

Structure right to reap the business benefits

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While it's often considered purely an administrative task of establishing and running a business, having the right structure in place is vital to achieving an SME owner's desired outcomes.

You should have a clear idea about how you intend to run the business and how you would like it to evolve, however some of the fundamental decisions to achieve these goals will be supported, limited or otherwise affected by your chosen structure.

These include:

- How long you will hold onto the business.
- Whether you will employ staff.
- What markets you are going to sell to.
- Whether or not you will restructure in the future.
- If you will reinvest or take profits.
- What additional funds will be needed.
- Whether you plan to bring on other investors, issue shares or offer ownership options to employees.

Importantly, tax implications can be triggered by choice of structure, with substantial differences that affect the financial efficiency and amount of tax paid.

From a tax perspective, there are two key considerations you need to make when choosing your business structure.

Firstly, how the profit of the business will be taxed in the hands of the business structure and in the hands of the owners when profits are taken out as dividends and drawings.

Take discretionary trusts for example. While small businesses operating under a company structure currently pay tax on net profit at a flat rate of 30%, which is set to be reduced to 28% from the 2012/13 financial year, discretionary trusts don't have to pay tax.

Instead the beneficiaries of the discretionary trust pay tax on their share of the trust's net income, and the trustee can decide how to distribute income between beneficiaries.

Secondly, you need to consider how the capital gains will be taxed in the structure on the sale of the business and how it will be taxed on distribution to the owners.

Company structures are not as capital gains tax efficient as say a trust structure, as they are not eligible for the 50% general discount.

Other tax considerations include:

- Access to tax losses.
- Access to various concessions, such as the R&D tax concessions which only companies are eligible to claim.
- Small business capital gains tax concessions.

There are a range of other commercial considerations associated with choosing a business structure including market acceptance and whether banks, insurers, landlords and other external parties are willing to deal with your business structure; whether it's investor friendly; how well the structure is understood by stakeholders; and the cost to establish and maintain the structure.

As a business owner, you should also understand the liability issues such as personal guarantees major creditors like banks might require and the level of protection the structure can provide in separating personal and business assets.

Business owners should seek advice from their accountant when establishing a business or to ensure they maximise their position under their current structure.

*Marc Peskett is a partner of MPR Group a Melbourne based firm that provides **business structuring advice**, as well as accounting, tax, business advisory and financial services to fast growing small to medium enterprises.*