Tax structure comparison checklists

Sole trader - Advantages

- Not expensive to establish and run
- Simple structure you can understand
- You have complete control and ownership
- Able to obtain the 50% CGT discount
- Able to obtain the small business CGT concessions easily
- Losses can be easily carried forward

Sole trader – Disadvantages

- No asset protection –your personal asset is at risk
- If on a high tax rate ,there is no income splitting
- There will be tax implications when a partner is admitted

Partnership - Advantages

- Less costly than a company or trust to establish
- Not expensive to run
- Structure easy to understand
- Income splitting between partners
- Can provide some flexibility in a partnership agreement
- Partners can obtain the 50% CGT concessions
- Small business CGT concessions easily obtained
- Partnership losses distributed to partners to be offset against other income
- Independent parties can be easily admitted as partners since trading stock and depreciable asset roll-over relief available

Partnership - Disadvantages

- The partners are jointly and severally liable (each partner is liable not only for his share of the partnership's debts but also for those of the other partners). At worst one partner can be liable for the entire partnerships debts
- No asset protection, your personal assets are at risk
- Income assessed at personal tax rate

Company - Advantages

- The company is a separate legal entity
- Asset protection. If the business fails, the personal assets of the shareholders are protected
- The company can employ you and provide salary packaging
- It is easy to admit or retire partners by simply buying or selling shares or alternately by issuing shares
- Tax rate at 30%. Profits can be retained and taxed at the corporate rate.

Company - Disadvantages

- Costly to establish and run
- A complex structure to administer, regulated by complex Corporations Act
- Complex rules regarding the carrying forward of losses
- Division 7A applies to loans to shareholders- assessable as unfranked dividends
- Income and capital cannot be distributed in a flexible manner
- Company not eligible for the 50% CGT discount
- Small Business CGT concessions more difficult to obtain
- Not easy to pass on tax free amounts to shareholders without them being taxed in the shareholders hands
- A change in share ownership can cause pre-CGT shares to be treated as post
- A change in asset ownership can cause pre-CGT assets to be subject to CGT on sale

Discretionary trusts - Advantages

- Ultimate asset protection with a corporate trustee. Your personal assets are protected from creditors of the trust
- The trustee has flexibility regarding the distribution of income and capital.
- Able to stream income to minimize tax
- The trust deed can be tailored to the needs of the principals and beneficiaries
- Less regulation than a company
- The trust can employ the principals and provide salary packages and employer sponsored superannuation
- The 50% CGT discount is available
- Control can be easily transferred by changing trustee and /or the appointer

Discretionary trusts - Disadvantages

- A complex structure
- Costly to establish and costly to run
- Cannot distribute loses to beneficiaries.
- Complex trust loss rules apply
- More difficult to satisfy conditions of the small business CGT concessions
- Amendments to trust deed could constitute a resettlement for CGT purposes
- ATO dislikes trust and they are forever targeted
- Beneficiaries do not have a transferable interest
- If a new partner is admitted to the business, it is not easy to give them a fixed interest
- 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 it receives a franked dividend