LOWE LIPPMANN

LOWE LIPPMANN FINANCIAL SERVICES

OWNERSHIP STRUCTURES

INTRODUCTION

There are numerous Ownership Structures and below we discuss the benefits and disadvantages of three different structures.

COMPANY STRUCTURE

A Company is a separate legal entity which has the right to sue and be sued in its own name and the right to hold, deal and dispose of assets. Ownership of a Company is held by way of shares that accord voting rights, and shareholders have the right to elect directors who formulate company policy.

The benefits of using a company structure are:

- A Company’s income is taxed at a relatively low flat rate of 30%.
- A Company has limited liability. However, it should be noted that if a breach of director’s duties occurs the director can become personally liable.
- Shareholder’s can receive fully franked dividends. This may provide a significant tax benefits if the dividends are paid in a year where shareholder’s have a lower marginal tax rate (i.e. retirement).
- A Company can claim a full tax deduction for superannuation contributions up to the employee’s age based limit.
- Can stream pre-tax income through the payment of reasonable salaries.
- Can stream post-tax income through the use of different classes of shares. This allows franked dividends to be distributed to shareholders who can best utilise franking credits (i.e. those on the lowest marginal tax rate).
- A Company that carries on a business and has shareholders with a significant interest can make maximum use of the CGT small business concessions.
- A Company can provide fringe benefits to its employees, including directors, which allows employees to take advantage of concessionally taxed fringe benefits (e.g. company cars, mobile phones, lap top computers).

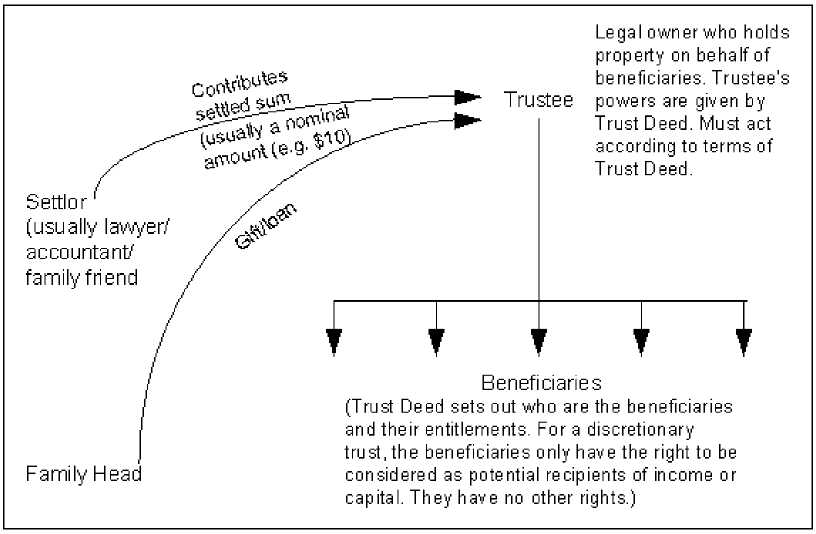
The disadvantages of a company structure are:

- A Company has higher set up costs than other structures. Generally a Company can be set up for approximately $1,000 if purchasing an existing company from an accountant and takes approximately 24 hours to obtain (the Company will not have previously traded – it established exactly for this purpose).
- A Company cannot utilise the individual 50% CGT discount.
- A company allows the deferral of tax, but ultimately a dividend must be paid to access the funds inside the company. Additional tax may be payable at that time.

- Administrative requirements.
- Losses incurred by a Company are trapped within the Company. Only the Company can carry the losses forward.

DISCRETIONARY TRUST

WHAT IS A TRUST?



A trust is the duty or obligation owed by a person (the trustee) in relation to property held or controlled by him or her for the benefit of another person or group of people.

A discretionary trust may be created by one person called the settlor (who is generally a close family friend) giving a sum of money to another person called the trustee to hold that sum of money and any other income or assets which the trustee may acquire (collectively called the trust fund) for the benefit of certain named persons called the beneficiaries.

HOW IS A TRUST TAXED?

Each beneficiary will include his/her share of the net income of the trust in his/her assessable income and it will be taxed at the beneficiary's tax rates. Any income that is not distributed from the trust in the year of income will be taxed at penalty rates (currently 45% plus Medicare levy where applicable).

As long as all the taxable income within a trust is distributed in a financial year, there should be no tax payable by a trust. A trust is not liable as a separate taxpayer to pay tax on any income, however it is still required to lodge tax returns.

The family trust is the most flexible investment structure because the Trustee can determine which beneficiary will receive trust distributions and will thus pay tax on that income.

PARTNERSHIP

A Partnership is a contractual relationship between the partners. It is not a separate legal entity and not a taxpaying entity, which the tax liability falls directly on the partners. It is a simple structure with low establishment and on going administration costs.

The benefits of structuring the business as a Partnership are:

- Losses incurred by the Partnership can be transferred to the individual partner, which can be used to offset against other income of a partner.
- Allows some income splitting between the partners. It must be split in accordance to each partner's interest in the partnership agreement.
- Individual partners can claim a 100% tax deduction for superannuation contributions in their personal tax returns.
- Can use the 50% discount on capital gains.
- Can also utilise the CGT small business concessions.

The disadvantages of establishing a Partnership are:

- Difficult and complicated to calculate the CGT liability upon the sale or transfer of an interest in a Partnership. Each partner must determine their own CGT liability based upon their share of proceeds of the sale.
- The partners have unlimited liabilities for all debts and obligations of the Partnership incurred.
- No asset protection available for individual partners.
- It can not provide fringe benefits to partners because they are not employees.