

# Tax Structure

# Sole Trader

	<b>Advantages</b>	<b>Disadvantages</b>
	<ol style="list-style-type: none"><li data-bbox="324 295 1276 327">1. Simple, inexpensive and easy structure.</li><li data-bbox="324 406 1276 470">2. Able to obtain the small business Capital Gains Tax (CGT) concessions easily.</li><li data-bbox="324 550 1276 662">3. Business losses can be offset against other income, subject to the non-commercial loss rules in Division 35. <i>If fail tests in Division 35 can apply for Commissioner's discretion.</i></li><li data-bbox="324 742 1276 774">4. Losses can be easily carried forward.</li><li data-bbox="324 853 1276 885">5. Easy to restructure to a company using CGT roll-over relief.</li><li data-bbox="324 965 1276 1029">6. Taxpayer can borrow money from, and transfer money to, family members without any tax implications.</li></ol> <p data-bbox="392 1332 1187 1420"><i>(The contents of this publication are general in nature, we accept no responsibility for persons acting on information contained herein without first consulting us – Lee Partners, Chartered Accountants)</i></p>	<ol style="list-style-type: none"><li data-bbox="1299 295 2139 327">1. No asset protection so sole trader's personal assets at risk.</li><li data-bbox="1299 406 2139 438">2. No income splitting.</li><li data-bbox="1299 550 2139 622">3. Income assessed at own tax rate (disadvantage if on a high tax rate).</li><li data-bbox="1299 742 2139 805">4. The substantiation rules must be complied with for car and travel expenses.</li></ol>

## Tax Structure

## Partnership

	Advantages	Disadvantages
	<ol style="list-style-type: none"><li>1. Simple, inexpensive structure if partners are individuals.</li><li>2. Income splitting between partners.</li><li>3. Some tax planning possible with the use of “partners’ salaries”.</li><li>4. Partners can obtain 50% CGT discount.</li><li>5. Small business CGT concessions easily obtained.</li><li>6. Partnership losses “distributed” to partners to be offset against other income.</li><li>7. Flexibility for CGT in that each partner can independently choose the concessions they want. Failure by one partner to satisfy the conditions will not affect the other partner.</li><li>8. Flexibility and asset protection can be obtained by using trusts as partners with corporate trustees.</li></ol> <p><i>(The contents of this publication are general in nature, we accept no responsibility for persons acting on information contained herein without first consulting us – Lee Partners, Chartered Accountants)</i></p>	<ol style="list-style-type: none"><li>1. The partners are jointly and severally liable for the debts of partnership.</li><li>2. Generally no asset protection.</li><li>3. New personal services income laws may attribute all income to one partner for tax purposes (ie. where there is a spouse).</li><li>4. Income cannot be accumulated and must be assessed at personal tax rates.</li><li>5. Partners as individuals cannot be employed by the partnership for salary packaging purposes.</li><li>6. The non-commercial loss rules in Division 35 apply. If the relevant tests are failed, <b><i>then can apply for the Commissioner’s discretion.</i></b></li><li>7. The substantiation rules apply to car and travel expenses.</li></ol>

## Tax Structure

## Company

	<b>Advantages</b>	<b>Disadvantages</b>
	<ol style="list-style-type: none"><li>1. The company is a separate legal entity.</li><li>2. Asset protection. If the company's business fails, the personal assets of the shareholders are protected.</li><li>3. Losses can be transferred within the consolidated group.</li><li>4. Perpetual existence.</li><li>5. The company can employ the taxpayer and provide salary packaging.</li><li>6. By employing the taxpayer, the company can provide employer sponsored superannuation and obtain maximum deductions compared to individuals and partnerships.</li><li>7. It is easy to admit or retire partners by simply buying or selling shares, or alternatively by issuing shares.</li><li>8. 30% flat rate of tax.</li><li>9. Shareholders have a fixed interest in the company so that they can be certain of their entitlements. Franked dividends can be passed to shareholders who can claim a refund of any excess imputation credits.</li><li>10. Profits can be retained and taxed at the corporate tax rate when personal services income is not an issue.</li><li>11. Deduction may be claimed for interest on borrowings to pay tax or refinancing shareholder's loans or equity.</li><li>12. The substantiation rules do not apply.</li></ol> <p><i>(The contents of this publication are general in nature, we accept no responsibility for persons acting on information contained herein without first consulting us – Lee Partners, Chartered Accountants)</i></p>	<ol style="list-style-type: none"><li>1. Complex to establish, administer and run.</li><li>2. Regulated by complex Corporations Act.</li><li>3. 50% CGT discount not available.</li><li>4. Cannot distribute losses to individuals.</li><li>5. Complex rules regarding the carry forward of losses.</li><li>6. No easy way for a company to pass tax free amounts to shareholders without them being taxed in the shareholders' hands.</li><li>7. Loans and other certain payments to shareholders may be deemed a dividend taxable unless loan agreement is in place.</li><li>8. Controlling individual test in the small business CGT concessions may be difficult to satisfy. It cannot be satisfied where the majority of the shares are not owned by an individual.</li><li>9. The taxpayer must terminate their employment with the company in order to obtain the small business retirement exemption.</li><li>10. New PSI rules can deny deductions and attribute income to the taxpayer providing the personal services.</li><li>11. The general share value shifting rules may apply when issuing shares to associates for below market value consideration.</li><li>12. A change in share ownership can cause pre-CGT assets to be treated as post-CGT assets.</li><li>13. A change in asset ownership can cause pre-CGT shares to be subject to CGT on sale.</li><li>14. Costly to wind up.</li></ol>

## Tax Structure

## Unit Trust

	<b>Advantages</b>	<b>Disadvantages</b>
	<ol style="list-style-type: none"><li>1. Asset protection.</li><li>2. Less regulation than a company.</li><li>3. The trust can employ the principals and provide salary packaging.</li><li>4. The trust can employ the principals and provide employer sponsored superannuation.</li><li>5. The principals have a fixed interest which is good where independent parties are involved.</li><li>6. The 50% CGT discount is available.</li><li>7. The trust is not taxed as a separate entity.</li><li>8. Loans from the trust are not subject to any special tax rules unless an unpaid present entitlement to a company exists at the time of the loan.</li><li>9. It is less costly to wind up than a company.</li><li>10. Easy to admit new partners by issuing units without CGT consequences (but beware general value shifting rules).</li><li>11. The substantiation rules do not apply.</li></ol> <p><i>(The contents of this publication are general in nature, we accept no responsibility for persons acting on information contained herein without first consulting us – Lee Partners, Chartered Accountants)</i></p>	<ol style="list-style-type: none"><li>1. Less people understand how they operate.</li><li>2. Ultimate beneficiary statement rules apply.</li><li>3. More costly to establish and operate than a partnership of individuals.</li><li>4. A change in unitholding can cause pre-CGT assets to become post-CGT assets.</li><li>5. A change in asset holding can cause pre-CGT units to be subject to CGT on sale.</li><li>6. Complex trust loss rules apply.</li><li>7. Cannot transfer losses unless comply with complex consolidations laws.</li><li>8. Cannot distribute losses to beneficiaries.</li><li>9. May need to elect to be a family trust. May not be able to elect to be a family trust.</li><li>10. No perpetual existence, normally must be wound up within 80 years.</li><li>11. Distribution of tax free income and gains has CGT implications to beneficiaries.</li><li>12. Individual trustees can be personally liable for debts of the trust.</li><li>13. Accumulated income taxed at top marginal rate.</li><li>14. If units in unit trusts are owned by discretionary trusts, the unit trust will not be able to satisfy the controlling individual test for CGT purposes</li><li>15. The general value shifting rules may apply when issuing units to associates for below market value consideration.</li></ol>

## Tax Structure

## Discretionary Trust

	<b>Advantages</b>	<b>Disadvantages</b>
	<ol style="list-style-type: none"><li>1. Ultimate asset protection when have a corporate trustee.</li><li>2. Less regulation than a company.</li><li>3. Flexible distributions allow income splitting.</li><li>4. Income can be distributed to a company to be taxed at the corporate tax rate.</li><li>5. The trust deed can allow for flexible distributions of capital.</li><li>6. The trust can employ the principals and provide salary packaging.</li><li>7. The trust can employ the principals and provide employer sponsored superannuation.</li><li>8. The trustee can vary distributions among family members according to their needs.</li><li>9. The trust deed can be tailored to suit the needs of the principals and other beneficiaries.</li><li>10. The 50% CGT discount is available.</li><li>11. Can still obtain the small business CGT concessions.</li><li>12. Easier to wind up than a company.</li><li>13. The substantiation rules do not apply.</li><li>14. Able to stream income to minimise tax.</li><li>15. Loans can be made to beneficiaries without tax implications. No equivalent to Division 7A unless FBT has application.</li><li>16. Control can be easily transferred by changing trustee and/or the appointor.</li></ol> <p><i>(The contents of this publication are general in nature, we accept no responsibility for persons acting on information contained herein without first consulting us – Lee Partners, Chartered Accountants)</i></p>	<ol style="list-style-type: none"><li>1. They are complex and many people do not understand how they work.</li><li>2. Costly to establish and run.</li><li>3. Ultimate beneficiary rules apply.</li><li>4. Cannot distribute losses to beneficiaries. Losses are trapped in the trust.</li><li>5. Complex trust loss rules apply.</li><li>6. Cannot transfer losses to other trusts unless comply with complex and restrictive consolidation rules.</li><li>7. May need to elect to be a family trust to satisfy trust loss rules or to be able to distribute franked dividends to beneficiaries without adverse tax implications.</li><li>8. No perpetual existence, normally must be wound up within 80 years.</li><li>9. More difficult to satisfy conditions for the small business CGT concessions, in particular the controlling individual test.</li><li>10. Amendments to the trust deed could constitute a resettlement for CGT and stamp duty purposes.</li><li>11. If required to make a family trust election, then flexibility of distribution is restricted.</li><li>12. The trustees can be personally liable for the debts of the trust in some circumstances.</li><li>13. Beneficiaries do not have a transferable interest.</li><li>14. If a new partner is admitted to the business, it is not easy to give them a fixed interest.</li><li>15. Additional stamp duty and land tax implications depending on the state.</li><li>16. Income accumulated in the trust is taxed at the top marginal rate.</li><li>17. It is difficult for a beneficiary of a discretionary trust (that is not a family trust) to satisfy the 45 day holding period rule where the trust receives a franked dividend.</li></ol>

## Tax Structure

## Self Managed Superannuation Fund (SMSF)

	Advantages	Disadvantages
	<ol style="list-style-type: none"><li>1. Asset protection.</li><li>2. 15% flat rate of tax on earnings and employer contributions whilst in accumulation.</li><li>3. 10% flat rate of tax on assets disposed of held for over 12 months under CGT rules.</li><li>4. Easy to admit members however limited to 4 for a SMSF.</li><li>5. Control over investments subject to the SIS Act and regulations.</li><li>6. Estate planning flexibility.</li><li>7. Superannuation surcharge abolished from 1 July 2005.</li><li>8. CGT assets which have accrued substantial capital growth generally will not incur capital gains tax once SMSF enters pension phase.</li><li>9. Flexibility in converting SMSF from accumulation to pension phase.</li><li>10. Can acquire business premises from a member or employer company controlled by member.</li><li>11. Can split contributions with spouse from 1 July 2006.</li><li>12. SMSF's earnings are generally tax exempt once in pension phase.</li><li>13. There is no limit to amount of personal/member undeducted contributions that can be paid into the SMSF subject to satisfying work test rules.</li><li>14. Franking credits at 30% rate assist in negating tax payable at 15% rate.</li></ol>	<ol style="list-style-type: none"><li>1. Requires audit every year and costly to run.</li><li>2. Strict rules apply contained in SIS Act and regulations.</li><li>3. Cannot carry on a business.</li><li>4. Generally cannot access benefits until reach preservation age.</li><li>5. Regulated by the Australian Taxation Office.</li><li>6. Strict restrictions apply when dealing with related parties of the SMSF.</li><li>7. Members or associates cannot get any enjoyment out of asset owned by the SMSF <i>unless</i> asset is business real property.</li><li>8. Assets cannot be acquired by a SMSF from a member except in limited circumstances.</li><li>9. Civil and criminal penalties apply for blatant and contrived breaches of the rules.</li><li>10. SMSF cannot borrow or pledge any assets as security for any related party borrowings.</li><li>11. Onerous trustee obligations.</li></ol> <p><i>(The contents of this publication are general in nature, we accept no responsibility for persons acting on information contained herein without first consulting us – Lee Partners Financial Planners)</i></p>