



Business Connect

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**Choosing the Right Business
Structure**

General Considerations

- Limited liability
- flexibility
- administrative hassle
- start up costs
- ongoing costs
- taxation
- name protection

Business Structures to Choose From

- proprietorship
- partnership
- limited partnership/limited liability partnership
- incorporation

Pros and Cons of Each Alternative

Proprietorship

Pros

- Typically 1 individual
- Easy to set up
- Nominal initial set up costs
- No ongoing legal costs of maintaining
- An Aboriginal proprietor is an “Indian” for the purposes of Indian Act S. 87 taxation exemption
- If income is taxable, start up losses may set off other income

Cons

- Typically 1 individual
- Unlimited liability
- No business name protection
- If taxable, no income splitting or tax deferral opportunities
- Income is taxed along with proprietor’s other income

Pros and Cons of Each Alternative Partnership

Pros

- Applicable to 2 or more parties (individuals, corporations, etc.)
- No ongoing legal cost of maintaining a limited partnership
- Taxation flow-thru so an “Indian” or Band that is a partner may be exempt from tax (s.87, S.149(1)(c))
- If income is taxable, start up losses may set off other income

Cons

- Should be governed by a Partnership Agreement but not mandatory
- Unlimited liability on a joint and several basis
- No business name protection
- If taxable, no income splitting or tax deferral opportunities (unless partners are corporations)
- Income is taxed along with partner’s other income

Pros and Cons of Each Alternative Limited Partnership

Pros

- Applicable to 2 or more parties (individuals, corporations, etc.)
- No ongoing legal cost of maintaining
- Can accommodate different types of participants with different kinds of ownership interests
- Taxation flow-thru so an “Indian” or Band that is a partner may be exempt from tax (s.87, S.149(1)(c))
- If income is taxable, losses may set off other income
- Limited Liability for Limited Partners
- Very good for Band participation

Cons

- More expensive to set up than a proprietorship or partnership
- No business name protection
- If taxable, no income splitting or tax deferral opportunities (unless partners are corporations)
- If taxable, income is taxed along with partner’s other income
- More administration required

Pros and Cons of Each Alternative Incorporation

Pros

- Can accommodate different types of participants with different kinds of shareholdings (voting, non-voting, preferred)
- Management (directors) may be different from owners (shareholders)
- Easy to do business with lenders, etc., recognized and accepted
- Limited Liability
- Name protection within jurisdiction of incorporation
- Income splitting and tax deferral opportunities

Cons

- More expensive to set up than a proprietorship or partnership
- Ongoing legal cost of maintaining
- Not an “Indian” so no benefit of from S.87
- If taxable, no income splitting or tax deferral opportunities (unless partners are corporations)
- If taxable, income is taxed along with partner’s other income

Business Name Protection

- Canadian trademark
- Foreign trademarks
- Incorporation