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FACT SHEET

Business Structures

What Business Structures are available to me?

If you are going into business, there are a number of options available to you in terms of the business structure you conduct your business from. The types of structures available are as follows:

- Sole trader
- Partnership
- Limited liability partnership
- Joint venture
- Company
- Association
- Trust
- Co-operative

This fact sheet will concentrate on the most commonly used business structures, being sole trader, partnership, company and trust.

What Business Structure is right for my business?

The right business structure will depend on your individual circumstances, the nature of your business as well as considerations such as asset protection and how you want to manage your exposure to business risk generally. Below is a quick synopsis of the highlights of each of the commonly used structures.

1. Sole Trader

A sole tradership is available to singular business proprietors and is a good option for people wanting a simple structure for a simple business. For example, operating as a sole trader is often the best option for a consultant with no major overheads or exposure to risk.

2. Partnership

A partnership is a good option for professional practices as it combines the labour, expertise, management skills and financial resources of a number of people. Partnerships do mean you are exposed to the conduct of other partners in your business therefore before going into business you should ensure you trust potential partners and have a partnership agreement drawn up.

3. Trust

Trusts provide great flexibility for tax planning purposes and also provide potential benefits in the way of segregating business assets and risk from your personal assets. Trusts are however subject to Personal Services Income Legislation[1], which serves to limit potential tax planning opportunities.

4. Company

The advantages of corporate structures come down to flexibility and protection. Companies are a good option for large and more complex businesses with significant assets, liabilities and a certain degree of business risk as they provide an element of protection for shareholders. Financiers feel more comfortable dealing with corporate structures however company administration is generally the most onerous and expensive of all four options. Similar to trusts, companies are subject to Personal Services Income Legislation[1], which serves to limit potential tax planning opportunities.

The tables on the following pages compare the four most commonly used business structures in greater detail.

What Next?

The following table provides a theoretical comparison of the commonly used business structures which should help guide your decision as to the most appropriate structure for your business. However, the decision can often come down to not only your individual circumstances, but your individual preferences. Before deciding on a business structure, contact your manager or partner at Enspira Financial to discuss further.

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Attribute	Sole Trader	Partnership	Trust	Company
Nature of the organisation	Simplest form of organisation, tied to the proprietor	Relatively simple and flexible form of organisation, tied to the partners	Relatively complex form of organisation and there are a number of different types of trusts	Relatively complex form of organisation that has its own legal status independent of its members
Governing law	Minimal	Statute law, common law and partnership agreement. However less regulated than companies and trusts	Common law, Trustee Act and the trust deed	Heavily regulated by the Corporations Law which governs company formation, wind-up and existence generally
Establishment procedure	Simple and inexpensive	Simple and inexpensive. A partnership agreement is recommended	Technical and sometimes complex, depending on trust type and type of trustee. Generally more expensive to set up than a sole trader or partnership structure	Establishment takes place by way of incorporation, and is generally more expensive to set up than a sole trader or partnership structure
Obtaining finance	Limited to the borrowing capacity of the proprietor	Often easier than obtaining finance as a sole trader as can take borrowing capacity of all partners into account	Debt and equity financing options available to a trust depending on the type of trust established	Debt and equity financing options available to a company i.e: loans or issuing shares in company
Continuity upon death or disablement	Business ceases to exist upon death or incapacity of the proprietor	Business can still continue upon death or incapacity of one of the partners – remaining partners continue the business	A trust can continue beyond the death of business operator / trustee however most trusts cease to exist after 80 years	Companies can exist indefinitely as they are separate legal entities that do not rely on the continuing existence of members
Exposure to liability	Proprietor is personally liable for the debts of the business	Partners are personally liable for the debts of the business, and partners are liable for the conduct of all other partners	Trustee is generally liable for the debts of the trust	Generally, a member will only risk capital contributed. Company directors may be liable for company debts

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Attribute	Sole Trader	Partnership	Trust	Company
Control	Proprietor has full control of the business and associated decision-making	Partners share control of the business and decisions are made jointly	Trustee has control over the trust however trustees are bound by the trust deed and their obligations to beneficiaries	Company control generally lies with company directors. Sometimes shareholders will be called upon to vote on a resolution, and majority shareholders tend to have influence in company decisions
Administration	Simple	Simple	More complex than sole trader and partnership	More complex than sole trader and partnership
Administration costs	Relatively low when compared with other structures	Relatively low when compared with other structures	More expensive than sole trader and partnership	Most expensive than sole trader and partnership
Admitting new business principals	Can no longer operate as a sole trader therefore a new business structure must be contemplated	Can admit new partners however most partnerships are limited to 20 partners (with the exception of legal and accounting partnerships). Also some professions specify that incoming partners have appropriate qualifications	Will depend on the type of trust, trust deed and trustee discretion	Can admit new business principal simply by issuing shares
Business sale	Simple to effect however key person dependency can sometimes affect saleability	Simple to effect however partnership interests are not always easily marketable	Simple to effect – trustee is empowered to execute this	Simple to effect and can be done by selling the actual business goodwill, or shares in the company itself
Business cessation	Simple – at the discretion of the proprietor	Can be simple or complicated depending whether cessation is amicable	The business itself can be ceased quite simply. If trust is to be wound up as well, this can also be effected relatively easily	The business itself can be ceased quite simply however if the company is to be wound up as well, it must be done in accordance with the Corporations Act

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Attribute	Sole Trader	Partnership	Trust	Company
Entitlement to profits	100% to proprietor	Shared amongst partners in accordance with partnership split	Depends on type of trust structure. If a unit trust, unit-holders entitled to profits in accordance with proportionate unit-holding. If discretionary trust, in accordance with trustee's distribution resolution	100% to company. Profits can be distributed to shareholders by way of dividends
Tax implications	Provided conditions are satisfied, business losses can be offset against proprietor's other income. However when business is profitable, there are not many tax planning opportunities available and profits are subject to proprietor's marginal tax rate	Provided conditions are satisfied, business losses can be offset against a partner's other income. When business is profitable, there are limited tax planning opportunities available and profits are subject to partner's marginal tax rate	Trusts cannot distribute losses therefore they are not tax effective when a business is making a loss. Any income derived must be distributed and will be subject to tax at the beneficiary's marginal tax rate. Trusts offer great flexibility from a tax planning perspective however it should be noted that Personal Services Income Legislation[1] applies to trust structures.	Companies cannot distribute losses therefore they are not tax effective when a business is making a loss. When making a profit, companies pay tax in their own right at a flat rate that is lower than the top marginal tax rate for individuals. The higher the income quarantined in the company the more tax effective a company becomes. Companies provide a range of tax planning opportunities however it should be noted that Personal Services Income Legislation applies to corporate structures.

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