

The Great Structuring Showdown

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Acis.

Today's Speaker



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Agenda



Structures:

- Trusts (discretionary, unit, lineal descendants, hybrid)
- Companies (private, public, limited by shares, limited by guarantee)
- Partnerships
- Individuals

Agenda



Considerations:

- Legal structure
- Key roles
- Asset protection
- Tax flexibility
- Succession planning
- Longevity
- Specific considerations
- Recent trends

Trusts



- Fiduciary relationship (not a legal entity)
- Trust Property + Trustee + Beneficiaries

Discretionary Trust

- Beneficiaries have no fixed entitlement or interest in trust assets
- Trustee's discretion
- **Key roles:**
 - *Settlor*
 - Three trust certainties
 - Excluded
 - *Trustee*
 - Legal owner of trust assets
 - Individual vs Corporate Trustee
 - Different trustee for each trust
- *Appointor*
 - Remove and appoint trustee – ultimate control
- *Beneficiaries*
 - No right or entitlement to trust assets until Trustee determines to distribute
 - Minor beneficiaries
 - Age pension
- *Default Beneficiaries*
 - Deemed to receive income where no valid distribution made
 - Not one-size-fits-all

Discretionary Trust

- **Tax planning & Discretionary Trusts**
 - Beneficiaries presently entitled to trust income
 - Trustee at highest marginal rate – can't retain profits in trust
 - Broad class of potential beneficiaries = tax planning flexibility
 - s. 100A
 - Capital gains tax 50% discount
 - Land tax aggregation



Discretionary Trust

- Asset Protection & Discretionary Trusts
 - Personal assets separated from trust assets
 - Corporate trustee
 - UPEs
- Succession Planning & Discretionary Trusts
- Additional Considerations
 - Trust assets are not individual assets
 - Appointor
 - Alternative Appointor
 - Shareholding of Corporate trustee

Trani v Trani [2018] VSC 274

- Additional Considerations
 - Longevity – Rule against Perpetuities – 80 years
 - Not suitable for unrelated parties
 - Privacy
 - Trust Deed

Benaroon Pty Ltd v Larmar & Ors
[2020] QCA 62

Benaroon Pty Ltd v Larmar [2018]
QSC 274

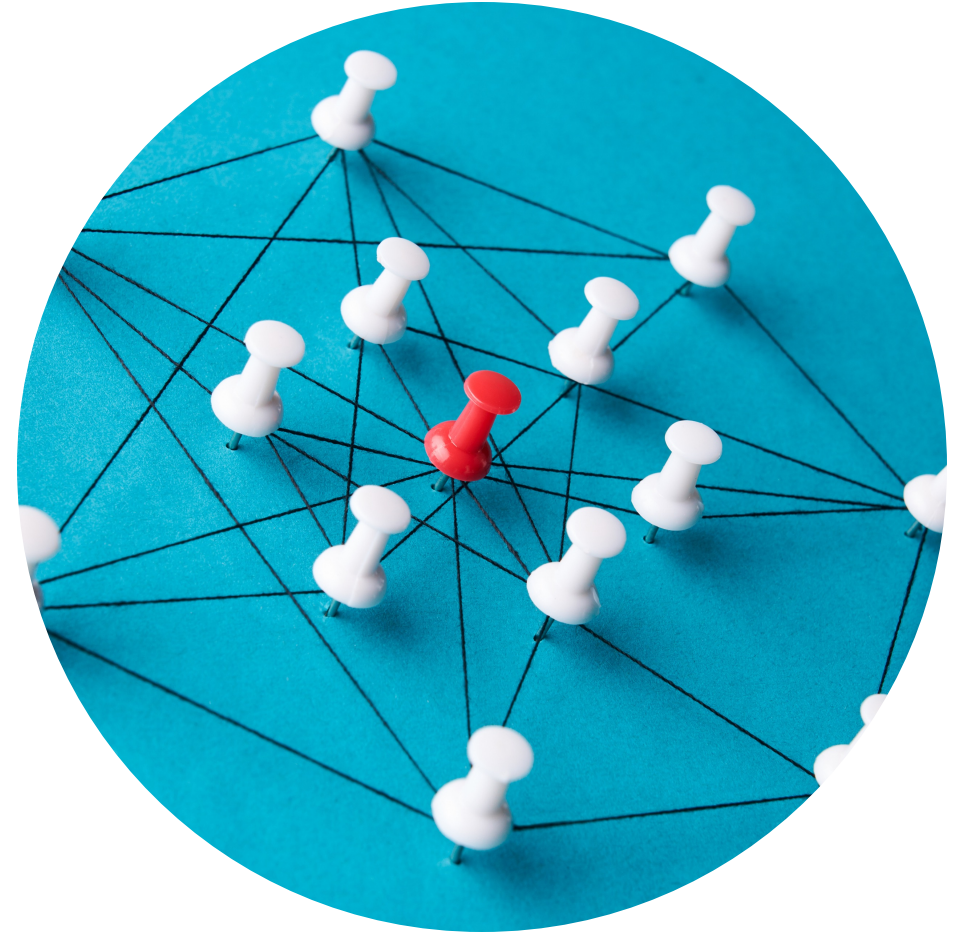
Lineal Descendants Discretionary Trust

- Beneficiaries – narrow class
- Income & Capital protected
 - Primary Beneficiary & Lineal Descendants
- Capital protected only
 - Income: Broad class of potential beneficiaries
 - Capital: Primary Beneficiary & Lineal Descendants



Unit Trust

- Specific entitlements
- Key Roles
 - Unit holders
 - Fixed - fixed entitlement to income and capital in proportion to unit holdings
 - Non Fixed - different classes with different rights
 - Settlor or no Settlor
- Tax planning & Unit Trusts



Companies

- **Key Roles**

- Directors
- Shareholders
 - Limited liability
 - Rights
 - Small business CGT concessions

- **Tax Planning**

- Company tax rate
- No access to CGT 50% discount
- Discretionary trust shareholder
- Retain earnings indefinitely



Companies

- **Asset protection**

- Personal assets separated from company assets
- Limited liability of shareholders
- Directors' duties

- **Succession**

- Shareholders appoint directors
- Shares form part of estate
- Directorship ceases on death
- Alternate Director and Successor Directors



Companies

- **Additional Considerations**

- Longevity – exists indefinitely until deregistered by directors/shareholders or ASIC
- Special purpose companies
 - BCorp
 - Pharmacy
- Suitable for non-related parties
- Loaning money to new companies
- Charitable companies – limited by guarantee

Trends & Changing Structures

- Companies as trusts
- Discretionary trust > Lineal Descendants trust
- Discretionary trust > Unit trust
- Non fixed unit trust > fixed unit trust
- Trust > Company > Holding company



Questions?

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Upcoming Webinar



The Latest on Div 7A, Corporate Beneficiaries & UPEs

Unpack the technical and practical issues arising from TD 2022/11 with Brian Richards, a highly regarded and sought-after tax advisor.

Join Brian as he outlines:

- when an unpaid present entitlement or amount held on sub-trust becomes the provision of ‘financial accommodation’;
- the ATO’s approach to dealing with unpaid distributions owed to corporate beneficiaries;
- the process for aligning the treatment of unpaid distributions to a company with Division 7A;
- how to deal with the treatment of a UPE where it includes the creation of a sub-trust; and
- managing cash flow implications of distributing trust income to a company.

Thank You.

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