



## Business Structures – Further Information [www.grubersbeckett.com.au](http://www.grubersbeckett.com.au)

One of the key decisions you'll make when starting a business is which legal structure to use. Because it's such an important decision, you should get advice from a qualified independent business, financial or legal advisor. The structure you choose will depend on the size and type of business, along with your personal circumstances and how much you want to grow the business. Keep in mind that if you need to, you can change your business structure later on if you find that a new structure will meet your needs better.

### Legal Structure - Comparison of Sole trader, Partnership, Company and Trust:

Business Structures	Sole trader	Partnership	Company	Trust
Difficult to set up?	No	No	Yes	Yes
Expensive to register?	No	No	Yes	Yes
Retain control?	Yes	No	No	No
Complex reporting ?	No	No	Yes	Yes
Assets at risk ?	Yes	Yes	Not as likely	Not as likely
Receive full profits ?	Yes	No	No	No
Can I employ staff?	Yes	Yes	Yes	Yes
Have to pay Super etc?,	No	No	Yes (if employed by the company)	Yes (if employed by the company)
Change structure easily?	Yes	No	No	No
Ability to plan tax?	No	Yes	Yes	Yes
Easy to raise capital?	No	Yes	Yes	Yes
Easy to dissolve or exit?	Yes	Yes	Yes	No

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## Sole Trader

A sole trader is the simplest form of business structure. It is also relatively easy and inexpensive to start and maintain.

Many sole traders choose to trade under their own name - for example, Karen Smith - others opt to register a Business Name - must be done with Australian Securities and Investments Commission (ASIC).

**Note :Business names and companies now registered Nationally with ASIC ; [www.asic.gov.au](http://www.asic.gov.au)**

### As a sole trader you retain complete control of your business

There is no division between business assets or personal assets, which includes your share of any assets jointly owned with another person (such as your house or car). Your liability is unlimited which means that personal assets can be used to pay business debts.

### Sole traders pay income tax at personal tax rates

Sole traders are taxed as individuals and pay income tax at personal tax rates. This means your business income is declared on your personal tax return along with any other assessable income (such as your salary or wages, interest, dividends).

Learn more about tax for sole traders at the [ATO website](http://ATO website) & [www.grubersbeckett.com.au](http://www.grubersbeckett.com.au)

### The advantages and disadvantages of a sole trader

#### Advantages

Simple set up and operation.

You retain complete control of your assets and business decisions.

Fewer reporting requirements.

- Any losses incurred by your business activities, may be offset against other income earned (such as your investment income or wages). Subject to certain conditions.
- You are not considered an employee of your own business and are free of any obligation to pay payroll tax, superannuation contributions or workers' compensation on income you draw from the business.

Relatively easy to change your legal structure if the business grows, or if you wish to wind things up.

#### Disadvantages

Unlimited liability which means all your personal assets are at risk if things go wrong.

- Little opportunity for tax planning - you can't split business profits or losses made with family members and you are personally liable to pay tax on all the income derived.

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## Partnership

A partnership involves two or more people (but no more than 20, with some exceptions) going into businesses together in order to make a profit. In most cases a partnership will need to register a business name with the Australian Securities and Investments Commission (ASIC) unless it uses the surnames of all the partners involved.

A partnership has its own tax file number (TFN), Australian business number (ABN) and lodges a separate tax return.

### Partners share all business assets and liabilities

A partnership is a relationship, not a separate legal entity. Each partner jointly owns all the business assets and liabilities. It's vital that each partner knows their rights, responsibilities and obligations. Seek the help of a qualified professional to prepare a written partnership agreement. The agreement should also state each partner's role and level of authority, their expected financial contribution and a clear procedure for dispute resolution and dissolving the partnership. This is important because personal liability is unlimited for each and every partner in the business. If the business fails and your partner can't afford to pay their share of any debts incurred, you will be held liable for the shortfall. You are also jointly responsible for any debts your partner incurs, with or without your knowledge.

Where there is no agreement in place, each partner is deemed to own equal shares of each asset as prescribed by the *Partnership Acts in various States and Territories*.

### The advantages and disadvantages of a partnership

#### Advantages

- Simple and inexpensive to set up.
- Minimal reporting requirements.
- Shared management/staffing responsibilities.
- More opportunities for tax planning (such as income splitting between family members) than that of a sole trader.
- A partner's share of the business's tax losses may be offset against other personal income, subject to certain conditions.
- Combined skills, experience and knowledge can provide a better product/service.
- Relatively easy to dissolve or exit and recover your share.
- Access to capital.
  - Partners are not employees. Superannuation contributions and workers' compensation insurance are not payable on partners profits or drawings.

#### Disadvantages

- Potential for disputes over profit sharing, administrative control and business direction. **(Especially on Death/Disability)**
  - Joint and several liability of partners. This means that each partner is fully responsible for debts and liabilities incurred by other partners - with or without their knowledge.
- Changes of ownership can be difficult and generally require a new partnership to be established; **Succession very messy !**

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## Company

Australian Company Number (ACN)

The tax requirements for a company

Company liability

Proprietary and public companies

Advantages and disadvantages of a company structure

*Your obligations as a small business operator is an ASIC booklet which makes it easy to understand and comply with the law if you operate a small business as a registered company, or under a registered business name.*

A company is a separate legal entity capable of holding assets in its own name and conducting business in its own right. A company can also sue and be sued. Shareholders own the company while directors run the company. In many cases company directors are also shareholders, along with company employees.

To become a company, an entity must:

be incorporated under the *Corporations Act 2001* (Commonwealth Act); and  
be registered with the Australian Securities and Investment Commission

### Australian Company Number (ACN)

Unlike business names, once registered, a company name can trade throughout Australia. Every Australian company receives a unique nine digit Australian Company Number (ACN) which must appear on the company seal (if it has one) and every public document issued, signed or published.

### The tax requirements for a company

The tax requirements for a company are quite different to the other business structures. It has its own tax income liability which is totally separate to individual income tax. A company pays income tax at a flat rate of 30% on taxable income.

*Learn more about the tax requirements of an Australian company at the ATO website [www.ato.gov.au](http://www.ato.gov.au)*

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## Company liability

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A company's assets belong to the company and the company is liable for debts incurred which makes this type of business structure appealing to high-risk business ventures. Generally, the owner's assets cannot be accessed to pay for any company debts or liabilities. However, there are some exceptions. Financial institutions may require a personal guarantee against loans or overdrafts. A personal liability may arise if debts are caused recklessly, negligently or fraudulently. A company can sue and be sued in its own right, but the company director can also be held personally responsible for offences under the *Corporations Act 2001* or if they are found to have been negligent in performing their duties.

## Proprietary and public companies

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Companies may be formed as either private, also known as proprietary, or public companies that are listed on the stock exchange. If you wish to operate as a company you may require the assistance of a solicitor or an accountant to prepare the documentation.

### ***Proprietary - "Pty" company***

A proprietary company has no more than 50 non-employee shareholders and is generally not permitted to offer shares or securities to the public. It must have at least one shareholder and one director, and at least one director must ordinarily reside in Australia.

### ***Public company***

A public company may have more than 50 non-employee shareholders, can offer shares and securities to the public, and may seek listing on the Australian Stock Exchange. Companies can often be floated initially quite cheaply for instance on the Newcastle Stock Exchange or some of the other smaller stock exchanges rather than with ASX straight away.

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## Advantages and disadvantages of a Company structure

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### **Advantages**

- Limited liability for shareholders/owners.
- Company structure is commercially well understood and accepted.
- Ability to raise significant capital.
- Profits can be reinvested in the company or paid out to the shareholders as dividends.
- Easy to sell and pass on ownership.
- Company can carry forward losses indefinitely to offset against future profits.
- Good from a succession point of view ; can leave shares in a Will for instance.***

### **Disadvantages**

- Significant set-up costs and maintenance costs.
- Limited or no control of company affairs.
- Complex reporting requirements.
- Company can't distribute losses to its shareholders.

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## Trust

Unlike a company, a trust is not a separate legal entity. Trusts are often used in connection with running a business for the benefit of others. A trust is a structure where a trustee (an individual or company) carries out the business on behalf of the members (or beneficiaries) of the trust. Family businesses are often set up as a trust so that each family member can be made a beneficiary without having any involvement in how the business is run.

Further Information ; see [www.trustdeedregister.com](http://www.trustdeedregister.com) & [www..trustdeedregister.com](http://www..trustdeedregister.com)

### Discretionary and Unit trusts

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A trust is set up through a trust deed and there are two main types:

#### Discretionary Trusts

The trustee has discretion in the distribution of funds to each beneficiary. The most common example is the family trust.

#### Unit Trusts

Unit trusts are recommended when more than one family is involved. The interest in the trust is divided into units, similar to shares. Each unit holder may have a number of units in the trust. Distribution from the trust is determined according to the number of units held. Importantly, trustees are legally liable for the debts of the trust. They can use the assets of the trust to meet those debts. However, if there's a shortfall, they are responsible for covering the difference from their own resources.

A trustee must apply for a Tax File Number (TFN) and lodge an annual trust return. The trust is not liable to pay tax, tax is assessed to the trustee or to the beneficiaries that are entitled to receive the trust net income. **Learn more about the tax requirements of an Australian trust at [www.grubersbeckett.com.au](http://www.grubersbeckett.com.au)**

### Advantages and Disadvantages of a Trust

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#### Advantages

Reduced liability - especially if corporate trustee.

Asset protection.

Flexibility of asset and income distribution.

#### Disadvantages

Can be expensive and complex to establish and administer, **assets cannot be left in Wills ("Non Estate Asset")**

Difficult to dissolve, dismantle, or make changes once established particularly where children are involved.

Any profits retained to reinvest into the business, will incur penalty tax rates.

Can not distribute losses, only profits.

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