Comparison of Purchasing Entities

The following table considers:
1. The status of each structure in relation to income tax, capital gains tax and land tax;
2. The status of each structure in relation to asset protection;
3. Control of the structure and succession;
4. The flexibility to change as circumstances might dictate; and
5. The initial and ongoing costs associated with setting up and running the structure.

The table rates each structure against the other on a scale of 1 for the least desirable to 10 for the most desirable, depending on individual circumstances which should be discussed with your lawyer.

	Sole Trader	Partnership of Individual	Company	Unit Trust	Discretionary Trust	Super Fund
Income Tax	**Rating = 1** No income splitting. Must substantiate business deductions. Losses can be offset against profits. Tax at marginal rates of up to 46.5%	**Rating = 1** Limited income splitting. Losses not trapped in partnership, but distributed to partners and can be offset against other income of the partners. May be able to vary profits and losses payable to partners year to year. Tax a marginal rates of up to 46.5%	**Rating = 6** 30% flat tax payable on income of the company. Dividends taxed to shareholders. Franked dividends pass on tax paid. Restrictions on loans to shareholders. Losses trapped in company. Limited splitting through classes of shares	**Rating = 8** Profits taxed at unit holder level so depends on the structure of unit holders. Good for joint venture. Losses trapped in trust	**Rating = 8** Profits usually taxed at beneficiary level so depends on tax profile of the beneficiary. Maximum ability to split income. Biggest range of recipients. Losses trapped in trust	**Rating = 10** 15% tax or 0% where income derived from assets supporting pensions being paid by fund
Capital Gains Tax	**Rating = 6** 50% discount for certain assets or rights held for more than 12 months. Main residence exemption. Small business concessions.	**Rating = 6** Not part of the partnership income. Capital between partners in accordance with interest in partnership. 50% discount for certain assets or rights held for more than 12 months. Main residence exemption. Small business concessions.	**Rating = 3** No 50% discount. No main residence exemption. Tax free gains to company are taxed to shareholders without imputation as dividends if distributed. Small business concessions available but partly clawed back on distributions to shareholders. Losses trapped in company	**Rating = 8** Depends on unit trust holders. 50% discount applies to unit trust. No main residence exemption. Small business concessions. Losses trapped in trust	**Rating = 8** 50% discount for certain assets or rights held for more than 12 months. No main residence exemption. Maximum ability to split capital gain. Small business concessions. Losses trapped in trust	**Rating = 9** 33% discount for certain assets or rights held for more than 12 months, meaning 10% tax, or no tax where capital gains derived from assets supporting pensions being paid by fund. Limited gearing. Cannot own main residence or other personal use assets

Comparison of Purchasing Entities

	Sole Trader	Partnership of Individual	Company	Unit Trust	Discretionary Trust	Super Fund
Asset Protection	**Rating = 2** None except by insurance. Business and non-business assets exposed.	**Rating = 1** None except by insurance and may also be exposed to partners' debt due to joint and several liability of partners. Business and non-business assets exposed	**Rating = 8** Shareholders protected from company debts but value of their shares available to their creditors on bankruptcy. Directors potentially liable if trading whilst insolvent.	**Rating = 8** If trustee a company. Unit holders protected if trust deed correctly worded from business debts but value of their units available to creditors on bankruptcy. Deed usually limits trustee's indemnity against unit holders. Trustee personally liable	**Rating = 10** If trust is a company. Beneficiaries protected if trust deed correctly worded for business debts. Beneficiaries usually have no value in their interest in the trust for their creditors. Trustees personally liable	**Rating = 10** If trustee a company. Borrowings now available but lender has no recourse against fund only against particular asset. Beneficiary's account protected from creditors of beneficiary in most cases
Control and Succession	**Rating = 8** Total control but can't move income between family members. Can move capital in and out at will. Can change nature of business at will. Business ceased on death	**Rating = 5** Regulated by agreement. Can move capital in and out. Can change nature of business on agreement of partners. Partnership ceases on death of a partner	**Rating = 5** Bound by constitution. Must act in interest of shareholders. Directors make most decisions. Can have single director. Perpetual succession	**Rating = 5** Bound by trust deed. Usually arm's length parties involved so should consider pre-emptive rights. Life of trust usually limited to 80 years.	**Rating = 10** Bound by trust deed. Usually high level of control. Life of trust usually limited to 80 years	**Rating = 6** High level of control over investment decisions. Regulated by SIS Act. Must wind up on last surviving spouse OR beneficiary
Set up and running costs	**Rating =10** Least expensive. No reporting requirements except business name registration and taxation obligations. No compulsory super. No workers compensation. No payroll tax.	**Rating = 5** Agreements need care and may be costly. Notionally a separate tax entity requiring a tax return and ongoing accounts. No super, worker's compensation or payroll tax for partners' drawings	**Rating = 5** Shareholder agreements recommended. Ongoing compliance and accounts. Super and payroll tax and workers compensation apply to payments to principals	**Rating = 4** Incorporation of trustee, trust deed and unit holders agreement required. Ongoing compliance and accounts. Super and payroll tax and workers compensation apply to payments to principals	**Rating = 4** Incorporation of trustee and trust deed required. Ongoing accounts. Super and payroll tax and workers compensation apply to payments to principals	**Rating = 4** Trust deed required. Highly regulated. Ongoing accounts and yearly audit required
Flexibility	**Rating = 3** All income to principal. No opportunity to split income	**Rating = 4** Limited as agreement with other partners is required.	**Rating = 3** Anything in the interest of shareholders	**Rating = 5** Similar to company but unit holders share in gross income rather than franked income	**Rating = 10** Maximum discretionary powers	**Rating = 4** Little as highly regulated
Land Tax	**Rating = 10** Threshold available.	**Rating = 10** Threshold available	**Rating = 10** Threshold available but related companies may be assessed together	**Rating = 7** Threshold available but related trusts are taxed together	**Rating = 5** Threshold available and then surcharge rates. Related trusts as taxed together	**Rating = 10** Threshold available to complying fund

TBA LAW

145 High Street
Nagambie VIC 3608
(03) 5794 2334
admin@tbalaw.com.au