The structure of a Company

Of all the decisions you make when starting a business, probably the most important one relating to taxes is the type of legal structure you select for your company.

Not only will this decision have an impact on how much you pay in taxes, but it will affect the amount of paperwork your business is required to do, the personal liability you face and your ability to raise money.

The most common forms of business are sole proprietorship, partnership, corporation and S corporation. A more recent development to these forms of business is the limited liability company (LLC) and the limited liability partnership (LLP). Because each business form comes with different tax consequences, you will want to make your selection wisely and choose the structure that most closely matches your business's needs.

If you decide to start your business as a sole proprietorship but later decide to take on partners, you can reorganize as a partnership or other entity. If you do this, be sure you notify the IRS as well as your state tax agency.

Sole Proprietorship

The simplest structure is the sole proprietorship, which usually involves just one individual who owns and operates the enterprise. If you intend to work alone, this structure may be the way to go.

The tax aspects of a sole proprietorship are appealing because the expenses and your income from the business are included on your personal income tax return, Form 1040. Your profits and losses are recorded on a form called Schedule C, which is filed with your 1040. The "bottom-line amount" from Schedule C is then transferred to your personal tax return. This is especially attractive because business losses you suffer may offset the income you have earned from your other sources.

As a sole proprietor, you must also file a Schedule SE with Form 1040. You use Schedule SE to calculate how much self-employment tax you owe. In addition to paying annual self-employment taxes, you must make estimated tax payments if you expect to owe at least $1,000 in federal taxes for the year after deducting your withholding and credits, and your withholding will be less than the smaller of: 1) 90 percent of the tax to be shown on your current year tax return or 2) 100 percent of your previous year's tax liability.

The federal government permits you to pay estimated taxes in four equal amounts throughout the year on the 15th of April, June, September and January. With a sole proprietorship, your business earnings are taxed only once, unlike other business structures. Another big plus is that you will have complete control over your business--you make all the decisions.

There are a few disadvantages to consider, however. Selecting the sole proprietorship business structure means you are personally responsible for your company's liabilities. As a result, you are placing your assets at risk, and they could be seized to satisfy a business debt or a legal claim filed against you.

Raising money for a sole proprietorship can also be difficult. Banks and other financing sources may be reluctant to make business loans to sole proprietorships. In most cases, you will have to depend on your financing sources, such as savings, home equity or family loans.

Partnership

If your business will be owned and operated by several individuals, you'll want to take a look at structuring your business as a partnership. Partnerships come in two varieties: general partnerships and limited partnerships. In a general partnership, the partners manage the company and assume responsibility for the partnership's debts and other obligations. A limited partnership has both general and limited partners. The general partners own and operate the business and assume liability for the partnership, while the limited partners serve as investors only; they have no control over the company and are not subject to the same liabilities as the general partners.

Unless you expect to have many passive investors, limited partnerships are generally not the best choice for a new business because of all the required filings and administrative complexities. If you have two or more partners who want to be actively involved, a general partnership would be much easier to form.

One of the major advantages of a partnership is the tax treatment it enjoys. A partnership does not pay tax on its income but "passes through" any profits or losses to the individual partners. At tax time, the partnership must file a tax return (Form 1065) that reports its income and loss to the IRS. In addition, each partner reports his or her share of income and loss on Schedule K-1 of Form 1065.

Personal liability is a major concern if you use a general partnership to structure your business. Like sole proprietors, general partners are personally liable for the partnership's obligations and debts. Each general partner can act on behalf of the partnership, take out loans and make decisions that will affect and be binding on all the partners (if the partnership agreement permits). Keep in mind that partnerships are also more expensive to establish than sole proprietorships because they require more legal and accounting services.

Corporation

The corporate structure is more complex and expensive than most other business structures. A corporation is an independent legal entity, separate from its owners, and as such, it requires complying with more regulations and tax requirements.

The biggest benefit for a business owner who decides to incorporate is the liability protection he or she receives. A corporation's debt is not considered that of its owners, so if you organize your business as a corporation, you are not putting your personal assets at risk. A corporation also can retain some of its profits without the owner paying tax on them.

Another plus is the ability of a corporation to raise money. A corporation can sell stock, either common or preferred, to raise funds. Corporations also continue indefinitely, even if one of the shareholders dies, sells the shares or becomes disabled. The corporate structure, however, comes with a number of downsides. A major one is higher costs. Corporations are formed under the laws of each state with its own set of regulations. You will probably need the assistance of an attorney to guide you. In addition, because a corporation must follow more complex rules and regulations than a partnership or sole proprietorship, it requires more accounting and tax preparation services.

Another drawback to forming a corporation: Owners of the corporation pay a double tax on the business's earnings. Not only are corporations subject to corporate income tax at both the federal and state levels, but any earnings distributed to shareholders in the form of dividends are taxed at individual tax rates on their personal income tax returns.

One strategy to help soften the blow of double taxation is to pay some money out as salary to you and any other corporate shareholders who work for the company. A corporation is not required to pay tax on earnings paid as reasonable compensation, and it can deduct the payments as a business expense. However, the IRS has limits on what it believes to be reasonable compensation.

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S Corporation and Limited Liability Company

S Corporation

The S corporation is more attractive to small-business owners than a regular (or C) corporation. That's because an S corporation has some appealing tax benefits and still provides business owners with the liability protection of a corporation. With an S corporation, income and losses are passed through to shareholders and included on their individual tax returns. As a result, there's just one level of federal tax to pay.

In addition, owners of S corporations who don't have inventory can use the cash method of accounting, which is simpler than the accrual method. Under this method, income is taxable when received and expenses are deductible when paid.

S corporations can also have up to 100 shareholders. This makes it possible to have more investors and thus attract more capital, tax experts maintain.

S corporations do come with some downsides. For example, S corporations are subject to many of the same rules corporations must follow, and that means higher legal and tax service costs. They also must file articles of incorporation, hold directors and shareholders meetings, keep corporate minutes, and allow shareholders to vote on major corporate decisions. The legal and accounting costs of setting up an S corporation are also similar to those for a regular corporation.

Another major difference between a regular corporation and an S corporation is that S corporations can only issue one class of stock. Experts say this can hamper the company's ability to raise capital.

In addition, unlike in a regular corporation, S corporation stock can only be owned by individuals, estates and certain types of trusts. In 1998, tax-exempt organizations such as qualified pension plans were added to the list. This change provides S corporations with even greater access to capital because a number of pension plans are willing to invest in closely held small-business stock.

Limited Liability Company

Limited liability companies, often referred to as "Lacs," have been around since 1977, but their popularity among entrepreneurs is a relatively recent phenomenon. An LLC is a hybrid entity, bringing together some of the best features of partnerships and corporations.

LLCs were created to provide business owners with the liability protection that corporations enjoy without the double taxation. Earnings and losses pass through to the owners and are included on their personal tax returns.

Sound similar to an S corporation? It is, except that an LLC offers business owners even more attractions than an S corporation. For example, there is no limitation on the number of shareholders an LLC can have, unlike an S corporation, which has a limit of 100 shareholders. In addition, any member or owner of the LLC is allowed a full participatory role in the business's operation; in a limited partnership, on the other hand, partners are not permitted any say in the operation.

To set up an LLC, you must file articles of organization with the secretary of state in the state where you intend to do business. Some states also require you to file an operating agreement, which is similar to a partnership agreement. Like partnerships, LLCs do not have perpetual life. Some state statutes stipulate that the company must dissolve after 30 years. Technically, the company dissolves when a member dies, quits or retires.

If you plan to operate in several states, you must determine how a state will treat an LLC formed in another state. If you decide on an LLC structure, be sure to use the services of an experienced accountant who is familiar with the various rules and regulations of LLCs.

Another recent development is the limited liability partnership (LLP). With an LLP, the general partners have limited liability. For example, the partners are liable for their own malpractice and not that of their partners. This legal form works well for those involved in a professional practice, such as physicians.

Even after you settle on a business structure, remember that the circumstances that make one type of business organization favorable are always subject to changes in the laws. It makes sense to reassess your form of business from time to time to make sure you are using the one that provides the most benefits.

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