

Choosing a Business Structure – Entity Matrix

We strongly recommend you take advantage of our Structural Review Service. For a fixed fee of \$150 (incl GST) we will review your business structure and provide our written recommendation about the best structure to achieve your business objectives.

	Sole Trader	General Law Partnership (Business)	Tax Law Partnership (Joint Assets)	Company	Unit Trust	Discretionary Trust
Established by	N/A	Partnership agreement	Asset title	Constitution	Trust deed	Trust deed
Establishment and operating costs	Low	Medium	As per asset	High	High	High
Perpetual existence	Terminates on death	Terminates on change of partners	Terminates on disposal of asset	Yes, until wound up by members or creditors	Must vest within certain period	Must vest within certain period
Limited liability	No	No	No	Yes	Yes, if corporate trustee	Yes, if corporate trustee
Controlled by	Individuals	Partners	Partners	Directors – day to day management Shareholders – ultimate decision making	Trustee – day to day management Appointor (often unit holders) – power to appoint/dismiss Trustee	Trustee – day to day management Appointor – power to appoint/dismiss Trustee
Flexibility for new equity holders	No	Yes, special tax rules apply to admission or retirement of partners	Yes, but requires legal transfer of title	Yes Care needed if incorporated pre-CGT	Yes	Yes Care needed re definition of ‘family group’ especially if family trust election
Does principal have fixed	Yes	Yes	Yes	Yes	Yes in broad terms	No



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interest					Tax definition of 'fixed trust' requires units to be issued or redeemed at market value	
Method of distribution to equity holders	Wholly to sole trader	Distribution in proportion to partnership share Partners salary if allowed in partnership agreement	Distribution in proportion to ownership of asset	Dividends according to shareholding Flexibility via different share classes, can emulate discretionary trust	Trust distribution in accordance with unit holding Proportionate approach where tax and accounting profit differ	Trust distribution in accordance with trustee resolution Proportionate approach where tax and accounting profit differ
Ability of principal (or associate) to withdraw money	As drawings	As partner drawings	As partner drawings	May be unable to frank dividends until tax paid on profits and franking credits available Loans may be deemed dividends Division 7A	As paid or applied by trustee Trust deed and tax law have special provisions for unpaid present entitlements	As paid or applied by trustee Trust deed and tax law have special provisions for unpaid present entitlements
Asset protection	Legal structure provides no protection, can be managed with	Legal structure provides no protection, can be managed with	Legal structure provides no protection, can be managed with	Yes, subject to personal liability of directors	Yes, if appointor is the unit holders	Yes, if joint appointors include an independent person, otherwise bankruptcy



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	insurance	insurance	insurance			trustee may seek to exercise power of appointment
Issues for families	N/A	Not suitable for children under 18	Family members are given independent property rights	Personal liability of directors Principal can give income & assets to family and retain control by issuing voting shares	Family members are given property rights via trust deed Principal can exercise limited control as trustee	Principal can give income & assets to family and retain control as trustee and appointor
Issues for unrelated parties	N/A	Joint and several liability	Partners retain independent property rights	No joint and several liability Established legal rights for shareholders	Unit holders retain independent property rights via trust deed	Generally not suitable due to power of trustee and appointor
Tax rate	Individual marginal rates Average rate (including Medicare) is lower than	Partners' marginal rates	Partners' marginal rates	Company rate (30%) Allows deferral of tax on income in excess of \$80,000 (2010/11) by delaying dividends	Beneficiaries' marginal rates (or top marginal rate if retained in trust)	Beneficiaries' marginal rates (or top marginal rate if retained in trust)



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	company rate below \$142,000 (2010/11)			until low income years		
Basis of accounting for tax purposes	According to type of business Former STS taxpayers can use cash	According to type of business Former STS taxpayers can use cash	According to type of asset, usually cash	Accruals Former STS taxpayers can use cash	Accruals Former STS taxpayers can use cash	Accruals Former STS taxpayers can use cash
Streaming of Income	No	No	No	Unequal dividends via different classes of shares, but not unequal franking percentage Can't stream different classes of income	Possibly unequal distributions via different classes of units. Streaming different classes of income unresolved (Bamford case)	Unequal distributions possible via trustee discretion Streaming different classes of income unresolved (Bamford case)
Distribution of losses	Individual can use	Partners can use	Partners can use	Remain in company, must meet tests to recoup (except PSI)	Remain in trust, must meet tests to recoup (except PSI)	Remain in trust, must meet tests to recoup (except PSI)
Transfer of losses	No	No	No	Yes, if part of consolidated group	No	No
PAYG instalment arrangements	Paid by individual	Paid by individuals	Paid by individuals	Paid by company	Only paid if income retained in trust	Only paid if income retained in trust



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Employment of principal	No	No	No	Yes	Yes	Yes
Remuneration for associates	Yes, limited by s26-35 and PSI rules	Yes, limited by s26-35 and PSI rules	No	Yes, limited by s109 and PSI rules	Yes, limited by PSI and general anti-avoidance	Yes, limited by PSI and general anti-avoidance
FBT applicable to benefits provided to principal	No	No	No	Yes	Yes	Yes
Superannuation contributions	Self employed	Self employed	N/A	Employer sponsored Possible maximum contributions for family employees (Ryan case)	Employer sponsored	Employer sponsored
50% CGT discount	Yes	CGT applies to individual partners, not to partnership	Yes if asset held for more than 12 months	No Generally unsuitable for real estate or passive investments expected to increase in value	Yes, but the benefit is limited by CGT Event E4	Yes
Small business CGT concessions	Yes	CGT applies to individual partners, not to partnership	CGT applies to individual partners, not to partnership	Yes Significant individual test and other conditions apply	Yes Significant individual test and other conditions apply	Yes Significant individual test and other conditions apply



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Tax concessions available	All primary production Small business trading stock, prepayments & depreciation Entrepreneurs' tax offset	All primary production (some at partner level) Small business trading stock, prepayments & depreciation Entrepreneurs' tax offset	N/A	Some primary production (no averaging or farm management deposits) Small business trading stock, prepayments & depreciation Entrepreneurs' tax offset Some concessions "lost" because untaxed book profits become unfranked dividends.	Some primary production (no averaging or farm management deposits) Small business trading stock, prepayments & depreciation Entrepreneurs' tax offset	Some primary production (no averaging or farm management deposits) Small business trading stock, prepayments & depreciation Entrepreneurs' tax offset
Non-commercial losses rules apply	Yes	Yes, to individual partners	No, generally not business income	No	No	No
Personal services income rules	Limited deductions	Limited deductions and attribution to individuals	N/A	Limited deductions and attribution to individuals	Limited deductions and attribution to individuals	Limited deductions and attribution to individuals



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		Personal services entity loss is deductible to the individual		Personal services entity loss is deductible to the individual	Personal services entity loss is deductible to the individual	Personal services entity loss is deductible to the individual
Specific anti-avoidance provisions		Unearned income of minors Uncontrolled partnership income Sham partnership agreements	Unearned income of minors	Division 7A Debt & equity rules Value shifting rules	Unearned income of minors Trust loss rules	Unearned income of minors Trust loss rules

