

Choosing a Business Structure

	Sole Trader	General Law Partnership (Business)	Discretionary Trust	Company
Established by	N/A	Partnership agreement	Trust deed	Constitution
Establishment and operating costs	Low	Medium	High	High
Perpetual existence	Terminates on death	Terminates on change of partners	Must vest within certain period	Yes, until wound up by members or creditors
Limited liability	No	No	Yes, if corporate trustee	Yes
Controlled by	Individuals	Partners	Trustee – day to day management Appointer – power to appoint/dismiss Trustee	Directors – day to day management Shareholders – ultimate decision making
Flexibility for new equity holders	No	Yes, special tax rules apply to admission or retirement of partners	Yes Care needed re definition of 'family group' especially if family trust election	Yes Care needed if incorporated pre-CGT
Does principal have fixed interest	Yes	Yes	No	Yes
Method of distribution to equity holders	Wholly to sole trader	Distribution in proportion to partnership share Partners salary if allowed in partnership agreement	Trust distribution in accordance with trustee resolution Proportionate approach where tax and accounting profit differ	Dividends according to shareholding Flexibility via different share classes, can emulate discretionary trust
Ability of principal (or associate) to withdraw money	As drawings	As partner drawings	As paid or applied by trustee Trust deed and tax law have special provisions for unpaid present entitlements	May be unable to frank dividends until tax paid on profits and franking credits available Loans may be deemed dividends Division 7A
Asset protection	Legal structure provides no protection, can be managed with insurance	Legal structure provides no protection, can be managed with insurance	Yes, if joint appointers include an independent person, otherwise bankruptcy trustee may seek to exercise power of appointment	Yes, subject to personal liability of directors
Tax rate	Individual marginal rates Average rate (including Medicare) is lower than	Partners' marginal rates	Beneficiaries' marginal rates (or top marginal rate if retained in trust)	Company rate (30%) Allows deferral of tax on income in excess of \$80,000 (2010/11) by delaying dividends until

	company rate below \$142,000 (2010/11)		low income years	
Streaming of Income	No	No	Unequal distributions possible via trustee discretion Streaming different classes of income unresolved (Bamford case)	Unequal dividends via different classes of shares, but not unequal franking percentage Can't stream different classes of income
Distribution of losses	Individual can use	Partners can use	Remain in trust, must meet tests to recoup (except PSI)	Remain in company, must meet tests to recoup (except PSI)
Employment of principal	No	No	Yes	Yes
50% CGT discount	Yes	CGT applies to individual partners, not to partnership	Yes	No Generally unsuitable for real estate or passive investments expected to increase in value
Small business CGT concessions	Yes	CGT applies to individual partners, not to partnership	Yes Significant individual test and other conditions apply	Yes Significant individual test and other conditions apply
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	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 Some concessions "lost" because untaxed book profits become unfranked dividends.