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Business Structures: How a Company or Corporate structure works in Australia

In Australia, there are several types of business structures that you can choose from when setting up your business operations. The choice of business structure depends on factors such as the nature of the business, the number of owners, liability considerations, and tax implications.

The following information is a simplified explanation of how a Company or Corporate structure works in Australia.

What is a Company

A company is a separate legal entity that is registered with the Australian Securities and Investments Commission (ASIC). It offers limited liability to its shareholders, meaning their personal assets are generally protected in the event of business debts or liabilities. Companies are governed by the Corporations Act 2001 and must follow various reporting and regulatory requirements.

Ownership

The ownership of a private company is determined by its shareholders. Shareholders can be individuals, other companies, or even trusts who hold shares in the company. The ownership is based on the number and type of shares held by each shareholder. The ownership of a private company can change over time as shares are bought and sold or new shares are issued.

Companies are a useful structure if you intend to introduce new business partners or shareholders into the future, particularly where these people are unrelated to you.

Shares can be issued with different 'Classes' that determine the rights of shareholders. For example, some share classes give access to dividends but not voting rights.

Responsibility

The ultimate responsibility for a company lies with its director(s). They are responsible for making decisions on behalf of a company keeping its best interests in mind (even when these may conflict with personal interests). The directors of a company bear the legal responsibility for the company's actions and compliance.

Where Director's act outside of the Corporations Act (for example knowingly incurring debts they know the company cannot pay I.e., trading insolvently) they can be held personally liable for these debts. Similarly, Directors can also be held personally liable for some tax obligations such as GST (Goods and Services Tax), PAYGW and Superannuation Guarantee.

It is therefore imperative that Directors are always informed of and aware of the company's financial position and performance.

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Responsibility cont.

Even if you are not officially appointed a director of the company, if you act as a director, including giving instructions to appointed directors on how they should act, you may be considered a 'shaddow director' and subject to the same duties and liabilities as a director.

How a company is taxed in Australia

Most small businesses operating as companies are considered 'base rate entities' and the respective tax rate in Australia is 25%. Larger listed, or primarily investment, companies typically have a tax rate of 30%

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- Taxable Income: A company's taxable income is calculated by subtracting allowable deductions from its assessable income. Assessable income includes revenue generated from business activities, investments, and other sources, while deductions include expenses incurred in running the business.

- Capital Gains Tax: Companies are also subject to capital gains tax (CGT) at the disposal of the assets. The net capital gain is added to the company's assessable income and taxed at the applicable company tax rate. Companies do not get discount on the Capital Gains like Individuals and Trusts.

How can you access the funds from a company

One thing to keep in mind if you want to run your business through a company is that as the company is a separate legal entity, its resources are not yours.

There are a few ways to access the funds from a company.

- Salary or Wages: You can receive a salary from the company as an employee. It is a common way for company owners or directors to pay themselves for their work within the business.

- Dividends: If you are a shareholder of the company, you may have the option to receive funds in the form of dividends. Dividends are payments made from the company's profits to its shareholders. The decision to declare and pay dividends is made by the company's directors and is subject to available profits, cash flow, and any legal restrictions. Dividends can be franked or unfranked.

- Shareholder Loans: Shareholders can take the money out of company by putting a loan agreement in place. The loan agreement will specify loan term, minimum repayment amounts, interest rates, and other relevant details. To avoid additional taxation the term and interest requirements of such loans need to meet relevant tax legislation.

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Ongoing Obligations

Operating as a company comes with obligations such as:

- Compliance with the Corporations Act
- Maintaining accounts and Financial Records which must be kept for at least seven years
- Ensuring ASIC information is always correct and any updates are reported within specified time limits (typically 28 days)
- Paying an annual ASIC registration fee