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Business Law

Chapter 16: Methods of Carrying on Business

1. **Sole Proprietorship**: individual carries on business for individual's own account 141-142
2. **Partnership**: 2+ persons carrying on business together with a view to profit 142
 - **General Partnership** (*Partnership Act*) – unlimited liability
 - **Limited Partnership** (*Limited Partnership Act*) – 1 or more general partner (unlimited liability) + 1 or more limited partner (limited liability) 143
 - **LLP** (*Partnership Act*) – partners liable for own negligence/employees under supervision
3. **Co-Ownership** (separate interest in property, not agents for each other) **v Partnership** 143
4. **Corporations** (separate legal entity): the most common form of business organization. 143
 - Shareholders liability is limited to contribution value (they own corporation, but not property) 144
 - Dissolution: (i) requisite majority vote, (ii) court order, (iii) inactive or breached statutory provisions
5. **Joint Ventures**: Should have a written agreement setting out the rules by which the venture will be governed 144
6. **Franchises and Licenses (Contractual relationship)** 144
 - **Franchise**: Franchisor grants franchisee right to use trade-mark/trade name 145
 - Franchisor has duty of fair dealing (good faith, reasonable standard)
 - **Master Franchising Relationships** (right to carry on multiple outlets within a designated territory)
 - **Simple Franchise Agreement** (right to operate a single outlet at a designated location)
 - *Arthur Wishart Act*: Franchisor provides prospective franchisee with certified information
 - **License**: owner of IP grants to another the right to use property for upfront fee and/or ongoing royalty
 - Distinction from franchising because franchisor has greater involvement & control
 - **Tax Consequences**: Depending on the business vehicle chosen by taxpayer = specific tax rules 146
7. **Not-for-profit organizations and Charities** 146
 - **Not-for-Profit**: Not taxed - social clubs, professional groups, sport clubs, etc. (*Not-for Profit Corp Act*)
 - **Charity**: Must apply under *ITA* and satisfy “registered charity” definition under the *ITA*
8. **Choosing Best Method of Carrying on Business** 147
 - **Factors**: Legally possible, Limited Liability, Perpetual Existence, Estate planning, # of Proposed Proprietors, Relationship of Proposed Proprietors, Employees, Costs, Citizenship, Flexible Structure, Income Tax 147-149

Chapter 17: Partnerships

1. **General Partnerships**
 - **Formation of Partnership** ((i) Business, (ii) View to profit, (iii) Carry on bus in common & share profit) 151
 - **Registration of General Partnerships** (S. 2 of *Business Names Act*)
 - **Characteristics of General Partnerships**
 - **No Separate Legal Existence**: partnership is not a separate legal entity from partners 151
 - **Agency**: Partnership is bound Unless (i) not acting within the scope of the firm's normal business course, or (ii) when a third party knows that the partner has no authority to act for the firm 152
 - **Liability**: No liability for anything done before partner, retired partner remains liable for debts and obligations incurred before retirement unless discharged by an agreement
 - **Duty of loyalty and good faith**: don't compete with partners, don't hide benefits
 - **Partnership Property**: NOT divisible (only get proceeds on dissolution after liabilities paid out)
 - **Relation of partners to another**: absent partnership agmt: share equally, indemnify partners, etc.
 - **Dissolution**: absent partnership agreement to the contrary: expiration of term, termination of single adventure or undertaking, partner gives notice, death/insolvency 153
2. **Limited Partnerships** (1+ General Partners and 1+ Limited Partners) 153
 - **Principle Feature**: Liability of limited partner limited to amount of money/property partners contribute
 - **Formation** by filing declaration (*declaration expires after 5 years unless renewed)
 - **Characteristics of limited partnership**:
 - **Share** in profits in proportion to contribution unless LPA says otherwise
 - **Control**: If Limited P partakes in control of business=loses limited liability & becomes General P 154
 - **Assignable Interest**: can assign interest to a substitute limited partner upon all partner consent
 - Assignee who is not substituted limited partner can only receive share of profits (can't inspect)

- Dissolution (i) **general partner dies**, (ii) **retires**, (iii) **incompetent** - unless agreement states otherwise + limited P can be dissolved by court order or can wind up if contributions not returned 154-155
 - Priority: Limited Partners > General Partners (unless otherwise agreed)
 - Extra-Provincial Limited Partnerships: can't carry on business in ON unless file declaration + PoA 155
 - **Limited Partnership Agreements**: deals with matters not addressed in the *Partnership Act* or *LPA* or allow partners to alter provisions of these statutes
- 3. Limited Liability Partnerships (LLP) – cross between General and Limited Partnerships**
- P not liable for debts, liab, obligations of another partner; but interest in partnership prop not protected 155
 - Act must permit LLP, min liab insurance, register name under BNA, LLP (see other abbrev) in name 155-156
- 4. Taxation of Partnerships**
- Partnership income calculated “as if” partnership is a separate person; income/gains allocated to partners
 - Income allocated to partner is taxed at partners tax rate (can offset v other income)
 - Income/losses allocated to partners pursuant to agreement, otherwise on equal basis
 - Non-capital losses offset against any income - 3 years back & 20 years forward, Capital losses offset only against capital income - 3 back, forward indefinitely 156
 - Partnerships can be used as “tax shelters” - losses flow through partnership to individual partner 157
 - Limited Partnership = permitted tax losses limited to amount partner invested - “at risk amount”
 - S. 96 of ITA was recently amended. In some instances, the new rules have the effect of turning a non-capital loss into a capital loss for upper-tier limited partners
- 5. Partnership Agreements**
- Scope of Business, Firm Name, Restrictions on carrying on competing business
 - Requirements for admitting new partners, Taxing partnership income, Management 157- 158
 - Capital Contributions, Retirement & Dissolution, Splitting of Profits, Work in Progress 158- 159

Chapter 18: Taxation of Corporations and their Shareholders

1. Taxation of Corporations

- Difference between taxation of corp & individuals (may be subject to provincial tax on capital + flat tax) 161
- Tax on corporations income & distribution dividends: 2 levels of tax = corporate level + dividends

2. Integration

- Perfect Integration: amount of income tax individual would pay = corp tax + tax on dividends; for perfect integration to exist, the federal and provincial combined corporate tax = 20%, etc. 161
- Over-integration (Tax Savings through corp) and Under-integration (greater tax cost through corp)
- 3 Examples of Integration 162 - 163
- **Deferral** where corp tax rate less than individual tax rate (corp retains after-tax profit before div) 163
 - Difference between personal tax rate and corp tax rate

3. Taxation of Shareholders

- Taxation of Dividends to Individual Shareholders (dividends grossed up and tax credit given) 164
 - **Non-Eligible Dividend Tax Credit (DTC)** – 15% gross up; federal DTC 9/13 of gross up
 - **Eligible DTC** - 38% gross up and federal DTC 6/11 of gross up 165
 - Eliminates double taxation
 - CCPC can pay eligible dividends if sufficient GRIP
 - Non-CCPC can pay eligible dividends as long as no LRIP at time dividend paid
 - E.g., Dividend is \$100. Times that by .38 and add to \$100: $\$38 + \$100 = \$138$. The dividend tax credit is $\frac{6}{11} \times 38 = \20.73 . This excludes taxes and charges and the provincial dividend tax credit
- Taxation of Dividends to Corporate Shareholders (free from tax)

4. Taxation of Corporations

- Federal Income Tax 165
 - **General Fed Corp Income Tax Rate: (38%)** – reduced to **28%** (*10% provincial abatement) 166
 - **Federal Rate Reduction** on income (other than M&P and investment income) not eligible for SBD: **13%**. Therefore, net federal rate: **15%** (38% - 10% - 13%)
 - **Net Federal Rate for CCPCs eligible for SBD – 9%** (38% - 10% - 19% SBD)
 - **Tax Rate on Investment Income: 38.67%** (38% - 10% + 10.67% refundable tax)
 - **Business Losses**: Non-Capital Loss (back 3 yrs forward 20 yrs) offsets income from any source 166