



# Scott Legal

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## Structuring your business

### 1. Get the structure right

Putting the right structure in place from the start will save you money during trading and on the sale of the business. Consult your accountant or lawyer early. For a relatively small fee an accountant can assist you in starting up your business and getting your structure right to effectively manage your tax and financial position. Prepare business plans and budgets. Your accountant can assist here.

Before you start trading as a business in Australia you need to have the trading name sorted out. You can trade in your own name, partners' names, a registered business name, or a company name.

An incorporated company (put in place often with a trust) is usually better for reasons of tax effectiveness, asset protection, flexibility and Australia wide usage, but seek advice – it will be worth it.

### 2. Asset protection

If the business is likely to borrow money or purchase goods or services on credit, it is important that the business always has enough assets to satisfy these debts.

Also, if the business is likely to be sued by someone, it is important to adequately insure against this possibility. Where insurance for whatever reason is unavailable, and the level of the assets of the business are less than the amount of the potential claim, asset protection is important.

In both these cases, by registering the business as a company, any creditors will not be able to pursue the assets of the owners (unless personal guarantees are provided).

Under a company structure, directors (typically also the shareholders of the company) are protected against debts of the company, provided the directors have not given a personal guarantee in respect to the debt and have acted within the law. If you are operating as a sole trader, under a business name or partnership, then you do not have such protection.

### 3. Tax minimisation

If a business is to derive assessable income, there are tax benefits to operating under a company structure.

Income tax minimisation can take the form of ensuring that income derived by the company is taxed at the lowest possible rate by:

- Taking advantage of low individual marginal rates and tax free thresholds
- Other income is taxed at a corporate rate
- Offsetting expenses to income

If the company derives income that is capital in nature, it will be advantageous to minimise the capital gains tax liability. This can be achieved through CGT, small business concessions and offsetting losses against gains.

An accountant can provide more in depth advice in relation to tax minimisation and specific to your own circumstances.

## **5. Administration costs**

Any structure put in place will result in costs, such as:

- Purchasing an entity
- Initial registrations
- Ongoing renewals
- Ongoing accounting and tax return requirements.

## **6. Multiple owners**

Every business with more than one owner should have an agreement between the owners, for the following reasons:

- To give clarity and certainty to the running of the business, including what can or cannot be done, decisions which require unanimous or majority decisions
- Restrict decisions made in relation to the business
- To safeguard the financial interests of the business and the other owners in the case of death or incapacity of an owner
- Provide a process in the event of a deadlock between owners
- Provide a process for an exiting business owner.

Once again, a company is recommended where there are multiple owners of the business, as theoretically, if one of the owners creates a liability of the business, all owners of the business could be personally liable (whether or not the liability arose with your knowledge).

Refer to information sheet "Starting a Business" for more information about shareholders agreements.

## **7. Types of entities and structures**

The above factors determine the type and complexity of the structure that will be adopted.

The basic structures to consider are:

- Companies
- Trusts
- Partnerships
- Individuals (sole traders)

This information is intended as a guide only. For further information, feel free to contact Leanne Scott of Scott Legal on (03) 9394 6326.