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BUSINESS STRUCTURES

Sole Trader

Partnership

Company

Trust

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STRUCTURE INFORMATION

Business Structures

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[redacted]

One of the most important decisions when commencing business is to determine the best legal structure that will apply to your specific situation. It is therefore essential that this decision be made with the advice of your accountant and solicitor to understand the advantages and disadvantages that apply to each type of structure.
The following is a general list of the more important considerations in determining the preferred business structure:

1. Legal liability
2. Tax implications
3. Formation cost
4. Ongoing cost
5. Flexibility
6. Future requirements

It is important that the chosen structure is established before the business commences and the nominated parties are able to comply with the various legal requirements. However, depending upon taxation (e.g. capital gains tax) and other implications (e.g. stamp duty), a business structure may be altered to suit a change in circumstances.

YOUR DESTINATION IS NOT DETERMINED BY THE DIRECTION OF THE WIND BUT BY THE SETTING OF YOUR SAIL

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SOLE TRADER

A sole trader is the simplest form of business structure, with the individual having sole ownership and control. Being relatively easy and inexpensive to start, this structure is ideally suited to small businesses with low risk and low profits.

A sole trader can register a business name with ASIC or choose to simply trade under their own name. Any business profits are taxed on the individuals income tax return, although business losses are subject to non-commercial loss rules and therefore can only offset other taxable income if certain tests are satisfied.

The following are some key advantages and disadvantages of operating as a sole trader:

Advantages
- Simple to administer and maintain control
- Low establishment and ongoing costs
- Tax benefits exist if profits are low
- Less compliance and legal requirements

Disadvantages
- Unlimited personal liability
- Change of structure required if more owners
- No flexibility of income distribution
- Tax disadvantages if profits are high

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PARTNERSHIP

A partnership is a relationship and not a separate legal entity. In a partnership, a business is owned and carried on by two or more partners, with each partner jointly owning all the business assets and liabilities. Often a partnership agreement is documented between partners to highlight key aspects such as the roles, authority and liabilities of each partner, and distribution of profits.

A partnership is required to lodge a partnership tax return but as it is not a separate taxable entity, it is not assessed on its taxable income. The partners are assessed on their share of the net income of the partnership or may be entitled to claim a deduction for their share of the net loss of the partnership.

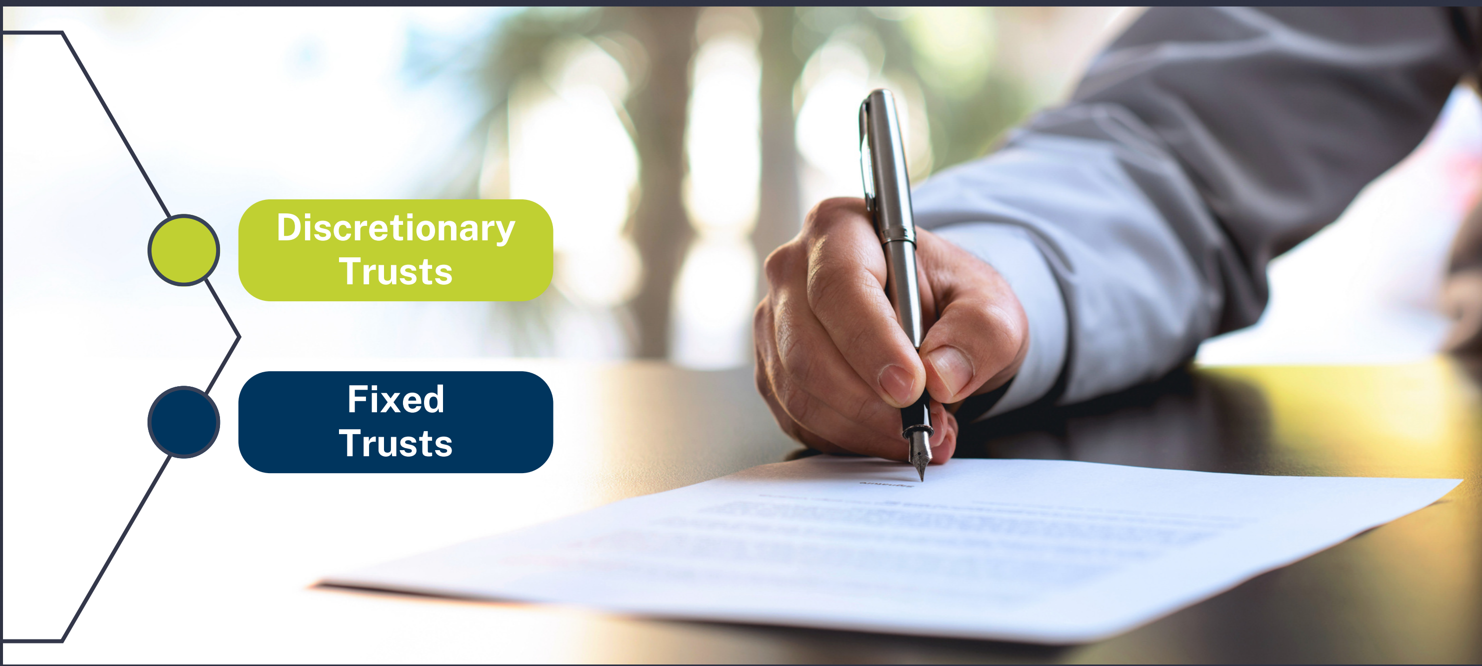
The following are some key advantages and disadvantages of a partnership:

Advantages
- Simple to administer and maintain control
- Low establishment and ongoing costs
- Tax benefits exist if profits are low
- Less compliance and legal requirements

Disadvantages
- Partners are personally liable
- Tax disadvantages if profits are high
- Decision making split between partners

ACHIEVING YOUR VISION THROUGH DYNAMIC STRATEGY AND PARTNERSHIP

TRUSTS



A trust is a structure where a trustee carries out the business on behalf of the beneficiaries of the trust. A trust deed is prepared by a solicitor prior to business commencing to outline the terms of a trust agreement and important details such as the trustee and beneficiaries.

The most common trusts are: (1) discretionary trust, and (2) fixed trust. A discretionary trust is most suited to family businesses so that each family member can be made a beneficiary without having any direct involvement in how the business is operated. A fixed trust is more common in arrangements between arm's length parties (i.e. non-family members) whereby the entitlement to both profit and capital is fixed.

A trust is not a separate legal entity and is therefore not a taxpayer in its own right. A trust is however required to lodge a tax return which reports profits and how such profits are distributed. Any losses are quarantined within the trust and are not be distributed to beneficiaries.

The following are some key advantages and disadvantages of a trust structure:

Advantages
- Limited liability is possible
- Flexibility of income distribution
- Tax benefits may exist depending upon beneficiaries
- Access to 50% general CGT concession

Disadvantages
- High compliance costs

COLLABORATION, ACUMEN & INTUITION TO ACHIEVE YOUR BIG PICTURE GOALS

COMPANY

A company is a separate legal entity incorporated with the Australian Securities and Investments Commission (ASIC). A company is controlled by the directors who operate the business for the benefit of the shareholders.

As a separate legal entity, a company is required to lodge a tax return each year and pay tax on any profits at a flat rate of 25% or 30%. Generally, the directors' or shareholders' assets cannot be accessed to pay for company debts or liabilities. However, there are some exceptions in situations for example, where personal guarantees are provided, or where the ATO have issued penalty notices to directors for outstanding company tax obligations.

While a company can also be sued in its own right, the company director can also be held personally responsible if they are found to have been negligent in performing their duties.

The following are some key advantages and disadvantages of a company structure:

Advantages

- Flat tax rate of 25% or 30%
- Limited personal liability
- Ownership can be easily transferred
- Control can be easily transferred

Disadvantages

- Complex rules
- Strict regulations
- High compliance costs
- No 50% general CGT concession
- Unable to offset losses against personal income

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