

Choosing the right business structure

Having the right structure can save your business time and money.

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Commonly used business structures in Australia are

Sole traders

Partnerships

Companies

Trusts



There are real advantages in choosing a structure best suited to the way you want to operate your business.

It's important you understand these advantages and responsibilities as they may affect:

- the way tax applies to your business
- protection of your assets
- your operating costs
- how other businesses deal with you.

 You should use the information in this publication as a guide only. We recommend you talk to an accountant, tax professional, solicitor or other adviser before deciding which business structure to use.

1

Sole traders

If you operate your business as a sole trader, although you may decide to have employees, you trade, control and manage all aspects of your business.

Advantages

- There are very few legal and tax formalities involved setting up the business.
- The structure is inexpensive to set up.
- You have full control of the business.
- You receive the full benefit of profits made by the business.
- You keep all the after-tax gains if the business is sold.

Things to consider

- Your access to finances is usually limited to your own resources.
- If you have no employees, you usually have to do all the work.
- You are legally responsible for all aspects of the business.
- Debts and losses cannot be shared.
- You can lose private assets such as your home, contents and vehicles if the business goes into debt.

Reporting and paying income tax

As a sole trader, you need to report the business income you earn (after expenses) on your personal income tax return, along with any other income you earn.

You pay the same tax as any other individual and you're also entitled to the tax-free threshold (the first \$6,000 you earn in an income year) if you're an Australian resident.

Paying super

You're responsible for your own super arrangements and may be able to claim a deduction for personal super contributions you make. You must also make super contributions for any eligible workers you employ.

2

Partnerships

If you operate your business as a partnership, you're carrying on your business with one or more other people as partners and receiving your income jointly.

Advantages

- Partnerships are inexpensive to set up.
- Greater access to finances from the resources of all partners.
- There are more people to share the work load.
- There are more people to share losses and legal responsibilities.

Things to consider

- You must share the profits with the other partners.
- You and your partners are responsible for the debts of the partnership, even if you do not directly incur or cause the debt.
- You can lose private assets such as your home, contents and vehicles to settle debts of the partnership.

Reporting and paying income tax

Although your business does not pay tax, you need to lodge an annual partnership income tax return on behalf of the business to show the total income earned and deductions claimed by the business. The tax return also shows each partner's share of net partnership income.

As a partner, you need to pay tax on your share of the partnership income (less expenses) you earn.

Under a partnership, each partner is personally liable for the tax debts of the partnership.

Paying super

As a member of the partnership, you're responsible for your own super arrangements as you're not an employee of the business. You may be able to claim a deduction for any personal super contributions you make, and the partnership must make super contributions for any eligible workers they employ.

3

Companies

If you operate your business as an incorporated company, the business is a distinct legal entity that is regulated by the Australian Securities and Investment Commission.

A company is a more complex business structure. Usually, the set-up and administrative costs for a company are higher than for other business structures.

Advantages

- A company has far greater access to capital for the running of the business.
- A company pays tax on its own profits.
- Shareholders are not liable for the debts of the business.
- Increased asset protection.

Things to consider

- A company is more expensive to establish.
- The tax reporting requirements for companies are far greater than for sole traders and partnerships.
- Shareholders have little say in the running of the business.

Reporting and paying income tax

Your company must lodge an annual company tax return to report its income and deductions, and the income tax it is liable to pay. All companies pay their own income tax.

Your company pays tax on its net profit at a flat rate of 30%, which may be an advantage for businesses with high profit levels.

If you receive wages or director's fees from your company, you need to:

- include them in your individual tax return
- pay tax on them at the individuals tax rates.

Paying super

Your company must make super contributions for any eligible workers it employs, including you as a company director.

4

Trusts

If you operate your business as a trust, you're:

- a trustee
- responsible for holding property or income for the benefit of others (the beneficiaries).

The most common variety of trust is the discretionary trust. If you're the trustee of a discretionary trust, you have the power to decide how the profit will be distributed among the beneficiaries.

Advantages

- A trust has a limited liability if the trust is a company.
- A trust has perpetual existence and does not cease with the death of a beneficiary.
- Increased asset protection.

Things to consider

- Like a company, a trust is more expensive and potentially complicated to establish.
- It may be more expensive to complete the required tax and administrative paperwork each year.
- Profits distributed to children under 18 may be taxed at higher rates.

Reporting and paying income tax

Your discretionary trust does not have to pay tax. Instead, the trust beneficiaries pay tax on their share of the trust's net income.

As a trustee, you can use your discretion each year to decide which beneficiaries will receive income. Trusts can pay very high rates of tax on any profits that are not distributed.

Paying super

Your trust must make super contributions for any eligible workers it employs. This includes you if you're employed by the trust.

➤ For more information about trusts, visit our website at **www.ato.gov.au/trusts**

Other information

Australian business number (ABN)

You don't have to have an ABN, but it may help you to register for GST and other business tax obligations. If you choose not to have an ABN, other businesses can withhold 46.5% of payments to you.

- Visit **www.abr.gov.au** to complete and lodge an online application for:
- an ABN for sole traders, partnerships, company or trust
 - a TFN for a company, partnership or trust.

To obtain a paper version of the tax file number and ABN application forms, you can also phone us on **13 28 66**.

More information

For more information about business structures and responsibilities:

- visit **www.business.gov.au**
- contact the Office of Fair Trading in your state
- speak with your tax advisor.

If you operate a company, you can obtain information from the Australian Securities and Investments Commission.

If you do not speak English well and want to talk to a Tax Officer, phone the Translating and Interpreting Service on **13 14 50** for help with your call.

If you have a hearing or speech impairment and have access to appropriate TTY or modem equipment, phone **13 36 77**. If you do not have access to appropriate TTY or modem equipment, phone the Speech to Speech Relay Service on **1300 555 727**.

Our commitment to you

We are committed to providing you with guidance you can rely on. If you feel that this publication does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

We regularly revise our publications to take account of any changes to the law, so make sure that you have the latest information. If you are unsure, you can check for a more recent version on our website at **www.ato.gov.au** or contact us.

This publication was current in **December 2008**.

PUBLISHED BY

Australian Taxation Office
Canberra
December 2008

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