DIFFERENCES OF A PRIVATE LIMITED COMPANY OVER A SOLE TRADER

One of the most common questions asked by the self-employed is whether to trade as a Company or as an individual. The decision has tax, legal and financial implications, the amount of paperwork you will need to complete and how your peers/clients view you. If you are currently a successful sole trader with a high yearly turnover, or an individual thinking of starting your own business and are wondering what would be the most beneficial legal structure for your business to take, this paper will assist in answering some of your questions when establishing your business.

As a reminder, a Sole trader is a person who is the exclusive owner of a business, entitled to keep all of the profits after tax has been paid but also liable for all of the losses. In contrast, a Private Limited Company is a separate legal entity from the persons involved. The Directors manage the Company on behalf of the Shareholders although in SME’s they are commonly the same person. The Shareholders are only personally responsible for the debts and liabilities for the Company to the extent of their unpaid share capital. The personal assets of Directors or Shareholders cannot be seized to pay off the Company debts unless Directors are found to have committed a serious breach under Company Law.

The table below clearly sets out the factors to be considered when deciding the best option for your business.

<table>
<thead>
<tr>
<th>SOLE TRADER/PARTNERSHIP</th>
<th>LIMITED COMPANY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SET-UP COSTS</strong></td>
<td></td>
</tr>
<tr>
<td>Relatively quick and easy to set up. Registration of a Business Name (€20) with¹ the Companies Registration Office (CRO). Form TR1 to be filed with the Revenue.</td>
<td>Private Limited Company incorporated with the CRO (€200 - €250)¹ A form TR2 should also be filed with Revenue.</td>
</tr>
<tr>
<td><strong>LIABILITY FOR DEBTS</strong></td>
<td></td>
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<tr>
<td>Unlimited Liability - business owner is <strong>personally</strong> liable for the debts of the business.</td>
<td>A Company is a separate legal entity from its Directors and Shareholder and, therefore, unless in serious breach of Company Law, offers protection as the liability is limited.</td>
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<tr>
<td><strong>TAXATION</strong></td>
<td></td>
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<tr>
<td>Like an individual, all the profits are taxable under Income Tax rules (20% - 40%). Losses can be offset against other income that you may have.</td>
<td>Profits currently are only taxable at 12.5% (Corporation Tax). Remuneration taken from the Company by Directors is subject to Income Tax. Seed capital relief may also be available.</td>
</tr>
<tr>
<td><strong>ANNUAL FEES</strong></td>
<td></td>
</tr>
<tr>
<td>Accounting Fees of €500-€1000 per year.</td>
<td>Accounting Fees from €1500 per year. If the Company requires an Audit this increases.</td>
</tr>
<tr>
<td><strong>NAME OF BUSINESS</strong></td>
<td></td>
</tr>
<tr>
<td>No protection of the name unless trademarked.</td>
<td>Company Name is protected by virtue of its registration with the CRO.</td>
</tr>
<tr>
<td><strong>ANNUAL REQUIREMENTS</strong></td>
<td></td>
</tr>
<tr>
<td>Income Tax return, VAT returns (if applicable)</td>
<td>Directors’ Income Tax Return, Corporation Tax Return,</td>
</tr>
</tbody>
</table>

¹ FCS Services can assist with this service for you.

This information is for general information purposes and does not constitute as legal or any other advice

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### ALLOWABLE EXPENSES
- All business costs must be fully receipted e.g. Motor costs, Travel etc.
- Directors’ expenses can be reimbursed by Company through vouched expense forms with receipts.

### DISCLOSURE OF ACCOUNTS
- No requirement to file accounts with CRO. Accounts not available to the public as they are only filed with the Revenue.
- As accounts are filed with the CRO the public can access them by paying a small fee. However, small/medium sized Private Limited Companies can avail of filing exemptions reducing the level of information that is required to be filed.

### ACCESS TO FUNDS
- May be difficult. Personal Loan may be required.
- Private Limited Company status can be looked upon more favourably by banks as well as customers and suppliers. Shares can be issued to investors in return for venture capital if required. Business Banking Loans are generally in the name of the Company, i.e. not Directors’ personal loans.

### PENSION/WEALTH CREATION
- Like an individual, can pay into a pension but tax relief on pension contributions is restricted, according to age and upper relief limit
- Unlike a sole trader, increased scope for tax planning, particularly in terms of pension contributions. Funding your pension through a limited Company is very tax efficient.

### SUCESSION OF BUSINESS
- Business ceases on owners death unless arrangements put in place
- More favourable to succession planning. Shares can be transferred or sold on so business does not cease.

### CLOSING THE BUSINESS
- Revenue and the CRO must be notified
- Revenue must be notified. A number of formal winding up options exist for Companies; of which one must be followed (Voluntary Strike Off, Members Voluntary Liquidation, Creditors Liquidation).

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If a business aims to have a significant turnover per annum or tender for large external government contracts the Company would need strong credibility and individuals’ personal limited liability becomes an important factor. Such businesses may be best served as a limited liability Company.

For some businesses, limited liability protection may be very important. If your business requires capital investment e.g. in stock, machinery, equipment; limited liability can be important in order to protect your personal assets in the event that the Company becomes unable to repay the loans or credit facilities offered by your suppliers.

To determine how important the 12.5% corporation tax rate is to you, you should consider what your expected turnover and profits will be and also how much of that profit you wish to take as a salary and how much you wish to reinvest in the business.

Your expected turnover and profits are very important for selecting a business structure. Sole traders pay the marginal rate of tax (20% or 41%) on all their profits before their own drawings/salary. Limited companies pay only 12.5% on their profits after paying out salaries. If you expect the business to be making more profits than you require as salary for yourself, a limited Company maybe more a favourable structure from a tax perspective.

If you have any further queries please call Anna on 00 353 (0) 91 704818