



HOW SHOULD I SET UP MY BUSINESS?

SOLE TRADER OR PARTNERSHIP?

If you are commencing a new business or you have purchased a business then you should consider which is the best structure for your business.

You can change the structure of your business as it expands, however this is sometimes complex and costly, so you should consider your intentions for business growth at the outset.

Putting in place the correct and most appropriate business structure is vital in respect to asset protection, costs, legal and operational risk and tax obligations.

In considering the most appropriate structure for your business, your personal situation needs to be assessed. What this means is that we need to know what your personal circumstances are and what objectives you have for your business. Therefore we need to talk to you and also have your accountant involved, or engage an accountant to be involved from the start. You will need to tell us:

- What type of business you intend to operate;
- Who else will be involved;
- Who will make decisions for the business; and
- You plan for the growth of the business.

There are 4 common business structures that can be considered. These are:

- Sole trader;
- Partnership;
- Company; and
- Trust.

Each of the 4 structures has their own advantages and disadvantages, and therefore each have their own costs in operating.

In this article we will look at 2 of the 4 structures, sole trader and partnership, and provide a brief overview.

SOLE TRADER.

This structure is the simplest and least expensive structure; however it is not very flexible and limits any growth of the business.

As a sole trader, you are the only person in control of the business. You make the decisions and you are responsible for the income and expenses of the business. Everything falls on to you. You receive the income of the business and you pay tax on that income based on your individual tax rate, and also you can carry forward or access any tax losses.

You are also liable for the expenses of the business and any other liabilities. If the debts of the business are not met then you are liable for those debts and your personal assets are at risk.

Set up costs are quite cheap and easy to set up, and we can discuss these with you.

PARTNERSHIP.

A partnership involves the business being run by 2 or more people. It is also fairly simple and inexpensive to set up.

In a partnership, the business is operated by the partners and they make the decisions, they share the profits and they share the expenses. Therefore it is important that there is compatibility and trust between the people in the partnership. If there isn't then there is the potential for disputes and loss of trust to arise.

The business may operate under the names of the partners (e.g. Willing & Able) and a business name (Willing & Able Electrical) can be registered with the Australian Securities and Investment Commission. The partnership will also have its own Australian Business Number (ABN) and its own Tax File Number and be registered for GST if its annual turnover is above \$75,000.00.

Each of the partners in the business will share the net income of the business and each partner will need to lodge their own tax return and pay income tax based on their individual circumstances. The partnership will also need to lodge an annual tax return however the partnership does not pay income tax; the partners themselves lodge their own tax returns and pay tax on their share of the partnership income.

The partners are liable for the debts and liabilities of the business, and the partners can be sued personally for the liabilities of the business. So if one partner has assets and the other partners don't have any assets, the partner with the assets can be sued solely, if the assets of the partnership are insufficient to meet the liability.

If a partnership is the structure for your business then it is advisable that you obtain legal advice and also have a Partnership Agreement drawn up and signed by all the partners. The Partnership Agreement will set out what is agreed to as between the partners from the outset and potentially eliminate any possible disputes.

We hope this article has been helpful and we will discuss company and trusts in our next blog.

We can't emphasise enough the importance of obtaining advice for the set-up of your business structure from both your accountant and your lawyer. If we can assist with setting up your business structure please contact Toni Monteleone on 8274 0288 / 0403 151 820 or toni@montlegal.com.au.