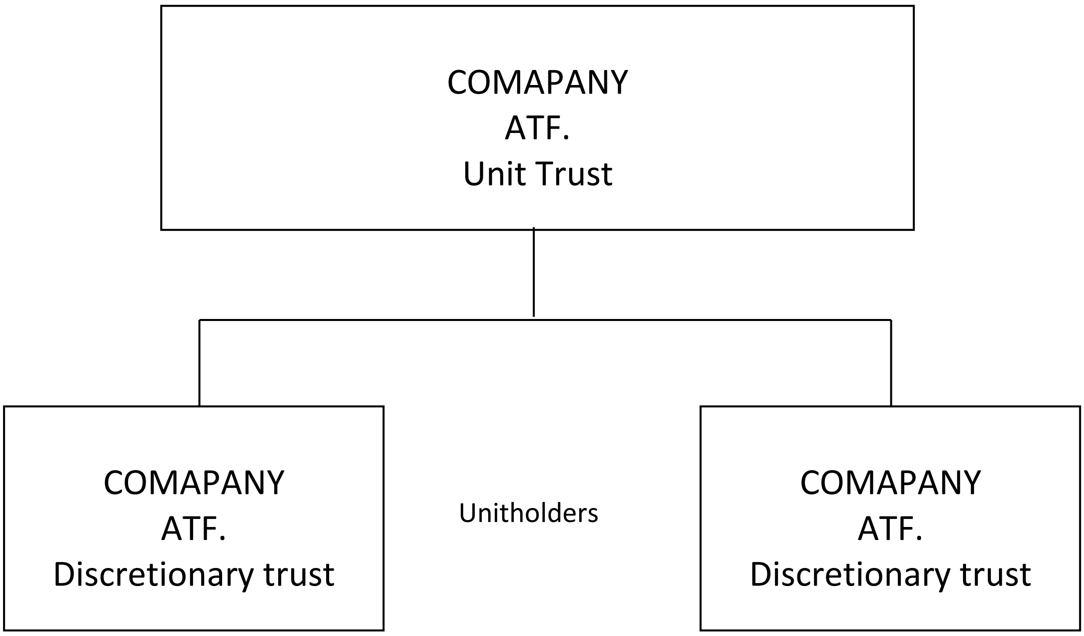
RESTRUCTURING- PART 4: THE THREE TRUST STRUCTURE ALTERNATIVES

21 June 2021

Unit Trust:



1. Formerly, the most common form of structure for business' or property holdings between independent parties.
2. For property holdings, needed to capitalise trusts to get full benefit of units for CGT. Corporate protection through company trustee. Required to carefully check Trust Deed to ensure that it has a limitation on trustee's right to indemnity from unitholders which exists at common law.
3. Fell out of favour for holding of business' due to claw back of the pre 1999 goodwill relief and now the 50% small business CGT relief, frozen indexation, building allowance and difference between tax and accounting income, triggered, at the latest, on winding up the unit trust (CGT event E4).

4. However, small business CGT relief applicable to a sale of business by the unit trust, which can be passed through to the unitholders, without its clawed back under CGT event E4. The claw back may be partly alleviated as long as unit trusts are wound up with 12 months of

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sale of business (as the units will also be treated as active assets for that period – see ATO ID 2010/90 which applied to shares, but the logic there is equally applicable to units). However, it may not be possible to wind up the trust in that time frame due to earn-outs or warranties.

5. Still has the ability to be able to introduce new capital without there then being any disposal under the CGT provisions. This may be an advantage over other structures in some instances.
6. “Significant Individual” issue as detailed in discussion above on “Small Business Relief”, however, if the unitholders sell their units and claim the small business 50% CGT relief, the more unitholders there are, the less likely it will be that the units are treated as active assets, as small business CGT stakeholders must have at least a 90% small business participation interest in the unit trust: s152-10(2)(b).