

Business Structures Comparison Chart

	Individual	Partnership	Discretionary Trust	Unit Trust	Company
Access to the CGT 50% discount	Yes	Yes	Yes	Yes	No
Small business CGT concessions	Yes	Yes	Yes- subject to the significant individual test in some circumstances	Yes- subject to the significant individual test in some circumstances	Yes- subject to the significant individual test in some circumstances
Flexibility to distribute income and capital	None	Some depending on partnership agreement	Good	Limited but will depend on the classes of units on issue	Limited but will depend on the classes of units on issue
Tax rate	Marginal tax rate of the individual	Marginal tax rate of the partners	Marginal tax of the beneficiaries, Trustee may also be taxed in certain circumstances	Marginal tax of the unit holders. Trustee may also be taxed in certain circumstances	30%
Ability to recoup losses	Yes- Straightforward	Yes- losses will be available to the partners	Yes- subject to complex tests	Yes- subject to complex tests	Yes- subject to complex tests
Access to R&D concessions	None	None-unless partners are companies	None	None	Yes
Asset Protection	Poor	Poor	Good	Good	Good
Potential employee participation	Difficult	Difficult	Difficult	Yes	Yes
Future funding requirements	Can only be achieved with debt or partial sale	Can only be achieved with debt or partial sale	Can only be achieved with debt	Yes-can only be achieved using debt or the issue of units	Yes-can only be achieved using debt or issue of shares
Compliance costs	Low	Low	Medium- high	Medium- high	Medium- high
Exiting and succession planning	Requires the sale of business assets	Requires the sale of partnership assets	Requires the sale of business assets unless family succession	Can be achieved through the sale of units- may be complicated if there is a family trust election (FTE) in place	Can be achieved through the sale of shares

Business Restructuring Checklist

Issues to consider	Yes	No	N/A
Asset Protection <ul style="list-style-type: none"> Does the structure separate business activities from personal assets? Should there be a corporate trustee? Is any “at-risk” spouse the owner of passive or personal assets? Should valuable business assets be transferred to an entity different from the main operating entity? Should security be taken to protect related party loans receivable owing from the operating entity? 			
Capital-raising <ul style="list-style-type: none"> Will the structure allow the introduction of investors at a later point in time? 			
CGT discount <ul style="list-style-type: none"> On the disposal of any asset, will the CGT discount be available to the entity disposing of the assets? Will the “look-through” provisions in s 115-45 be satisfied? 			
CGT roll-overs <ul style="list-style-type: none"> Will the CGT roll-overs be available in the future if the structure is changed (e.g. sole trader is looking to corporatise)? 			
Consolidation <ul style="list-style-type: none"> Does a CGT event arise on consolidation? Are the cost bases of the assets retained on consolidation? Will losses be available for transfer and use? Is it possible for CGT event L5 to apply when a subsidiary exits a consolidated group? 			
Dividend access shares <ul style="list-style-type: none"> Will dividend access shares result in a loss to the small business CGT concessions? Will the dividend access shares cause the COT to be failed? 			
Distributions <ul style="list-style-type: none"> Is a company able to pay a dividend under s 254T of the <i>Corporations Act 2001</i>? Is a dividend payable by a company frankable? Does a trust need to make an FTE to pass on franking credits? Are the recipients of distributions beneficiaries under the trust deed and do they fit within the family group if an FTE has been made? Is an IEE required when making distributions to related companies and trusts? Does the trust deed provide the flexibility to stream income? Does the deed clearly define income and is this what has been distributed? Will a trust have “income of the trust estate” to distribute (as compared to s 95 income)? 			

Division 7A <ul style="list-style-type: none"> Will profits taxed at the corporate rate be required by a non-corporate entity? Will loan repayments be possible without breaching s 109R? If a UPE arises, will it be satisfied, converted to an ordinary loan, put under a complying loan agreement, or put on sub-trust? Where there is a sub-trust or ordinary loan resulting from a UPE, how will the loan repayments be made? If the trust needs to reduce debt, does the trustee understand the relationship between debt reduction and taxation of profit? 			
Family Trusts <ul style="list-style-type: none"> Is a family trust election required to pass on franking credits or claim losses? Are beneficiaries members of the family group of the specified individual? Is an interposed entity election required where a family trust distributes to a company or trust where all of the entitlements are not fixed? Will a family trust be distributing to a unit trust? If so, consider whether the Commissioner's discretion is required to treat the units in the trust as fixed entitlements? 			
Losses <ul style="list-style-type: none"> Can the COT test be satisfied when claiming a loss? Are there dividend access shares on issue that will prevent the COT from being passed? Can the SBT be satisfied in relation to losses that do not pass the COT? Will losses be available in a consolidated group? 			
Part IVA <ul style="list-style-type: none"> Can it be objectively demonstrated what was achieved by the transaction (other than a favourable tax outcome)? Could the transaction have been carried out in a more convenient way? 			
Personal services/exertion income <ul style="list-style-type: none"> Are the requisite tests in Pt 2-42 met? Notwithstanding Pt 2-42 being met, can the income be retained in a company or split from a trust? 			
Small business CGT concessions <ul style="list-style-type: none"> Can all of the basic conditions be met? Are the additional basic conditions met where the asset is a share or trust interest? Have the connected entities been identified to determine when the maximum net asset value test is met? Have personal use assets been correctly identified (noting that they must be "used")? Can the significant individual test be met where there are dividend access shares on issue? Have payments made under the retirement exemption been made by the due date? Have the appropriate written elections been made? Have replacement assets been acquired during the replacement period? 			