

# Protecting Your Success



**Listen | Think | Solve**

# Structuring

## Asset Structuring

Many of us set out to build a business by laying the foundations for sustained success. We research the market, analyse the competition and build our strategy to best suit the resources at our disposal.

We concentrate all our efforts towards achieving success, and sometimes forget to protect what we have built. When running a business or working as a professional practitioner, assets can be exposed in a number of ways.

If the business suffers a downturn (often through no fault of the owners) it can be distressing to suddenly face a drop in cash flow. It can be more confronting however, facing the creditors.

*"It takes 20 years  
to build a  
reputation and five  
minutes to ruin it.  
If you think about  
that, you'll do  
things differently."  
Warren Buffett*

The other major concern many people face is the threat of litigation. Whether you are a medical practitioner, a financial adviser or a manufacturer, you face the risk of being sued for negligence. And professional indemnity and product liability insurance only extends so far.

In a worst case scenario, you could suddenly find yourself facing a liquidator or bankruptcy trustee who wants to put the family home on the market.

For these reasons, asset protection strategies become an important part of the business plan. Minimising risk via the use of sophisticated structures designed to reduce the exposure of hard earn assets can provide a peace of mind.

## Basic Principles

Every business is different. Every business owner is different. However they all share the need to separate their assets from business risk of litigation and bankruptcy. Business risk needs to be separated from all assets to ensure that creditors in the event something does go wrong, cannot make claim.

*"Failing to plan is  
planning to fail"  
Alan Lakein*

By structuring the business and asset ownership in a manner to ensure the distinct separation of the two will be the basis of all structuring strategies.

Some basic examples include:

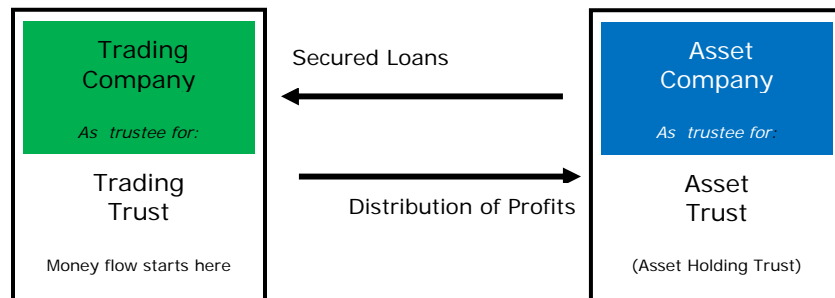
- Ensuring exposed business people should not own assets directly
- Protecting past profits from future creditors
- Personal guarantees
- Using sole directors
- Protecting intellectual property and goodwill

## Minimising Risk

The business in its everyday activities always exposes itself to the possibility of creditors and predators. There can be many ways in which an individual can minimize their exposure to this risk. The most effective forms of asset protection are achieved by having a number of layers of protection.

For example:

- *First layer:* have adequate insurance cover
- *Second layer:* own little or no assets in the name of the person exposed to the business risk
- *Third layer:* the operating entity should resist from holding any assets and retaining any profits. Assets and profits should be quarantined in a separate vehicle and loan/leased back to the business is required (refer to "The Money Flow" diagram below).



- ① If working capital is required it is loaned to the business via a secured loan
- ② Assets are protected from business creditors (profits ultimately remain in the asset trust)

## Tax Structuring

In building an appropriate strategy one must also take into consideration the tax consequences. The impact of income tax on profits and sale proceeds of assets can be minimised by planning ahead.

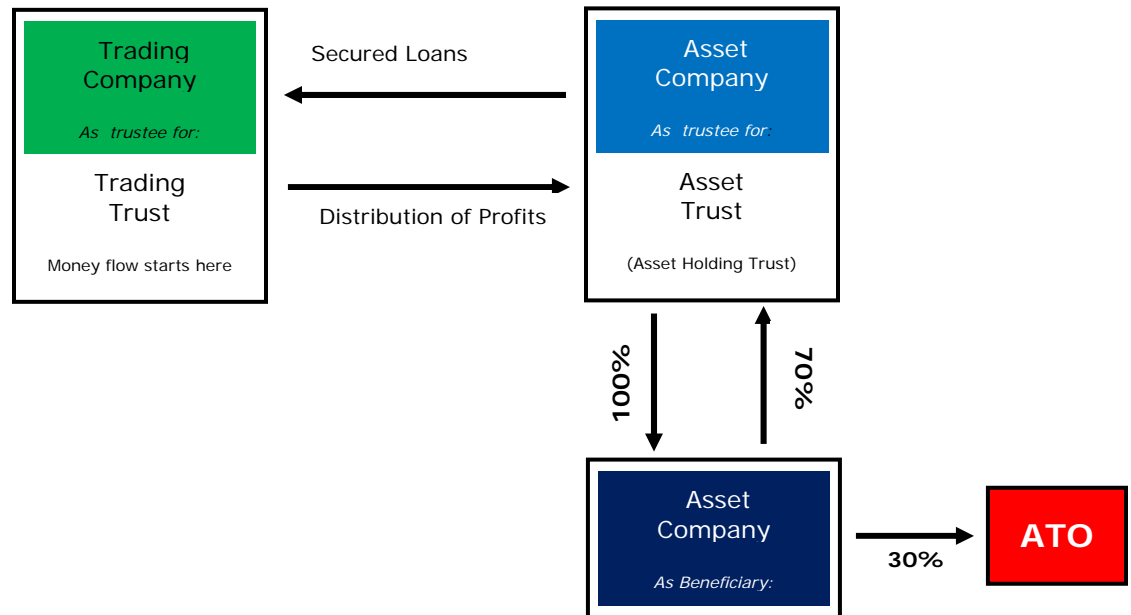
*"In this world  
nothing is certain  
but death and  
taxes."  
Benjamin Franklin*

Income tax is levied upon three sources of income for individual taxpayers: personal income, business income and capital gains. Income received by individuals is taxed at progressive rates (up to 45%), while income derived by companies is taxed at a flat rate of 30% and generally, capital gains are only subject to tax at the time the gain is realised.

Structuring profits/income to flow through certain structures can influence the outcome to the level of tax payable. With the highest marginal tax rate at 45% for individual's, tax can be minimised via the use of income splitting and structures such as:

- Company;
- Trust;
- Super Funds and
- other variation of the above

The diagram below illustrates how an effective structure can limit tax payable to 30% (company tax rate):



As demonstrated in the diagram above the use of layers is also prevalent when constructing the most suitable and tax efficient structure.

## Avoidance v Evasion

*"The difference between tax avoidance and tax evasion is the thickness of a prison wall."*  
*Denis Healey*

Understand the difference between avoidance and evasion can be vital. Tax **avoidance** is the legal utilization of the tax regime to one's own advantage, to reduce the amount of tax that is payable by means that are within the law. By contrast, tax **evasion** is the general term for efforts to not pay taxes by illegal means.

It is also important not to evade tax by intentionally devising a strategy solely for the purpose of avoiding tax, therefore being caught under the ATO's Anti-avoidance rules.

## Who can Help?

*"We pride ourselves on adding value to your business."*  
*Sonny De Silva*

All of the discussions above are important issues for any business operator or professional practitioner to consider when build their operational and holding structure.

For more information or an in-depth discussion on asset protection strategies or any of the points discussed above please call De Silva Accounting on (03) 9706 0122.

With our depth of experience and focus on providing positive outcomes for clients, we would be pleased to help.