

COMPARISON OF STRUCTURES

	Sole trader	Partnership	Private Company	Fixed Unit Trust	Discretionary Trust	Superannuation Fund
Cost	Minimal.	Minimal.	\$1,287.00 *	\$704.00 *	\$704.00 *	\$704.00 *
Annual ASIC Fee	None.	None.	\$267.00	None.	None.	\$54.00 if corporate trustee.
Establishment Documents	None.	Partnership Agreement.	Constitution.	Trust Deed.	Trust Deed.	Trust Deed.
Unsecured Business debts	Personally liable for all debts.	Personally liable for all partnership debts.	Limited liability protection. 2	Limited liability (unless the trustee personally liable).	Limited liability (unless the individual trustee personally liable).	N/A
Potential for splitting income	No, except by deductions for interest or payments to associate parties.	Between partners.	Between shareholders.	Between unit holders.	Between potential beneficiaries: can be varied from year to year. 4	Effectively reduces or defers tax liability.
Streaming of income	No, unless ownership is changed (which will trigger GST, Stamp duty, CGT).	Only if justified for non-tax reasons.	No, all profits received as dividends: note anti-dividend streaming rules.	Yes, if trust deed permits.	Yes, if trust deed permits: note general anti-dividend streaming rules.	No.
Offset of entity's losses against personal income	Yes, subject to loss provisions.	Yes, subject to loss provisions.	No.	No.	No.	No.
Retention of income at 30%	N/A	Only possible if partner is a company.	Yes.	Usually via company unit holder.	Yes, if able to distribute company beneficiary.	Qualifies for own concessional rate.
Taxable capital gains	Paid by individual.	Paid by partners.	Paid by company.	Paid by unit holder or other entities. 3	Generally paid by beneficiary.	Paid by the fund.
CGT rollover relief	Yes.	Available to partners.	Yes, but special conditions apply. May be lost on distribution: taxed as dividend.	Yes, but may be taxed on distribution.	Yes.	No.
Distribution of capital gain	N/A	Taxed as capital gain.	Taxed as dividend even on winding up.	Taxed as capital gain.	Taxed as capital gain.	Taxable to the Super fund as a capital gain.
Distribution of pre- CGT capital profits	N/A	Exempt in partners' hands.	Taxed as dividend except on formal liquidation.	Tax free.	Tax free.	Taxable to the Super Fund (special rules apply).
Indexation of capital profits. ¹	Yes, but frozen at September 1999.	Yes, but frozen at September 1999.	Taxed as dividend even on winding up.	Yes, but frozen at September 1999.	Yes, but frozen at September 1999.	Yes, but frozen at September 1999.
Access to CGT discounts	Yes 50% discount.	Yes, if partners are individuals or entities that otherwise have access.	No, for company assets. Yes for individuals and trusts shareholders when disposing of their shares.	Yes.	Yes.	Yes, 33.33 discount.

1 Small business concessions apply from 21 September 1999. For assets acquired before 21 September 1999 the entity can still use the indexation method however, the indexed cost base amount is frozen at 30 September 1999. The 50% CGT discount does not apply if the indexation method is chosen.

2 Unless a director who gives a personal guarantee in respect of debts of the company.

3 Cost base adjustments are required for certain distributions.

4 If the trust makes a loss in the current year or has carried forward revenue losses, they may be lost unless the trustee makes a family trust election.

COMPARISON OF STRUCTURES

	Sole trader	Partnership	Private Company	Fixed Unit Trust	Discretionary Trust	Superannuation Fund
Access to CGT small business concessions	Available provided specific requirements e.g. \$6m ceiling and active asset test are met.	Available to each partner regardless of number, provided specific requirements are met.	Yes, subject to specific requirements. 7	Yes, subject to specific requirements.	Yes, subject to specific requirements.	Not available.
Administration: specific external regulator	State authority regulating business names registration. Fair trading and trade practices legislation and general law.	State authority regulating business names registration. Fair trading and trade practices legislation and general law.	ASIC. Fair trading and trade practices legislation and general law.	ASIC if a corporate trustee. Prudent person rules. Other trust, fair trading and trade practices law.	ASIC if a corporate trustee. Prudent person rules. Other trust, fair trading and trade practices law.	ATO if self-managed. APRA if non-self-managed. Superannuation Industry Supervision Act and related laws.
Imputation credits	N/A	Flow through if received franked dividend.	Adds to franking account.	Flow through if received franked dividend.	Flow through if received franked dividend.	Refundable to superfund.
Deductible superannuation contributions	\$25,000 pa.	\$25,000 pa.	\$25,000 pa limit per employee.	\$25,000 pa limit per employee.	\$25,000 pa.	N/A
Interest-free loan from entity	N/A	Yes.	Deemed unfranked dividend unless repaid by June 30 or benchmark interest paid.	Not taxed as income.	Not taxed as income unless there are unpaid company entitlements.	Not permitted.
R & D concessions	No.	No.	Eligible.	No.	No.	No.
Admission of new parties	New structure required.	Usually permitted. 5	Usually permitted.	Usually permitted.	May be difficult.	Usually permitted (maximum of 4 members for a self-managed superannuation fund).
Need for prospectus	N/A	Possibly.	Yes, unless exempted.	Yes, unless exempted.	Possibly.	Specific rules apply.
Interest that can be disposed	N/A	Partnership interest.	Shares.	Units.	Power of appointment.	N/A
CGT on disposal of interest	Yes.	Yes. 6	Yes.	Yes.	No.	Specific rules apply.
Transfer on death	By Will.	By Will.	By Will.	By Power of appointment.	By Will.	By Trustee discretion. 8

5 CGT implications for continuing partners. They will be treated as disposing of fractional interests in underlying assets.

6 For CGT purposes, the relevant CGT assets are generally the fractional interests in the underlying assets.

7 Controlling individual test changes to 20% (significant individual 20% test) from 1 July 2006.

8 If there is no valid binding death benefit nomination.

***** Includes first attendance and ATO regulations.