

Partnerships

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What is a Partnership?

Two or more people can enter into an agreement either verbally or under contract to enter into a business and share in the risks and profits.

Advantages

- Low setup costs compared to a Company or Trust.
- Less government regulation compared to a Company.
- 50% General Capital Gains Tax concession still available to individual partners.
- Partners are not (and cannot be) employees. So no compulsory workers' compensation insurance or superannuation payments are required to be paid on their behalf on any profits made or drawings taken by the partners.
- Tax losses made by the partnership are distributed to the partners and may be able to be used to offset set income tax payable on their assessable income from other sources.
- Income splitting between partners is available.
- No Fringe Benefits Tax on non-cash benefits provided by the business to partners.
- Operating in partnership brings a wider pool of expertise to the business.
- Partnership business income is eligible for a tax discount worth up to \$1000/annum from FY 2016 under the small business tax offset.

Disadvantages

- No legal separation between the business and its' owners – No Asset Protection.
- All Partners are joint and severally liable for the debts of the business. This means that one partner may be liable for all debts the partnership has incurred even if they had no knowledge of those debts.
- Any business names must be registered with ASIC (currently (\$38/annum).
- Each Partner is assessed on their entire share of the profit of the partnership whether it is drawn out of the business by them or not.
- Partners may find that due to uncertainty around the responsibility for paying superannuation guarantee or workers compensation insurance, principal contractors may be unwilling to deal with their business
- Individual Partners pay income tax on their share of profit at the individual tax rates.
- Lack of succession, ie, if a partner wishes to leave the partnership must end and a new partnership of the remaining partners must be created.

- Joint tenant partners cannot dispose of their interest in the partnership separately.
- Structure can be unwieldy with 3 or more partners.
- Maximum number of partners is generally limited to 20.
- Alienation of Personnel Services Income rules may limit deductions.

Compliance Requirements.

- 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)
- Financial Statements must be prepared annually in required format.

General Comments

This type of structure is suited when two or more people enter into an agreement to run a business or investment which enables the profits to be split for tax planning.

Whilst a partnership can be set up with no more than a handshake and an ABN application, Austax strongly recommends that a professionally prepared partnership agreement be prepared by a lawyer prior to the commencement of business under a partnership structure. A trading name must also be registered with the relevant body in each state that the business intends to operate in using that name.

As each partner is jointly and severally liable for the debts of the partnership, the partners should be mindful of the character of their potential business partners, any great disparity in personal wealth between partners and the asset protection issues associated with this business structure.

The income tax on business profits of a partnership is either paid at the end of the year after lodgement of individual partners' income tax returns. The Australian Taxation Office may require the individual partners to make quarterly instalments towards their expected annual income tax bill via an Instalment Activity Statement (IAS).

Despite compulsory superannuation and workers' compensation insurance being listed as advantages of this structure these are not necessarily good things. Partners need to be aware that failure to voluntarily make superannuation contributions while operating their business in lieu of superannuation guarantee payments will have a detrimental impact on their retirement income.

Likewise, Austax recommends that all partners consider taking out some form of sickness & accident or income protection insurance policy. As public liability and/or other forms of indemnity insurance are also recommended for this business structure, we strongly recommend clients seek the services of an insurance broker to discuss their insurance requirements before commencement of business as a partnership.

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