RUNNING A BUSINESS:
CHOOSING THE BEST BUSINESS STRUCTURE FOR YOU

Businesses and their assets can be operated and owned in a variety of different structures. The choice of structure is generally a balance between commercial, control and tax considerations. It is critical to implement the correct structure at the outset of a business since the transfer (even between related parties) of an existing business or its assets often triggers tax and stamp duty liabilities, incurs legal costs and can be disruptive to the core business. By choosing and implementing an appropriate structure as early as possible in the life cycle of a business, business owners can potentially save thousands of dollars in tax, stamp duty and lost income.

When a business person considers how best to structure their affairs, many factors will determine their approach. Sometimes they will inherit a business structure from a previous owner and the tax and stamp duty costs of restructuring may be prohibitive. If buying or starting a new business, however, a business person must decide which structure will best suit their circumstances.

Generally, there are five broad structures in which to run a business:

- Sole Trader – where the business owner operates the business in his own name.
- Partnership – where the business owners operate the business together as partners.
- Company – where the business owner(s) own shares in a company and the company operates the business.
- Trusts – where the business is operated by a trustee for the business owner(s) as beneficiaries.
- Hybrid – where a combination of the above mechanisms are used to operate a business.

Sole Trader and Partnership

A business may be carried on by an individual as a sole trader, or a group of individuals as a partnership. Whilst simple to understand and administer, these arrangements offer no limited liability or other asset protection for the owner– the personal assets of the owners are not protected from legal claims arising against the business. Partners are also personally liable for each others' debts and obligations incurred in the business.

Australian Company

Using a company to conduct a business is often attractive to a businessperson. This is because companies are well regulated, well understood and offer limited liability to their shareholders. However company directors have strict statutory and common law obligations. Therefore, in family businesses where the shareholders and directors are often the same people, the protection of limited liability is very often illusory. Companies also cannot access the 50% discount on capital gains (unlike individuals and trusts) and can only distribute profits to shareholders.

Trusts

The family trust (also called a discretionary trust) is often the most appropriate choice of structure for a family business. This structure insulates beneficiaries from legal claims against the business (and vice versa) conferring its own form of limited liability. In addition, discretionary trusts have no ASIC reporting requirements, allow for distribution of profits to a range of beneficiaries and can access the 50% CGT discount.

Other alternatives for operating a business or owning assets include unit trusts, partnerships of trusts and combinations of various different entities. Each of these has its own risk and tax attributes.

The range of considerations and business structures extends way beyond what is described in this article. Your accountant or lawyer is best placed to advise you on which structure is appropriate for you.

About Us

Baggiolegal is a boutique law firm, specialising in commercial, taxation and private client law. **We understand** our client's objectives and provide clear and independent advice. Service is paramount to us. **We deliver** technically sound, timely and commercially oriented solutions. **We know** and understand the South Australian landscape, but our international perspective is unique in Adelaide. Our people have excelled in the legal profession in private practice and industry all over the world. **We apply** international best practice to our local client's needs. **We work** with our clients. **We listen** to our clients. We are approachable, accessible and personable.

Dequetteville Chambers 1 Dequetteville Terrace Kent Town South Australia 5067 phone +61 8 8132 5000
facsimile +61 8 8363 1633 mobile +61 0404 826 554 admin@baggiolegal.com.au www.baggiolegal.com.au