GARBETTS
Chartered Certified Accountants

CHOICE OF STRUCTURE

There are several trading structures available to UK businesses:

1. Sole trader. This is the most simple of structures, in the form of "J Smith t/a Smith Consultants". The business is regarded for legal and taxation purposes as an extension of the traders person.

2. Partnership. One up from a sole trader, the trading style is "J Smith and N Smith t/a Smith Consultants". Although subject to separate taxation rules, partnerships are an extension of the legal personalities of the individual partner.

3. Private Limited Company. The most common form of corporate structure, in the form of "Smith Consultants Limited". The company is owned by its shareholders, run by its directors, and has a separate legal personality and tax status. Although the directors and shareholders will often be the same persons, the roles are in fact separate and should not be confused.

4. Limited Liability Partnership. This is a hybrid between a partnership and a private limited company. It is taxed in the same way as a partnership, but has limited liability like a company. Its of no interest to a contractor.

5. Public Limited Company. This is a "grown up" form of the private limited company, in the form of "Smith Consultants PLC". A public company can offer its shares for sale to the public, via a stock market listing or similar, a private one cannot; the quid pro quo for this is that public companies are subject to more stringent audit, capital and disclosure requirements, to the extent that they are not a viable structure for small businesses.

6. Other structures. There are more specialist structures available, eg charities, trusts, guarantee companies, offshore companies, but these are outside the scope of these notes.

   NB If you are working in the UK, and are UK resident, then offshore companies never offer any tax saving – don't listen to those who say they do.

In this guide, "company" or “PSC” refers to a private limited company. The main reasons for using a PSC are:

1. Tax Law - when working through an agency you cannot be self employed or in partnership, as defined in 1 and 2 above - tax law prohibits it. Therefore the choice is either being an agency employee or working through the company.

2. Tax Savings – provided income is not caught by the IR35 regime, the tax liabilities via a personal service company are considerably lower than liabilities operating as a sole trader or employee.

3. Preference of client/agency - many agencies, or client companies if you are working direct, prefer you to use a company. From their point of view it is administratively simpler, and avoids a lot of the employment protection liabilities which they would otherwise have, even with a "temporary" employee. Recent case law has started to tackle the agencies protection against employment protection issues where a limited company is in place. However employment protection for users of a PSC is still the exception rather than the norm, and is very much court dictated.

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CHOICE OF STRUCTURE *continued*

4. Availability of work - many vacancies now stipulate limited company only.

5. Better rate – a contractor operating through a PSC will normally be able to achieve a 12.8% better rate from his client/agency by absorbing the client/agency employers NI costs.

5. Liability protection - a company gives limited liability, and this can be of importance in protecting against negligence or solvency risks. However this is a complicated area, and a company will not automatically give protection; ask for more details if this impacts on you.