

PRIVATE BUSINESS STRUCTURES - Getting them right

Given the myriad of taxation and business laws which exist in Australia, it is extremely important that your business is structured correctly to take full advantage of the concessions available whilst also providing business owners with the best possible asset protection strategy.

In achieving these goals, it is important for the business structure to remain as simple as possible to avoid burdensome red tape and compliance costs, an unnecessary distraction for business owners from running a profitable business.

In Australia, the **four most common structures** (or combination thereof) used in private business groups are:

1. Proprietary companies
2. Trusts – both discretionary and fixed
3. Sole traders
4. Partnership of any of the above three structures

When considering the business structure for a private business, there are **five key factors** which are commonly used to determine the most suitable structure for the particular circumstance of the business and include:

1. **Income Tax minimisation** – the structure must provide the ability to minimise the annual tax liability to your business on an ongoing basis.
2. **Capital Gains Tax minimisation** – the structure must provide the flexibility that on any potential exit or sale of the business by the existing owners, any capital gains tax liability can be at worst minimised and at best eliminated.
3. **Succession Planning** – if necessary, and pending the business owner's plans, your business structure must have the ability to allow the existing owners to "exit", transfer between generations or sell the business in the future.
4. **Asset Protection** – in our opinion the most important function of a business structure is to ensure that private family wealth is protected from business risk and litigation.

5. **Simplicity** – the business structure must be appropriate to meet the requirements of the business and the business owner, without being too complex such that it hampers the business' ability to grow due to red tape and compliance costs.

In order to achieve the correct business structure, the first thing any business owner(s) should do is compile a **comprehensive business plan** which will provide many of the answers to the above criteria that is used to determine the most appropriate business structure.

Each business structure has both merits and restraints, therefore determining the **most effective structure** is about tailoring a structure to the objectives of the business and the business owner.

As part of the structure, it is also vital to implement appropriate agreements particularly where the private business is owned by unrelated parties, to ensure that the respective parties protect their rights to the business profitability and equity.

It also is a protection mechanism to ensure a smooth exit by either party, whether it be amicable or otherwise.

It is critical that any business review their structure on a regular basis to ensure it is achieving the objectives of the business owners.

HW One are specialists in private business structures and should you wish to connect with us to conduct an initial audit of your business and investment structure, we would be more than happy to do so.

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