University Spin-offs Alliance:

From the idea to the market through mentoring and transnational entrepreneurial teams

Module 4

Legal aspects when creating a company.

Legal forms

Tax and other obligations

Economic viability

Financial management tools

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Introduction

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The decision to create a company is not usually an easy task. Entrepreneurs can often have a good idea, but they don't know where to go or how to start. It's easy to forget that before starting a business project, it must be evaluated as a whole, in order to be able to have a valid criterion to assess its viability.

In general terms, we can say that there are two types of entrepreneurs: the necessity new entrepreneur and the opportunity new entrepreneur.

What type of entrepreneur are you?

The new **entrepreneur by necessity** is usually a person or several people who are facing an unexpected situation: For instance, unemployment. To create a new business, can be seen as an easy and fast way to solve this situation. There is nothing more far from reality. Starting a successful business is neither quick nor easy, there is an important preliminary work, to have good results since the business start phase.

The **opportunity entrepreneur** is that person or group of people who, for some reason, want to start a business based on a technical innovation, a new idea or have detected a market niche. The new business will solve problems or will satisfy needs of potential customers that currently are not covered or just partly covered.

From a **risk** point of view and, always speaking in general terms, projects with not enough preparation, have a higher risk of failure. In this sense, projects driven by necessity, are usually prepared as a matter of urgency, and then, they are higher risk to fail than projects driven by a genuine new business idea. Usually, the entrepreneur by necessity does not take the necessary preparation time due to the urgency of starting a new activity. The motivation is also different, so this type of entrepreneur must be aware that it's necessary to work more deeply before the business start, in order to be successful.

In any case, before starting a new business, it's needed to have certainty or to reduce the risk to a minimum to ensure its viability and, as seen in Module 2, the tool to ensure viability, is the **business plan.**

But in addition to business plan, it's recommended that entrepreneurs also have at least a basic knowledge of aspects not directly related to the new business, but also important, like legal aspects, accounting and financial management, tax and Social Security obligations, liability to third parties, etc that, in some way, can also condition twofold: in the new business viability and in its future management.

New entrepreneurs should also be aware of the minimum turnover to be reached for the business to be viable, and of the management tools and Key Performance Indicators (KPIs) that can be used to monitor the evolution of the business and to be able to take decisions in accordance with the business performance.

Before starting the new business, it's also very important to define the relationship between the partners, to agree on the functions that they are going to perform in the daily work of the company, and how the strategic decisions are going to be made.

These are key elements that should be considered and agreed between partners before the business starts, so that the relationship between them, the organization of work, as well as the available human resources can be optimal.

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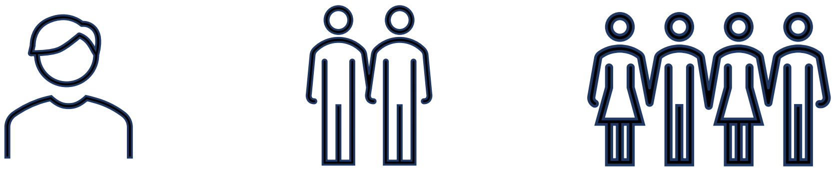
Legal forms. What is the best legal way for starting a business project?

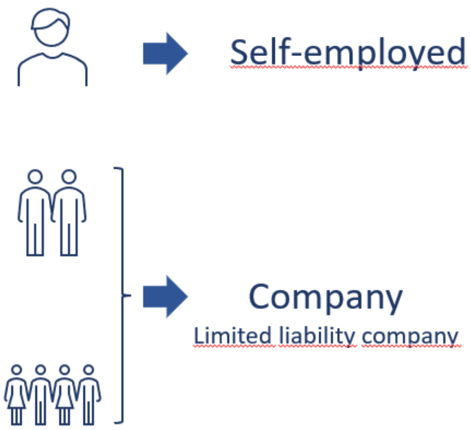
To start a business project, it will be necessary to create a company with a specific legal form. The choice of legal form will basically depend on the number of people who are going to lead the new business.



The main key factor to start a business project focuses on **the number of people who lead project**.

If the project is led by a single person, like a freelancer, the most common legal form is the self-employed new entrepreneurs (sole trader), that means that it's the individual person who carries out the activity.

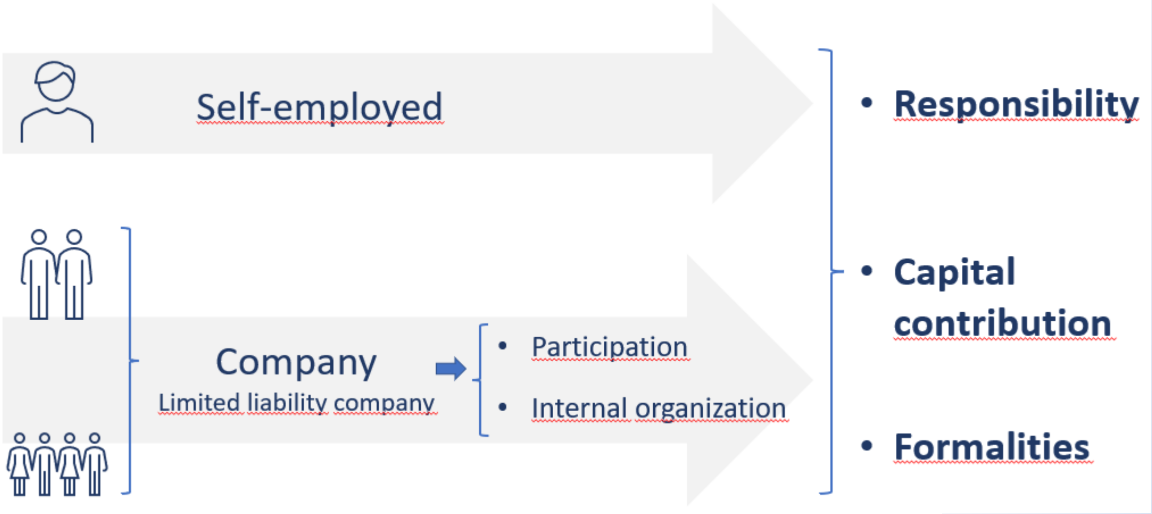
If there are more than one person, it would be necessary to set up a company that links the partners of the new business, which could be a limited liability company, the most common legal form.



The following link shows all the legal forms in all European Countries:

[List of legal forms]

These are the main legal forms for starting a new business that are present in all countries. It's important to find out the exact legal framework of each country.



If the decision has been to create a limited liability company, it's very important to decide the participation of each partner in the new company and the internal organization.

Participation

This is a very important aspect in case that the new business project is promoted by more than one person and mainly if new entrepreneurs are just two.

In this case, it's common to think that the ideal participation for each partner would be to participate 50% in the new company. We may think that this would be a good decision but, in the future, it could be the main source of conflicts. In case of disagreement between the partners, the company would be blocked, and no decision could be made.

To avoid this, it would be better if the percentage of participation between the partners was different, for example, 51%-49% for each partner. Probably, this is one of the most delicate decisions to make as no partner will want to be less influent in the decision-making process than the other but, surely, it's the best decision for long term partnerships.

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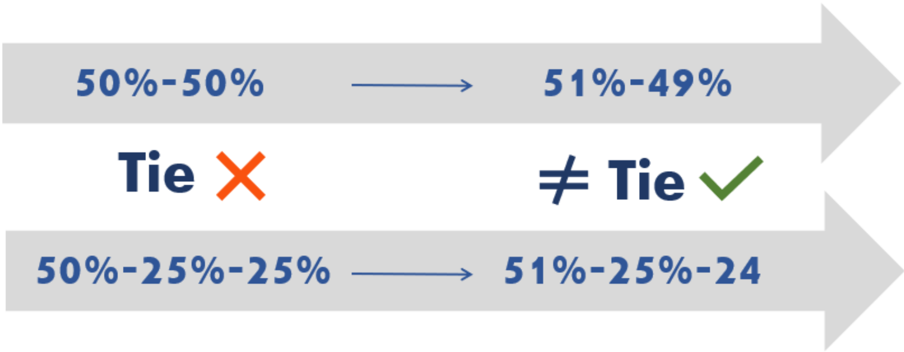
In any case, it's important that the sum of participations between different groups of partners does not result in a tie (for example 50-25-25%). In this case, the distribution of shares of 51-25-24% or 49-26-25%, for example, would be more convenient.



The internal organization

Another important aspect to take into account is the internal organization. This is also a key aspect that should be discussed among the partners of the future company. It's important to decide which areas of company management will be the responsibility of each partner (sales, manufacturing or customer service, internal management, etc). These responsibilities can be decided based on the knowledge, skills, experience, and preference of each partner.

In the event that any management area remains to be uncovered by partners, tasks and skills could always be subcontracted or new personnel could be hired to cover those functions or skills still uncovered.

Many start-ups and new companies fail because they have not previously planned or decided these key elements. All these aspects must be considered and decided during the development of the Business Plan.

Top tips

Two partners, who have discovered an important technological innovation that will have a very good market launch, should consider:

- Who will perform the commercial function?
- Who does the administration and finance?
- How are the functions and roles going to be distributed in the company?
- Who has the necessary skills for all functions in the company?
- Will it be necessary to hire staff or outsource services that cover skills or functions that the partners cannot cover?

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Responsibility

The liability (responsibility) of the self-employed individual entrepreneur is unlimited. This means that he/she responds to third parties with all his/her personal assets.

The liability (responsibility) of the partners of a limited company is limited to the capital amount contributed to the company by each of them. This means that there is a separation between personal assets and business assets.

This is an aspect that will depend on the legal framework of each country

Minimum share capital according to the chosen legal form

To become a self-employed entrepreneur, it's not necessary to make a minimum capital contribution. On the other hand, to set up a Limited Company, it's necessary that the partners of the future company make a minimum capital contribution that can be different depending on the local law of each country.

The minimum capital contribution has no relation with the initial amount needed for the investment to start a new business and it's an amount of money that can be used to cover any need of the new company.

Formalities

The formalities for starting a business depend on the juridic form chosen and on the local law about this matter and can be more or less complex, depending on the legal form and the country where the new business will be started.

Related to this, there are different initiatives that can simplify the procedures and make shorter the term to formalize the constitution of a company, such as the One stop shop

For example, in Spain, there is a network to facilitate the procedures for the creation of a company.

More information can be found at the following link:

PAE points net

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Tax and Social Security obligations

Taxes can have significant implications on a business's cash flow or liquidity. It's vital to understand and plan the impact of the taxes on cash flow, and, for this reason it's important that you register in your accounting the taxes properly.

All companies that develop an economic activity must comply with the corresponding tax obligations. Once again, these obligations will depend on the legal framework of each country but, in general, the most common obligations are as follow:

Taxes on profits generated (Income tax)

This tax is generated by the fact that a company earns money, and its payment will depend on the legal form chosen to carry out the activity. Periodically, the amount of the profits generated must be communicated to the Tax Agency and a percentage of it must be paid, which will depend on the regulation of each country and the legal form chosen.

VAT management

VAT is an indirect tax and, in general terms, consists of adding a percentage to the concepts invoiced. Periodically, normally quarterly, the difference between the VAT invoiced to customers and the VAT invoiced to us by suppliers must be reported to the Tax Agency. This difference is usually positive and must be paid to the said Tax Agency.

In the following links you can find specific information about tax on each country:

Austria

Guide for business start-up's

The guide provides all the essential information about taxation (p. 56)

Croatia

Tax obligations in Croatia

More information

Italy

Tax obligations in Italy´

More information

Latvia

Tax obligations In Latvia

Spain

Tax obligations in Spain

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Social Security obligations

Another obligation that all companies must comply with is to pay a fee to the social security.

Social Security is an organization that, among many other functions, is in charge of managing health services, covering payments for sick leave and paying pensions to retired people, among other functions depending on each country.

All companies and the new entrepreneurs must pay a fee to the Social Security. This fee can be a fixed fee or based on the income or profits obtained during a period.

The payment of the fee is usually monthly.

Once again, the current legislation on this matter must be complied with in each country where the economic activity is carried out.

In the following links you can find specific information about Social Security on each country:

Austria

Guide for business start-up's

The guide provides all the essential information about social insurance (p. 51)

Croatia

Social security system in Croatia includes the right to health and pension insurance. All of the information about health insurance are available on the official website of Croatian Health Insurance Fund https://hzzo.hr/

Information about pension insurance can be found on the website of the Croatian Pension Insurance Institute https://www.mirovinsko.hr/

Italy

Social Security obligations in Italy

More information

Latvia

Social Security obligations In Latvia

More information

Adding information

Spain

Social Security obligations in Spain

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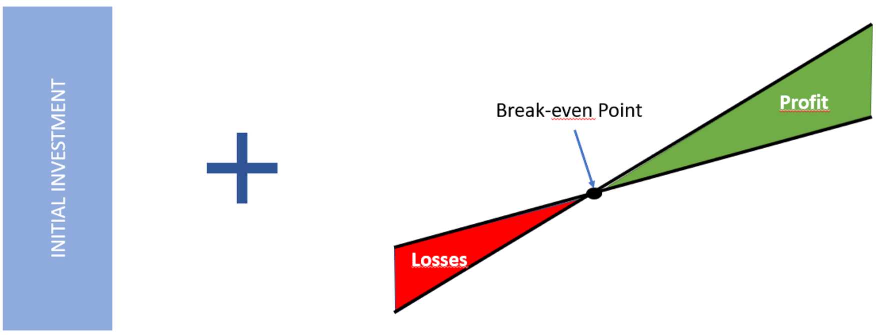
How to evaluate the economic viability of a business project?

The tool for evaluating the viability of a business project is to make the business plan. The business plan is the result of a period of reflection and analysis during which a series of aspects that may affect the development of the activity are analyzed and an important part of that analysis is the development of the economic and financial plan.

The economic and financial plan is the tool for evaluating the economic and financial viability of a business project and we will need to analyse the initial investment and the break-even point.

The best way for evaluating the viability of a business project is to make the business plan.



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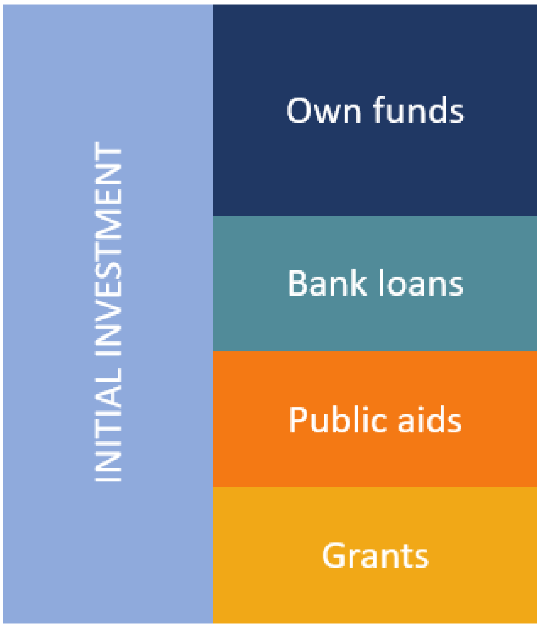
The **Initial investment** is the amount of money needed to start the activity. An inventory of everything necessary for starting (machinery, installations, IT equipment, vehicles, furniture, raw materials, etc...) must be made. To do this, is recommended to have different budgets and choose the ones that best suits.

Once this investment has been valued, the sources of financing to be able to carry out these investments must be evaluated.



The total investments must be equal to the total financing sources

The different sources of financing can be diverse:

Own funds: Is the financing provided by the partners of the company or by the entrepreneurial team.

Bank loans: It's the part that will be requested from a financial entity or bank to cover the necessary investment for starting the activity.

Public aids: Aids from the government for starting a new company, for example, an interest subsidy on the requested bank loan.

Grands: Aids from the government: It's an amount of money that is given to companies to help them during the first months/years, and that it's not necessary to repay.

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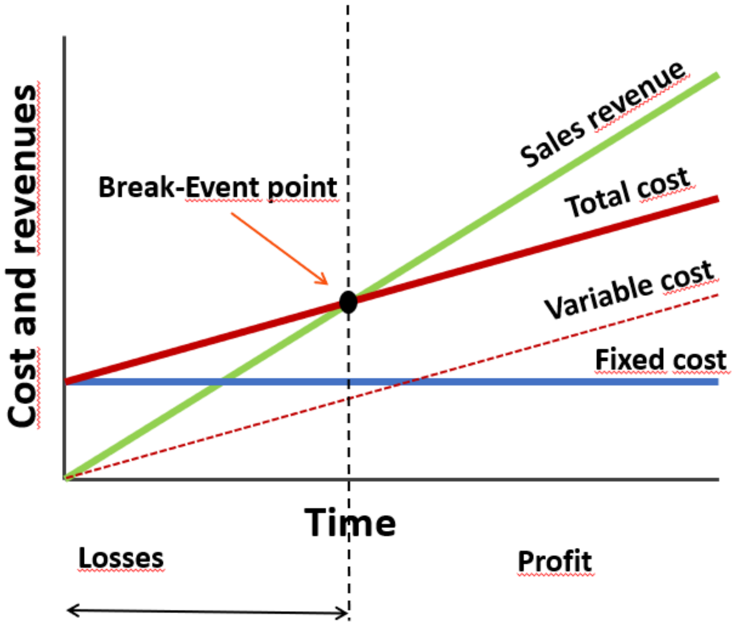
The assessment of economic viability:

To assess the economic viability of a business project, an economic and financial plan must be drawn up with forecasts of income and expenses for the first months of activity.



The time until the beak-event point is reached should be as short as possible

To do it, we must take into account the following concepts:

Fixes cost: Are those costs that do not vary, regardless of the volume of sales or billing. For instance, rent.

Variable cost: Are those costs that increase or decrease depending on the volume of sales or billing, For example, consumption of raw materials.

The break-even: Is the minimum sales level that equals total costs to total incomes.

Timing until reach the breakeven: It's desirable that the period before reaching the break-even point was as short as possible.

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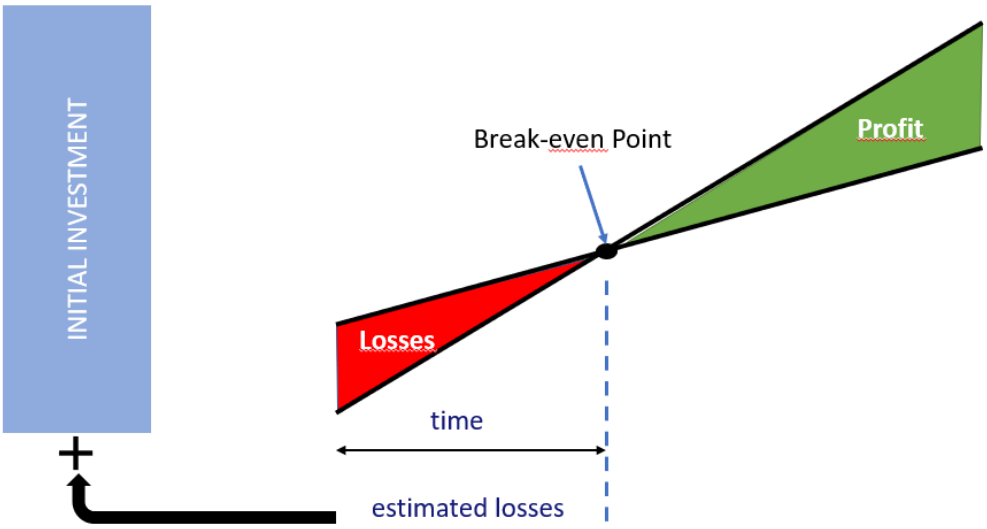
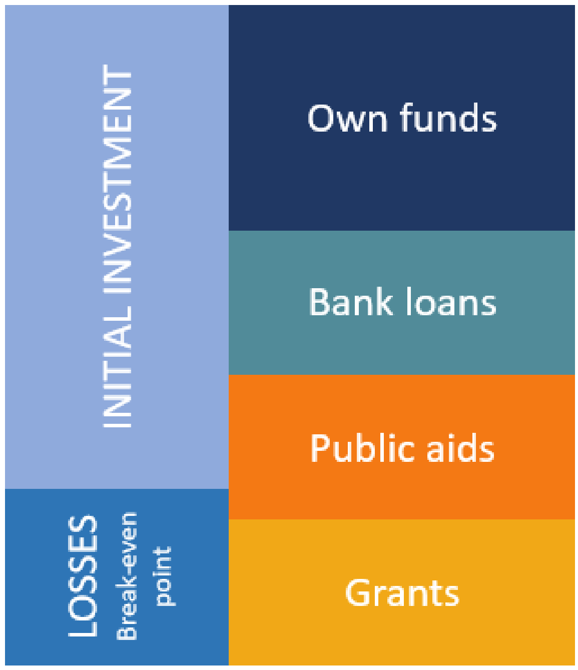
While the break-even point is not reached, the company won't obtain profits and, therefore, it will be necessary for the new entrepreneurs or partners to contribute with extra funds in order to cover the losses generated.



As long as the break-event point is not reached, losses are generated, which will have to be covered by the partners.

This quantity of losses must be added to the previously calculated initial investments.



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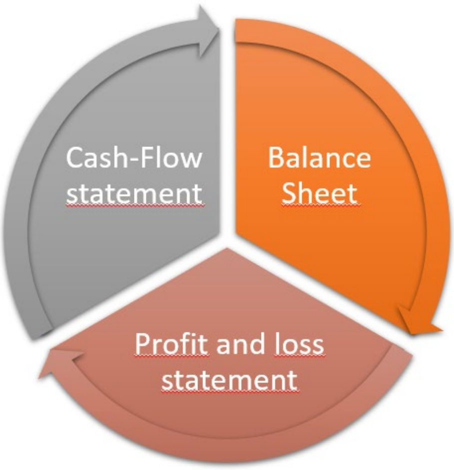
The financial management

In order to control the evolution of the business, it will be necessary to have tools that help us to monitor the economic situation of the company. The best tool for this, is accounting, since it allows us to get important data to know the evolution of the business and we will be able to make decisions in accordance with this evolution.

The accounting: the accounting is the tool that all companies must use to obtain information about the evolution of the business. The companies that are obligated to keep official accounts depend on the law of each country (not all the companies are obligated to) but it's highly recommended that every business and new business keep accounting records in order to monitor the business performance.

From the accounting, all the companies' managers can obtain different tools that can help them to make different decisions about management.



The **balance sheet**, which gives a one-time snapshot of a company's assets and liabilities

The **profit and loss statement** or **income statement**, which indicates the business's profitability during a certain period

The **cash flow statement** or treasury control, which records the company's cash transactions (the inflows and outflows) during the given period. It shows whether all the revenues booked on the income statement have been collected.

Accounting must be adapted to what is established by the regulations of each country.

Austria

Guide for business start-up's

The guide provides the law which is applicable to accounting and bookkeeping (p. 96) – UGB, BAO, EStG.

Croatia

Croatian accounting Law

Italy

Since November 2001, the Italian Accounting Organisation (Organismo Italiano di Contabilità– OIC) has been in charge of accounting standards.

Latvia

Latvian accounting Law

Spain

In Spain it's regulated by Royal Decree 1514/2007, of November 16 and the Royal Decree 1515/2007, of November 16, modified by the Royal Decree 1/2021, of January 12

General Accounting Plan

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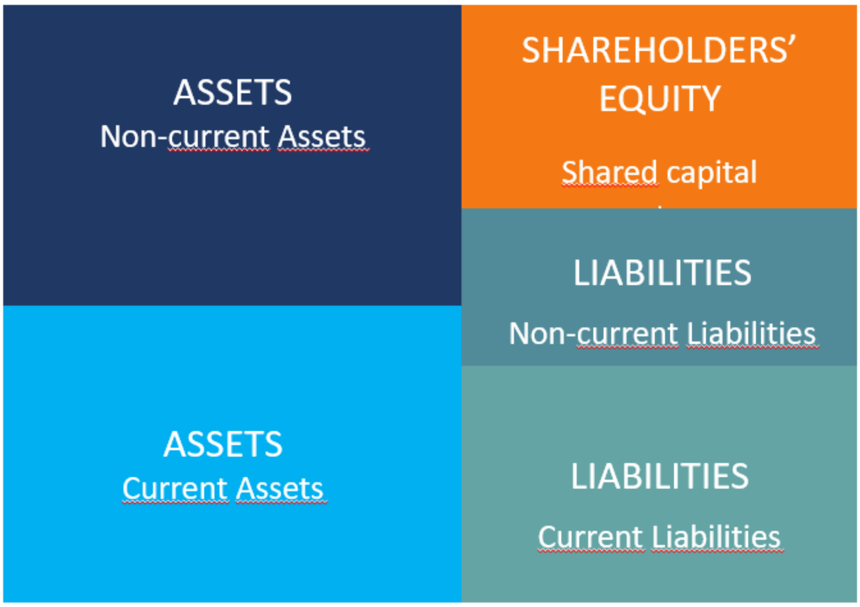
The balance sheet

The balance sheet is a document that represents the true and real image of a company for a period of time. It's generated from the information provided by the company's accounting, which contains data from the past, the present and even data forecast for the future. Summarizing, the balance sheet shows the financial situation of a company.

The balance sheet reflects data about the rights and possessions of the company, called Assets, and the liabilities and the Shareholder's Equity.



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Assets

The **assets** portion of the balance sheet goes into what the business owns that can be converted to cash. Assets can further be broken down into sub-categories such as Current Assets and Long-Term Assets or Non-Current Assets.

The Long-term assets (or **Non-Current Assets**) are assets that require more than one year to get their money's worth. Are formed by buildings, equipment, property, machinery, computers, etc, owned by the company and also intangible assets such as copyrights or patents.

Current assets are assets that can be converted to cash in less than one year. Are formed by investments that can be sold in less than one year, accounts receivable (money owed by clients), inventory and cash.

The liabilities and Owner Equity

The liabilities and Owner Equity show the sources of financing that serve to maintain all the assets we have seen before. It's divided in:

- Owners' Equity
- Non-current liabilities
- Current liabilities

Owners' Equity or also named **Shareholder's equities** are formed by the capital contributed by each partner and the amount of money that is generated by the business during previous years.

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The **Liabilities** refer to money that is owed to others, for example loans. Like assets, this category can be broken into the two subcategories of current liabilities (such as payments to suppliers and other accounts payable) and long-term liabilities.

The **Long-term Liabilities** section classifies all those debts whose payment date is set for a period of more than one year, from the date of preparation of the balance sheet. For example, a balance formulated in December 2021 would show debts with a payment date beyond December 2022.

Current Liabilities section classifies all those debts whose payment date is set for a period of less than one year, from the date of preparation of the balance sheet. For example, a balance sheet formulated in December 2021 would show debts with a payment date prior to December 2022. Usually are formed by payments to suppliers and other payable accounts.

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An example of the balance sheet structure is presented in the following table:

ASSETS	Current year
NON CURRENT ASSETS	-
Intangible assets	-
Property, plant, and equipment	-
Long-term investments	-
Other investments	-
(Less accumulated depreciation)	-
	-
CURRENT ASSESTS	-
Short-term investments	-
Prepaid expenses	-
Inventory	-
Accounts receivable	-
Cash	-
TOTAL ASSETS	-

LIABILITIES AND OWNER'S EQUITY	Current year
OWNER 'S EQUITY	-
Owner's investment	-
Retained earnings	-
Other	-
LONG TERM LIABILITIES	-
Long-term debt	-
Deferred income tax	-
Other	-
CURRENT LIABILITIES	-
Current portion of long-term debt	-
Unearned revenue	-
Accrued salaries and wages	-
Income taxes payable	-
Short-term loans	-
Accounts payable	-
TOTAL LIABILITIES AND OWNER'S EQUITY	-

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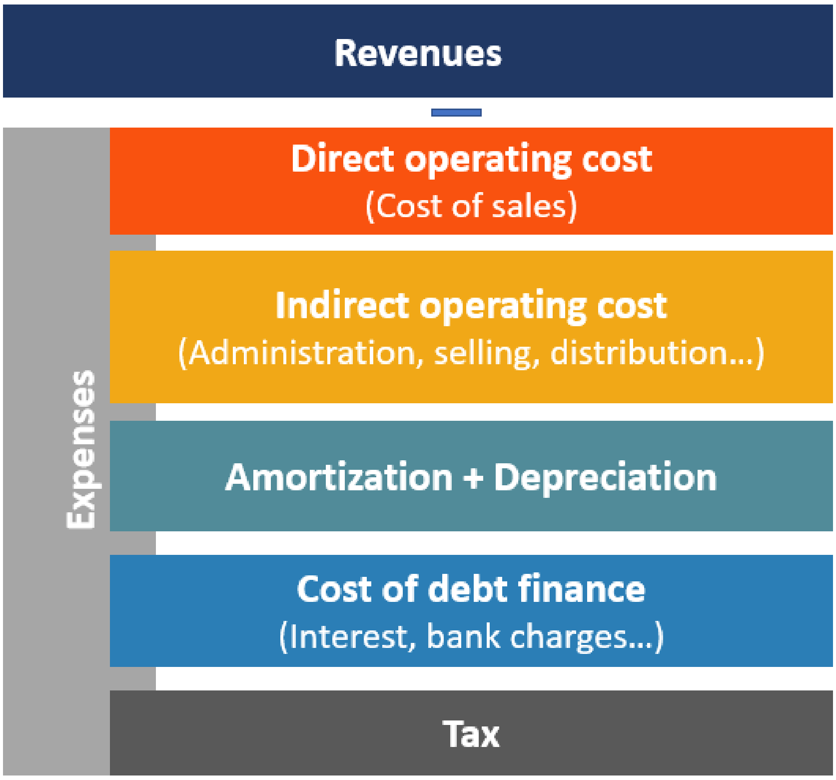
The profit and loss sheet

A profit and loss report is a financial statement that summaries the expenses, costs, and revenues of an organization during a particular period of time, often monthly. As the balance sheet, it's generated from the information provided by the company's accounting.

The profit and loss report is usually divided into two sections, revenue and expenses.



Revenue refers to income from all the activities of the company. It's the amount of money obtained by the companies for their sales.

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Expenses is referred to all expenditures and there are different classes of that and, usually, are showed in the following order:

- The cost of goods sold (for example any raw materials)
- Staff cost
- Operating expenses: Rent, Office Supplies, Utilities, Telephone, Insurance, Travel, Maintenance, Advertising, etc.
- Amortization
- Financial expenses
- Financial income
- Other expenses
- Corporation Taxes

From the income and the different types of expenses or costs, we can obtain different types of margins or subtotals as is showed in the following table:

		Current	Budget	Past year
+	Sales			
-	Cost of sales			
=	Gross profit			
-	Staff Cost			
-	Operating Expenses			
=	EBITDA - Earnings before Interest, Taxes, Depreciation and Amortization			
-	Amortization			
-	Depreciation			
=	EBIT - Earnings before Interest and Taxes,			
-	Financial Cost			
+	Financial income			
=	Financial gain/loss			
=	EBT - Earning before taxes			
-	Tax Corporation - Income taxes			
=	NET PROFIT			

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The different levels of results show the reason why a company is viable or not. For example:

- If we subtract the cost of those sales from the sales (for example, if we sell candies, we should subtract the cost of the raw materials that have been used to make what we have sold), we will obtain the **gross margin**. If the gross margin is negative, it indicates that the core business of the company is not viable and that the business model should be reviewed or the company should be closed.

- The **EBITDA** shows the profit that is obtained after subtracting the costs of the structure necessary to manage the company. If the EBITDA is negative, it means that the company should review personnel costs and management expenses. It's probable that the personnel structure is oversized and that the management expenses are too. The business is viable in itself, but the structure that manages it must be reviewed.

- The **EBIT** shows the profit that the company obtains after subtracting the expenses for the amortization of the asset elements that the company uses. If the EBIT is negative, it would indicate that the company is working with oversized assets (machinery, installations, etc.) and that it should adjust said assets to its needs.

- The **EBT** shows the benefit that the company obtains after applying the costs generated by the external financing sources used by the company, such as loans. If the EBT is negative, it indicates that the company is bearing an excess of financial expenses due to an excess of external financing. In this case, it should

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restructure the sources of financing, reduce external debt, and increase own funds.

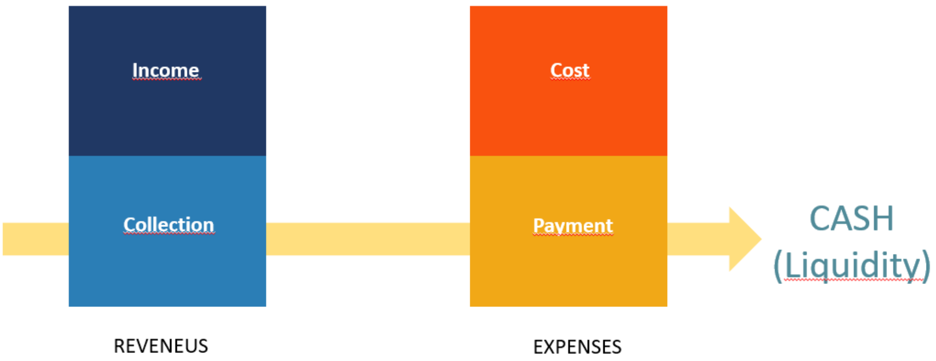
- On the other hand, if it obtains a positive result after obtaining a negative **EBIT**, it would indicate that the company generates profits from financial management and, therefore, it could be understood that the company's business is different.
- Finally, the **net profit** shows the profit or loss generated after the tax income is paid.

The treasury control (Cash-flow statement)

Treasury control is important for companies because reports on a company sources and usage of cash over some time.

Assessing the amounts, timing, and uncertainty of cash flows, along with where they originate and where they go, is one of the most important objectives of financial reporting. It is essential for assessing a company's liquidity, flexibility, and overall financial performance.

We must distinguish between income and collections(inflow) and between expenses and payments(outflow).



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These concepts can be confused with each other and, therefore, we must be clear about each of them:

Income: It's generated at the time of issuing an invoice and making the corresponding entry in the income statement.

Collection: It's generated at the moment in which a flow of money is received from the collection of a previously issued invoice.

Because there may be a time difference between the time an invoice is issued and its subsequent collection, it's important to differentiate income from collection.

Costs or expenses: They are generated at the time of receiving an invoice from a supplier and is recorded in the profit and loss account.

Payments: It's generated at the moment in which a flow of money is sent for paying an invoice previously received.

Due to the fact that there may be a temporary difference between the moment of receiving an invoice and its subsequent payment, it's important to differentiate expenses from payments.

Based on this information, all expected receipts and payments must be classified over a period of time, for example, one year, classified by months. In this way, it's possible to see if any month the expected payments exceed the expected collections, so that measures can be applied to avoid this situation.

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The budget

The budget is an instrument that should serve to detect deviations in relation to the forecasts made previously on the expected income and expenses. It's usually carried out for a period of one year and, periodically (every month, for example), its evolution must be analyzed, deviations detected, and the corresponding decisions made in each case.

		Current	Budget	% Current/budget
+	Sales			
-	Cost of sales			
=	Gross profit			
-	Staff Cost			
-	Operating Expenses			
=	EBITDA - Earnings before Interest, Taxes, Depreciation and Amortization			
-	Amortization			
-	Depreciation			
=	EBIT - Earnings before Interest and Taxes,			
-	Financial Cost			
+	Financial income			
=	Financial gain/loss			
=	EBT - Earning before taxes			
-	Tax Corporation - Income taxes			
=	NET PROFIT			

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Sources

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The photos were taken from:

https://pixabay.com/es/

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