

# Strictly Business

A Business Law Blog for Entrepreneurs, Emerging Companies, and the Investment Management Industry.



## ABOUT THE AUTHOR

Alexander J. Davie is an attorney based in the Nashville, TN area. His practice focuses on corporate, finance, and real estate transactions. He works mainly with emerging companies, venture funds, entrepreneurs, and startups. His firm's website can be found at [www.alexanderdavie.com](http://www.alexanderdavie.com).

In his corporate practice, Mr. Davie has worked extensively with his clients on all aspects of their businesses, including company formation, business planning, mergers and acquisitions, vendor and customer contracts, corporate governance, debt and equity financings, and securities offerings. In addition, he has represented investment advisors, securities brokers, hedge funds, private equity funds, and real estate partnership syndicators in numerous private offerings of securities and in ongoing compliance. Prior to returning to private practice, Mr. Davie served as the general counsel to a private investment fund manager.

In his real estate practice, he has participated in property acquisitions, mortgage financings, and commercial leasing matters throughout the United States. He has represented developers, governmental entities, life insurance companies, banks, and owners of malls, shopping centers, industrial parks, and office towers. He has worked on a number of transactions involving the syndication of real estate partnerships, advising sponsors on both real estate and securities issues.

## 7 Reasons to Use a C-Corp for Your New Business

One of the first decisions a small business owner faces is choosing the right form of entity for his or her company. The most popular form of business in recent years is the limited liability company (LLC), because it is simple to organize and manage and can be taxed as a partnership (i.e. without the "double taxation" associated with C-Corporations). However, there are many reasons why you should avoid structuring your new business as an LLC taxed as a partnership and instead use a C-Corp structure. Here are some of them:

1. Venture capital funds will usually only invest in a C-Corp. Many VCs are funded by pension funds and the Internal Revenue Code makes it difficult for pension funds to invest (even indirectly) into an entity taxed as a partnership (as LLCs by default are) if that entity carries on an active business. Therefore, if your goal is to eventually attract venture capital or private equity money, using a C-Corp structure is essential.

2. With a C-Corp, you will receive a W-2 instead of a K-1. If your company is an LLC taxed as a partnership, as an owner of the company, you will not be permitted to also be an employee. Therefore at the end of the tax year, you will receive a K-1 instead of a W-2. If you want to finance anything (like a house or a car), banks prefer to see a W-2. It's just what they are used to seeing. But if you use a C-Corp, you will also be permitted to be an employee of your company and can take your compensation as wages, and will thus have proof of your income in the form of a pay stub and a W-2.

3. With a C-Corp, you will be able to get your personal taxes done quickly. If you are in a partnership, you must wait until you receive a K-1 from your company before you can file your own taxes, and the K-1 can only be completed once your

company's partnership tax return has been completed (which depending on the complexity of your company, may take some time). In contrast, if you are an employee of your own company, all you will need is your W-2 to do your taxes (and a 1099-DIV if you get any dividends, but see item 7 below on why in most cases you shouldn't be receiving dividends). W-2s and 1099-DIVs are based solely on the cash your company pays to you, so they can be completed far in advance of your company's tax return.

4. With a C-Corp, all your employee benefits are deductible. Owners of partnerships and S-Corporations are limited in the amount they can deduct for certain benefits like medical, life insurance, education, childcare, and retirement plans. Owners of C-Corps have no such limitation.

5. C-Corps have their own progressive tax brackets. This means that you can split your income between your company and yourself by choosing how much you pay yourself in compensation. Since the income will be split between two entities, each will be better positioned to avoid the higher tax brackets.

6. You don't have to forego the simplified management structure of an LLC. If you really want a simple LLC-type management structure, form an LLC, then file Form 8832 with the IRS and elect to have your LLC taxed as a C-Corp. You will get the best of both worlds.

#### Contact Information

Alexander J. Davie  
Attorney at Law  
1109 Davenport Boulevard, # 211  
Franklin, TN 37069  
Phone: (615) 585-3546  
Email: [adavie@alexanderdavie.com](mailto:adavie@alexanderdavie.com)

© 2011 Alexander J. Davie — This article is for general information only. The information presented should not be construed to be formal legal advice nor the formation of a lawyer/client relationship.

7. Double Taxation isn't really the big problem that it seems. For C-Corps, if you are an active owner in your business, then you are both an owner and an employee. The compensation you receive can be treated as wages rather than a dividend, in which case, it is only taxed once. Done right, you can avoid double taxation completely. Please note however, this strategy would not work with a capital-intensive company that invests in acquiring significant assets like real estate or machinery. If a large part of your company's income is derived from its assets, then your company's income may exceed what you would reasonably expect to make as an employee. If this happens, the IRS may try to re-characterize part of your wage income as a dividend. On the other hand, the C-Corp structure is great for companies whose entire income is derived from the efforts of their employees (like consulting firms and law firms) because it would be difficult for the IRS to challenge paying out all of the income to employees since they are responsible for generating it.

As always, your final choice in entity selection should be based on your own specific situation. Therefore, before making any final decisions on your form of business, you should speak with your attorney or accountant.