Assets and structure

Are your assets protected?

Everyone in business is carrying a level of risk as things can, and often do, go wrong. What you need to understand is that there are steps you can take to isolate and limit these risks as much possible. This is called Asset Protection.

There are a number of options and steps that can be taken to protect assets and ensure that they are not exposed to the risks of the business failing or other events.

To protect your assets, it's important that you operate deliberately in a way to remove asset ownership from "at risk" individuals. These are detailed in the **12 Golden Rules of Asset Protection** (refer attached).

Consideration of Structure

There are many different structures that could be considered. Refer to the table summarising the key attributes of three common business structures below.

	Company	Trust with Corporate Trustee	Trust with Individual Trustee
Who has control	Director(s)	Principal(s)	Principal(s)
Tax paid at	Company level	Beneficiary level	Beneficiary level
Tax rate	Corporate tax rate	Beneficiary marginal rates	Beneficiary Marginal Rates
Liable for debts	Director(s)	Trustee	Trustee
Risk management or protection	Directors not liable for debts of company unless insolvent trading or not proper conduct of role. Note that directors are personally liable for PAYG WH and SGC debts. Shareholders (who are not also directors) can limit their risk to loss of their investment in the company.	Corporate trustee can limit risk of day to day controllers. Legal and beneficial ownership are separated which allows the structure to be an effective vehicle for asset protection.	Trustee can be exposed to a high level of risk Legal and beneficial ownership are separated which allows the structure to be an effective vehicle for asset protection.

What is a Trust?

A structure governed by a deed or document known as the 'trust deed'.

The deed specifies:

- Who is the trustee – the trustee holds the legal responsibility for the trusts actions and property, makes the day to day decisions and determines which beneficiaries will be entitled to distribution of profits or assets of the trust
- Who are the beneficiaries – these are the people who are able to receive distributions and for whose benefit the trust is operating – there are usually one or two names beneficiaries (Primary) and then a range of people who fall under different classes or qualify due to their relationship with the primary beneficiary(s).
- Who is the principal or appointer – this is where the ultimate control of the trust rests as the principal has the power to replace the trustee.

Why use a Company?

- Provides a level of asset protection to business operators other than directors
- Simpler than trusts for the management of related party loans
- Preferred structure where there are multiple business owners of there is the possibility of additional shareholders
- The company will pay tax at the corporate rate. Once actually paid this tax provides the company with franking credits which it can use to pay out fully franked dividends to shareholders.

Other types of asset holding or trading structures

- Self-Managed Superannuation Fund
- Unit Trust
- Fixed Trust
- Hybrid Trust
- Bucket Company
- Partnership of Trusts
- Bare or Security Trust

Are you concerned about your asset protection?

First step is to ascertain the major assets that you have and would like to protect. Then we can conduct a review for you to work out the best options available to protect each asset.

Complete the Asset Register document provided and then contact our office for a review.

Should you have any questions or require any assistance, contact our **Business & Entrepreneurial Support** division today.

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