

# Let's chat

Asset protection, investment structuring and tax

# House keeping

- Recording?
- Intentionally 'non-technical', but ask if you are curious
- Feel free to ask questions at any point

# Overview

- Objectives
- Structuring options
- Investment asset considerations
- Recommendations/instructions

# Objectives

# Why use structures

- Asset protection
- Tax planning
- Succession planning

# Asset protection

- Separating risk from wealth
- \*Need to ensure structures set up correctly to ensure actually effective
- \*\*Need to ensure transactions done correctly to ensure no unwinding – clawback provisions

# Tax planning

- Structuring done right
- Tax anti-avoidance provisions:
  - Personal services income

# Succession planning

- Passing assets down at a later point in time
- While living v on passing



# Structuring options

# Structuring options

- Personal name
- Partnership
- Trust
- Company

# ‘In your own name’

- It’s just you
- You enter into contracts
- Asset protection – it’s all in one pot
- Tax linked to ‘self’
- No separation of risk with property
- Succession done through Will
- No compliance costs

# Partnerships

- Complexity depends on type of arrangement and entity representing you (see further slides about trusts and companies)
- All the other factors based on the entity in the partnership representing you
- Acknowledge difference from partnership and joint venture

# Company

- Separate legal entity
- Directors (managers) v shareholders/members (owners)
- Directors responsible for actions of the company
- Assets in company segregated from assets held outside of company\*
- 30% or small business entity tax rate, as well as potential for franked distributions to shareholders
- Succession done through shareholder or governing company document (allows for passing of control prior to death potentially\*\*)
- Highest compliance costs due to Government fees needing to be paid

# 'Family' trust

- Reasons for tax planning, asset protection and succession planning
- Nature of a trust: Someone (called the **trustee**) legally holds things (the **trust property**) for the benefit of others (being the **beneficiaries**) | it's a **relationship**
- Beneficiaries **don't have to be fixed** but rather a range of people who the **trustee** can pick to benefit! (Consider proper tax advice prior to making people benefit from a trust)
- Risk of litigation against beneficiaries separated from assets held by the trustee in the trust.
- NOTE: Someone needs to be liable for issues arising from the trust -> the legal owner (trustee)
- Appointor role who is someone who can change the trustee at will

# 'Family' trust cont.

- Beneficiary class often requires naming one or more persons (defined as the Primary Beneficiary)
- Additional beneficiaries also included:
  - Spouse of Primary Beneficiary
  - Children, grandchildren and great-grandchildren of Primary Beneficiary
  - Partners and grandparents of above people
  - Brothers, sisters, nieces, nephews, uncles and aunties of above people
  - Related trusts, companies and partnerships
  - Charities
- Also known as 'discretionary trust' because trustee (the legal owner) has the **discretion** to pick and choose which beneficiaries can benefit
- Trust laws operate over the relationship (can't do things out of bad faith)

# Unit trust

- Just a trust where people have a fixed benefit in the income and underlying assets
- Complex to understand (given same trust law issues as a ‘family trust’)
- Tax linked to people with the fixed benefit (we call them ‘unitholders’)
- Assets in trust segregated from assets held outside of trust\*
- Succession done through unitholder (or some kind of unitholders agreement)



# Investment asset considerations

# General factors

- Complexity
- Ability to fund
- Joint investment
- Tax flexibility
- Asset protection
- Succession
- Compliance costs

# Comparison table

	Personal	Company	'Family trust'	Unit trust
Complexity	Low	Moderate	High	High
Ability to fund	Easy	Loan or share issue	Gift or loan	Loan or unit issue
'Joint investment'	No	Yes	Difficult	Yes (stamp duty)
Tax flexibility	None	Company tax rate	High	Depends on unitholder
Asset protection	Low	High subject to directorship	High subject to correct trustee	High subject to correct trustee and unitholders
Succession planning	Will	Depends on shareholder	Outside Will	Various documents
Compliance costs	Low	High	Moderate	Moderate

# Property investment

- Property found and signed?
  - If yes – consider stamp duty consequences
  - If no – still good to get structure set up now
- Negative gearing
- Capital gains tax/income considerations
- Stamp duty and foreign surcharges
- Land tax (and foreign surcharges)
  - Home v investment
- Long-term objectives

# Share investment

- Dividend franking
- Capital gains tax/income tax considerations

# Business investment

- Think now or think for the future
- How to pay a wage
- Think for the future:
  - Payroll tax
  - Introducing new partners
  - Risk segregation
  - Restructure costs

# General tax rule of thumb

- Flat tax rate → Company
- Tax flexibility → Family trust; or Company with family trust as shareholder
- Capital gains tax discount potential → Family trust
- Ease of business owner concessions → Family trust
- Asset protection → Company with family trust shareholder, or family trust with company trustee
- Succession planning → Company with family trust shareholder, or family trust with company trustee

# Recommendations/instructions



# Recommendations

# Family trust instruction table

Trust name:		Trust date:		Settlement sum:	\$10
Role	Name	Address			
Settlor					
Trustee					
Appointor					
Primary beneficiary					
Note beneficiary class:	includes primary beneficiary named above as well as their spouse, parents, grandparents, siblings, lineal descendants, niece, nephews, trusts, companies and charities.	Exclude foreigners from benefiting?			
		Specifically exclude others?			

# Company instruction table #1

Company name:		Registered office:		
State registration:		Principal place of business:		
Director details	<i>Full name:</i>			
	<i>Street address:</i>			
	<i>Date of birth:</i>			
	<i>Place of birth:</i>			
	<i>Director/secretary/public officer:</i>			
Shareholder details	<i>Full name (include if held on trust):</i>			
	<i>Street address:</i>			
	<i>No. and type of shares (e.g. 5 ORD shares):</i>			
	<i>Fully paid:</i>			

# Company instruction table #2

Company name:		Registered office:		
State registration:		Principal place of business:		
Director details	<i>Full name:</i>			
	<i>Street address:</i>			
	<i>Date of birth:</i>			
	<i>Place of birth:</i>			
	<i>Director / secretary / public officer:</i>			
Shareholder details	<i>Full name (include if held on trust):</i>			
	<i>Street address:</i>			
	<i>No. and type of shares (e.g. 5 ORD shares):</i>			
	<i>Fully paid:</i>			

# Contact details

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