

# Entity comparison table

A very general guide showing the interplay between the various competing issues for each of the main entity structures available is set out below.

The table is subject to numerous qualifications. Some of the qualifications are set out in the notes below the table. Unfortunately, due to the complexity and range of different issues, the table can only ever be a starting point in considering any structuring arrangement. Particular care should be taken where there are multiple entities involved.

	TAX EFFECTIVENESS						ASSET PROTECTION <sup>6</sup>		ESTATE PLANNING <sup>9</sup>	SUCCESSION		
	CORPORATE TAX RATE <sup>1</sup>	DISTRIBUTION FLEXIBILITY	ACCESS TAX LOSSES <sup>2</sup>	50% CGT DISCOUNT <sup>3</sup>	CGT SMALL BUSINESS CONCESSIONS <sup>4</sup>	DUTY ON STRUCTURE <sup>5</sup>	PAYROLL TAX <sup>5</sup>	ENTITY ASSETS PROTECTED IF PERSONAL CLAIMS <sup>7</sup>	LIMITED LIABILITY <sup>8</sup>	ASSETS CAN BE GIFTED UNDER WILL	SIMPLE TO TRANSFER TO 3 <sup>RD</sup> PARTIES	SIMPLE TO TRANSFER TO FAMILY MEMBERS
SOLE TRADER	No	No	Yes	Yes	Yes	Yes	No	No <sup>10</sup>	No	Yes	Yes	Yes
PARTNERSHIP	No <sup>11</sup>	No <sup>12</sup>	Yes	Yes <sup>11</sup>	Yes <sup>13</sup>	Yes	No	No <sup>14</sup>	No <sup>15</sup>	Yes <sup>16</sup>	No	Yes
COMPANY	Yes	No <sup>17</sup>	No <sup>18</sup>	No	Yes <sup>19</sup>	No	Yes	No <sup>20</sup>	Yes <sup>21</sup>	Yes <sup>20</sup>	Yes	Yes
DISCRETIONARY TRUST	No <sup>11</sup>	Yes <sup>22</sup>	No <sup>18</sup>	Yes	Yes	Yes	Yes	Yes	Yes <sup>23</sup>	No	No	No
LIMITED PARTNERSHIP	Yes	No <sup>12</sup>	No <sup>18</sup>	No	Yes <sup>19</sup>	Yes	Yes	No <sup>14</sup>	Yes	Yes <sup>16</sup>	No	Yes
SMSF	No <sup>24</sup>	No	No <sup>18</sup>	Yes	No	Yes	N/A	Yes	Yes <sup>23</sup>	Yes <sup>25</sup>	N/A	No
JOINT VENTURE	No <sup>11</sup>	No <sup>12</sup>	Yes	Yes <sup>11</sup>	Yes	Yes	Yes	No	No <sup>15</sup>	No	Yes	Yes

## NOTES:

- 1 Company tax rate generally capped at 30%, although subject to certain criteria may be less.
- 2 Subject to otherwise satisfying loss rules.
- 3 Subject to satisfying all requirements (e.g. held on capital account for more than 12 months)
- 4 Subject to satisfying all requirements including net assets or turn over tests.
- 5 Duty, land tax, foreign duty surcharges and payroll tax rules are state based, therefore care must be taken.
- 6 Asset protection limited to uninsured 3rd party claims (i.e. ignoring family law risks).
- 7 That is, business or investment assets excluded from claims against ultimate owner or controller.
- 8 Is exposure capped at the amount invested in the entity?
- 9 Impact of claims by disgruntled beneficiaries, including 'notional estate' rules ignored. Separate issues arise in relation to all tests in this table for the structure of the will. The threshold issue being whether testamentary trusts are utilised.
- 10 Subject to strategies such as a 'gift and loan back' arrangement.
- 11 Unless a company (other than a trustee company) utilised.
- 12 Unless parties have different rights to income based say on the value of services (for example by paying a salary).
- 13 Each partner generally assessed separately for net asset test.
- 14 Unless a discretionary trust.
- 15 Unless a company (including a trustee company).
- 16 Assumes partner is an individual.
- 17 Unless classes of shares with different rights validly created.
- 18 Losses are trapped in entity.
- 19 Concessional amount can be trapped in company.
- 20 Unless shares not personally owned.
- 21 Subject to exceptions such as guarantees, negligence, WPH+S, insolvent trading etc.
- 22 Subject to rules such as family trust election and interposed entity election regimes.
- 23 Assumes a trustee company is used.
- 24 Tax rates capped during accumulation at 15% income and 10% CGT. 0% income and CGT if in pension mode, subject to transfer balance cap (funds in excess of balance cap continue to be taxed at accumulation rates).
- 25 If death benefit paid to estate.