IRVING LAW

BUSINESS STRUCTURES IN AUSTRALIA – COMPARATIVE TABLE

Type	Legal features	Taxation features	Comments
Sole trader	Individual person, unlimited liability except where controlled by contract (indemnities and releases).	Individual taxpayer has a tax-free income threshold, and taxation percentage increases as the person's income increases through the different tax brackets. All income and expenses are treated as personal business income and expenses.	Advantages: easy to start and end, lower level of regulatory compliance (business name plus any permits required for specific industry). Disadvantages: **unlimited liability**, may pay unnecessarily high income tax if income rises above a certain level.
Partnership	Made up of more than one individual. Usually involves a written partnership agreement.	Partnership must lodge a separate taxation return, and each partner launches an individual tax return. The partnership doesn't pay tax on the income earned, but the individual partners pay tax.	Advantages: can be formed and dissolved at will, can cater for succession and expansion. Disadvantages: partnership has unlimited liability, and each partner has **joint and several liability**.
Company	The most common type of company used by businesses in Australia is the PTY LTD company. A company is a **separate legal e**ntity from its owners, the shareholders or "**members**", and also from its managers, the **directors**. A member can be another company, in other words a company can own shares in a company. A member's liability is limited to the value of its shares.	The company income tax rate is 30%, although if the income is from "personal services" provided by a principal, it might be taxed at the rate that applies to the person. Companies are often liable to pay capital gains tax and fringe benefits tax. After the company's income is distributed to members via a dividend, it is taxed again in the hands of each member, but the member may be able to claim a credit for tax already paid by company, called a "franking credit". If a company is a "land rich" entity, transfers of	Companies have limited liability. Directors do not have liability unless they give personal guarantees or are in breach of their directors' duties. Members do not have any liability unless the company was created for fraudulent purposes or is regarded as a sham. There is a compliance burden. Companies are regulated by ASIC under the Corporations Act, and the directors must make reports to ASIC and can be audited by ASIC. Company members meet at least once per year in a General Meeting, and appoint the directors. The company must have an internal audit

		shares in the company attract stamp duty.	every year, and appoint a qualified auditor for this purpose. If the company qualifies as a "small" company, it can opt for a simplified audit procedure.
Trading Trust	A **trust** is an arrangement, set up under a **trust deed** (or a Will), where property is held by a person or entity, the **trustee**, on behalf of one or more people the **beneficiary** or **beneficiaries**. The trustee can be an individual or a company set up specifically for the purpose of being the trustee (corporate trustee). In other words, the company is the manager of the business activities, but doesn't keep the profits. The profits go to the beneficiaries of the trust. The two main types of trust used in Australia for business purposes are: (1) discretionary "family" trusts, & (2) unit trusts. Unit trusts are set up with units that can be sold e.g. to external investors.	If a trust engages in trading activities and earns income, it must file a taxation return and pay income tax. If the profits made in each financial year are all distributed to beneficiaries, the trust won't be liable for tax. If it keeps the profits, however, then that will be treated as its income.	If a trust has multiple beneficiaries, the income of the trust can be distributed among those individuals, each of whom will attract a tax-free threshold. This is called **income splitting**. An individual trustee would have unlimited liability, but is usually provided with an i**ndemnity** under the trust deed which covers actions taken in good faith in the role of trustee. A corporate trustee, like any other company, has limited liability, in addition to any protections provided by the trust deed. If a trust has interests in multiple businesses, a larger structure could be set up with one company acting as the central trustee company with a separate company being set up as a trading company for each business. This arrangement will make it easier to separate and sell one of the sub-businesses.
Co-operative	A co-operative is an **employee-owned** or **consumer-owned** corporate entity, which is different from a PTY LTD company, which is an **investor-owned** entity. A co-op can be set up under State legislation, e.g. the *Cooperatives Act 2009* (WA) and Regulations. A company embodying co-operative principles could also be set up under the *Corporations Act 2001* (Cth) if those principles are embedded in the company's constitution. A co-op normally has a	Co-operatives are taxed under special rules compared to other corporate structures: see ITAA 1936, Pt III, Div 9. The co-operative must have certain objects and do 90% of its business with its members, in order to qualify for this tax regime. Co-ops can claim a deduction for an amount paid to a member (a bonus or rebate) based on business done with the co-op: s.120(1). When the individual member is taxed, these amounts	Co-ops are organised on a principle of **active membership** and usually require more member involvement than a company in order to succeed. Co-ops are designed to return value to their members rather than generate ROI for investors, and co-op members gain from the "critical mass" created by grouping together into one entity. through such things as lower prices (for goods or services bought though the co-op), or maximised wages (for work in the co-op environment). The co-

	co-operative fund that is used for the benefit of members, and an annual **membership fee**. It allows one vote (only) per member. Most co-ops employ a professional manager.	are excluded from that person's income. Co-operative funds are **mutual funds** that are subject to special taxation rules.	op model is a good structure for groups of people with similar interests who wish to maintain independence in some parts of their activity but gain advantages from combining together in other parts of their activity.