Guide to Business Structuring

You've got an idea and you can't wait to get your new business started. But there's something important to get sorted first – your business structure.

This Guide explains what a business structure is and the different types of business structures commonly used for SMEs. It explores the pros and cons, set up requirements and ongoing obligations for each, and helps you choose the best business structure for you.

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on your terms

What is a business structure?

A business structure is the legal arrangement from which you provide your goods and services.

Business structures can be simple or complicated, but they form the basis of how your business interacts with customers, suppliers, your bank, the IRD, and any other person or entity your business encounters.

Everything flows from the structure - the legal documents you need, the way the money you earn is accounted for, and how much tax the business will pay.

What are the forms of business structure in NZ?

In New Zealand when you hear someone (usually your lawyer or accountant) talking about business structure, they mean one of the following:

Sole Trader	Company	Partnership	Trust

You may also hear the words contractor, self-employed and freelancer. These are not a type of ‘business structure’ as a contractor, self-employed person or freelancer describes the individual that can operate through either a company business structure or a sole trader business structure. It really just means you are not an employee of someone else and you need to choose your business structure.

A trust is usually used to hold assets, rather than operate a business from. You can trade (operate a business) from a trust, but it is complicated, not standard and not typically recommended for SMEs so we have focussed on the other three in this guide.

All businesses (whatever their structure) can register for Goods and Services Tax (GST), raise invoices, have a bank account, apply for loans, claim business and home office expenses, hire staff (employees or contractors), depreciate assets, trade under a trading name, and have a website and physical premises.

What’s the difference between a business structure and a ‘legal entity’?

A legal entity has two key features:

- it is a business structure (i.e., one of the four above) that has been created by following certain laws e.g., incorporating a company under the Companies Act 1993, and
- it is separate and distinct from the person who set it up, meaning the law views the entity as a different body from the person who set it up.

A business structure, however, will not always create a separate legal entity – i.e, a sole trader is not considered distinct from the individual who is trading.

The tables on the following pages will explain things further.

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What are the key aspects of each business structure?

Structure	Features	Legal entity separate from its owners?
Sole Trader	Operate your business under your own name i.e, it is you as an individual.	No
Company	A separate entity to its owners, who are called shareholders. The owners/ shareholders can be one or more people, and they appoint directors to manage the company.	Yes
Partnership	Two or more people running a business by working together in partnership.	No, unless you set up a Limited Partnership under the Limited Partnerships Act 2008. Limited Partnerships are not a common trading entity for SMEs as they are unnecessarily complex.

What are the pros and cons of each?

Structure	Pros	Cons
Sole Trader	Easy to set up. No ongoing legal administration or maintenance besides tax & accounting.	Personally liable for all debts of the business – meaning your personal assets (house etc) could be used to pay off business debts if it fails. No business partners. Harder to raise funding.
Company	Limited liability protection for shareholders, (meaning only the assets of the business (not your personal assets) are at risk of being ordered by a court to be sold to pay off business debts. Provides more comfort to banks/investors. Can outlast you, meaning you can sell your shares but the company remains in existence.	Some personal liability for directors – can be reduced by director insurance and following the law. More expensive. More administration.
Partnership	Slightly easier to set up than a company. Provides flexibility of income/expense flows without company structure constraints.	Personal liability for losses of business and liability for mistakes/losses of your business partners. Meaning no protection of your personal assets so your house could be used to pay off business debts if it fails. Harder to raise funding.

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What do I need to set up each business structure?

Structure	Requirements
Sole Trader	IRD number (this will be your personal IRD number – you do not need to get a new one for the business). Register for GST if you will sell goods or services of more than $60k per year. Your GST number will be the same as your IRD number. A separate bank account is recommended to make accounting easier.
Company	Register on the Companies Register – this is done online via the Companies Office. Register for income tax & get a company IRD number (you get this automatically when you incorporate a company). GST registration if the company will sell goods or services of more than $60k per year. You can register for GST when you incorporate your company. Your GST number is the same as your IRD number. At least 1 director and 1 shareholder. Shareholders Agreement is recommended if more than 1 shareholder. Bank Account
Partnership	Register the partnership to pay income tax – will need a separate IRD number. GST registration and number if the partnership will sell goods or services of more than 60k per year. Your GST number is the same as your IRD number. Partnership Agreement Bank Account

What are my ongoing obligations?

Structure	Obligations
Sole Trader	File an individual income tax return (IR3) File a GST return regularly (where relevant) Pay ACC levies
Company	File a yearly company tax return (IR4) File GST return regularly (where relevant) Pay ACC levies. Prepare financial statements File an Annual Return with the Companies Office (this isn't difficult but must be done) As a shareholder – you'll need to file your own individual tax return. This will include any dividends paid by the company to you or drawings you take from the company.
Partnership	File a yearly partnership tax return (IR7) File GST return regularly (where relevant) Pay ACC levies Prepare financial statements As a partner, you'll need to file your own individual tax return. This will include your partnership share of the income and expenses of the business.

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What structure is best for you?

Structure	Choose this if:
Sole Trader	• you don't have any business partners • provide goods and services yourself to your customers • don't have permanent employees (or any intention of having any) • don't need outside money (either from investors or a bank) • don't have stock/inventory • don't have many/any personal assets in your own name
Company	• there are 2 or more people who own the business • you want to raise money – either capital from investors or debt from a bank • you hold a lot of stock/inventory • you have employees/or intend to have employees • you have personal assets you wish to protect • you want your business to outlast you i.e, have something separate from yourself to sell when you've had enough • the business will develop/acquire its own assets over time
Partnership	• there are 2 or more people who own the business • business owns farm/forestry or other land-sharing ventures or commercial property • you need the flexibility of income/expense flow without the company legal structure constraints

Hope this helps you choose the right structure for your business... on your terms!