

WHAT YOU NEED TO KNOW BUSINESS STRUCTURING

THE RIGHT STRUCTURE FOR YOUR BUSINESS

There are many factors to consider when choosing a business structure for the purpose of running a business or investing. Choosing the right structure will depend on your individual circumstances and objectives.

There are four main structures commonly used for small business or investment:

- Sole Trader
- Partnership
- Company
- Trust

It's important to understand the features and limitations of the structure you choose for your business.

TAX-RELATED FACTORS

Examples of tax-related factors that you may need to consider include:

Tax Rates

What rate of tax will apply to business profits and investment returns at the time it is earned in the structure and when it is accessed by the owners?

Tax Concessions

Are the relevant tax benefits and concessions for the business or investment activity available in the structure? For example, the business may be eligible for the 50% Capital Gains Tax discount and small business concessions.

Tax Losses

When are tax losses available to be used against other sources of income and whether any remaining losses can be carried forward to offset future profits or other sources of income in future years?

Wages and Salaries

Whether wages and salaries paid to owners and their associates are deductible?

Superannuation

If the structure allows maximum access to superannuation contributions caps?

Personal Services Income

Whether the business activity might be categorised as Personal Services Income, which may require business profits to be ultimately attributed and taxed to the individual owners directly?

Government Payments and Allowances

The possibility of the structure affecting eligibility for payments or allowances.

Child Support

What income received or payments made may be assessed for child support purposes.

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OTHER FACTORS

The following are some examples of other factors that may be considered:

Asset Protection

The need for any asset protection against claims by third parties, such as professional indemnity and/or public liability claims.

Control

Whether the owners have their desired control over the business and its assets within their chosen structure.

Liability

The extent to which the owners are ultimately responsible for paying the liabilities of the business when they cannot be paid.

Set-Up Costs

The initial set-up costs for the structure – eg. company registration, business name registration, legal fees etc.

Compliance and Ongoing Costs

The ongoing costs to maintain and keep the required records for the structure – eg. annual company review fees, business name registration renewal, accounting fees, audit fees.

Succession and Estate Planning

The ability to effectively sell the business and assets to others in the future.

Flexibility

How flexible the structure is to allow for future changes in owners' circumstances?

The following pages contain our Business Structure Summary, outlining all the key elements of the four main business structures.

For more information about the right structure for your business, please feel free to contact us on 07 3360 9888 or visit our website at www.peakpartnership.com.au.



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BUSINESS STRUCTURES IN SUMMARY

	SOLE TRADER	PARTNERSHIP	COMPANY	TRUST
Control	Absolute	Joint	Separated	See Trust Deed
Perpetuity	Terminates on the death of the sole trader	Terminates when a change in partners occurs	Unlimited (can be deregistered)	Must vest within a certain period (usually 80 years)
Liability	Unlimited; personally liable for: <ul style="list-style-type: none"> ■ Negligence ■ Fraud ■ If claim for insurance unsuccessful ■ Liability can extend to personal assets or assets held jointly 	Partners joint and severally liable Partners personally liable	Shareholders; liability limited to paid-up capital of their shares (usually \$1 each share) Directors personally liable for: <ul style="list-style-type: none"> ■ Directors' G'tees ■ PAYG Withholding from employees' wages ■ Negligence ■ Fraud 	Trustee liability depends on what entity the Trustee is. See Sole Trader for Individual Trustee or Company section for Corporate Trustee
Asset Protection	Personal assets at risk	Personal assets at risk	Company assets at risk	Limited recourse of trust assets
Taxation	Tax is paid on business profits at individual marginal tax rates (plus Medicare Levy). Business income and expenses are declared on a business schedule in the individual's Tax Return, so no separate return is required.	Partnership profit is split between partners in accordance with the Partnership Agreement (a written agreement is not required, but recommended). A separate tax return is required for the Partnership and each partner declares their share of the net profit (loss) on their own tax return. Partners then pay tax based on their applicable rate of tax. Partners of a partnership can be individuals, a company or a trust.	Base Rate Entities Tax on profit is 25% from \$1.00 Other Companies Tax on profit is 30% from \$1.00 A separate tax return is required to be lodged for the Company. If any profit is deemed to be Personal Services Income, profit is attributed to the Individual. Profits can be distributed to shareholders via Dividends. Shareholders are entitled to claim the imputation credits on the franked portion of the Dividend. "Top up" tax is paid by the Shareholder if their tax rate is higher than the imputation credits. Imputations credits are a credit for the tax the company has already paid on its profits; therefore the level of imputation credits is limited by the amount of tax that the company has paid.	Trust profit is distributed to the Beneficiaries of the Trust in accordance with the Trustee's discretion and the Trust Deed. If any profit is deemed to be Personal Services Income, profit is attributed to the Individual. A separate tax return is required to be lodged for the Trust and each Beneficiary declares their distribution of any net profit on their own tax return. Beneficiaries pay tax on their distribution at their applicable rate of tax: Beneficiaries of a Trust can be an individual, company or another Trust. If no distribution of profits is made by the Trust, the Trustee is liable to pay tax at the top marginal tax rate plus Medicare Levy.

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Capital Gains Tax and Small Business Concessions	Individual has access to: <ul style="list-style-type: none"> 50% discount on assets held for 12 months or longer Small business concessions if tests are met 	See Sole Trader, Company or Trust for applicable eligibility for each Partner	Company has access to: <ul style="list-style-type: none"> Small business concessions if tests are met Any tax free amounts from the available small business concessions may be difficult to pass onto Shareholders without them being fully taxed in the Shareholder's hands. An option is to do this via a members voluntary liquidation.	Trust has access to: <ul style="list-style-type: none"> 50% discount on assets held for 12 months or longer Small business concessions if tests are met Beneficiaries will need to consider their own eligibility to concessions.
Losses	Losses can be carried forward and offset against future income if tests are satisfied so it is not deemed to be a non-commercial loss.	Losses are split between Partners in accordance with the Partnership Agreement. See Sole Trader, Company or Trust section for applicable loss treatment for each Partner.	Losses are retained in the Company and can be carried forward and offset against future income if the Continuity of Ownership Test is satisfied or the Same Business Test is satisfied.	Losses are retained in the Trust and cannot be distributed to the Beneficiaries. Losses can be carried forward and offset against future income if the relevant tests for the type of trust is satisfied.
Cash Flow and Drawings	Accessible	Accessibility subject to Partnership Agreement.	Subject to distribution of profits through dividends, wages or through a loan agreement with the company.	Subject to distribution of profits at Trustee's discretion. Loan agreements may be required for loans to a Company Beneficiary.
Wages and Salaries	A Sole Trader (individual) cannot pay a wage or salary to themselves and claim a tax deduction for it.	Partnership cannot claim a tax deduction for wages or salaries paid to the Partners. A Partners Salary may be agreed to in the Partnership Agreement which deems the first amount of Partnership Profit as distributed to that Partner with the balance of profit distributed in accordance with the Partnership Agreement.	Company can pay a wage or salary to the Directors and claim a tax deduction for it.	Trust can pay wage or salary to the Beneficiaries and claim a tax deduction for it.
Superannuation (Age as at 30 June prior financial year)	Concessional Cap (Maximum Deduction): <ul style="list-style-type: none"> \$30,000 Concessional Cap (Maximum Deduction): <ul style="list-style-type: none"> \$120,000 	No deduction for superannuation contributions within the Partnership. See Sole Trader, Company or Trust section for applicable deduction for each Partner.	Concessional Cap (Maximum Deduction): <ul style="list-style-type: none"> \$30,000 Concessional Cap (Maximum Deduction): <ul style="list-style-type: none"> \$120,000 	Concessional Cap (Maximum Deduction): <ul style="list-style-type: none"> \$30,000 Concessional Cap (Maximum Deduction): <ul style="list-style-type: none"> \$120,000

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Set-Up Costs (tax deductible over 5 years)	Nil set-up cost. Accounting fees for registration.	Partnership Agreement – approximately \$500 (usually only if unrelated parties and tax deductible in the year incurred) Accounting fees for registration	Shelf Company – approximately \$830 Accounting fees for registration	Trust Deed – approximately \$396 Accounting fees for registration
Ongoing Costs (tax deductible in the year incurred)	Accounting Fees	Accounting Fees	Accounting Fees ASIC Annual Filing Fees – \$321 ASIC Fees for certain changes	Accounting Fees
Personal Services Income	If any profit is deemed to be Personal Services Income, certain deductions may not be claimable, for example: <ul style="list-style-type: none"> Reasonable amounts paid or superannuation contributions made to an associate for non-principal work Rent, mortgage interest, rates or land tax for a home that is a place of business Expenses or Fringe Benefits Tax for more than one car that is used partly or solely for private purposes. 			

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