

# What structure: company, trust, partnership or sole trader?

How do you decide what best suits your circumstances? So long as the relevant law governing the licensing of an entity is complied with, the choice is up to the individual.

In the context of a corporate entity, so long as the officer in effective control is a fully licensed agent, there are no real barriers.

## STRUCTURES

The underlying issues dealt with in this article are complex and it is recommended that when setting up a structure advice is sought. This article will only be dealing with the basic differences and not the complexities that may arise based on individual circumstances.

Sothertons' article in the December edition of *Estate Agent* ('Think before you link') centred on the issue of business partners; once you've decided either to go it alone or take on partners, you must also decide what structure best suits your circumstances. Is it a company or a trust? Who will be the stake holders?

The issues (listed) that will influence your decision require some consideration and planning but can result in considerable benefits in the medium- and long term. They are:

- asset protection;
- tax efficiency;
- business expansion; and
- business succession.

## COMPANY BASICS

In a corporation, the shareholders are the owners as they have put up the money and taken on the business risk. Consideration must be given to who the appropriate shareholders will be.

The company pays tax on profits earned at the tax rate of 30 per cent. The tax system ensures that, as a rule, there is no doubling-up on tax; so any tax paid by the company is available as credit to the shareholders.

### Example:

Real Estate Pty Ltd	
Profit	\$100
Tax	\$30
After tax profit	\$70 (paid out as dividend)

The shareholder receives a tax credit of the \$30 equal to the company tax paid when lodging their tax return.

One disadvantage of a corporation is the restriction on accessing the Capital Gains Tax (CGT) 50 per cent discount.

## WHY CONSIDER A COMPANY?

- Simplicity of admission of new partners.
- Tax-efficient tax rate of 30 per cent.
- While it is easy to add new partners to this structure it is not always tax efficient in relation to CGT when selling the business. This article will not deal with the complex issues arising on CGT disposal.
- Company law supported by a strong shareholders' agreement affords a high level of protection to the business participants.
- Being a company director carries responsibilities and a director cannot say they 'didn't understand' these responsibilities. It is a director's duty to seek advice and determine what those obligations are.

## TRUST BASICS

### UNIT TRUST

To be considered for the operating entity as an alternative to a company.

A unit trust has registered stakeholders (like a company) referred to as unit holders.

The unit holders are entitled to a distribution of profits, much the same as shareholders in a company – with some clear technical differences. Unlike a company, the trust will distribute its profits before tax is paid. The tax, therefore, becomes the responsibility of the party who receives the distribution, i.e. the unit holder. As trusts traditionally distribute all their profits, they do not usually pay tax in their own right.

### Example:

Real Estate Unit Trust	
Profit	\$100
Tax	\$0
Profit	\$100 to be distributed to all unit holders

The unit holder pays tax in their own name when lodging their tax return.

One significant benefit that a trust has over a company is the ability to take advantage of certain Capital Gains Tax (CGT) rules that are not available to a company.

“

In order to ensure that the business risk does not have an impact on personal and family assets...

## WHY CONSIDER A UNIT TRUST?

- Provides a high level of asset protection if structured correctly.
- Ease of entry for new stakeholders.
- Can result in tax efficiency.
- Being a director of a trustee company places the same burden of responsibility as described above for a trading company.
- Discretionary trust

The discretionary trust is most commonly used in the context of a discreet family group and does not lend itself to a situation that may require new partners in the future.

This makes succession planning and growth strategies difficult; therefore, a discretionary trust is not recommended as the primary business entity.

## WHY ASSET PROTECTION?

Being in business potentially exposes the operator to personal liability. In order to ensure that the business risk does not have an impact on personal and family assets, care should be taken to set the structure to provide maximum asset protection. It is for this reason that the option of trading as a sole trader in one's own right is not desirable.

An appropriate structure can reduce or eliminate exposure of private assets to business risk. Care should be taken to ensure wherever possible that the stakeholder in the business is not an individual as this will in part defeat the asset protection strategy.

## GENERAL COMMENT

Taxation of companies and trusts is complex and requires careful planning. This article only deals with the basic differences and not the complexities that may arise based on individual circumstances. It is important to understand that profits earned will attract tax irrespective of the type of entity. The entity or the parties receiving the economic benefit may vary, but tax will be applied. Appropriate planning for the specific needs of various parties will lead to better protection and more efficient tax outcomes; all too often planning focuses on taxation rather than the broader commercial issues, of which taxation is only one aspect.

Robert Lissauer  
Director of Property and  
Real Estate Division  
Sothertons Melbourne

# Like to sell your rent roll?

Right now is the perfect time to sell. If you would like a confidential discussion about your rent roll call me today and together we can plan your selling strategy. We have a wide range of genuine buyers ready right now to negotiate confidentially and discreetly.

Ross Hedditch  
Telephone: **9380 5999**  
Mobile: 0418 321 952  
rhedditch@bdhsolutions.com.au  
**bdhsolutions.com.au**

**BDH SOLUTIONS**

**ROSS HEDDITCH**

