Linda McGowan Pty Ltd

'the personal touch'

Director: Linda McGowan CPA - B.Bus
Registered Tax Agent
1st Floor, 6-8 Wilson Avenue Brunswick 3056

Phone: 03 9387 2086 | Fax: 03 9387 9473
www.lindamcgowan.com.au

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Thinking Of Starting A Small Business?

Starting a Small Business requires research, risk, planning and like a game of chess, you need to make the right opening moves.

One of the most important decisions you need to make is how to structure the business. The most common options are sole trader, partnership, limited liability company and discretionary trust.

You should be mindful of the fact that your business can affect:

- The safety of your personal assets
- Your income tax and capital gains tax positions
- The continuity of the business upon change of ownership
- What registration process you will need to take

There are numerous factors that can influence your decision. You need to consider the business type, if and how many others are involved in the business, how you want profits to be shared and who is going to be legally liable for the debts of the business. You also need to consider the relationship, financial and tax positions of all the people involved and the budgeted level of profit.

When deciding on your business structure you should look to:

– Maximise the Protection of Your Assets
– Minimise Tax Exposure (including Capital Gains Tax)
– Allow for Admission of New Partners or Investors
– Comply with all the Legal Requirements

Let's have a brief look at the four most popular types of business structures:

- **Sole Trader** is the simplest and cheapest option to establish and run which probably explains why some 660,000 Australians operate under this structure. As the owner of the business you have full control and you are personally liable for the debts of the business. This means all your personal assets could be at risk including any jointly owned with your spouse or de-facto partner (e.g. house or bank accounts).

  You can trade under your personal name or register a separate business or trading name with Consumer Affairs Victoria (Cost $77.10). The business name must be renewed every 3 years and as a sole trader, the business profit or loss is added to your other income for tax purposes. You pay tax based on the personal tax rates scale. You can't split the business profits with a partner but you can offset business losses against other sources of income such as salary and wages or investment income.

- **Partnership** is where between 2 and 20 people go into business and legally share the risk and profits in accordance with the terms set out in the 'Partnership Agreement'. This agreement legalises the business roles and authority of each partner, the proportion of ownership, who contributes funds and the split of profits. From an asset protection perspective, all partners are liable for the business debts and this applies even if one partner incurs debts without the other partner's knowledge.

  A partnership lodges its own tax return but does not pay tax. Instead, the partners pay tax on their individual share of profits. The income splitting opportunities make them particularly popular with businesses run by a husband and wife team.

- **Limited Liability Company** is a separate and independent legal entity registered with ASIC that can sue and be

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sued, enter into contracts plus own and dispose of property and other assets. ASIC allocates it a unique 9 digit Australian Company Number (ACN) and there are significant establishment and ongoing costs. Companies are heavily regulated and the Tax Office's 'personal services income' rules may apply if you are a consultant or contractor with your own Company.

A Company has Shareholders who own the Company and the Directors run it. A proprietary company limited by shares must have at least 1 shareholder but no more than 50 shareholders (not counting employee shareholders). It can have 1 or more Directors. As the name suggests, Companies have limited liability, but Directors are personally liable under the *Corporations Act 2001* if they are found to be fraudulent, negligent or reckless. As such, a Company structure may be suited to a high-risk business because the liability of the shareholders is limited.

A Company lodges its own tax return and has a separate Tax File Number. It pays tax of 30% on its profit and shareholders get an 'imputation credit' towards their tax payable equal to the amount of tax paid by the company.

- **Trusts** can be a flexible and favourable tax vehicle providing asset protection from creditors and court orders. They can also be complex structures, each with their own set of financial and legal obligations. There are many different types of trust but probably the most common type is a 'family discretionary' trust that is established for the benefit of family members.

  By definition a Trust is a business structure where a person, persons or entity (called the 'trustee') holds property in its own name (the legal interest) for the benefit of others, called 'beneficiaries'. The trustee has a wide discretion in relation to dealings with the trust property including the discretion to distribute the income to any one or more beneficiaries. There can be more than one trustee and often a Trust will have a corporate trustee.

  It lodges a separate tax return and 'flow through taxation' rules apply so that income distributed by the trust will retain their special characteristics (e.g. franked dividends) in the hands of the beneficiaries. Income accumulated and not distributed by the Trust will be taxed at the highest marginal income tax rate (plus the Medicare levy).

Summary
Whenever you are setting up a new business you need to consult with us regarding the choice of tax structure. There are a number of important tax and legal considerations that you need to understand including the potential future application of the discount capital gains tax and small business GST concessions.

In most instances, your particular structure will probably be some form of compromise whether it be asset protection, income tax, flexibility of income distribution or capital gains tax. The wrong decision can be costly so make sure you contact our office.

Saving Scheme Could Open Doors For First Home Buyers

From July 1 2008 the Federal Government will offer first homebuyers tax-advantaged accounts to help them save a bigger house deposit by establishing superannuation-style, low-tax savings accounts.

The new scheme, known as the 'First Home Savers Account' encourages savings and allows a couple - each on an average wage and saving 10% of their income – to save a deposit of around $64,000 over five years. Buyers will still be eligible for the First Home-buyer's Grant and the new accounts require a minimum start-up contribution of $1,000.

This $64,000 deposit is around $14,500 or 30% higher than could be achieved by saving through a traditional deposit account. The benefit amounts to an extra $2,900 a year in savings and a larger house deposit will theoretically reduce the total borrowings and potentially help them avoid paying costly mortgage insurance.

Savings in the First Home Saver Account will receive preferential tax treatment in two key ways compared to ordinary savings accounts:

- Savers will be eligible for a low tax rate of 15% on the first $5000 of income they deposit in their account each year - rather than their marginal rate.
- Interest earned will be taxed at a maximum of 15%.

With an ordinary savings account, both contributions and interest earned on the savings are taxed at the individual's marginal tax rate. As a result, the tax benefit provided by the First Home Saver Account will enable most first home buyers to save substantially more than they otherwise would.

In addition to the first $5,000 in tax-preferred contributions, an additional $5,000 a year may be contributed towards a First Home Saver Account from after tax income without paying any further tax on that contribution. This will also allow parents to help their children save their deposit.

The saver account will be open to anyone over the age of 18 years but you will need to meet the same eligibility criteria as the First Home Buyer's Grant.

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