



Smarter Settlements

YOUR BUSINESS NAVIGATOR

7 Red Flags
5 Common Mistakes in
Orders

Murray Howlett

Director, Taxation Services
Pilot Chartered Accountants

Brian McDonald

Director, Forensics and Business Advisory
Pilot Chartered Accountants



7 Red Flags



YOUR BUSINESS NAVIGATOR

Client Structure or Use of Entities
≠
ATO's view of appropriate structure

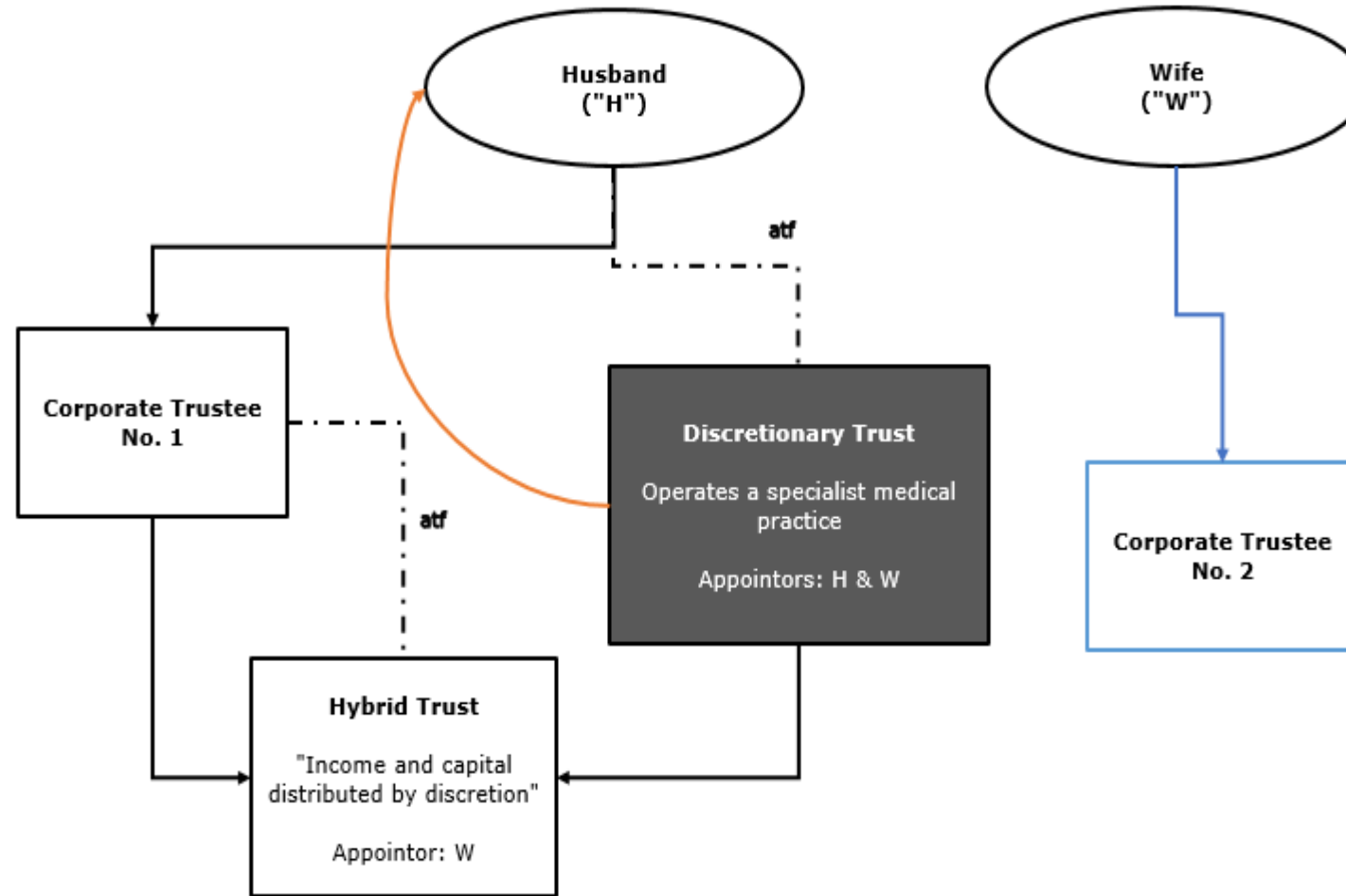
OR

... who keeps the risk?

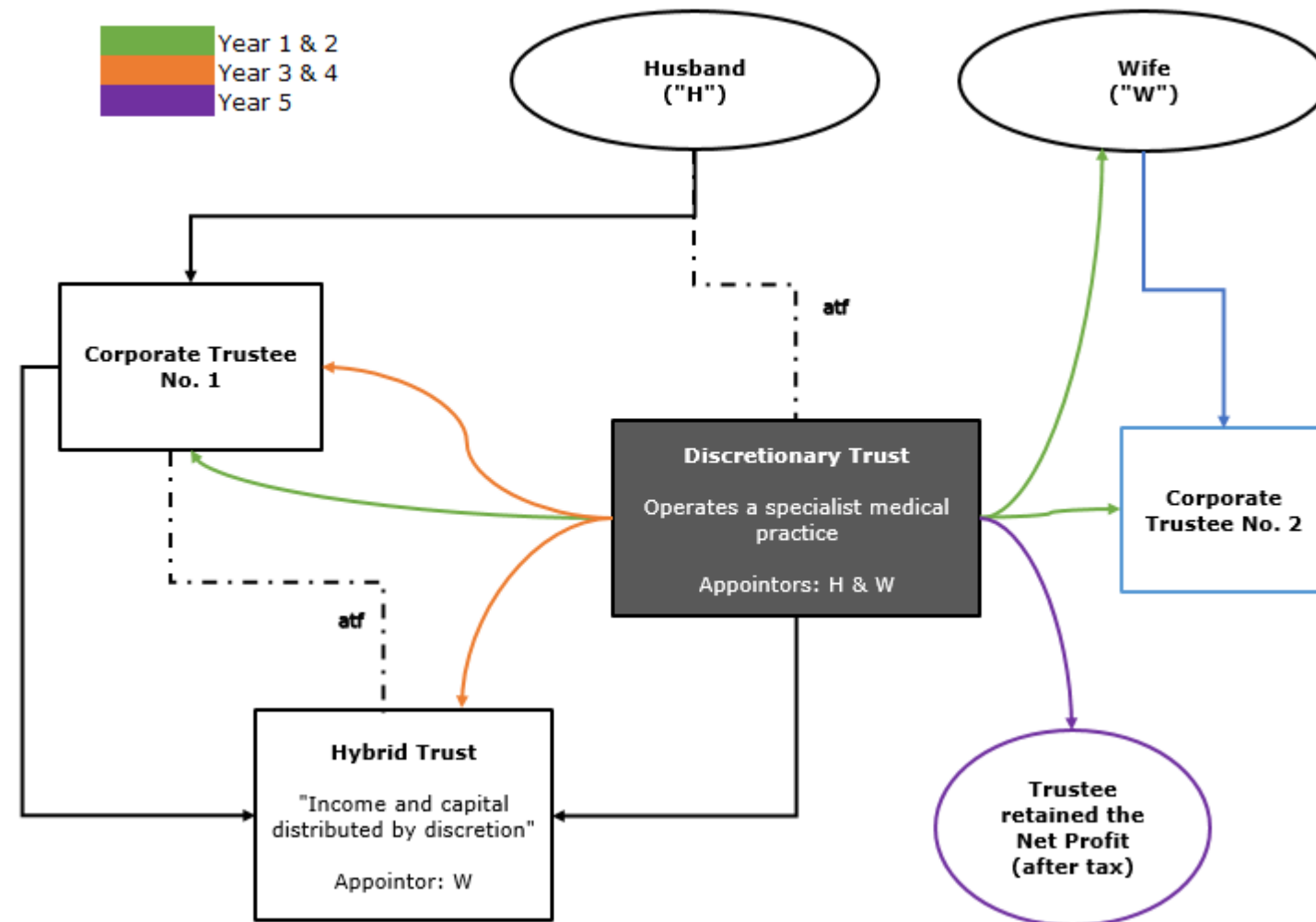
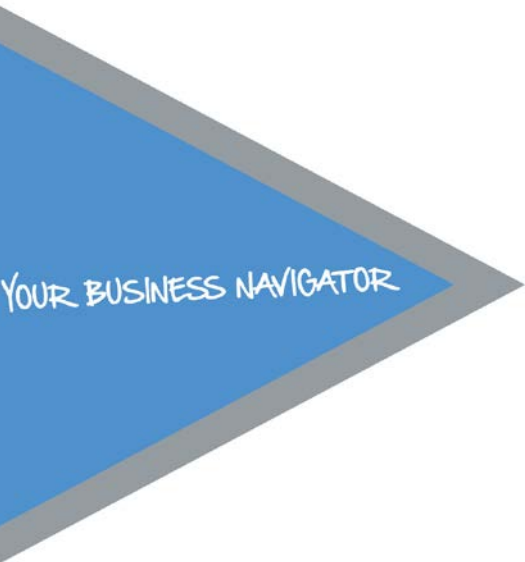
✓ Where should the distributions go?



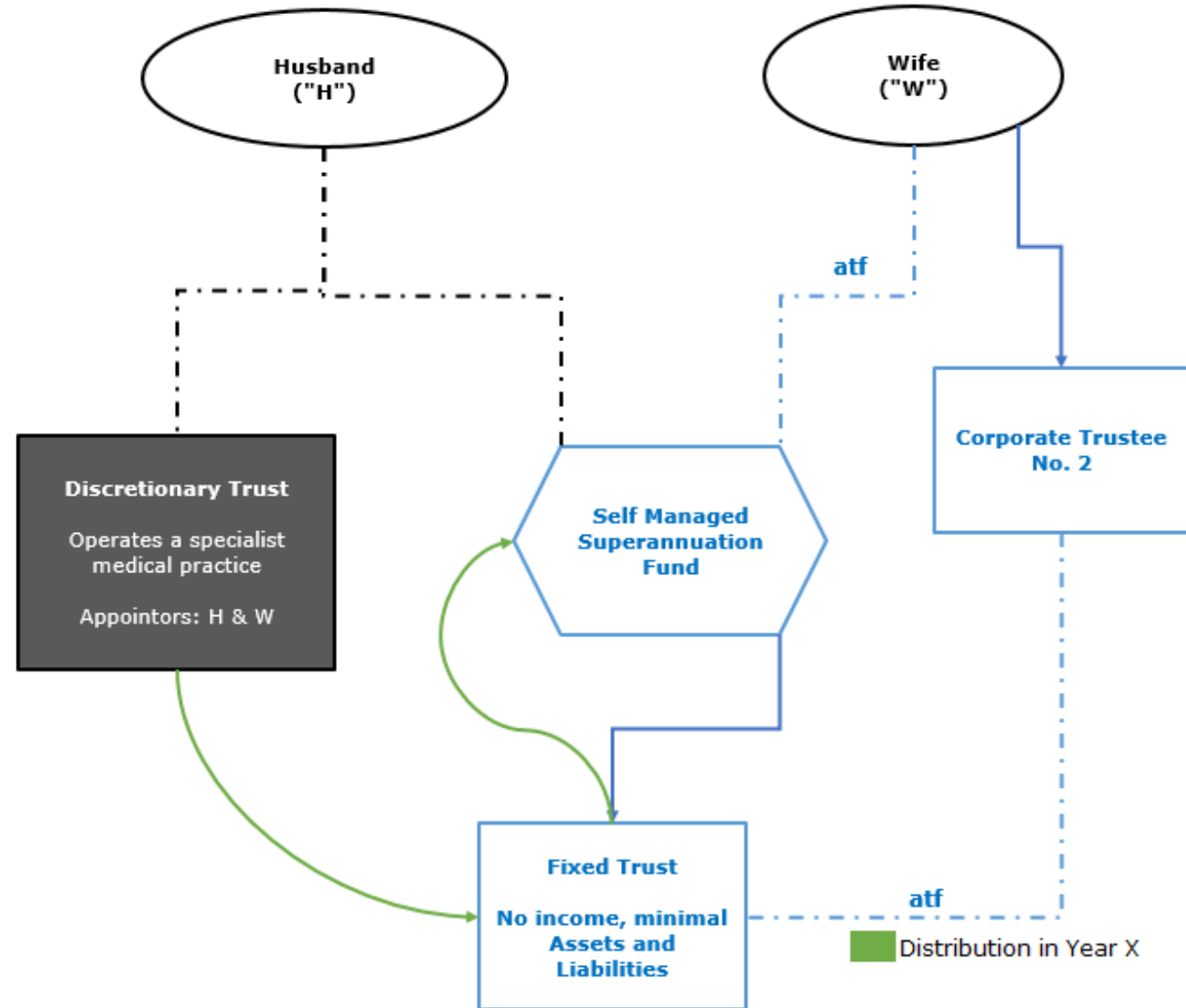
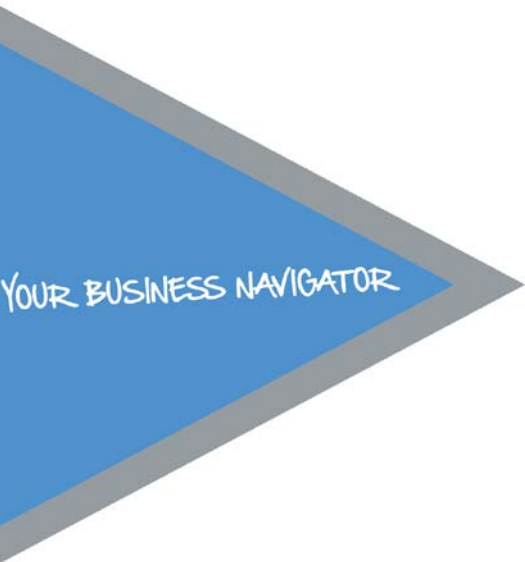
YOUR BUSINESS NAVIGATOR



X Where did the distributions go?



Non-complying Super Funds



2



Division 7A

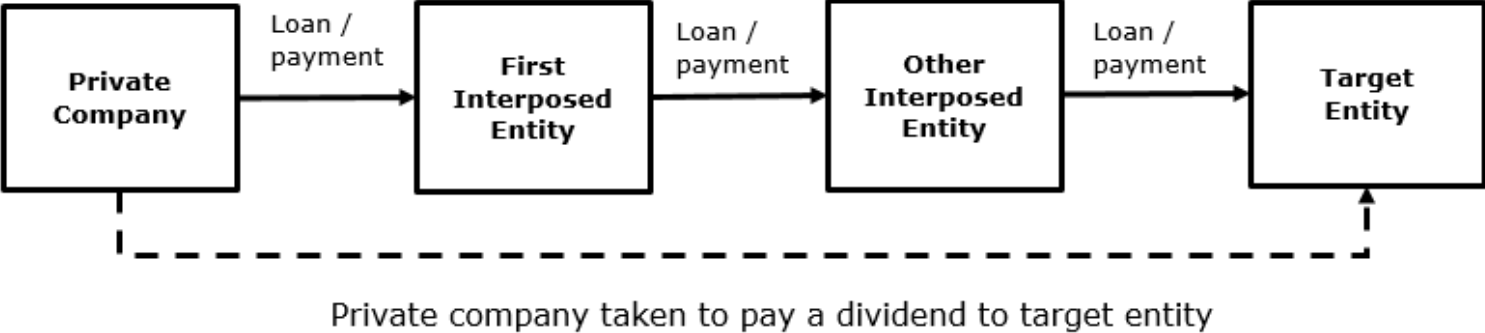
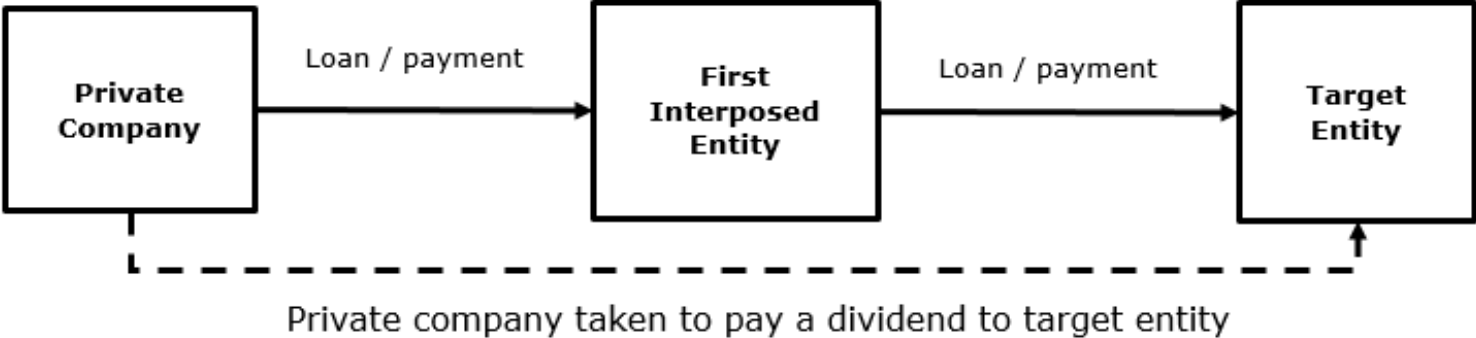
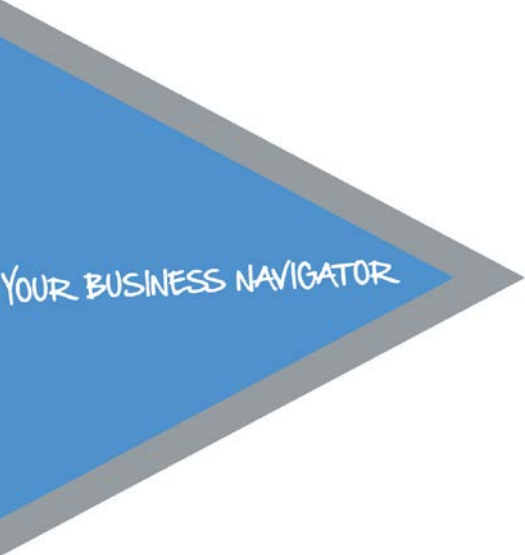


YOUR BUSINESS NAVIGATOR

- Profitable company
- Monies lent out of Company to take advantage of the differential in Company vs Individual tax rates

(ie 27.5-30% versus 47%)

Division 7A



3



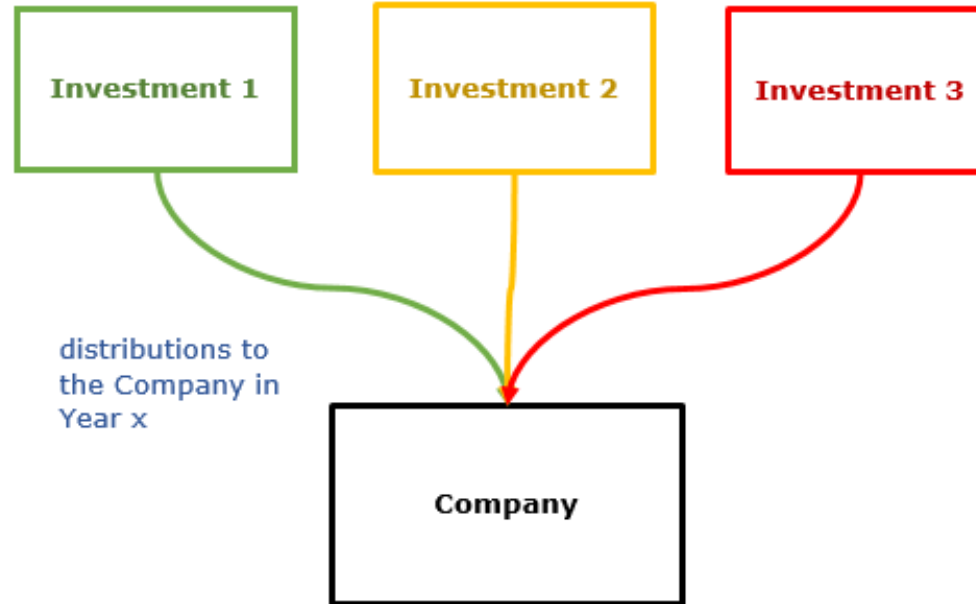
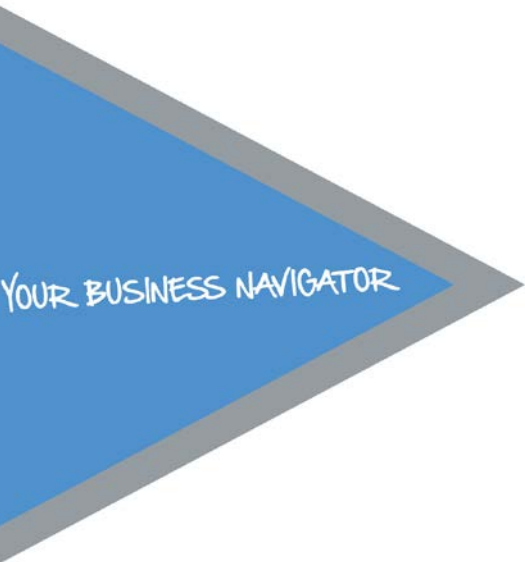
Fundamental Misalignment of Pool Value



YOUR BUSINESS NAVIGATOR

- Tangible assets
- Debt
- Income flows that suggest intangible value

Fundamental Misalignment of Pool Value



Balance Sheet	
Assets	
Cash	10
Plant & Equipment	100
Investment 1	50
Investment 3	70
Liabilities	
Loan Bank	-100
Net Assets	<u>130</u>

No recognition of Investment No.2 in Balance Sheet

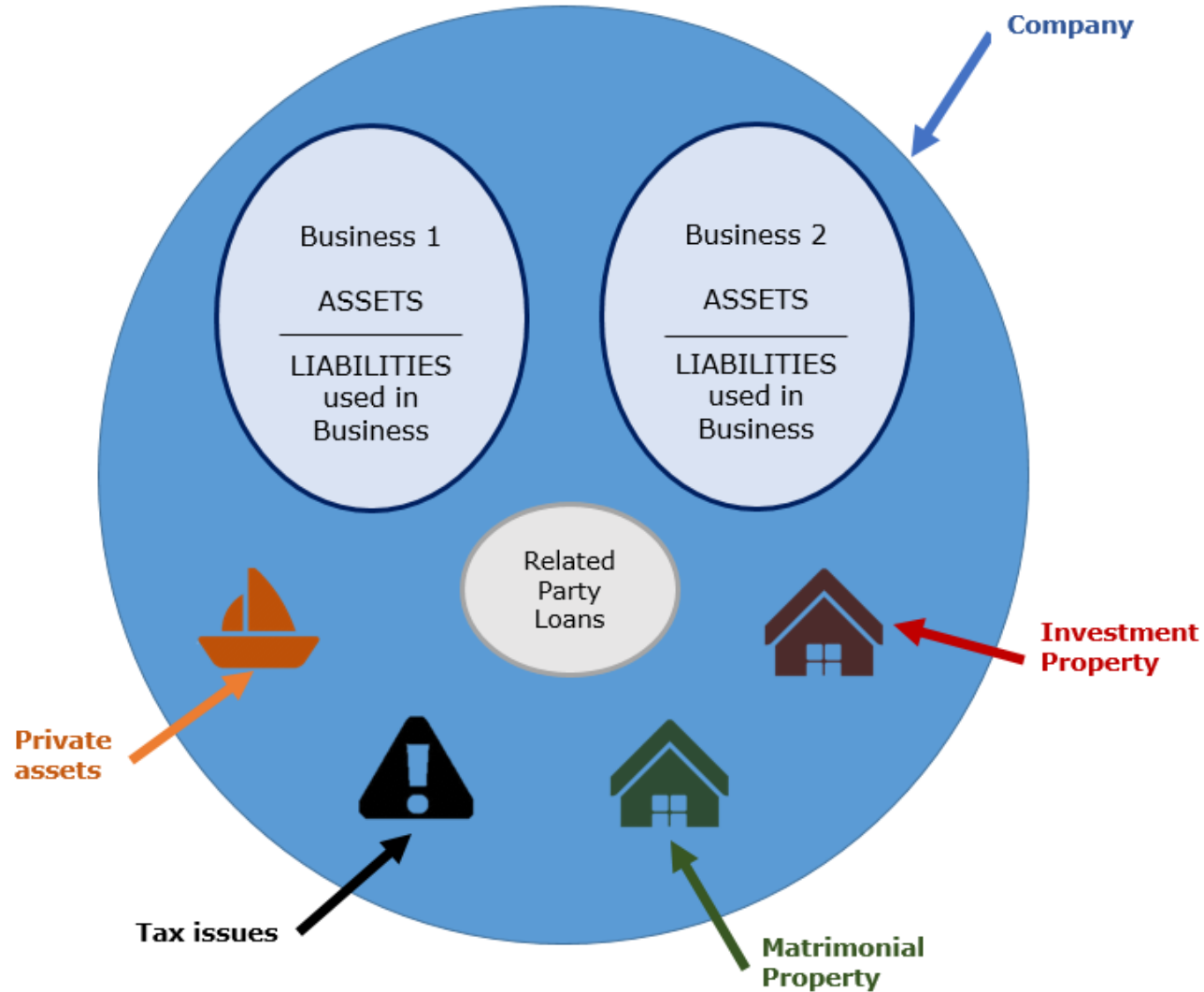
- tax deferred distributions wiping out cost base
- omission by accident?

4 

All of the Assets are
in one entity

pilot 

YOUR BUSINESS NAVIGATOR



5



Understanding Structures

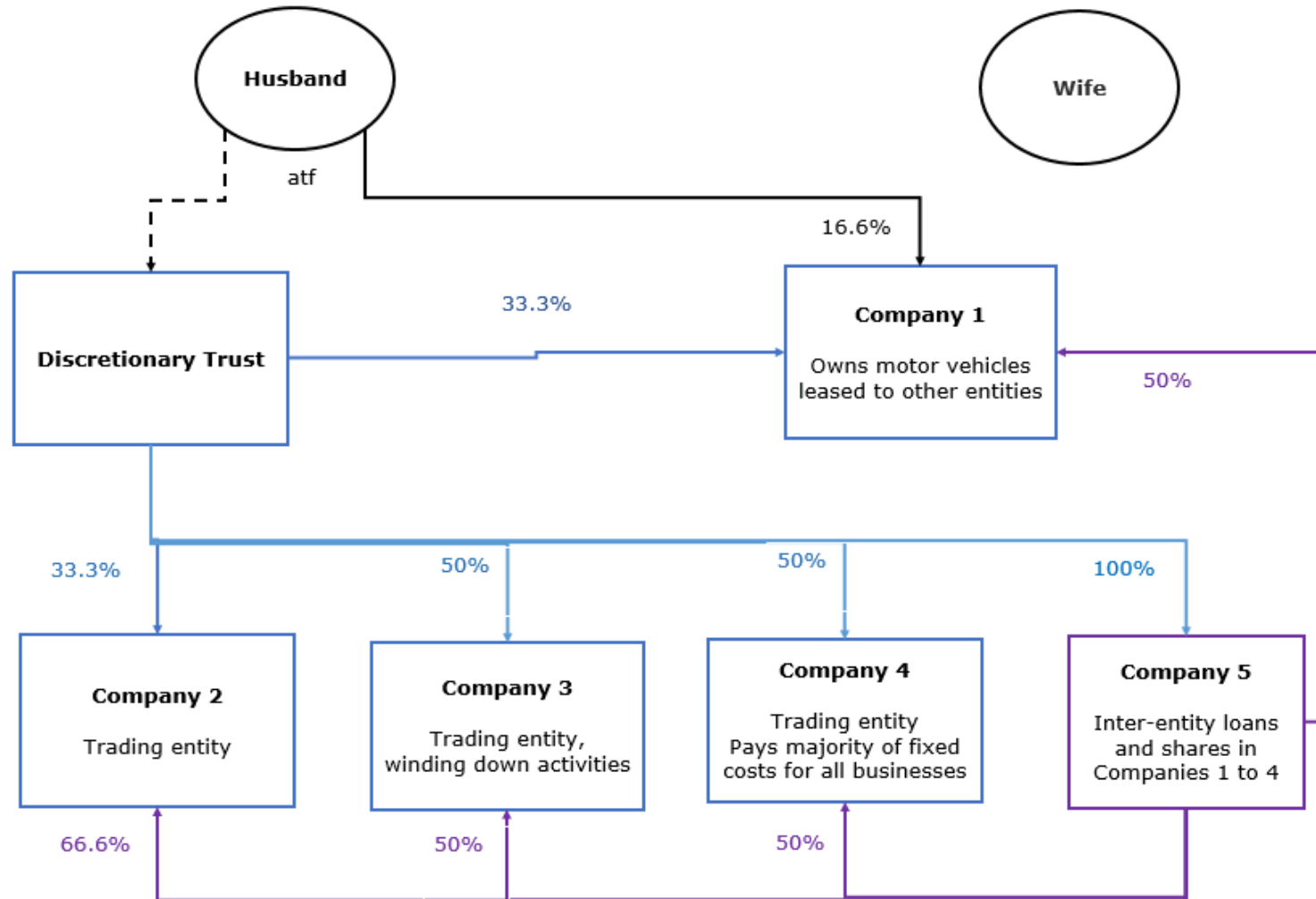
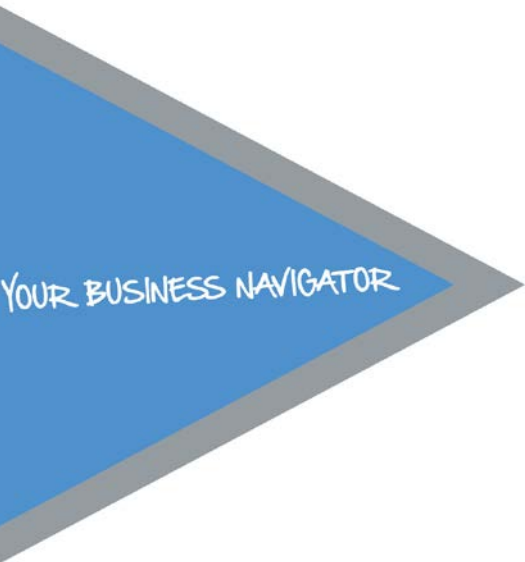


YOUR BUSINESS NAVIGATOR

Is there a discernible logic to what you can see?

Assuming there is a rationale for the structure can highlight gaps in the information

Understanding Structures



6



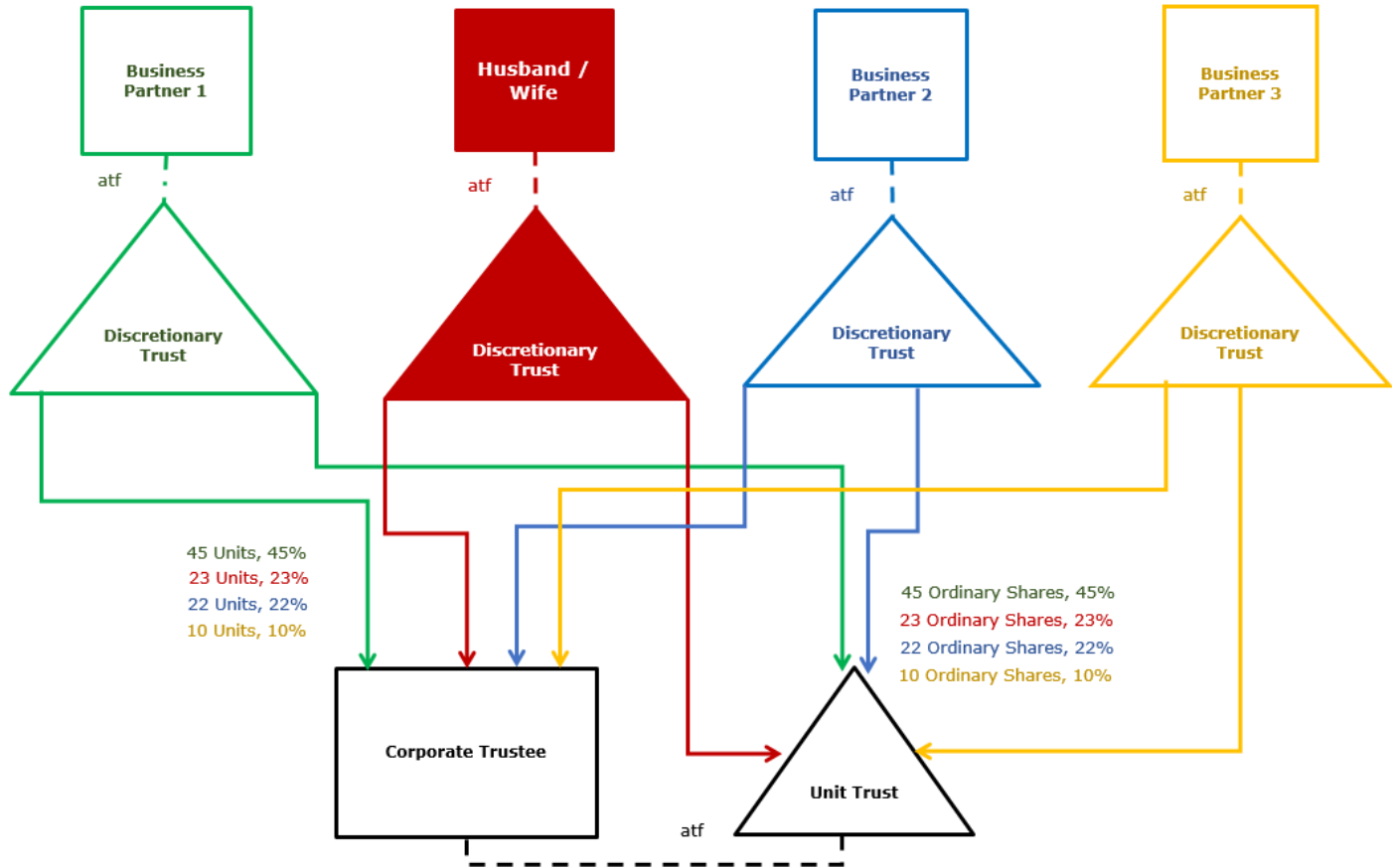
Third Party Interests



YOUR BUSINESS NAVIGATOR

Shareholders or Unitholders, other than the Parties

In particular, non-family members



Third Party Interests



In these circumstances, ask for copies of Shareholders or Unitholders Agreements.

May prescribe a method for calculating:

- The purchase price of shares or units
- The fair value of the business or entity

May set out whether a discount for minority interest or a control premium ought to be included

Defined method for Purchase Price

The Purchase Price must be:

- (1) the price for the Grantor's Shares agreed between the Grantor and the Grantee; as per the agreed model (0.77 x 1 year average of the prior 2 years gross revenue), less the Shareholders gross revenue + 20% of the gross revenue of the resigning Shareholder for 12 months following resignation.

Agreement between owners regarding premium for control

The Independent Valuer must determine the fair market value of the Shares by valuing the Company as a whole on a going concern basis as at the date of the Grantee's notice under clause 20.3 The fair market value of each Share will be the proportionate amount of the value of the Company without regard to any premium for control.

7 International Matters



YOUR BUSINESS NAVIGATOR

Overseas addresses



Overseas bank accounts

Overseas investments or entities

Foreign currency

Clients who are frequently changing countries

Double Taxation



YOUR BUSINESS NAVIGATOR

(AUSTRALIAN COMPANY & FOREIGN SUBSIDIARY)	
Taxable Income	1,000
Income Tax in Australia	-
Income Tax in Foreign Country	(280)
Net Profit	720
Distribution To Australia	720
Australian Corporate Income Tax	-
Distribution To Individual	720
Australian Individual Income Tax	(338)
Foreign Income Tax Offset	-
Net Receipt	382
Global Income Tax	618
Tax Paid (%)	61.84%



Five Common Mistakes in Orders

Five Common Mistakes in Orders



Transferring assets, including cash, from entities and triggering tax liabilities

Five Common Mistakes in Orders



Risky Strategies

Risky Moves



YOUR BUSINESS NAVIGATOR

Self Managed Super Funds

Dividend Access Shares

Franking Credits

Limited Partnerships



Five Common Mistakes in Orders



Debt Forgiveness

Debt Forgiveness



YOUR BUSINESS NAVIGATOR

245-40 Forgivenesses to which operative rules do not apply

Subdivisions 245-C to 245-G do not apply to a * forgiveness of a debt if:

(a) the debt is waived and the waiver constitutes a * fringe benefit ;
or

Note: The waiver by an employer of a debt owed by an employee is usually a fringe benefit: see section 14 of the Fringe Benefits Tax Assessment Act 1986.

(b) the amount of the debt has been, or will be, included in the assessable income of the debtor in any income year; or

(c) the forgiveness is effected under an Act relating to bankruptcy; or

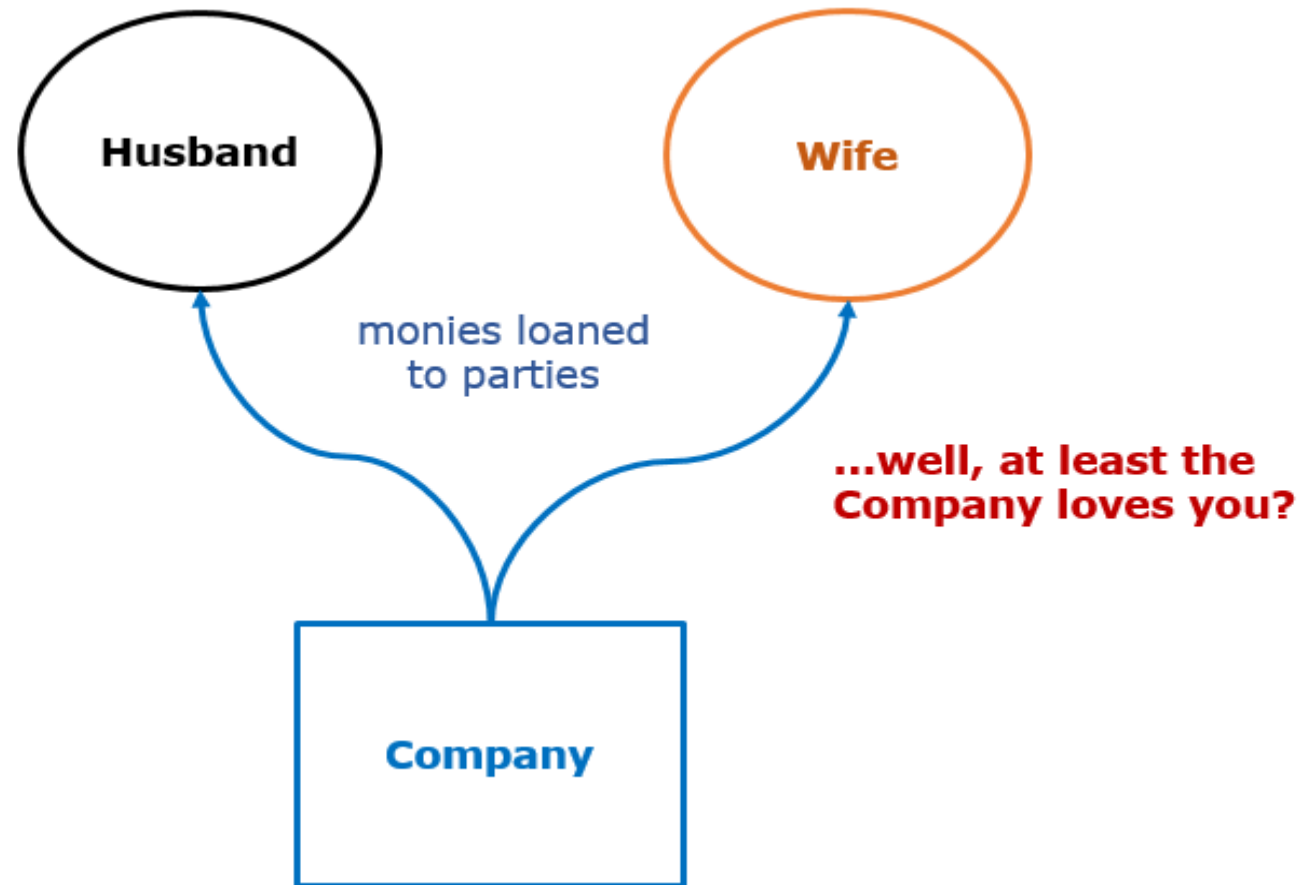
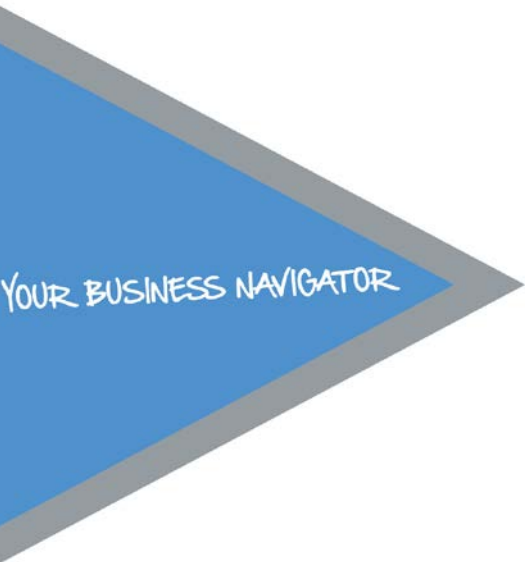
(d) the forgiveness is effected by will; or

(e) the forgiveness is for reasons of natural love and affection; or

(f) the debt is a * tax-related liability or a civil penalty under Division 290 in Schedule 1 to the Taxation Administration Act 1953 (about penalties for promoters and implementers of tax avoidance schemes).

Note: If the forgiveness of your debt involved an arrangement which was entered into before 28 June 1996, see section 245-10 of the Income Tax (Transitional Provisions) Act 1997. [S 245-40 insert Act 79 of 2010, s 3 and Sch 2 item 2, with effect from 1 Jul 2010]

Can a company forgive a debt for reasons of natural love and affection?



Five Common Mistakes in Orders



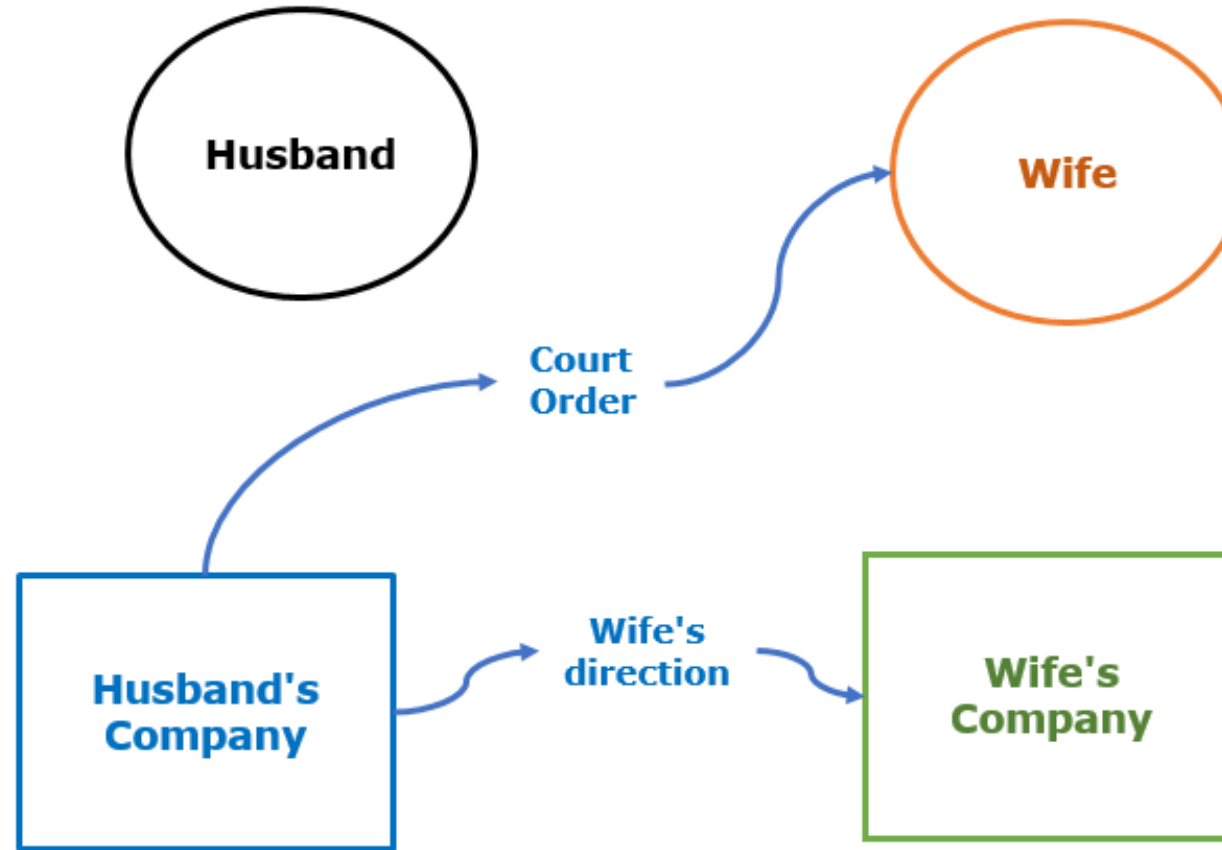
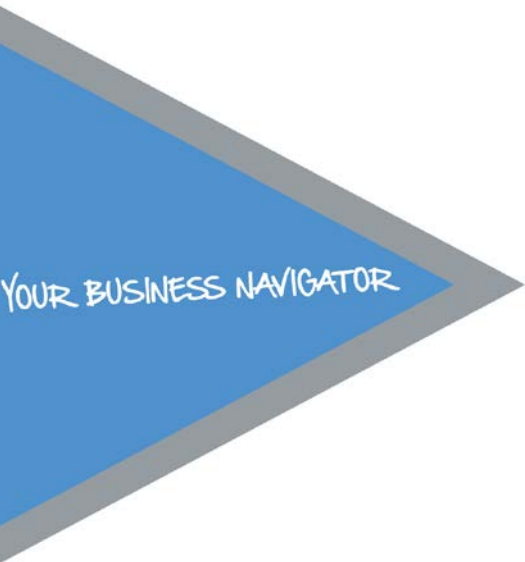
Not valuing deferred benefits
taxes/future tax appropriately

Five Common Mistakes in Orders

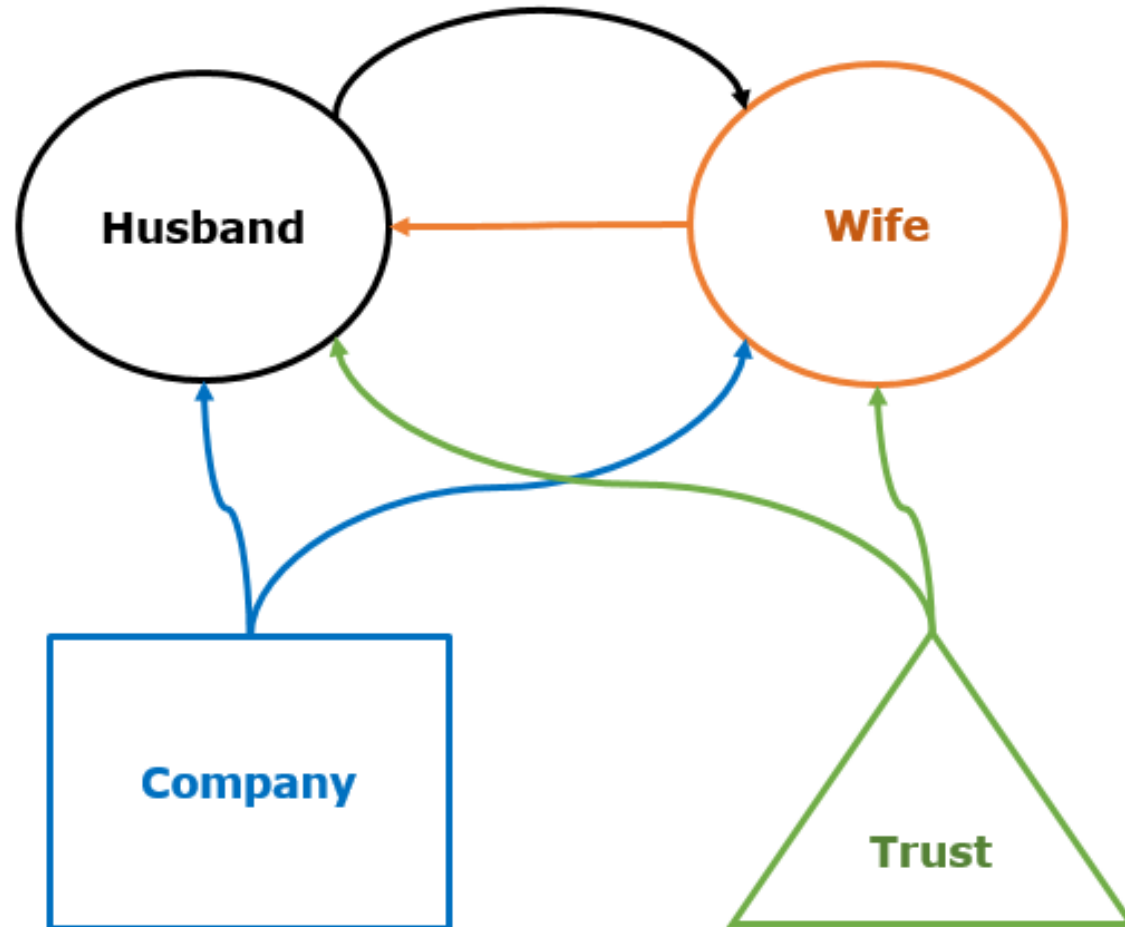
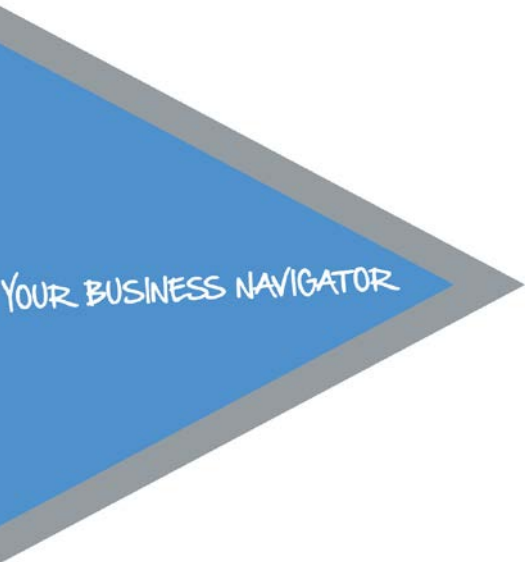


Not considering the income of the Parties going forward and structuring payments over more than one year

A quick word on Sandini



... and the winner is?



CGT Matrimonial Rollover



YOUR BUSINESS NAVIGATOR

Automatic if in orders or arrangements

Just because you can use it,
should you?

Don't Forget to consider
Transfer Duty



Contact Details:

Pilot Chartered Accountants

(07) 3023 1300

mhowlett@pilotpartners.com.au

bmcdonald@pilotpartners.com.au