

ABSTRACT

What have been driving hybrid business forms and will Australia follow?

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Recently in Australia there has been a growing recognition of, or legislating for, a new business form known as a hybrid entity. This hybrid business form, having its origins overseas, has corporate characteristics such as providing for a separate legal entity and limited liability for members, yet is subject to flow-through taxation like a general partnership. That is, the income or losses of the hybrid entity are directly attributed to members. Australia's recent recognition of hybrids has been stated as necessary to ensure that the tax system is not adversely affecting Australians investing overseas in these hybrid business forms.¹ Whereas the recent legislating for a venture capital hybrid has been perceived as necessary to ensure that Australia achieves an internationally competitive framework,² and to stimulate economic growth.³ To date Australia's recognition of or legislating for hybrids have been restricted, though there are pressures from various sectors for this too broaden.⁴ One argument for the broad introduction of a hybrid is for their utilisation by closely-held businesses, as hybrids are perceived as advantageous for this sector.⁵ However, if such arguments are to be supported a comprehensive understanding of hybrid business forms is required. This is particularly important in relation to closely-held businesses, as there has been criticism that prior tax reforms aimed at assisting this sector appear to be based on insufficient data.⁶

After establishing what a hybrid is, this paper will add to the understanding of this business form by analysing what have been the political and economic drivers around the world for the introduction of a number of hybrid entities. Particularly, the drivers for the introduction of S Corporations and Limited Liability Companies ('LLC') in the United States, the United Kingdom's Limited Liability Partnership ('LLP') and Loss Attributing Qualifying Companies ('LAQC') in New Zealand will be identified and discussed. It will be demonstrated that the drivers for the introduction of these hybrids involve the notions of tax neutrality, interest groups, tax and regulatory competition, efficiency arguments and limited liability. This paper will then analyse to

¹Coonan, H. (Minister for Revenue and the Assistant Treasurer). (2003). *Press No 26: Taxation of Foreign Hybrids*. Canberra: Treasury.

²Coonan, H. (Minister for Revenue and the Assistant Treasurer). (2002). *Press No 100: Minister Announces Detail of Venture Capital Reform*. Canberra: Treasury.

³*Explanatory Memorandum to Taxation Laws Amendment (Venture Capital) Bill 2002 (Cth) and Venture Capital Bill 2002 (Cth)*, para 7.1. Whether this will be successful, particularly for start-up corporations, is questionable, see: Stewart M, "Venture Capital Tax Reform in Australia and New Zealand" (2005) 11(2) *New Zealand Journal of Taxation Law and Policy* 216.

⁴House of Representatives: Standing Committee on Industry and Resources, *Exploring: Australia's Future - Impediments to increasing investment in minerals and petroleum exploration in Australia* (Parliament of Australia, 2003); and Hayes G, "Real Tax Problems Need Real Solutions" (2003) *Australian Financial Review*, 14 October at 50.

⁵Hayes G, "Real Tax Problems Need Real Solutions" (2003) *Australian Financial Review*, 14 October at 50.

⁶Burton, M. "The Australian small business tax concessions - public choice, public interest or public folly?" (2006) 21 (1) *Australian Tax Forum* 71.

what extent, if any, these political and economic forces exist in Australia. Thereby this paper will explore what could be the future of hybrids in Australia. Such an analysis will demonstrate that these drivers to some extent do exist, particularly tax and regulatory competition and tax neutrality.

However, it will be identified that a major obstacle for the introduction of hybrids is the Australian Government's underlying policy against flow-through taxation when the business form provides members with liability protection.