TO INCORPORATE, OR NOT TO INCORPORATE, THAT IS THE QUESTION...

"…incorporating can offer a degree of protection to its owners."

BY MOIRA WALLACE BA, MA, LLB

Whether 'tis better at law to create a company to do business or to conduct your business without the protection available through incorporating. When starting a business, owners are often mindful of the initial costs to incorporate and do not consider the long term advantages that incorporation provides. Consider the following benefits:

Legitimacy – Public and institutional perceptions are raised when dealing with incorporated companies, primarily because companies are regulated. They must file annual corporate and tax returns, make certain information publicly available and comply with specific laws relating to their industry. Customers are more inclined to deal with a reputable jewellery store rather than the fly-by-night salesperson who sells watches from his trench coat. Businesses that have paid the expense to incorporate are viewed as more reputable, which may in itself bring your company more business.

Fundability – Financial institutions and lenders consider incorporated companies a safer risk than a partnership or sole proprietor. In addition to the perceived legitimacy and legal obligations, the incorporated company is separate from its shareholders, who cannot commingle the funds or use them for personal purposes. The line may not be so clearly drawn for the sole proprietor. Also, lenders can require companies to prove their worth and entitlement for a loan by ensuring the company maintains certain financial covenants, which cannot be imposed upon or easily fulfilled by the individual business person.

Tax Savings – Assuming your company was incorporated with dividend bearing shares, it can issue dividends to its shareholders in any financial year the company earns a profit. Dividends are taxed at a much lower tax rate than general income paid and taxed through a standard T4 or self-employed business income. Less tax being paid out means more money in your pocket as the business owner. A good accountant will advise you of the optimal time to pull money out of the business based on your personal income, how to carry forward company losses from year to year or set up your company to share the wealth among your family at a reduced tax liability. Over time, the savings will likely far exceed the initial expense of setting up the corporation.

"It is often easier and more profitable to sell or transfer an incorporated company through an asset or share purchase than to sell a sole-proprietorship, *which is tied to the individual operating the business.*"

Transferability – It is often easier and more profitable to sell or transfer an incorporated company through an asset or share purchase than to sell a sole-proprietorship, which is tied to the individual operating the business. Because the shares and assets of the company are legally separate from the people who are responsible for operating the business, it is easier to distinguish and place a value on the business to be sold. That may not be the case of the sole proprietor, who has his business combined with his personal assets or who is in fact the biggest and most valuable asset of his business.

Limitation of Liability – While directors are being held accountable for some employment related costs, default on tax payments and health and safety matters, incorporating can offer a degree of protection to its owners. The company business is separate from its shareholders. If sued, the corporation will only be liable for damages covered by insurance and the value of the company. The owner may lose the company, but her home and other personal assets will be protected, which is not the case of a sole proprietor who has unlimited personal liability for damages related to her business. The shareholder can effectively start up a new company doing the same business the next day; whereas the sole proprietor may have to file for personal bankruptcy. To do business, to grow; to grow, perchance to prosper—ay, there's the key: For in that growth of business what prosperity may come, when the owner must consider the value of incorporating and not being the cause of his own demise through greater taxation, no limit of liability and lesser funding, perceived legitimacy and transferability of his business. **BL**

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The Benevolent Dictator

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…spend too much time creating strategy that will never see the light of day because changes occur in business in weeks and months, not years.

5. Use a rifle, not a shotgun. When you fire a shotgun, you'll hit a wider area, but will lack focused precision. Sure, you'll hit something with a shotgun, but the price in doing so seldom provides the payback.

Trying to cover a wider area and hoping that something resonates is inviting your efforts to miss the mark. A laser-sharp strategy is more practical, productive, and economical. And no matter the circumstances, make sure that you always aim well before you fire!

When you take the time to focus, have discipline, and follow-up along your path. Whether you're a business owner, a manager or an employee, you're creating a road map that documents what has to be accomplished and by when, which is a precursor for success. **BL**

Michael Feuer (pronounced: Foyer) is the author of the new no-nonsense business book, The Benevolent Dictator about how to get things done both in business and life. He co-founded OfficeMax in 1988 starting with one store and $20,000 of his own money, a partner, and a small group of investors. As CEO, he grew it to more than 1,000 stores worldwide with annual sales topping $5-billion before selling the company in December 2003. He is also CEO of Max-Ventures, a venture capital and retail consulting firm, and founder and CEO of Max-Wellness, a comprehensive health and wellness retail chain that launched in 2010. After opening initial laboratory test stores in Florida and Ohio, a national roll-out is now underway.