	10K CURRENCY TRANSFER HOME	MARKET LOW (past 12 months)	10K CURRENCY TRANSFER HOME	DIFFERENCE
GBP £	€1 = £0.81 £1 = €1.23 (May 2014)	£10,000 = €12,300	1 = £0.88 £1 = €1.14 (Aug 2013)	£10,000 = €11,400	€900
USD \$	€1 = \$1.28 \$1 = €0.78 (Jul 2013)	\$10,000 = €7,800	1 = \$1.39 \$1 = €0.72 (May 2013)	\$10,000 = €7,200	€600
AUD \$	€1 = AU\$1.34 AU\$1 = €0.74 (Jun 2013)	AU\$10,000 = €7,400	1 = AU\$1.58 AU\$1 = €0.63 (Jan 2013)	AU\$10,000 = €6,300	€1,100
CAD	€1 = C\$1.35 C\$1 = €0.75 (Jun 2013)	C\$10,000 = €7,500	1 = C\$1.55 C\$1 = €0.64 (Mar 2013)	C\$10,000 = €6,400	€1,100

# Personal Fund Threshold deadline announced by Revenue

In Budget 2014, Minister Noonan announced measures to restrict tax relief on pensions that provide income of more than €60,000 per annum in retirement. He did so by reducing the Standard Fund Threshold (SFT) from €2.3 million to €2 million from 1 January 2014 and as before, grandfathering arrangements will apply for individuals who have pension rights in excess of the new SFT threshold. Revenue have just announced a 12 month window with a deadline of the 1 July 2015 to apply for a Personal Fund Threshold where pension fund assets exceed €2 million.

Under the grandfathering arrangement individuals who have pension rights in excess of the new SFT of €2 million on the 1 January 2014 will be able to claim a Personal Fund Threshold (PFT) by notification to Revenue. PFT's approved under previous applications are not expected to be affected by the new lower SFT cap.

It is worth noting that the SFT of €2 million

includes all pension arrangements from all sources (Social Welfare excluded). In addition for those in defined benefit schemes such as the public sector superannuation scheme, there are new age-related valuation factors that were introduced from the 1 January 2014.

These new factors, ranging from as high as 37 from those aged 50 reducing down to 22 for those aged 70 make the calculation of the SFT or PFT more complex than before. In addition the original standard capitalisation factor of 20 will continue to apply to calculate the capital value of defined benefit pension rights accrued up to the 1 January 2014.

While the objective of improving the equity of the SFT regime between defined benefit and defined contribution arrangements remains, it has made the whole area more complex again. As a starting point any potential applicant should obtain the relevant statement(s) from their plan administrator(s)

stating the value of the fund at the 1 January 2014 and in the case of defined benefit schemes, the calculation of the accrued benefits at 1 January 2014.

The PFT system itself can be accessed by either of the following routes;

<https://www.ros.ie>

<https://www.ros.ie/payee-home-v1-web/pft/login>

and remember if you have accrued significant assets in your pension arrangement, or if you are a member of a defined benefit pension scheme and in particular those working in the public sector then you should seek independent advice prior to submitting any application.



## COMPANY WEBSITES

## What must be displayed?

EVERY LIMITED LIABILITY COMPANY WHICH HAS A WEBSITE IS REQUIRED TO DISPLAY THE FOLLOWING DETAILS:

- ✚ The full name of the company;
- ✚ The place of registration of the company;
- ✚ The registered number of the company;
- ✚ The registered office address of the company;  
In the case of a company exempt from the obligation to use the word "limited" or "teoranta" as part of its name, the fact that it is a limited company;  
In the case of a company which is being wound up, the fact that it is being wound up; and  
If the share capital of a company is mentioned on the website, the reference must be to the paid-up share capital.

The details should be displayed on the homepage of the website. Alternatively, they may be displayed on another webpage but a readily accessible link to the webpage must be prominently displayed on the homepage.

Failure to comply with the Regulation, which came into effect on 1 April 2007, deems the company, every officer of the company and any person in accordance with whose directions or instructions the directors of the company are accustomed to act, and to whose directions or omissions the default is attributable, guilty of an offence and liable too. The maximum fine is €2,500 per offence.

It is clear that a company and its officers must comply with disclosure requirements in respect of the company's website and electronic communications. Companies should take steps to ensure that the disclosure requirements are adhered to and their obligations are met.



# RESIGNATION OF DIRECTORS

Part 2 of our article in issue 2

There is no legal limit to the amount of time that you can remain a director of a private limited company, as long as you continue to meet the mandatory requirements. However some restrictions are imposed for public companies and the Multi-Unit Development Act, 2011 also limits the terms that Directors of Owners' Management Companies may serve on the board.

There are of course a wide variety of circumstances that may require a Director to resign, ranging from a conflict of interest, a desire to seek new opportunities elsewhere, a disagreement with the board of directors on a commercial point or indeed if they believe that the company is undertaking activities that are illegal or fraudulent.

## RETIREMENT BY ROTATION

Some companies, in line with Table A of the articles of association, include a regulation which provides that up to one third of directors retire each year. Usually these directors then offer themselves for re-election at the annual general meeting, conversely a director may retire by therefore simply not offering himself for re-election.

In practice this provision tends to be cumbersome and inconvenient and many private companies amend their Articles to remove it.

## RESIGNATION BY NOTICE IN WRITING

Table A again requires that notice of resignation be given in writing. Such notice should be addressed to the chairman or secretary and be precise as to the actual date of resignation, furthermore it cannot be retrospective.

Whilst this provides a general rule of thumb for the most common mechanism utilised for resigning as a Director, individual companies may include specific provisions of their own Articles such as the length of notice required and the format or manner in which it is to be delivered.

## HOW IS A RESIGNATION NOTIFIED TO THE CRO?

As with the appointment of a Director, the resignation of one must also be notified to the CRO on a B10 form within 14 days of it occurring.

A resigning Director cannot sign his own B10 form and the onus is therefore on the company, and the remaining Directors, to ensure that the form is lodged.

Just like an appointment, the company must also ensure that the Register of Directors & Register of Directors' Interests is duly updated.

## WHAT HAPPENS IF A COMPANY FAILS TO FILE A B10 FORM?

If a company fails to file a B10 form in respect of a Director who has resigned, there is a procedure in place whereby the former Director can notify the CRO of his own resignation using a Form B69. Prior to filing the form B69, the Director in question must follow a specific procedure.

This includes notifying the company in writing of his resignation, which, if not acted upon, is then followed by a further request to the company for the B10 to be lodged within 21 days and the resigning Director also forwarding a copy of his resignation and his notice of request to the company, to every person who is, to his knowledge, an officer of the company.

## REMOVAL OF DIRECTORS

A Director cannot be dismissed by the board unless the Articles of Association make specific provision for it. However, if someone is a life Director of a private company, they can be dismissed from that position, at any time before the expiration of their term of office, by an ordinary resolution passed by the shareholders in general meeting.

This is regardless of any provisions that might exist in the Articles of Association or indeed in any contract of service between the company and the Director.

A resolution to dismiss a Director in this manner must firstly be proposed by a shareholder who requisitions the Directors to call an EGM, which must be held at extended notice.

The company must also send notice of the EGM to the Director who is to be removed and he must be afforded the opportunity to make representation. Once the resolution has been passed, the form B10 is then filed with the CRO in the normal manner.

When undertaking any procedure to retire or dismiss a Director, extreme care should be taken to ensure that their signing powers on the company's bank account and elsewhere are cancelled. The dismissal of a Director may also lead to the Director in question seeking damages, if he is an employee, for breach of his service contract, or he may also be able to claim redundancy payment or compensation for wrongful dismissal.

If he is also a shareholder it may lead to a winding-up petition or a petition based on oppression. For these reasons, legal advice should always be sought prior to proceeding with the removal of a Director.





## PITFALLS OF EMPLOYING CHILDREN/YOUNG PERSONS

The summer months often see employers inundated with young persons trying to land themselves an elusive summer job however all parties should be aware of the existence of the Protection of Young Persons (Employment) Act 1996.

The law does not allow children (that is, those aged under 16) to be employees apart from in very restricted circumstances, for example (1) to take part in a film (2) children aged over 14 may do light work outside school term and (3) children aged over 15, but under 16, may also do light work and this may be during school term. In any of the above circumstances there are restrictions on the number of hours that may be worked and when the work may be done, with a complete prohibition on work between 8pm and 8am.

Young people (those between 16-18 years of age) may become employees but there are restrictions on the maximum hours that can be worked and generally the work cannot be between 10pm and 6am. A young person

can be employed on general duties in a licensed premise up to 11pm on a day that does not immediately precede a school day.

An employer of a child or young person must:

- ➔ Obtain a copy of the person's birth certificate;
- ➔ If a child is being employed, obtain a letter of consent from the child's parent / guardian;
- ➔ Keep records of the employee's details such as date of birth, and of the hours worked; and
- ➔ Provide pay slips.

The national minimum wage is set at €8.65 per hour. This does not mean that everyone is automatically entitled to receive this. Young people aged under 18 are only guaranteed up to 70% of the national minimum wage which is €6.06 per hour. An employer is, of course, free to pay more than the minimum wage if they wish, but are not required to do so by law.

## INTERPRETING COMMERCIAL CONTRACTS

Ambiguity in contracts, unless for a deliberate purpose, is poor drafting. The very reason most people commit agreements to writing is to ensure as much certainty as possible.

A court, when asked to interpret a commercial contract, will follow certain principles of interpretation, for example:

- ➔ by putting itself in the position of a reasonable person in possession of the background information reasonably available to the parties, the court will try to ascertain the objective intention of the parties when entering into the contract; and
- ➔ where ambiguity arises in the wording, the court will choose the interpretation that makes the most commercial sense.

It is the natural meaning of the words that apply in the first instance. Commercial sense is secondary and reserved for ambiguities. Therefore straightforward and simple language will best serve your business. Clarity is certainty.

An 'entire agreement' clause seeks to prevent parties to a contract introducing evidence outside of the written contract in order to vary the terms of that contract. It does not, however, prevent extrinsic evidence being used to aid the interpretation of the contract. Neither does it prevent rectification being sought if the contract incorrectly records the agreement reached or if there was a common mistake of the parties.

Usually parties do not pay particular attention to the miscellaneous clauses, such as an entire agreement clause, often contained at the end of the document. This can often be to their detriment if (and when) issues arise between the parties.

## DOES GOOGLE EVER FORGET?

The Court of Justice of the European Union (CJEU) has ruled Google must amend some search results at the request of ordinary people in a test of the so-called "right to be forgotten". The ruling is as a result of a case taken by a Spanish lawyer to have links to legal notices posted in 1998 removed.

The CJEU found that Google act as a 'Data Controller' notwithstanding the search engine's assertion that it does not control data, it only offers links to information freely available on the internet. In its judgement, the court said people had the right to request information be removed if it appeared to be "inadequate, irrelevant or no longer relevant". Google said the ruling was "disappointing" and has previously said forcing it to remove data amounts to censorship.

The effects and application of the decision are not clear. The ruling will not be easy to apply and will inevitably depend on the type and subject of the data. The judgement stresses that the rights of the individual are paramount when it comes to their control over their personal data, although there is a public interest defence when it comes to people in public life.

Google has launched a webpage allowing EU citizens make requests for the removal of information and has received thousands of requests which it is trying to deal with. Google has outlined that it is seeking to adhere to the ruling and will work closely with data protection authorities in the future.



# SUCCESSION PLANNING IN FAMILY BUSINESS

*A screech of brakes from his brand new sports car announced the entrance of the eighteen-year old son of the principal in a well-known local family business to minor football training. "Ah, shur, wasn't his father there before him" was the comment from a wise old fox, with raised eyes and a knowing smile. The moral? The previous generation had worked hard to build up the family wealth but the current generation seemed more intent on enjoying the fruits of their parents' labour.*

It is a universal tale and statistics from the US-based Family Business Institute are revealing. A recent survey conducted by them suggests that, while 88% of current family business owners believe the same family or families will control their business in five years, succession statistics completely undermine this. In fact, only about 30% of family businesses survive into the second generation, 12% are still viable into the third generation, and a mere 3% operate into the fourth generation or beyond. The statistics clearly reveal a major gap between the optimistic belief of today's family business owners for the future and the harsh reality that the vast majority do not survive through the generations. Though there may be a number of contributory factors, research indicates that family business failures can essentially be boiled down to one key factor: a lack of proper family business succession planning.

Though it can be analysed in various ways, there are two key (and very much intertwined) broad objectives that need to be met in addressing any successful business succession planning exercise:

## WHO WILL MANAGE THE BUSINESS?

## WHO WILL OWN IT?

It is often the family member that initially set it up who continues to manage the business. At some point, a worthy successor needs to be found (and groomed). The preference will typically (and understandably) be for a family member, which works in many cases. However, in others, hiring in an experienced manager could be the solution if the parents take the difficult decision to recognise that, for whatever reason, their children/other relatives do not have the necessary skills.

That decision does not mean they cannot retain most/all of the ownership within the family. Difficult decisions are needed on how to fairly pass on these assets to children, some of whom will have an interest in maintaining the family tradition (with some only in it for the money!). At an early stage, it is important to consider the best method for transferring the ownership, both legally and with a view to minimising tax costs. Any such decision throws up consideration of many issues – parents hoping to enjoy the fruits of their labour before illness/death; children marrying someone unsuitable who could get half the child's assets in a divorce; a third party making an offer to buy that can't be refused; difficult negotiations with banks for otherwise good companies crippled by legacy Celtic Tiger debt; prohibitive tax costs on passing the assets.

Though there is no perfect solution, family business owners are well-advised, before it is too late, to get best advice to formulate a succession plan that takes into account all relevant factors and competing family interests. The aim? Ensuring the family business survives to the next generation (and the next and so on), an objective possibly helped by taking more modest modes of transport to training where the comment passed can be "ah, shur, wasn't his grandfather there before him!"

