











BUSINESS STRUCTURE COMPARISON

	Sole Trader 	Partnership (General Law - Business) 	Partnership (Tax Law - Joint Assets) 	Company 	Discretionary Trust 
UNDERSTANDING THE STRUCTURE					
What is it?	An individual trading on their own, as the exclusive owner of the business.	Association of people, companies or trusts running a business together. But not as a company.	Association of persons (other than a company) in receipt of ordinary income or statutory income jointly (e.g. joint rental properties)	A legal entity owned by shareholders and run by directors.	Trustees (people or companies) operating a business for beneficiaries.
Established by	N/A - you only need to apply for an ABN under your individual name	Partnership agreement	Asset title	Constitution	Trust Deed
Separate legal entity?	No	No	No	Yes	Yes
Limited liability?	No	No	No	Yes	Yes, if corporate trustee
Controlled by	Individual	Partners	Partners	Directors – day to day management Shareholders – ultimate decision making	Trustee – day to day management Appointor – power to appoint/dismiss trustee
Costs (establishment & operating)	Low	Medium	As per assets	High	High
Asset protection	Legal structure provides no protection. Can be managed with insurances.	Legal structure provides no protection. Can be managed with insurances.	Legal structure provides no protection. Can be managed with insurances.	Yes. Subject to personal liability of directors.	Yes, if joint appointors include an independent person
Complexity & legal obligations	Low	Medium	Medium	High	High
Flexibility for new equity holder? (e.g. investors, partners)	No	Yes - special rules apply to admission or retirement of partners	Yes - requires legal transfer of title	Yes	Yes - care needed re. definition of 'family group', esp. if family trust election has been made

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EMPLOYMENT OF PRINCIPAL (OR ASSOCIATES) AND COMPLIANCE ISSUES					
Employment of principal	No	No	No	Yes	Yes
Remuneration for associates	Yes, limited by s.26-35 and PSI rules	Yes, limited by s.26-35 and PSI rules	No	Yes, limited by s.109 and PSI rules	Yes, limited by PSI and general anti-avoidance
Ability of principal (or associate) to withdraw money	As drawings	As partner drawings	As partner drawings	Loans - may be deemed dividends Division 7A Dividends - may be unable to frank dividends until tax paid on profits and franking credits available	As paid or applied by trustee Trust deed and tax law have special provisions for unpaid present entitlements
Superannuation contributions for principal	Personal super contributions	Personal super contributions	Personal super contributions	Employer sponsored contributions Possible maximum contributions for family employees	Employer sponsored contributions
PAYG Instalment arrangements	Paid by individual	Paid by individuals	Paid by individuals	Paid by company	Only paid if income is retained in trust, otherwise paid by beneficiaries
Fringe Benefits Tax (FBT) applicable to benefits provided to principal?	No	No	No	Yes	Yes
Personal Services Income (PSI) Rules	Limited deductions	Limited deductions and attribution to individuals	N/A	Limited deductions and attribution to individuals	Limited deductions and attribution to individuals

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PROFIT/LOSS DISTRIBUTIONS					
Distribution method	Individual	Partners Partners' salary if allowed in partnership agreement	Partners - in proportion to ownership of assets	Dividends	Trust distribution
Distribution of losses	Individual can use (subject to non-commercial loss rules)	Partners can use (subject to non-commercial loss rules)	Partners can use (subject to non-commercial loss rules)	Remain in company, must meet tests to recoup (except PSI)	Remain in trust, must meet tests to recoup (except PSI)
Transfer of losses	No	No	No	Yes, if part of consolidated group	No
INCOME TAX					
Tax assessed to?	Individual	Partners	Partners	Company	Beneficiaries
Tax rate	Individual marginal rate	Partner's marginal rate	Partner's marginal rate	26% to 30%	Beneficiary's marginal rate or top marginal rate (47%) if retained in trust
CAPITAL GAINS TAX					
CGT discount (50%)	Yes if held >12 months	CGT applies to partners Yes if held > 12 months	CGT applies to partners Yes if held > 12 months	No	Yes
Small business CGT concessions	Yes	CGT applies to partners Yes	CGT applies to partners Yes	Yes - significant individual tests and other conditions apply	Yes - significant individual tests and other conditions apply