



CANADIAN ARTISTS REPRESENTATION /
LE FRONT DES ARTISTES CANADIENS

ADVISORY NOTE

Business Entities for Artists

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There are three main business entities that can be utilized in Ontario. The choice of business entity is essential to good tax and business planning, and therefore could save you money in the long run. Non-profit business entities are somewhat different from the standard entities that will be described here. For information on the formation of charities and non-profit organizations see the ALAS fact sheet on that topic.

Sole Proprietorships

The most basic way of carrying on a business as an individual is a sole proprietorship. A sole proprietorship is not incorporated, which means there is no creation of a separate "legal person" recognized by law. A sole proprietorship consists of the business dealings of a single individual who owns the business and may involve employees. All profits belong to the sole proprietor. The sole proprietor is also personally responsible for any business liabilities (e.g. law suits) that may arise in the course of business. The basic premise here is that "sole proprietorship" is just a name for someone doing business whom, in most cases, has no legal documentation other than a business registration. For example, if Joe, a professional photographer, wants to start up a business and does not want to have to worry about all the formal requirements of maintaining an incorporated business, the simplest way for him to start up is to operate under a sole proprietorship.

Tax Perspectives

Any profits or losses of a sole proprietor must be included with his or her income from all other sources during the year. The amount of tax you will pay is calculated based on the personal income rates. As noted earlier, losses may be important. If you expect losses in your first few years of operation (i.e. you are spending more on materials than you are earning in sales or performance, etc), it may be wise to operate as a sole proprietorship because you can write your losses off against any other sources of income. For example, a musician can write off any losses against money made from his or her "day job". However, it must be kept in mind that you must have a reasonable expectation of making a profit from your business. If Revenue Canada audits you and decides that your artistic endeavours are actually only a hobby where you had no real expectation of profit, you could be liable for taxes on the amount you wrote off as a business loss.

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For more information on claiming income tax as an artist, refer to Revenue Canada's Interpretation Bulletin IT-504R, available at your taxation office.

Registration

There is a legal requirement in Ontario to register a sole proprietorship. As well, the chartered banks require evidence of business registration if a business bank account is to be opened for a business that has a name, there is no need for registration, however, any variation such as the addition of "Enterprises" after your name would have to be registered as required under the Business Name Act, 1990.

To register a business, simply go to the Partnership's Registry, Companies Branch, Ontario Ministry of Consumer and Commercial Relations. The cost is currently \$50. Also, you must apply within 60 days of commencing the business. The registration must be renewed every five years.

Partnerships

Like a sole proprietorship, a partnership is another form of unincorporated business entity. A partnership is a business arrangement where two or more partners carry on business in common with a view to profit.

A partnership is not a separate legal entity from the individuals who form the partnership. Each partner is individually liable with the other partners to the full extent of his personal assets for all debts and obligations of the partnership incurred while he is a partner. A partner will share equally in the profits of the business. To illustrate this point, if one partner cannot pay his share of a debt that was incurred as part of the business, the other partner or partners will be responsible for that debt.

There should be some agreement between the partners to carry on business and to share in the profits and losses. The agreement may be written or oral or it may be implied from the conduct of the parties. If at all possible, it is recommended that you document your partnership agreement in writing. By doing so, you may avoid future problems. To continue the previous example, if Joe the photographer wanted to carry on his business of picture taking with someone else, he and his partner should register that business as a partnership.

Tax Perspectives

The tax issues for partnerships are similar to those of sole proprietorships. The income earned by a partner from a partnership is taxed at that individual's personal tax rate. A statement of income and expenses from the business must be prepared.

Registration

To sue or be sued in the partnership name the partnership must be registered. Applications to register partnerships are made at the same government office as are sole proprietorships (see above). Partnerships must be registered within 60 days of commencement. All partners must sign

the registration form. The registration fee is currently \$50. The registration must be renewed every five years. Any legal costs associated with the drawing up of a Partnership Agreement would be in addition to the registration fees.

Corporations

A corporation is a legal entity, separate from its owners, that is created upon the registration of the appropriate documents with the Provincial or Federal Ministry. As a separate entity, a corporation has all the powers of another person. It can own property, carry on business, sue or be sued in its own name and incur debts just as any living individual can. The business corporation is owned by the shareholders through their ownership of shares of the corporation. The shareholders do not own the property belonging to the corporation, and the liabilities of the corporation are not the liabilities of the shareholders. This arrangement is unlike a sole proprietorship or a partnership, where the owners of a business or of property own the business or property directly as individuals.

Directors are the persons who are required by law to manage or supervise the management of the corporation's affairs. In a small business corporation the main shareholders and directors are often the same people.

The size of a corporation can vary from a single person who owns all the shares to a situation where there are thousands of shareholders who do not have day to day input in the corporation. As a corporation grows in size, the legal issues can become complex. This fact sheet only covers the very basic legal and tax issues regarding corporations. To follow through with our example, if Joe the photographer wanted to open up his own studio in a formal capacity it would be advisable to incorporate his business for the reasons set out below.

Tax Perspectives and Limited Liability

The most important advantage to incorporating a company is limited liability. This means that only the corporation is responsible for its liabilities (debts, adverse court orders, etc.) to the extent that it has the money to cover them. If a corporation has gone bankrupt or is in financial trouble and cannot meet its debts, the persons who are owed money cannot collect from the shareholders for any more money beyond what those shareholders invested.

Another advantage for corporations is what is called the Small Business Tax Deduction. This deduction is available for Canadian Controlled Private Corporations (C.C.P.C). These are corporations that are Canadian owned and that do not list their shares on a stock market. The tax break for C.C.P.C's can be substantial. Currently it amounts to 22% on the first \$200,000 that corporation earns. Anything that is earned above \$200,000 is taxed at the top corporate rate (approximately 48%). To get the full picture on the advantages of a C.C.P.C. you should speak with a lawyer or an accountant.

The disadvantages inherent in registering a corporation are that corporations are closely regulated by the government and therefore extensive record keeping is required. It is also the most expensive form of business entity to organize.

Registration

There are two ways to incorporate a company in Canada. One is provincially if you intend to carry on business solely in one province, or federally, if you wish to carry on business in every province in Canada. Although incorporating federally does make carrying on business in other provinces easier, the majority of corporations are provincially incorporated. The cost of filing articles for a provincial incorporation is currently \$270. For a federal incorporation the cost is \$500. This cost does not include any extra fees such as legal fees that you might incur.

Incorporation and its associated issues are procedurally complex. It is advisable that you obtain competent legal advice to draft the necessary article of incorporation, to conduct the required name search, to organize the share certificates and the minute book and to attend to any other related matters.

Bibliography

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