

Table Comparing Different Legal Structures

This table compares the entity choices by looking at issues (tax and nontax) that generally are considered significant when selecting the type of entity to use for a new business.

Issue	C Corp	S Corp	Partnership	LLC	Sole Proprietorship
Limited liability for owners?	Yes	Yes	No general partners, yes for limited partners. Limited partners cannot be actively involved in the business without losing limited liability.	Yes	No, liability is unlimited
Flexible ownership and capital structure?	Yes	No. Limited to 100 Shareholders and one class of stock. Types of shareholders limited.	Yes. Need at least two partners.	Yes. PA allows one member	N/A-one owner
Continuity of life for Entity?	Yes	Yes, but stock ownership must be monitored	Generally no	Often, yes	No
Centralized management of entity?	Yes	Yes, but number of stockholders limited to 75, so may not be practical.	No for general partnership, usually yes for limited partnership.	Often, yes	No
Free transferability of ownership interest?	Yes, but may be contractually limited by a buy/sell agreement.	Yes, but must observe limitations on who can own stock.	Generally, no.	Generally, no	No, but as practical matter, the entire business may be sold
Degree of administrative complexity?	High	High	Moderate	High, because of newness	Low
Certainty of legal and tax Outcomes?	High	High to moderate.	Moderate	Lowest, due to newness	High
Double Taxation of income?	Yes	No, unless former C corp. and built-in gains and certain other taxes apply.	No	No	No
Ability to retain income at lower current tax cost.	Yes	No	No	No	No
Tax treatment fringe benefits for owners?	Good	Poor, if own more than 2% of stock.	Poor	Poor	Poor

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Issue	C Corp	S Corp	Partnership	LLC	Sole Proprietorship
Potential ability to reduce payroll taxes of owner-employees?	No	Yes, within limits of reasonableness.	No	No	No, but may benefit from employing owner's children under the age of 18.
Potential favorable treatment of owner-level interest expense on debt to inject capital or acquire ownership interest?	No	Yes	Yes	Yes	Yes
Double taxation at state and local tax level?	Generally, Yes	Sometimes	Rarely	Sometimes	No
Additional owner-level tax basis from entity-level debt (for loss deduction purposes)?	No	No, even if owner guarantees debt.	Yes	Yes, but generally not for Section 465 at-risk purposes.	N/A, but owner gets basis from debt since no Entity exists.
Basis adjustments upon purchase of ownership interest?	No	No	Yes	Yes	N/A
High ability to make tax-free contributions and distributions?	No	No	Yes	Yes	Yes
Ability to make special tax allocations among owners?	No	No	Yes	Yes	N/A
Ability to shift entity income among family member owners?	No	To a degree, by manipulating wages of employee owners.	Yes, within limits of family partnership rules.	Yes, within limits of family partnership rules.	Yes, by employing family member.
Treatment of gain on sale of ownership interest?	Generally, capital unless collapsible corporation rules apply (IRA Sec. 341).	Capital	May be part ordinary under "hot assets" rules (See IRA Sec. 751).	May be part ordinary under "hot assets" rules (See IRA Sec. 751).	May be part ordinary due to recapture items.
Treatment of loss on sale of ownership interest?	Capital unless stock it Section 1244 stock.	Capital unless stock it Section 1244 stock.	Capital	Capital	Depends on nature of assets sold.

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Issue	C Corp	S Corp	Partnership	LLC	Sole Proprietorship
Flexibility to choose tax year?	Yes	Limited	Limited	Limited	Limited [See Jerome H Vance, TC Memo 1989-95, PH TCM 89095 (1989)]
Passive loss rules apply?	No, unless a PSC or closely held corp.	Yes, at shareholder level.	Yes, at partner level. Treatment of limited partners is unfavorable.	Yes, at member level; unclear if members treated as limited partners.	Yes
Deduction for corporate dividends received?	Yes	No	No	No	No
Loans against qualified plan accounts possible for owners?	Yes	No, if own more than 5% of stock.	No, if own more than 10% of profits or capital interests.	No, if own more than 10% of profits or capital interests.	No
Favorable tax rate on long-term capital gains?	No, regular corporate rates apply.	Yes, 28% maximum.	Yes, 28% maximum.	Yes, 28% maximum.	Yes, 28% maximum.
Double taxation upon liquidation?	Yes	No	No	No	No
Personal Holding company tax applies?	Yes	No	No	No	No
Accumulated earnings tax applies?	Yes	No	No	No	No
Unreasonable owner compensation issue applies?	Yes	Normally no, unreasonably low compensation could be challenged.	No	No	No
PSC rules apply?	Yes	N/A	N/A	N/A	N/A
Limitations on use of cash method?	Yes, but smaller corporations and PSCs can use cash method.	No, unless more than 35% of losses allocated to "limited entrepreneurs".	No, unless more than 35% of losses allocated to limited partners.	No, unless more than 35% of losses allocated to "limited entrepreneurs".	No
Limitations on use of NOLs and other "tax attributes" after ownership change?	Yes	N/A. Losses pass through to owners.	N/A. Losses pass through to owners.	N/A. Losses pass through to owners.	N/A
Entity-level ATM?	Yes	No, but ATM information must be provided to shareholders.	No, but ATM information must be provided to partners.	No, but ATM information must be provided to members.	No, but ATM information must be provided to calculation.

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