

Structuring a Business for First Nations Entrepreneurs

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Sole proprietorships and corporations are two of the most common ways to structure a small business include. Choosing which structure is best for First Nations entrepreneurs involves a few specific considerations. Here is a brief overview of the some of the benefits and considerations of each business structure.

Corporation vs. Sole Proprietorship

Corporation

Incorporating a company is a legal process whereby a **new** and separate legal entity is created. When a company is incorporated, a result is that there is *Legal Separation* created between you and the corporation. A corporation is, in the eyes of the law, **just like a person** in many respects. It will own its own assets and incur its own debt and liabilities. It can also be sued. **All of this occurs separate** and apart from the owners of the corporation, who are known as the shareholders of the corporation. (*as long as the shareholders have not taken steps to incur personal liability).

Recognizing a Corporate Name: You will recognize a corporate entity by the letters or words, '**Limited**', '**Ltd.**', '**Incorporated**', or '**Inc.**' at the end of its name. These all mean the same thing, so it is purely preference which one you use. A corporate name will therefore look like, for example, *Gizmos Inc.*, or *Gizmos Ltd.*, and not simply *Gizmos*.

Liability: The 'owner' (i.e., "shareholder") of a corporation is generally shielded from liability of the corporation, unless, as noted, the shareholder has taken some kind of step to be responsible for the liability of the corporation. Examples of such steps could include signing a personal guarantee or entering into an equipment or a building lease or other contract in the entrepreneur's individual name, opposed to the corporation's name.

Getting paid: Since a corporation is a separate legal entity, the money it makes will be its own money (the corporation's money), not the owner's money. Therefore, the corporation will have to keep its own separate financial records, its own bank account, etc.

The owners have a few options to get paid. You can get paid as an employee of the corporation. Depending on where the corporation is located, where the owner lives, and where employment duties are carried out, the employment income may be all or partially tax exempt if the owner/employee is a status Indian under the *Indian Act* (Canada). Be sure you get legal and tax advice on this issue.

As a shareholder, you also have the option of taking dividends for compensation. However, there are certain conditions that must be observed in order to be able to take a dividend so be sure to check with your accountant to ensure it is done properly.

We are often asked if there are tax exemptions available to a corporation if the shareholders / owners are all Status Indian. The answer is "No". The law is that a corporate entity is not, and cannot, be an Indian as defined in the Indian Act, and thus is not exempt from income taxes under the Indian Act provisions which exempt certain income of an individual Status Indian. Also note, a corporation will have to file its own separate tax return each year, in addition to you having to file a personal tax return.

Deciding which way to pay yourself is usually a tax driven decision and a full analysis of the specific facts of your business will be required in order to determine the options available to you.

Sole Proprietorship

Operating as a Sole Proprietor means, you are operating the business under your own name (*even if you register a separate business name), and there is NO legal separation between you and your business.

This is an easier, quicker and cheaper way to start a business and its also easier and less expensive to maintain.

Registering a Business Name: It is not necessary to register a business name if the sole proprietor will operate using only her or his first and last name. i.e., Jane Doe. However, if Jane wants to add some branding such as “Consulting Services” to make “Jane’s Consulting Services”, then she must go through the process of the name search and reservation. There is a chance the name could be rejected until she gets one that is approved. Reasons for rejected names include that they are too close to another registered name or trademark. Operating with an unregistered name can lead to other legal troubles, so I don’t recommend it.

Liability: As a sole proprietor you are personally liable for the debts & liabilities of your business, as they are your debts/liabilities because there is no legal separation between you and your business. Some people who register a business name as a sole proprietor mistakenly believe that the debts are ‘company debts’. Unless there has been a separate legal entity created (corporation), there is no such separation of liability, or ‘company’. It is recommended to consult a business lawyer regarding business liability so that there are no surprises. Being a First Nations sole proprietor can make sense in many cases if all of the assets are located on a reserve as the Indian Act contains certain exemption from seizure provisions if the right circumstances are met.

Getting Paid: As a Sole Proprietor, the business income is your income and must be reported as such on your personal tax return. Again, there may be some tax considerations depending on the specific facts present. For example, a Status Indian who earns employment income that is sufficiently connected to a reservation (talk to a lawyer), may earn it on an exempt basis (this tax exemption is available to individuals, but not to a corporation). Each person’s particular business and background situation is different, so, it’s best to get tax and legal advice beforehand so there are no surprises.