Forbes Andersen

Business Matters

OCTOBER 2020

VOLUME 34 | ISSUE 5

MANAGEMENT

We're Not Through the Pandemic Yet: Six Points to Keep in Mind for your Workplace this Winter

As the weather gets colder and Canadians start to move indoors, an increase in COVID-19 case numbers – maybe even a second wave – is likely. Whether or not there will be further shutdowns, there is little doubt that the cold and flu season is on its way. As many of those symptoms are similar to those of COVID-19, your business will need to be ready for increased absences.

This need to self-isolate will impact not just the individual workers, but their families as well. Many parents may be keeping their children home from school to both avoid spreading the virus and to keep children who have symptoms from potentially bringing COVID-19 to their school or childcare. So, given these concerns, what can organizations do to prepare?

1. Safety first

Under occupational health and safety legislation, employers have an obligation to take all reasonable precautions to ensure their workplace is safe. As well, many organizations should be mindful of potential legal obligations to the public at large. As such, if you have not done so already, your organization should review its policies and how they relate to the COVID-19 pandemic.

In particular, make sure that everyone in your workplace is made aware of the symptoms of COVID-19 and what they should do if they exhibit them. What is your policy on sick leave? What about remote work? Employees should know what is expected of them should they wake up with a runny nose or start to feel ill while working.

2. Don't forget what you've learned so far

Many lessons learned in the early stages of the pandemic will be helpful in navigating the coming months.

Some businesses may have the mindset of getting everyone back in the physical workspace as quickly as possible. Although this may be the long-term goal, we may still be a while yet from reaching it.

If your business has been able to adapt to employees working remotely, it is advisable to keep this option open. There will inevitably be some employees who are able to work but cannot come into the office for health reasons, but there will also be those that must stay home to take care of dependants, even just temporarily; a flexible approach to remote work is a key tool that employers will need to get through the coming months. Keeping it as an option can help protect those in your workplace from the virus while providing a way to maintain productivity during the absence.

3. Be ready for those who might take advantage

There may be some that see that runny nose as a ticket to a day off, even if they might be capable of working remotely. This will be difficult to police, and employers should be mindful of employees' privacy rights as well as potential human rights concerns related to undisclosed illnesses.

Even with this in mind, employers can monitor patterns in absences and have their policies address culpable absenteeism and the related consequences.

4. Be flexible

Although putting policies in place or cementing existing ones may sound to some like the employer "laying down the law," it cannot be overstated how important it is to be flexible in such policies.

With the pandemic impacting every aspect of our society, there will inevitably be employee absences due to family responsibilities. Employers should also not lose sight of the fact that, in many jurisdictions, they not only must provide time off to workers to care for dependants; they also have an obligation under human rights legislation to make accommodations for family status rights just shy of the standard of "undue hardship" to the employer.

As such, there will be the need for some flexibility in the rules. Employers will need to be ready for such things as remote work and different start and end times, and they will also need to be ready to be as flexible as possible on scheduling, not only to meet legal obligations but also to adapt to increased absences.

5. Layoffs may be needed

Even with a comprehensive policy in place, there may still be shutdowns and layoffs ahead of us yet. Employers should be mindful of their legal obligations and carefully review the statutory requirements in their jurisdiction, seeking legal advice where necessary.

It is also important to be aware that layoffs are a creature of statute, but even if the layoff meets statutory requirements, an employer may have contractual and/or common law notice obligations to the employees they lay off.

Moreover, even if the layoff is only intended to be temporary, an employee could challenge it, saying that it amounts to a constructive dismissal. Before you move ahead, make sure to review any employment agreements you have and get some legal advice about what the risks and potential liabilities may be.

6. Communication is key

As with the policy and preparatory points above, communication is key. Handled well, it may help to mitigate against potential claims.

- Make sure to communicate any changes in policy to your employees, giving them an opportunity to ask questions.
- Have your employees sign off to affirm that they have received and understand the policy.
- Even without policy changes, remember how important it is to communicate with your employees. For example, if you intend for a layoff to be temporary, be sure to clearly communicate this to the employee and, where possible, keep laid-off employees up to date on the situation.

And do not forget that you have obligations of good faith to your employees. Clearly-documented communication can help mitigate allegations by laid-off employees of employers not living up to their good faith obligations.

As the saying goes: “an ounce of prevention is worth a pound of cure.” We may not be able to stop what is coming, but there are steps your organization can take to get ready. And as we have seen, the more you can include your workers in the process as you carry out those steps, the more prepared the entire organization will be to adapt to what potentially lies ahead.

Whole Life Harmony – The New Work-Life Balance

As we all seek out new and *better* norms, having experienced a global pandemic, one thing for sure is that the journey to get to where you want to go ought to feel as satisfying as possible. Consider becoming aware of and striving for *whole life harmony* – for when you are in harmony within yourself, you are in harmony with life surrounding you.

What is “whole life harmony”?

Harmony is defined as “a pleasing arrangement of parts” (dictionary.com). Think of a musical orchestra: The sound and experience is about the quality contribution of each instrument, not its quantity. On a human level, it’s a pleasing, quality arrangement of the individual showing up to the eight facets, or chords, of life. They are career, family and friends, marriage, health and self-care, fun and play, physical surroundings and personal development.

Harmony is unique to the individual. It’s what each one of us defines as important, what feels right. It’s our values-based DNA. Honouring your values is a process of alignment, and it’s this alignment that creates a steady, grounded, energized, fulfilled individual.

Why is whole life harmony important?

Whole life harmony creates an optimal experience across the board. Humans are holistic beings. How we feel in one dimension of life influences another. Take this simple example: When we are content in our personal life, we can achieve greater focus and productivity at work; and vice-versa, when our work is in a good place, we are more able to be present in our personal lives.

Why is it important for professional leaders?

Professional leaders have great responsibility given the depth and demands of their role. Since harmonizing is like tuning the chords – all eight facets, not exclusively your career – it paves the way for a pleasing performance, both professionally and personally.

Typical leaders are visionaries; the ones who stand in front to promote the vision / mission and empower the journey forward. They are tasked with connecting others to the vision. When leaders show up in a state of alignment – clarified, intentional and keys in tune – it is likely that their presence and communication will be of positive influence.

An admirable and essential skill for a leader to honour is listening. When life is in harmony, with reduced clutter and noise, the leader can hone in on their listening skills, listening to what’s being said or what’s not being said. They can then offer soft support in the form of compassion or empathy – or action-oriented support in the form of empowerment and innovation.

Whole life harmony also helps in creating a positive essence and respectful reputation for the leader. Leaders become worthy of following, the mission is more likely to be achieved, and the experience is one for all to enjoy.

How to get whole life harmony

Given that harmony within is medicine for the mind, body and spirit, it minimizes the stress or discord, and a weight is lifted off. Try the following practices for achieving whole life harmony, or for when you have fallen out of harmony.

1. **Conduct a self-assessment.** Do a scan of all eight of your life facets, and determine what's off. Complement your scan with inquiries like, "What's important to me?", "What do I want to feel?", "What needs attention?" or "What can I do to make it better?"

2. **Prioritize what's important.** The bottom line is, strive for quality, not quantity. As motivational speaker Michael Altshuler put it, "The bad news is time flies. The good news is you're the pilot."

3. **Look at the goods.** Of the eight facets, what good elements does each one bring you? What are you grateful for or proud of? Giving yourself appreciation and acknowledgment creates space to leverage the goods. And the added bonus? This is known to attract more of the good.

4. **Set better boundaries.** Boundaries are essential so as not sabotage you, your fine work or your quality time doing what matters. When your boundary lines are crossed, resentment seeps in and creates pitfalls that do not lead you to an inspiring place – there's much more peace to enjoy when honouring you and your boundaries.

5. **Rejuvenate.** Take time to fill up your own cup; you cannot serve from an empty one. Self-preservation, or self-care, is essential for rejuvenation, and it is your own distinct recipe. It could include a combination of time away from others, quality connection with others, exercise, good food, writing, music, outdoors, play, or wellness rituals.

6. **Consider investing in coaching and personal development.** This is an act to have a third-party professional, listen for and fan the flame toward what's important to you, so you can feel greater harmony on the inside and out.

Remember, harmony will ebb and flow rhythmically as you do, but making yourself conscious of it, being intentional and using some of these tips will help create a more manageable flow. Find your rhythm, protect it, and play the accompaniment as loud or soft as needed to achieve the tune that feels just right for you.

TAXATION

Things You Need to Know When it Comes to U.S. Taxes For Individuals: Accidental Americans

It is becoming more well-known that United States citizens have income tax filing requirements from their home country, regardless of where they reside. However, there are some people who do not know they hold U.S. citizenship. Are you potentially one of these "accidental Americans"? Read on to learn more …

What is an "accidental American"?

An "accidental American" is someone who has inadvertently acquired U.S. citizenship. This can include people in the following situations:

- A child is physically born in the United States, even though they may not have remained there.
- A child born in wedlock that:
  - — has two U.S. citizen parents, and at least one parent resided physically in the United States or one of its outlying possessions at the time they were born
    or
  - — has one U.S. citizen parent and one U.S. national parent (lawful permanent resident, or "green card holder"), and the U.S. citizen parent was physically present in the United States or one of its outlying possessions for at least one continuous year
    or
  - — has one U.S. citizen parent and one non-U.S. parent, and the U.S. citizen parent was physically present in the United States for at least five years, with at least two of those years being after the parent was 14

Additional rules apply for a child born out of wedlock to U.S. citizen parents, and they have specific requirements depending on what year the child is born and whether it is the father or the mother that is the U.S. citizen.

As it can be complicated to determine whether someone in fact has U.S. citizenship, it will help to discuss your situation with a U.S. immigration lawyer.

What are your benefits and responsibilities as a U.S. citizen?

If you are a U.S. citizen, you are eligible to have and travel on a U.S. passport. Among the other benefits are that you can:

- travel to the United States without a visa
- vote in U.S. federal elections
- sponsor family members to move permanently to the United States
- obtain U.S. citizenship for your children

Generally, you would also have the responsibility to pledge allegiance to the United States and give up allegiances to other countries. However, some countries – notably Canada – have agreements in place with the United States for dual citizenship.

You must also file a U.S. income tax return to report your worldwide income annually, regardless of whether or not you are physically living in the United States. There are mechanisms, such as the foreign earned income exclusion or foreign tax credits, that will reduce or eliminate double taxation on the income reported in both the United States and the country where you physically live.

In addition to the income tax return, you may also be required to file additional information reports. Some of the more common ones include:

- FinCEN Form 114: *Report of Foreign Bank and Financial Accounts (FBAR)*.
  - — This form is required when the maximum value of all financial accounts outside of the United States that you own individually or jointly, or for which you have signing authority, exceeds $10,000 USD in aggregate.
- Form 5471: *Information Return of U.S. Persons With Respect to Certain Foreign Corporations.*
  - — This form is required when you are a U.S. person with share holdings in a non-U.S. corporation. The required sections of the form are dictated on the share transactions that took place during the calendar year, as well as the percentage of ownership you have by vote or value.
- Form 8621: *Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund*.
  - — This form is required when you are a U.S. person with shareholdings in a non-U.S. corporation that is classified as a Passive Foreign Investment Company. Common examples are non-U.S. mutual funds, exchange traded funds and some real estate investment trusts.

To learn more about some common U.S. tax misconceptions, see the article *Mistakes Canadians make with U.S. taxes* in the previous issue of *Business Matters*.

What are your U.S. income tax voluntary disclosure options?

If you find yourself in the situation of being an "accidental American" and are delinquent on your U.S. income tax filings, there are voluntary disclosure programs available. Under these programs, you could be subject to lower civil penalties than the default penalty amounts or, if you qualify for the Streamlined Foreign Offshore Filing Compliance Procedures, you could potentially face no penalties.

The voluntary disclosure program that you qualify for depends on your situation. One determining factor is whether your delinquency was willful (on purpose) or non-willful (not on purpose). If your situation is more on the willful side of the spectrum, it is advisable to go through the voluntary disclosure process with a U.S. tax lawyer to reduce and/or avoid criminal penalties as well as civil penalties.

To learn more about the voluntary disclosure options available to you, see *Voluntary Disclosures Program* in the April issue of *Business Matters.*

Do you have to keep your U.S. citizenship?

Even though you may be an "accidental American," you can choose whether to keep your U.S. citizenship.

However, as the renunciation is generally irrevocable – it cannot be reversed – it is not a decision to make lightly. If you are thinking of renouncing, please speak to a professional in the U.S. immigration space so that you avoid any potential issues. The websites below can give you further interpretation, but only a professional immigration counsel can advise on what would apply in your circumstances.

U.S. Citizenship and Immigration Services. Policy Manual. Chapter 3 - U.S. Citizens at Birth
https://www.uscis.gov/policy-manual/volume-12-part-h-chapter-3

U.S. Citizenship and Immigration Services. **What Are the Benefits and Responsibilities of Citizenship?**
https://www.uscis.gov/sites/default/files/document/guides/chapter2.pdf

U.S. Department of State – Bureau of Consular Affairs. **Renunciation of U.S. Nationality Abroad**
https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/us-citizenship/Renunciation-US-Nationality-Abroad.html

Internal Revenue Service. **Report of Foreign Bank and Financial Accounts (FBAR)** (filing information)
https://www.irs.gov/businesses/small-businesses-self-employed/report-of-foreign-bank-and-financial-accounts-fbar

WEALTH MANAGEMENT

Reverse Saving: Borrowing to Invest in the Stock Market

Legendary investor Benjamin Graham said that the investor's chief problem and even their worst enemy is likely to be themselves. Indeed, borrowing to invest is not for the faint of heart.

Why might you consider borrowing to invest in the stock market?

Traditionally, discussions with your financial professional related to borrowing and investing occur at the same time. This typically happens when the two following market conditions are present:

1. Borrowing rates are low.
2. Stocks are cheap after a dramatic decline in stock prices.

For instance, there was nowhere to hide in the first quarter of 2020: With the novel coronavirus spreading rapidly around the world, economies were closed for business as stay-at-home orders were issued in Canada and abroad. Stock markets and interest rates both fell dramatically, offering investors these traditional incentives to pursue a leveraged investment strategy.

Are you fit to borrow to invest?

These two key factors should dictate whether borrowing to invest is right for you:

- your ability to take risk
- your willingness to take risk

To assess your *ability* to take risk, you would look to the factual details laid out in your financial strategy or retirement plan. If your retirement plan cannot sustain higher expected risk (in other words, your cash flow is tight), then this investment strategy is not something you should consider.

Borrowing to invest is a better strategy for investors who have excess cash flow and need help building long-term equity outside their principal residence and/or business. Those who typically might benefit from this strategy are professionals with their own practices, such as partners at law, accounting firms, doctors or dentists.

Next, consider your *willingness* to take risk. If you can't sleep at night because your portfolio of investments using your own money has declined in value – never mind other people's money that you are considering borrowing from the bank – then this strategy is not right for you. However, if you are among the investors who have survived previous "bear markets" (i.e., stocks declining 20% or more) and have not panicked, then this strategy is one for you to consider.

Another situation that favours this investment strategy is that Canadians are traditionally very good at paying down debt, but they may struggle with building equity through savings outside their registered RRSP and TFSA accounts. So, this leveraged strategy of borrowing to invest could make sense – it forces the investor to save while they focus on paying down debt, which they have historical experience doing aggressively.

Your leveraged investment plan: A double-edged sword

Whether you acquire real estate with a mortgage or a stock portfolio using borrowed funds, the returns on those investments are magnified by the use of leverage and the cost of borrowing. As a result, you will see an enhanced and asymmetric impact on returns – the returns swing up and down.

In plain language, this means that if your portfolio (half borrowed and half not borrowed money or "equity") earned or lost 10% in a given year, the impact on the equity within your portfolio will move up and down by 17% and 23% (this is a highly simplistic example that assumes a 3% per annum cost to borrow). You can see that although the portfolio returns were symmetric – both up and down 10% – the equity return is asymmetric: it is higher and lower than the portfolio return, and it increases and declines by unequal amounts.

The enhanced equity returns up and down are caused by the use of leverage, while the asymmetry in returns is caused by the cost of borrowing. This asymmetry in returns creates the added need to get the timing right on your leveraged investment strategy. If you implement the leveraged investment strategy and your portfolio declines in value, stress and emotion can kick in and derail even the most seasoned investor's plan, resulting in a bad outcome overall.

Keep your leveraged investment plan clean and tax deductible

Borrowing to invest is tax-deductible in Canada when money is invested in a non-registered account. To keep your cost of investing clear for the Canada Revenue Agency (CRA), set up a line of credit dedicated only to your leveraged investment strategy. That way, it will be crystal clear how much it cost you to invest.

Success is based on diversification

Although we like to believe we can predict the future, we must accept that uncertainty is a part of the investing process, so with this realization you should spread out your investment risk to accommodate various scenarios. One way to achieve this is by owning stocks in different sectors that are thus exposed to different economic influences.

A common idea behind this leveraged strategy is to cover your cost of borrowing by purchasing dividend-paying stocks. You can find dividend-paying securities in almost all sectors of the economy, not just in the long-established Canadian banking sector.

Another way to diversify is to look at your portfolio in a North American context, and not just focus on Canadian stocks. Although you can realize tax advantages to owning Canadian dividend stocks through the dividend tax credit, tax considerations should be secondary in your mind to enhanced diversification.

Canadians who invest a portion of their leveraged strategy in the United States are likely to find many more stocks in a wider range of sectors of the economy (technology, health care, consumer discretionary, etc.), which can enhance your portfolio's diversification and outcomes. In addition, exposure to the U.S. greenback has historically provided Canadian investors with an enhanced source of diversification against market uncertainty.

The golden rule

Ignoring all the factors already discussed, the golden rule for anyone contemplating borrowing to invest is to look at the worst-case scenario.

Consider what would happen if your leveraged investment strategy went to zero and you still owed the bank the loan and interest. If this scenario would impair your family's current and expected lifestyle, then you should reconsider this strategy. Because, in essence, this strategy should be viewed as being more aspirational: We are trying to achieve the lifestyle we want in future, but not by losing the foundation (our needs) we have at present.

BUSINESS MATTERS is prepared bimonthly by the Chartered Professional Accountants of Canada for the clients of its members.

Authors:

We are not Through the Pandemic Yet	Ian Brown, CA
Whole Life Harmony – The New Work Life Balance	Katie Wright, PCP
Things you Need to Know When it Comes to U.S. Taxes for Individuals	Cyndy Packard Osode, CPA, CA, CPA (TX, USA), CGMA
Reverse Saving – Borrowing to Invest in the Stock Market	Adam McHenry, CFA