

Company – Limited by Shares

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What is a Company?

A company is separate, legal entity and is administrated by its directors. It is formed by people who own its shares and whose liability is linked to the amount (if any) unpaid on the shares respectively held by them.

Advantages

- Separate legal entity to Shareholders – Asset Protection.
- Limited Liability of Shareholders for company debt if business fails.
- Profits are taxed at the flat Company tax rate (28.5% or 30%) rather than potentially higher individual rates. The company tax rate is expected to be progressively reduced to 25% by 2026.
- Ability to retain earnings in the company.
- Public perception that “Pty Ltd” means a sizeable business.
- Easier to administer than partnerships with more than 2 partners.
- Ability to dispose of company shares rather than the investment, reducing stamp duty and other costs.
- Flexible in distribution of income, with some restrictions in case of Personal Services Income entities.
- Imputation credits can be passed to shareholders via dividends.
- Workers Compensation and Superannuation Guarantee are not payable on dividends paid to shareholders.
- Structural continuity, ie, directors and shareholders may come and go but company name and registration numbers (ACN, TFN, ABN, etc) remain the same.
- Company name does not need to be registered and renewed separately as a trading name.
- Company names are federally registered and negate the need to register a trading name where the company name and trading name are the same.
- Company Structure provides certainty to principal contractors that they are not responsible for paying Superannuation Guarantee or Workers Compensation for your staff.

Disadvantages

- Cost of establishing and maintaining is higher than some alternative business structures.
- Not everyone can be a Company Director (see below).
- Director's potential liability in case of negligence or insolvent trading.
- Director's can be made personally liable for unpaid taxes, and employee superannuation guarantee contributions.
- Payments to Directors are treated as wages and are liable for Workers Compensation, Superannuation Guarantee and Payroll Tax.
- Workers Compensation Insurance is compulsory if annual wages exceed minimum threshold.
- Tax losses cannot be distributed to shareholders.
- More compliance issues with regard to Corporations Law & Accounting standards.
- Not eligible for general 50% Capital Gains Tax concession.
- Assets must be kept separate from those of the directors/shareholders.
- Liability for Fringe Benefits Tax on non cash benefits provided to directors, eg, company car.
- Alienation of Personnel Services Income rules may limit deductions and reduce effectiveness of structure.

Who can be a Director?

Any individual who is at least 18 years old can be the director of a company. However you cannot act as a director without court consent if you;

- Are an undischarged bankrupt,
- Are subject to an arrangement under Part X of the Bankruptcy Act 1966 (Cth).
- Have been convicted of an offence involving fraud within the past five years.
- Have been convicted of an offence involving a breach of your duties as a director such as insolvent trading within the past five years.
- Are banned by ASIC from being a company director.

If you were imprisoned for any of the convictions outlined above, you must not manage a company within five years after your release from prison.

Compliance Requirements.

- ASIC annual return & annual fee (approx \$249/annum) payable to ASIC.
- Any changes in Directors/Shareholders details or company structure must be reported to ASIC within 28 days.
- ABN registration.
- Tax File Number application.
- GST registration (if applicable).
- BAS – monthly or quarterly (if applicable).
- Income Tax Return – Yearly.
- Fringe Benefits Tax Return – Yearly (if applicable).
- Company assets must be kept separately from those of Directors/ Shareholders.
- Financial Statements must be prepared annually in required format.

Included with an Austax Company Incorporation (estimated set up cost from \$2200.00)

- Professional advice from a registered tax agent regarding the choice of office holders, shareholders, and share structure.
- Incorporation of a new company with your choice of name (if available).
- Company constitution - 3 copies.
- Bank account opening kit.
- Attending to initial minutes of company meeting, and other notices as required.
- Registration of the company ABN, TFN and other taxation registrations as required.
- Completion of initial TFN declarations for working Directors.
- Provision of registered office services for 1 year from the date of incorporation (\$110 per annum thereafter).

Disclaimer: The information contained in this fact sheet is general in nature and is intended to be used for general information purposes only.

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