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SHOULD I INCORPORATE?
by J. Ryan J. Carson

Whether or not to incorporate raises a diverse array of questions, some of which include: length of time business has been operable, personal cash flow needs of the principal of the business and the personal and corporate tax rates in the province the company does business.

Cash Flow

If all of the profits from the business need to support the personal financial needs of the principal then incorporation may not be appropriate. The cost of setting up and annually maintaining the corporation may outweigh the benefits. But if the financial situation of the company allows you to retain profits in the company then incorporation may be warranted and may provide significant tax savings (this should be discussed with an accountant).

Tax

If the business is just getting started, it is usually not appropriate to incorporate because losses incurred by an incorporated business cannot flow through to shareholders. However, once business is booming, incorporation can provide tax advantages. Further, if the business is incorporated you may be able to take advantage of income splitting to reduce taxes. If a spouse and/or adult children are shareholders in the incorporated company, any dividends that they receive will be taxed in their hands. The incorporated business can choose to employ and pay family members as long as remuneration is reasonable for the work performed. Finally, an incorporated company may choose a different fiscal year (12 month period) than the regular calendar year. This will allow the business to tailor its filing of taxes based on the company's cash flow peaks and business expenses.

Credit Proofing Personal Assets

Incorporating can limit personal liability, because creditors of the incorporated company can only go after the assets of the corporation and not those owned personally. For example, if the incorporated company was sued for breach of contract and the court awarded judgment in favor of the creditor, the creditor could only enforce the judgment on the assets of the corporation. Therefore, any personal assets, i.e. bank accounts, primary residence and investments would be insulated from the courts judgment.

Estate Planning

Most sole proprietorships and partnerships don not survive after the death of the principal of the company. But a corporation is a legal entity which can be in existence indefinitely, which is why corporations are used for estate planning purposes.

Incorporation

If it is time to incorporate some difficult decisions must still be made such as who will be a shareholder, director and officer? If incorporation is right for your business and/or questions still remain, please contact a lawyer in our corporate/commercial department for assistance.

The foregoing is provided to you for information purposes only. We caution you to obtain legal advice specific to your situation in all circumstances.

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