

# BUSINESS STRUCTURE CONSIDERATIONS

Topics	Sole Proprietorship	Partnership	Business Corporation	Joint Venture
<b>Formation</b>	<ul style="list-style-type: none"> <li>• Simple – no legislation</li> <li>• No organizational arrangements (bylaws, etc.) are required</li> <li>• One owner who is responsible for all business decisions</li> <li>• Modest startup expenses</li> <li>• All profits accrue to the proprietor</li> <li>• Size and complexity can be changed as finances dictate</li> <li>• Involvement of family members is relatively unrestricted</li> </ul>	<ul style="list-style-type: none"> <li>• relationship between 2 or more individuals or companies carrying on business with a view to make a profit</li> <li>• General partnership - codified by Partnership Act – agreement between partners can override provisions</li> <li>• Limited partnership – must register under Limited Partnership Act (Ontario)</li> </ul>	<ul style="list-style-type: none"> <li>• incorporate via Business Corporations Act (Ontario) or Canada Business Corporations Act</li> <li>• One or more person may incorporate</li> <li>• Incorporation and filing fees are generally higher than those paid by partnerships</li> <li>• Legal fees may also be higher</li> <li>• Annual returns must be filed in many provinces</li> <li>• A corporation wishing to do business in more than one province either has to incorporate federally or obtain an extra provincial license to carry on business in the host province</li> </ul>	<ul style="list-style-type: none"> <li>• Simple – no legislation – agreement between parties</li> <li>• Individuals, corporations, or partnerships may form a short term partnership (joint venture)</li> </ul>
<b>Structure</b>	<ul style="list-style-type: none"> <li>• No flexibility</li> </ul>	<ul style="list-style-type: none"> <li>• Great flexibility in internal management structure</li> </ul>	<ul style="list-style-type: none"> <li>• Can put in place parent-subsidiary relationships to accomplish business goals</li> </ul>	<ul style="list-style-type: none"> <li>• Great flexibility in structure</li> </ul>
<b>Separate Existence</b>	<ul style="list-style-type: none"> <li>• Business has no separate legal personality; business and proprietor are considered one and the same</li> </ul>	<ul style="list-style-type: none"> <li>• Does not have a separate legal personality</li> </ul>	<ul style="list-style-type: none"> <li>• Has its own legal personality – true even of one person corporations</li> <li>• Has perpetual succession, not affected by changes in, or deaths or retirements of, its members</li> </ul>	<ul style="list-style-type: none"> <li>• Does not have a separate legal personality</li> <li>• lasts for a specified duration</li> </ul>

<b>Limited Liability</b>	<ul style="list-style-type: none"> <li>No limited liability</li> <li>Owner fully liable for all debts and obligations</li> </ul>	<ul style="list-style-type: none"> <li>Does not have a separate legal personality</li> <li>Unlimited liability of each partner, jointly or jointly and severally, for all debts and other obligations</li> <li>Partners share equally in losses</li> <li>Partners are equally liable for all debts incurred by partnership while she is a partner</li> <li>Partners may become limited, which reduces her liability to the extent of her contribution to the firm</li> <li>Limited partner loses her protection if she “takes part in the control of the business” i.e. Takes part in the management of the partnership</li> </ul>	<ul style="list-style-type: none"> <li>Shareholders are not liable for debts or other obligations of the corporation</li> </ul>	<ul style="list-style-type: none"> <li>Liability may be limited depending on nature of parties involved in joint venture and agreement between parties</li> </ul>
<b>Ownership of Assets</b>	<ul style="list-style-type: none"> <li>Assets owned by proprietor</li> </ul>	<ul style="list-style-type: none"> <li>Assets can be owned either by the partnership or by the individual partners</li> </ul>	<ul style="list-style-type: none"> <li>Assets can be owned either by the corporation or the shareholders (most often owned by corporation)</li> </ul>	<ul style="list-style-type: none"> <li>ownership of assets by two or more co-owners ordinarily involves the holding by each owner of his own separate interest in the property which he can deal with as he chooses, subject to any agreement he may have</li> <li>entered into with his co-owners.</li> </ul>
<b>Income</b>	<ul style="list-style-type: none"> <li>Determined by proprietor, proprietor can determine extent of discretionary expenses, such as CCA, and ECE</li> </ul>	<ul style="list-style-type: none"> <li>Determined at the partnership level,</li> <li>Partners share profit/losses</li> </ul>	<ul style="list-style-type: none"> <li>Corporation (rather than shareholders) determines discretionary expenses</li> <li>Shareholders may share after tax profit via dividends</li> </ul>	<ul style="list-style-type: none"> <li>No determination of profit at JV level</li> <li>No sharing of profit (sharing of gross revenue and expenses)</li> </ul>

<b>Income Tax</b>	<ul style="list-style-type: none"> <li>• Taxed at individuals marginal tax rates</li> <li>• disadvantage exists where business income is put back into business because of potential to be taxed at marginal rates greater than 19%</li> <li>• losses may be deducted against other income</li> </ul>	<ul style="list-style-type: none"> <li>• Partners are taxed on income whether or not it is distributed</li> <li>• Partners cannot individually decide discretionary expenses – ie CCA determined at partnership level</li> <li>• disadvantage exists where business income is put back into business because of potential to be taxed at marginal rates greater than 19%</li> <li>• losses may be deducted against other income</li> </ul>	<ul style="list-style-type: none"> <li>• CCPC earning income from active business carried on primarily in Canada may be eligible for Small Business Deduction (low rate of tax on the first \$400,000 of income earned)</li> <li>• Note- the SBD represents a deferral of income tax as s/h will pay tax when the after-tax profits are distributed.</li> </ul>	<ul style="list-style-type: none"> <li>• ITA ignores the existence of JV</li> <li>• CCA taken by each Venturer – not restricted as in Partnership</li> <li>• Concept of Specified Partnership income does not exist</li> <li>• Statutory at-risk rules do not apply to JV</li> <li>• Statutorily, there is no separate tax year, but CRA allows JV to have separate taxation year from participants</li> <li>• New participants must acquire an ownership interest in jv property</li> <li>• Annual information returns not required</li> <li>• Elections that affect computation of income do not need to be jointly elected amongst joint venturers</li> </ul>
<b>Income Splitting</b>	<ul style="list-style-type: none"> <li>• pay reasonable salaries to family members</li> </ul>	<ul style="list-style-type: none"> <li>• Can income split by having spouses partners and receive allocation of business income, but must be cautious as ss. 103(1) and 103(1.1) require allocations to be reasonable</li> <li>• Kiddie Tax in section 120.4 also applies to partnership income</li> </ul>	<ul style="list-style-type: none"> <li>• Pay reasonable salaries to non-shareholder family members</li> <li>• Bonus income to shareholder/employees</li> <li>• Allocation of income via dividends not subject to reasonableness</li> <li>• Attribution issues on share ownership</li> <li>• Kiddie Tax on dividend distributions to children</li> </ul>	<ul style="list-style-type: none"> <li>• splitting opportunities affect by business status of JV</li> </ul>

<p><b>GST</b></p>	<ul style="list-style-type: none"> <li>• s.123(1) “registrant”             <ul style="list-style-type: none"> <li>○ a person, including a partnership, who is registered or who is required to be registered for GST</li> </ul> </li> <li>• every person who makes a taxable supply</li> <li>• “small supplier” exception             <ul style="list-style-type: none"> <li>○ less than \$30,000 of <i>consideration</i> for non-capital property</li> <li>○ not less than \$30,000 “net income”</li> </ul> </li> <li>• only GST registrants can claim input tax credits</li> </ul>	<ul style="list-style-type: none"> <li>• JV not recognized, GST at venturer level</li> </ul>
<ul style="list-style-type: none"> <li>• sole proprietor responsible for GST</li> </ul>	<ul style="list-style-type: none"> <li>• partners are jointly and severally liable for GST liabilities of partnership incurred while person was a member of the partnership</li> </ul>	<ul style="list-style-type: none"> <li>• directors are jointly and severally liable for GST liabilities of partnership incurred while person was a member of the partnership</li> </ul>