



Aspects which help determine the choice of a business enterprise

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When you choose your form of business, the main things to consider are liability and the limitation of financial risks, the capital at your disposal, the form of collaboration, taxes and social security.

Liability and risk parameters

The desire whether or not to limit financial liability is very important in the choice of a business enterprise. You limit the risk if you introduce, legally, a separation between the capacity (money, possessions) of the venture and that of the people involved. Thus, if a venture cannot comply with its obligations, you avoid the people involved in their private capacity being held liable.

Suppose: two people want to set up a small production company. One of them has their own house, the other one lives in a rented house. In this case the partners run an unequal risk if they are made personally liable. In order to prevent this it is sensible to categorize the activities within a legal entity.

For subsidy suppliers liability is also a reason to require that the application submissioner is a legal entity. The subsidy donor wants to prevent private persons - in a financial debacle - getting into financial difficulty (more importantly, it is the wish of the subsidy supplier that the subsidy money is not only managed by the interested party, but that there is the supervision of superiors.) The government grants subsidies to cover deficits, not to make it possible for you to work for profit or to increase your profit. This is often yet another reason for grant providers to favour foundations over private limited companies, although both these forms of business are legal entities which exclude private liability. Thus you see that, for example, museums choose a foundation set-up, but for their catering and souvenir shop within the museum, a separate limited company is established.

You can limit or exclude your private liability with an insurance policy or by general conditions. In the first case you can take out a business liability insurance for damage that you may perhaps cause one day with your activities. The insurance may also cover damage caused by activities by people whom you use: volunteers, employees, etc. With general conditions you can impose the condition on third parties that you are not, or are only partially, liable for damage caused by you in connection with your activities, for example up to a certain amount (your fee), or up to the limit of the insurance.

It is of course impossible to insure against or to exclude with general conditions damage caused deliberately or by wilful carelessness on your part.

To limit liability you can also combine these methods: you can create a person at law, take out insurance policies on behalf of the person at law, and ensure that the person at law has general conditions to limit liability. Juridical and fiscal advice is certainly to be recommended in such a case!

Capital

The second aspect for stipulating the suitable business enterprise is the input and the property of capital. If you choose to have a private person as a legal entity, the combined capital becomes the property of that legal person. You cannot simply withdraw that privately. The capacity (money,



property) is thus NOT yours. This applies both to any profit you make and to the residual assets you may have if the legal entity is wound up.

A well-known complaint which is frequently heard by employees (and also from artists who are in the service of a legal person) is: 'I have given everything and what do I receive in return? They have enriched themselves at my expense.'

That is exactly the difference between being an employee or an entrepreneur within the legal form of the legal entity (separated capital) on the one hand, or being an entrepreneur with their own business or a form of collaboration which has no legal personality. When the capital is not separated, you will also find the financial pleasures and pains in the capital: the loss is for you, the profit also. When the capital is separated, then the financial pleasures and pains are not for you. You are protected against those risks; but you also do not gain directly from the profit. As an employee you give your labour, not your capital. As an artist you give your creativity, not your capital.

If external financing is necessary, then a bank sometimes states, as a requirement, that people involved put up money themselves as well, because with that they show that they have faith in the venture. In banking terms, such an action is called risk-bearing capacity. This frequently goes together with the choice for a business enterprise, where the people involved can also be held liable privately. Or the bank only lends money on the condition that the parties involved are also privately liable themselves up to a certain amount.

Collaboration

If a venture is set up jointly between several people, you must stipulate how you want to regulate mutual collaboration. You can for, example, in developed statutes, or in a contract, indicate how the collaboration must take place, how the decision processes work and how the task division is set up. What must be regulated in any case are the procedures for conflict and for the suspension of collaboration. After all, it is then important to be able to fall back on rules which are made when peace was still reigning.

In the collaboration agreements the mutual authority relation and the decision-making process are also regulated. For example, in a foundation the members of a theatre group can step into paid employment. The mutual relation between the employees might be equal, but the management of the foundation has the formal competence, of course within the legal rules, to dismiss one or more employees. In other words, within the business enterprise of a foundation there is a proportional authority between management and employees.

Moreover it merits recommendation not to lay down possible collaboration agreements in too much detail. Experience teaches, as it happens, that the best form of collaboration and decision-making become clear just from working (together) in practice.

Tax and social insurance

The choice for a business enterprise also has consequences for taxes and social security. 'Natural persons' for their profit, fall under income tax and can claim certain tax advantages, such as the self-employed person's deduction. There are possibly also tax advantages for them in sales tax, by means of the so-called small entrepreneur regulation. Legal entities are subject to corporation tax. Employees who are in the service of the legal entity are subject to wage tax. What form of business is the most advantageous for you from a tax perspective will depend on the amount of profit, among other things.

For as far as social insurance is concerned, it makes a particularly big difference if the entrepreneur is a self-employed person or an employee. Consider thereby that the director of, for example, a foundation is also an employee of this legal entity. The employee is compulsorily insured for a number of situations. Then it is about WW (unemployment insurance law), the WIA (Incapacity Benefit), and further the obligation of the employer to continue to pay the salary of the employee



during the first year of illness. Everybody has the obligation to take out a health insurance for themselves.

As a self-employed person or freelancer you are not automatically insured against loss of income in the event of sickness, incapacity to work or a lack of commissions. You can take out insurance against such contingencies, but you will have to pay the premium out of your own pocket. The same applies to pension plans.

More information

On BeroepKunstenaar.nl:

- What legal form of business is appropriate for me?
- Furthermore: information on: *law & contracts*, on types of business including articles on the various types, *income & taxes*, including information on social security