Nexia Australia

Asset Protection
for Sole Traders

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Establishing the correct business structure when commencing operation is key. Very few small to medium businesses are operated as sole traders. However, many micro businesses continue to operate as sole traders or partnerships because of cost, simplicity and the absence of proper advice at their inception.

Generally speaking, structuring a business as a sole trader is not recommended, particularly if you own other personal or business assets or you are in the process of accumulating assets. If you operate a business as a sole trader, any risks (whether they are large or small) that arise out of the business and its activities equally apply to any personal assets and business assets owned by the business operator. In some circumstances, those risks can also impact on assets owned by a spouse or related entity.

If you are operating as sole trader, you should take some of the actions as protections against risk.

1. Ensure all necessary insurances are taken out. Where applicable, relevant policies such as public and product liability, professional indemnity and workers compensation should be entered.
2. Accumulate assets in either a spouse's name or an entity controlled by a spouse or another family member where possible.
3. Separate ownership of the business from valuable tangible assets and any real property associated with and used by the business where possible.
4. Closely manage and monitor your business cash flow.

If you are operating a winery, an ideal structure would be the business operating out of one entity and a separate entity owning the land and any major improvements on the land. The vines and related structures could also be owned with the land by a party different to that operating the business. A rental/license fee is then charged to the business entity for the use of the land and any valuable equipment to be used by the business. The rental or license agreement would also enable the business to harvest the grapes to be used to make the wine.

The two entities would preferably also be controlled and operated by separate family members where possible. Should the business fail, the land, major improvements and major plant and equipment are partly protected from creditors.

If the business has borrowings, most lenders will require personal guarantees and the land as security unless they are making a cash flow lend. Therefore, separating the ownership of the business from the ownership of the other valuable assets and land will generally not protect you from a bank or other financier. However, it may well protect you from general creditors should the business fail or suffer a crippling event not covered by insurance policies.

If you are undertaking the business in your own name, valuable assets (other than land) used in the business and owned by your spouse or other family member should be registered on the Personal Property Securities Register. This will mitigate any doubt as to ownership of the asset should the business fail. We recommend that land and other valuable assets are also owned by a spouse or entity controlled by a spouse or other family member.

Many business structures, especially for small businesses including those held by individuals can be changed without major tax implications. Any change should however, be carried out with careful planning and sound advice.

Talk to Us

If you would like further information on asset protection and business structuring, contact a Nexia advisor today.

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