

**BUSINESS STRUCTURES EXPLAINED**

# Private Companies

## Ownership & equity funding

Advantages	Disadvantages
Clearly defines ownership & can separate from day to day control	Reductions in capital relatively complex
Facilitates additional equity funding	Changes in ownership subject to value shifting rules
Facilitates transfer of ownership	
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Can have unlimited life	
Able to retain profits	

## Control

Advantages	Disadvantages
Control clearly defined & separated from ownership	Owners cannot exercise day to day control unless they are also directors
Control (& associated risk & responsibility) of day to day operations can be delegated by owners	Subject to statutory regulations
Constitution can be used to restrict how changes in control occur	

## Establishment, maintenance & windup of structure

Advantages	Disadvantages
The concept of this structure is easily understood by third parties	Companies are more expensive to incorporate & operate
Life of structure can be unlimited	Compliance requirements of the structure
	Costly to wind up
	Restricted when deeming equity
	Requirements for an audit of companies if not under 2 of the following 3 thresholds: <ul style="list-style-type: none"> <li>• 50 employees</li> <li>• \$ 10 million turnover</li> <li>• \$ 5 million in assets</li> </ul>
	Disclosure of information to public

## Risk management

Advantages	Disadvantages
Owners (who are not also directors) can limit their risk to loss of their investment in the company	Owners do not control day to day operations of company (unless they act as directors)
Directors are not liable for debts of company unless is insolvent trading or not proper conduct of role	Generally not a suitable structure to be used for asset protection (compared to trusts)

## Operations

Advantages	Disadvantages
Copes well with any sized business	Requires more formality
Retention of earnings can assist in obtaining non equity finance	Owners must rely on directors
Copes well with growth and change of operations	

## Return on investments (to stakeholders)

Advantages	Disadvantages
Distribution of profits via payment of dividends can be controlled	Generally not suitable for holding of appreciating assets which as concessional taxed as concessions are not fully preserved when distributed
Companies can accumulate assets in their own right	Reduction in equity relatively complex
Distribution flexibility is limited	
Income can be accumulated within the structure	

## Tax efficiency

Advantages	Disadvantages
<b>Flat tax rate of 30%</b>	Specific rules apply to debit loan accounts (Div7a)
<b>Dividend imputation is available</b>	50% CGT discount is not available
<b>R &amp; D concessions are available</b>	The benefit of CGT indexation may be lost on liquidation
<b>Scrip for scrip roll-over relief available</b>	Distributions are generally taxed as dividends
<b>Access to small business CGT concessions (subject to compliance with rules)</b>	Specific rules that affect the availability of income & capital losses
<b>Rollover relief into another company</b>	Tax free thresholds does not apply
<b>Non commercial losses rules do not apply</b>	Unable to pass on foreign tax credits to shareholders
	No refund of excess imputation credits
	Streaming of distributions generally not available
	Limited income splitting
	Any concessional tax treatment is usually lost when amounts distributed / returned to shareholders

Contact us to find out more about Private Companies and whether it may be the right structure for your circumstances.

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