



**Summary – Table for Appropriate Structure**

	<i>Sole Investor</i>	<i>Partnership</i>	<i>Private Company</i>	<i>Unit Trust</i>	<i>Discretionary Trust</i>	<i>Superannuation Fund</i>
Administered by	Individual	Partners	Directors	Trustee	Trustee	Trustee
Responsible to	N/a	Partners	Shareholders	Unit holders	Appointer	Members
Cost to establish and run	Low	Fairly low	Higher	Higher	Higher	Higher
Protection of assets from outside risks/claims	No	No	Only if owned by discretionary trust	Only if owned by discretionary trust	Yes	Yes
Maximum tax rate	Up to 45% plus Medicare levy	Up to 45% plus Medicare or 30% if Partner is a Company	30% if profit retained	Up to 45% or if unit holder is company 30%	Up to 45% or 30% if able to distribute to a company beneficiary	15% if a complying fund (45% if non-complying)
Potential for splitting income	No	Between partners	Between shareholders	Between unit holders	Between beneficiaries	No, but reduces members tax
Streaming of income	No	Limited	No	Dependent on trust deed	Yes, subject to trust deed	No
Taxable capital gains	Paid by individual	Paid by partners	Paid by company	Paid by unit holder	Paid by beneficiaries	Paid by trustee
Access to CGT discount for assets held greater than 12 months	Yes	Yes	No	Yes	Yes	Yes
Other realized capital profits	Not taxed	Not taxed	Taxed as an unfranked dividend to shareholder	May be taxed as capital gain	Not taxed	15% in a complying
Can losses be distributed?	Yes	Yes	No	No	No	No
Interest-free loan to relatives	Not taxed as income	Not taxed as income	May be taxed as deemed dividend	Not taxed as income	Not taxed as income	Not permitted
Flexibility	Poor	Fairly Poor	Fair	Good	Very good	Fairly poor
Admission for new parties	New structure is required	Usually permitted	Usually permitted	Usually permitted	May be difficult for non family members	Usually permitted
Changing ownership	N/A	Partnership interest	Shares	Units	By appointer	N/A

# Sole Trader

## What is a Sole Trader?

A person wishes to go into business can simply trade under their own name. They can register a name of business (trading name) in respective states to protect against infringement of trade practices.

## Set up Procedure

- Register for ABN.
- Register for GST (if applicable).
- Register a Trading name with state authority (if applicable).
- Register for PAYG (if applicable).

## Advantages

- Simple.
- Minimal compliance.
- Lower maintenance cost.
- Capital gains tax discounts.
- Total control of assets.
- No set-up costs.

## Disadvantages

- No asset protection – individual person is liable.
- The structure has a limited life as on the death of the individual the investment must change hands.
- Taxed at your marginal rates.
- Inflexible tax planning.

## Compliance Requirements

- ABN registration – compulsory.
- GST registration – must have over \$75,000 turnover
- BAS – monthly or quarterly.
- Tax return – yearly.
- Financial records – income and expenditure statements.

## General Comments

This type of structure is suited for someone with little or no assets and is starting out in business with little turnover. The income tax is either paid at the end of the year after lodgement of Tax Returns or paid through in Income Activity Statement (IAS) during the year and an adjustment at the end. The Owner take drawings as opposed to wages from a Company and these drawings constitute profits of the Business. Hence the profits of the Partnership is made up of the drawings during the year and the net monies left in the bank after taking off what the bank account started off with at the beginning of the Public liability insurance is compulsory and other indemnity insurance is recommended.

# Partnerships

## What is a Partnership?

Two or more people can enter into an agreement either verbally or under contract to enter into a business and share in the risks and profits. Partners are jointly and severally liable for any debts and litigations of the partnership.

## Set up Procedure (estimate set up cost from \$250 plus legal if required)

- Register for TFN.
- Register for ABN.
- Register for GST (if applicable).
- Register trading name with state authority (if applicable).
- Partnership agreement (if applicable).
- Register for PAYG-W (if applicable).

## Advantages

- Reasonably simple.
- Minimal compliance
- Mid-low maintenance costs.
- Income splitting.
- Minimise workers compensation and superannuation.
- Capital gains taxed at the partners level.

## Disadvantages

- No asset protection – partners are jointly and severally personally liable.
- Partnership splits income at the same ratio each year.
- Joint tenant partners cannot dispose of their interest separately.
- Tenant- in common partners does not have any right of survivorship.

## Compliance Requirements

- ABN registration.
- Tax File Number application.
- GST registration – must be over \$75,000 turnover.
- BAS – monthly or quarterly.
- Tax Return – yearly.
- Financial records – balance sheet and profit and loss.

## General Comments

This type of structure is suited when two or more people enter into an agreement to run a business or investment which enables the profits to be split for tax planning. The income tax is either paid at the end of the year after lodgement of Tax Returns or paid through an Income Activity Statement (IAS) during the year and an adjustment at the end. The Partners take drawings as opposed to wages from a Company and these drawings constitute profits of the Partnership. Hence the profits of the Partnership is made up of the drawings during the year and the net monies left in the bank after taking off what the bank account started off with at the beginning of the year. However as each partner is jointly and severally liable for the debts of the partnership, the partners should be mindful of asset protection.

Public liability insurance is compulsory and other indemnity type insurance is recommended.

# Company – Limited By Shares

## What is a Company?

A company is a separated, legal entity and is administrated by its directors. It is formed by people who own its shares and whose liability is linked to the amount (if any) unpaid on the shares respectively held by them.

## Set up Procedures (estimated set up cost from \$1350.00)

- Purchase a shelf company or establish a new company.
- Register for ABN.
- Register for TFN.
- Register for GST (if applicable).
- Register for PAYG (if applicable).

## Advantages

- Limited liability.
- Ability to dispose of the shares rather than the investment, reducing stamp duty and other costs.
- Corporate tax rate lower than the top individual marginal rate.
- Flexible in distribution of income, with some restrictions in case of Personnel Services Income entities.
- No workers compensation on director's fees or dividends.
- Imputation** credits can be passed to shareholders.
- Superannuation contributions deductible up to age base limits.
- Retain earnings in the company effectively limits the tax rates to 30%.

## Disadvantages

- Cost of establishing and maintaining is higher.
- Director's potential liability in case of negligence or insolvent trading.
- Compulsory workers compensation on wages drawn. Two lots of insurance paid since most self employed people require income protection.
- Superannuation contributions is required on wages paid.
- Losses cannot be distributed to shareholders.
- More compliance issues Accounting standards and ASIC.
- Capital gains are not concessional taxed.

## Compliance Requirements

- ABN registration.
- Tax File Number application.
- GST registration – turnover must be over \$75,000.
- BAS – monthly or quarterly.
- Tax Return – yearly.
- Financial records – financial accounts balance sheet and profit and loss in required format.
- ASIC annual return yearly and other charges in directors shares holding etc.

## **General Comments**

This structure is a popular structure for people running a Business where there is a requirement for asset protection and tax minimisation. If the company is a Mum/Dad type arrangement and they require both asset protection and tax minimisation we recommend a single director company with assets held by the non director. Public liability is compulsory. The tax rate is 30% which is lower than the top individual marginal rate of 45% plus 1.5% Medicare levy for individuals.

## **Trusts – Discretionary**

### **What is a Trust?**

A trust is a fiduciary relationship in which a person or company is the holder of an interest in property but is subject to an equitable obligation to use or keep the property for the benefit of another person or for some commitment object or purpose.

In a discretionary trust, the trustee is able to exercise discretion as to who is or are the beneficiaries to be beneficial and what proportions of the trust fund or trust income they are to receive.

### **Set up Procedure**

- Create a settler with a Trust deed (discretionary).
- Establish a trustee.
- Register for TFN.
- Register an ABN.
- Register for GST (if applicable).
- Register for PAYG (if applicable).
- Register trading name with state authority (if applicable).

### **Advantages**

- With a corporate trustee – limited liability.
- Asset protection – assets sheltered within the trust.
- Flexible tax planning with ability to distribute income and profits to family and other entities.
- Distributions from trust do not attract workers compensation and SCG.
- Capital gains tax discounting flow through to beneficiaries.
- Can distribute to a Company utilising the Company tax rate but cumbersome.
- Maximum tax rate of 30%

### **Disadvantages**

- Cost of maintenance.
- Changing legislation.
- Tax is paid at the beneficiary's level hence losing the 30% Company rate.
- Loses the land tax threshold if it owns property.

### **Compliance Requirements**

- ABN registration.
- Tax File Number registration.
- GST registration – turnover must be over \$75,000.
- BAS – monthly or quarterly.

- Tax Return – yearly.
- Financial records – Financial accounts balance sheet and profit and loss statement.
- Minutes of meeting of trustees to record decisions made by trustees.

### **General Comments**

Most businesses which use a Discretionary Trust are either after asset protection and require the flexibility of distributing to various different entities to minimise their income and capital gains tax. Typically when the threshold of all beneficiaries are utilized fully the larger businesses typically run through a Company structure to take advantage of the Company's flat rate of tax.

We usually accumulate assets in a Discretionary Trust and we keep the assets separate from the Trading Company that deals with the clients or customers.

## **Trusts – Non Discretionary (Hybrid Unit)**

### **What is a Trust?**

A trust is a fiduciary relationship in which a person or company is the holder of an interest in property but is subject to an equitable obligation to use or keep the property for the benefit of another person or entity or to some commitment object or purpose.

A non-discretionary trust is one where the trustee is not required to exercise any discretion as to which beneficiary should receive trust property and in what proportion or amount for example a declaration of trust for the benefit of X and Y in apportionment to their unit holding or interest in the trust.

### **Set up Procedure (estimated set up cost from \$1200)**

- Create by settler with a trust deed.
- Establish a trustee.
- Register for TFN.
- Register ABN.
- Register for GST - turnover must be over \$75,000.
- Register for PAYG-W (if applicable).
- Register trading name with state authority (if applicable).

### **Advantages**

- With a corporate trustee – limited liability.
- Asset protection – assets sheltered with the trust through careful use of units.
- Flexible tax planning with ability to issue income units and ordinary or capital units to different people dependent on financial situation.
- Capital Gains tax only in the hands of beneficiaries without change in ownership of the investments.
- Control of investments can effectively be retained by the appointer of the trustee who normally places the asset in the trust.
- Retains a land tax threshold if it holds property.

### **Disadvantages**

- Cost of creation and administration of the trust is higher than a sole trader or Partnership.
- Potential changes to legislation.
- Capital gains tax issues when issuing and redeeming units in trust.
- Careful structuring required for negatively geared investments as losses could get quarantined in the Trust.
- When gross up dividends are less than net losses from other sources, the refundable franking credit is lost and the carry forward losses are reduced by the amount of franking credit lost.

### **Compliance Requirements**

- ABN registration.
- Tax File Number registration.
- GST registration – turnover must be over \$75,000.
- BAS – monthly or quarterly (if applicable).
- Tax Return – yearly.
- Financial records – Financial Accounts – Balance sheet and profit and loss statement.
- Minutes of meeting of trustees to record decisions made by trustees.

### **General Comments**

A trust has a semi-permanent existence and can also be created by the will of a person who has died. As the government does not intend to proceed with taxing the trusts as if they were companies, the current taxation laws for trusts will continue to apply. All Trusts should only be established after careful consideration of the client's circumstances. Trusts do not come as a "one size fits all" but needs to be customised to each individual client's circumstances.

## **Self-Managed Superannuation Fund – DIY**

### **What is a Self-Managed Superannuation Fund (SMSF)?**

An SMSF has less than five members, each individual trustee of the fund is a fund member, each member of the fund is a trustee, no member of the fund is an employee of another member of the fund unless those members are related. The requirement that all members be trustees ensures that each member is fully involved in the decision making process.

### **Set up Procedure (Estimated Set up Cost form \$1000)**

- Trust deed.
- Appoint a trustee.
- Elect to become a regulated fund.
- Register for a TFN.
- Register for an ABN.
- Register for GST (if applicable).

### **Advantages**

- Asset protected in Super Fund.
- Lower tax rate of 15% on income and contributions.
- Retirement planning – payment of pensions.

- Capital gains tax discounts.
- Imputation credits offset tax liability.
- Control over investments.
- A better vehicle than the traditional Testamentary Trust in respect to Deceased estates.
- Can purchase Business real estate property through a trust (conditions apply).
- Can purchase Residential real estate property through a trust or as tenants in common / joint tenancy (conditions apply).
- Tax free income in retirement.

### **Disadvantages**

- Cost of establishing, maintaining and compliance.
- Trustee responsibilities and duties.
- Audit certificate required.
- Contribution surcharge.
- Funds locked until retirement age.
- Government legislation may change in the future.
- Restriction on type of investments it can hold.

### **Compliance Requirements**

- ABN registration.
- Tax File Number application.
- GST registration (if applicable).
- BAS monthly or quarterly (if applicable).
- Tax Return – yearly.
- Financial statements – Balance Sheet, Investment Strategy, Profit and Loss and members' Investment Accounts.
- Yearly audit by an approved Auditor.

### **General Comments**

Self Managed Superannuation Funds are becoming increasingly popular. It provides the members with control over where to invest their retirement savings.

It is a particularly good tax planning tool when acquiring Business real estate property and many Business owners use this vehicle to assist in purchasing their own Business premises.

It has the lowest tax rate available and is a great tax planning vehicle whilst maintaining control. At retirement, the income earned by the Superfund is tax free and the allocated pension paid by the Superfund is taxed concessionaly giving tremendous tax planning benefits to the recipients.