

COMPANIES AND LAQC'S

On the path to asset protection, one of the options available is the use of a Company.

A company has some basic elements:

- There is at least one director and one shareholder
- It must have a registered office (where the company records are kept)
- It must have an address for service (where legal documents can be served – this address can be different to the registered office)
- Its name must be unique to it so that no two companies can have the same name

Most importantly, a company has limited liability. While the company has full responsibility for meeting the debts and obligations that it incurs, limited liability is what applies to the shareholders and directors (with some exceptions) and means that they cannot be held personally liable for the actions of the company. The company is a separate legal entity and is treated completely separately from the shareholders and directors.

It doesn't matter how small a business is, at the very least, the business should be set up in a company rather than being conducted in a person's own name (where they will have unlimited liability) or in partnership with others (where you will have joint and several liability for your own actions as well as the actions of your partner/s). While this will add some cost (to setup and maintain the company), it would be wise to view this in the same way as you would an insurance premium – you never know if you'll need it but if you do, you'll be very pleased you had it. From a tax point of view, there is some extra compliance cost with the filing of an additional tax return (for the company), yet this is small in the overall context of things. Tax rules for what individuals and companies can claim are largely the same.

If it is known that the business is going to operate at a loss, an application can be made to IRD for the company to become a Loss Attributing Qualifying Company or LAQC. This special status allows the LAQC to pass out its losses to its shareholders (there can be no more than five) and the shareholders can then offset those losses against their personal income, thereby lowering their tax bill. In doing this, IRD is treating the LAQC like a partnership. A normal company cannot pass its losses out to its shareholders – the losses must be retained within the company and carried forward to offset against future profits.

One downside is that in order to gain LAQC status, the shareholders must give a personal guarantee to IRD that they will pay the company's tax bill if the company is unable to. This is quite different to a standard company where if the company is unable to pay its tax bill, IRD cannot pursue the directors or shareholders personally for payment.

Another downside is that the shareholders, if they wish to get the tax benefit personally because, for example, their personal income is greater than \$60,000, they must own the shares personally. The value of the shares is determined by the net assets of the LAQC. If the LAQC for example owned residential investment property, the value of the shares would be the market value of the property less the mortgage. Under most circumstances, this would mean that the value of the shares would rise each year as the value of the property rose. As the shares represent an asset in their own name, the shares could be used against them in a number of circumstances such as a creditor claim or in a relationship property claim.

Both companies and LAQCs should be considered when putting together an asset protection plan, bearing in mind that there is no one size fits all for people, businesses or circumstances.