FOREIGN PASSTHROUGH ENTITY USE
IN FIVE SELECTED COUNTRIES

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION

October 2013

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INTRODUCTION

Request

This study has been prepared by the staff of the Joint Committee on Taxation pursuant to a request for an examination of the use of passthrough entities in countries other than the United States.

In response to this request, the staff of the Joint Committee on Taxation has sought and obtained data on the use of passthrough entities as well as descriptions of the tax rules governing types of passthrough entities in each of five other countries. The five countries are Australia, Canada, Germany, Japan, and the United Kingdom, all trading partners of the United States with significant business economies.

Methodology of this study

The Joint Committee staff consulted with foreign tax law experts for information related to the taxation of business income in Australia, Canada, Germany, Japan, and the United Kingdom and information characterizing flow-through businesses in those countries.

Data

The Joint Committee staff requested the number of businesses that are organized as separate legal entities (or as is the case in with sole proprietorships in the United States, businesses that do not have legal status separate from that of the individual) in comparison to all businesses. In addition, the Joint Committee staff requested data on the amount of business income which is not subject to a separate entity tax compared to that of all businesses. It was requested that the data be distributed by the size of business as measured by the following criteria.

- Business assets;
- Business gross receipts;
- Business net income;
- Number of full-time equivalent employees.

Law

The Joint Committee staff asked a number of questions about the law governing passthrough entities which are listed below. In addition, as information was provided, the Joint Committee staff asked follow-up questions relevant to the material submitted.

- Does the country permit business income to be passed through and taxed solely at the individual owner level and not be subject to a separate entity-level tax?
- Does the country permit businesses to operate with limited liability and not be subject to entity-level tax?

- Does the country provide a form of business organization that allows public trading of interests in an entity that is not subject to entity-level tax?
- To the extent that the country's laws allow legal entities to operate in passthrough form for tax purposes, are there size-based restrictions – such as restrictions based on revenues or number of shareholders – on the availability of passthrough tax treatment?
- To the extent the country's laws allow legal entities to operate in passthrough form for tax purposes, are there significant differences from the U.S. rules applicable to partnerships or S corporations? For example, are there limitations similar to the U.S. rule that S corporations are limited to one class of equity?
- Does the country permit a business to be operated without a legal entity – for example as a sole proprietorship – and thereby avoid corporate tax?

Overview: components of this study

This study consists of four parts. The first part is a summary of the data relating to the use of passthrough entities by size and by industry in each of the five countries. The data and analysis presented in this study add to data reported by the Organization for Economic Cooperation and Development in 2009.

The second part is a summary description of the types of passthrough entities permitted under the applicable tax law in each of the five countries.

The third part is a summary of the factors that affect choice of entity based on the law in each of the five countries.

The fourth part is a series of charts showing the principal features of, and restrictions on, passthrough entities under the tax law of each of the five countries. A comparison chart is provided illustrating two principal types of passthrough entities permitted under the Federal income tax law of the United States, partnerships and S corporations, as well as the features of C corporations (which are not passthrough entities).

I. DATA ON NET INCOME OF BUSINESSES REPORTED ON INDIVIDUAL AND ENTITY RETURNS

A. Data by Country

Introduction

For the countries under study, the following tables document variation in the relative amounts of net income generated from business activities that are subject to entity-level (typically corporate) taxation and owner-level taxation. For convenience in this section, "corporation" refers to any business subject to entity-level taxation. Business income earned by "individuals" refers to income earned by individuals either directly or through passthrough entities.

The data presented in this study adds to that reported by the Organization for Economic Cooperation and Development ("OECD") in 2009 on small- and medium-sized enterprises.[1] The 2009 OECD report includes information on the distribution of the number of firms by taxable profit and type of business structure (unincorporated or incorporated) across a number of countries. However, the OECD report does not describe whether these firms were taxed at the entity or individual level and does not aggregate taxable profits by type of business structure. Moreover, the OECD report does not include data on taxable profits and business structure for Australia, Canada, Japan, Germany, or the United States. In contrast to the OECD report, this study compares the shares of business income taxed to corporations and to individual business owners in these countries.

All of the tables presented in this study are derived from publicly available government tabulations of tax return data from the most recent year for which data were available at the time of writing. The line items in the tables are not uniform across countries because of differences in definitions as well as the countries' presentations of these items. Several points relating to the data presentations for the various countries should be clarified at the outset. The amount of business income shown as being received by individuals and corporations includes the allocable share of the business income of passthrough entities that they own. Moreover, all income, including interest income and capital gains, of corporations is deemed to be business income for purpose of the tables. Because rental income (largely from real estate) is a significant portion of corporations' income, rental income is also included in individuals' business income. Individuals' business income, however, does not include interest and capital gains, since a substantial portion of such income are received from passive investments. More details on the data and methodology used in this section are described in Part B of this section.

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[1] Organization for Economic Cooperation and Development, *Taxation of SMEs: Key Issues and Policy Considerations*, 2009, available at http://www.oecd.org/ctp/tax-policy/taxpolicystudyno18taxationofsmeskeyissuesandpolicyconsiderations.htm .

Australia

In Australia, 81.9 percent of net income from business activity was earned by corporations in 2009, while 18.1 percent was earned by individuals, as illustrated in Table 1.

Most of the net income from business activity reported by individuals fell in the category of net business income, while a smaller share was attributable to personal services. In the aggregate, individuals reported losses from their rental operations.

Table 1.–Australia: Net Income from Business Activity Reported on Individual and Entity Returns (2009)

	Number of returns	Income or loss (AUS $ millions)	Share of total net income from business activity
Corporations[1]			
Total net income[2]	777,205	$147,166	81.9%
Individuals			
Net business income	1,085,908	$21,655	12.0%
Net personal services income	109,330	$2,136	1.2%
Net rent	1,751,679	-$4,810	-2.7%
Other business-type income[3]	521,366	$13,605	7.6%
Total net income		$32,586	18.1%

Source: Australian Taxation Office and JCT staff calculations.

[1] The data is reported for companies, which are corporations or any unincorporated association or body of persons but does not include a partnership, unincorporated joint venture, or trust.

[2] Net income here refers to the sum of taxable income or loss for all companies.

[3] Other business-type income equals the sum of distributions from a partnership's primary production income, distributions from a partnership's non-primary production income, distributions from a trust's primary production income, and net farm management withdrawals less deposits. Distributions from a trust's non-primary production income generally consist of investments, and thus have not been included in identifying taxpayers with net business income. Primary production income generally comprises income from farming, fishing, and forestry.

Canada

As Table 2 shows, in Canada, 74.5 percent of total net income from businesses was earned by corporations in 2009, while 25.5 percent was earned by individuals.

Net business income and net professional income accounted for 81.8 percent of all net income reported by individuals from their business activity. For individuals, a relatively small percentage of net income of businesses came from rental operations, sales commissions, farming, and fishing.

Table 2.–Canada: Net Income from Business Activity Reported on Individual and Entity Returns (2009)

	Number of returns	Income or loss (CAN $ thousands)	Share of total net income from business activity
Corporations			
Total net income[1]	1,316,779	$157,244,000	74.5%
Individuals			
Net business income	1,963,610	$23,828,395	11.3%
Net professional income	319,240	$20,173,415	9.6%
Net rental income	1,332,670	$3,950,780	1.9%
Net commission income	200,840	$3,677,419	1.7%
Net farming income	367,590	$1,645,308	0.8%
Net fishing income	29,840	$322,387	0.2%
Net partnership income for limited and non-active partners	205,330	$191,495	0.1%
Total net income		$53,789,199	25.5%

Source: Statistics Canada and JCT staff calculations.

[1] Net income here refers to net taxable income.

Germany

In 2007, 34.1 percent of net income from businesses in Germany was earned by taxable corporations, while 65.9 was earned by individuals, as shown in Table 3.

Most of the positive net income from business operations (57.1 percent) reported by individuals took the form of trade or business income. A smaller portion of net income from business activity reported by individuals came in the form of independent personal services income. Net income from agriculture, forestry, rentals and royalties accounted for a relatively small share of net income reported by individuals from business activity.

Table 3.–Germany: Net Income from Business Activity Reported on Individual and Entity Returns (2007)

	Number of returns	Income or loss (€ thousands)	Share of total net income from business activity
Corporations			
Net income, all corporations[1]	923,535	€ 103,760,187	34.2%
Net income, tax-exempt corporations[1]	19,765	€ 324,506	0.1%
Total net income (taxable corporations)		€ 103,435,681	34.1%
Individuals			
Positive net income from trade or business	3,597,792	€ 124,165,781	40.9%
Net loss from trade or business	1,070,850	-€ 10,005,987	-3.3%
Positive net income from independent personal Services	1,700,634	€ 66,704,468	22.0%
Net loss from independent personal services	249,665	-€ 910,224	-0.3%
Positive net income from rentals and royalties	3,012,059	€ 24,642,260	8.1%
Net loss from rentals and royalties	2,168,868	-€ 13,755,038	-4.5%
Positive net income from agriculture and forestry Income	518,587	€ 9,647,586	3.2%
Net loss from agriculture and forestry	75,258	-€ 473,426	-0.2%
Total net income		€ 200,015,420	65.9%

Source: Federal Statistical Office of Germany and JCT staff calculations.
[1] Net income here refers to adjusted gross income.

Japan

Table 4 shows that in Japan, the share of total net income from business operations was closely split between corporations (50.1 percent) and individuals (49.9 percent) in 2010.

Most of the net income from business activity reported by individuals came in the form of net business income, followed by net income from real estate operations. A small share of income reported by individuals came from their farming activity.

Table 4.–Japan: Net Income from Business Activity Reported on Individual and Entity Returns (2010)

	Number of returns	Income or loss (¥ 100 million)	Share of total net income from business activity
Corporations			
Total net income[1]	2,709,089	¥154,732	50.1%
Individuals			
Net business income	3,882,009	¥79,550	25.7%
Real estate income	3,250,034	¥67,447	21.8%
Net farm income	685,731	¥7,216	2.3%
Total net income		¥154,213	49.9%

Source: National Tax Agency of Japan and JCT staff calculations.

[1] Net income here refers to the sum of profit minus loss.

United Kingdom

Table 5 shows that in the United Kingdom, 67.5 percent of total net business income was earned by corporations in 2009, while 32.5 percent was earned by individuals.

At the individual level, nearly all net business income came from self-employment income (89.0 percent), with a much smaller share coming in the form of net income from property (11.0 percent).

Table 5.–United Kingdom: Net Income from Business Activity Reported on Individual and Entity Returns (2009)

	Number of returns	Income or loss (£ millions)	Share of total net income from business activity
Corporations			
Total net income[1]	891,971	£185,536	67.5%
Individuals			
Self-employment income	4,880,000	£79,500	28.9%
Net income from property	1,240,000	£9,840	3.6%
Total net income	3,250,034	£89,340	32.5%

Source: HM Revenue and Customs and JCT staff calculations.

[1] Net income here refers to net chargeable profits.

United States

In the United States, 43.8 percent of net income from business activity was earned by corporations in 2009, while 56.2 percent was earned by individuals, as illustrated in Table 6.[2]

Of net ordinary income earned by individuals, 60.7 percent was earned by partnerships and S corporations, while a smaller share was earned by sole proprietors (39.3 percent).[3]

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[2] A 2012 study on the taxation of U.S. businesses by the Congressional Budget Office (CBO) also compared business activity occurring at the individual and entity levels. Unlike the present study, however, the CBO report compared business revenue subject to individual- and entity-level taxation, rather than net business income earned at the individual and entity levels. Moreover, for the CBO report, business revenue earned by C corporations included business revenue earned by regulated investment companies ("RICs") and real estate investment trust ("REITs"). In contrast, for the present study, net income earned by corporations does not include net income earned by RICs or REITs. (For more details, see Congressional Budget Office, *Taxing Business Through the Individual Income Tax*, December 2012.)

[3] These calculations aggregate net income with net losses.

Table 6.–United States: Net Income from Business Activity Reported on Individual and Entity Returns (2009)

	Number of returns	Income or loss ($ thousands)	Share of total net income from business activity
Corporations			
Total net income (less deficit and dividends received deduction) of active corporations other than S corps, RICs, and REITs	1,716,308	$443,166,636	43.8%
Individuals			
Net ordinary income, including that from rents (partnership or S corporation)	5,006,112	$497,773,276	49.2%
Net ordinary loss, including that from rents (partnership or S corporation)	3,006,468	-$152,675,851	-15.1%
Net nonfarm income from business or profession (sole proprietorship)	16,539,948	$308,887,694	30.5%
Net nonfarm loss from business or profession (sole proprietorship)	5,572,286	-$63,905,867	-6.3%
Net nonfarm income from rent (sole proprietorship)	4,120,652	$59,282,981	5.9%
Net nonfarm loss from rent, including nondeductible losses (sole proprietorship)	5,685,324	-$70,772,197	-7.0%
Net income from farms (sole proprietorship)	523,107	$11,615,884	1.1%
Net loss from farms (sole proprietorship)	1,401,107	-$25,711,141	-2.5%
Net income from farm rentals (sole proprietorship)	441,845	$4,722,728	0.5%
Net loss from farm rentals (sole proprietorship)	118,530	-$655,397	-0.1%
Total net income		$568,562,110	56.2%

Source: Internal Revenue Service, Statistics of Income Division, and JCT staff calculations.

Summary

Table 7 summarizes data reported in this section on the share of total net business income earned by corporations and individuals in Australia, Canada, Germany, Japan, the United Kingdom, and the United States. Cross-country comparisons are complicated by the lack of uniformity in how the publicly available data is organized, as well as the differing years for which data are reported.

However, recognizing these limitations, some observations can be made. There are substantial cross-country differences in the corporate and individual shares of net income from businesses. The corporate share of net income from business operations was 81.9 percent in Australia, 74.5 percent in Canada, and 67.5 percent in the United Kingdom in 2009, while it was 34.1 percent in Germany in 2007 and 43.8 percent in the United States in 2009. In 2010, roughly equal shares of business income were earned by corporations and individuals in Japan.

These disparities could result from a variety of factors such as the relative rates of taxation (both at the entity and the individual levels) under the tax regimes in each country, the tax benefits of or restrictions on passthrough forms of business in each country, the availability of limited liability for owners of passthrough entities in each country, and nontax factors such as the size distribution and other structural characteristics of each country's businesses. Data limitations make it difficult to compare the relative importance of these factors.

Table 7.–Corporate and Individual Shares of Net Income from Business Activity in Selected Countries

Country	Corporate	Individual
Australia (2009)	81.9%	18.1%
Canada (2009)	74.5%	25.5%
Germany (2007)	34.1%	65.9%
Japan (2010)	50.1%	49.9%
United Kingdom (2009)	67.5%	32.5%
United States (2009)	43.8%	56.2%

Source: Australian Taxation Office; Statistics Canada; Federal Statistical Office of Germany; National Tax Agency of Japan; HM Revenue and Customs; and Internal Revenue Service, Statistics of Income Division.

B. Data Methodology

The data reported in this study are derived from publicly available government statistics. This section outlines the assumptions made, and methodology used, in constructing the data tables presented in the study.

1. Treatment of income of of passthrough entities. Some studies of taxation of income generated by passthroughs have tabulated the income of these entities and assigned this income to the non-corporate category even though a significant portion of interests in these entities may be owned by corporations and thus subject to entity-level (corporate) tax. Further, simply totaling the income of passthrough entities may overstate the amount of such income subject to tax due to double-counting, since some of these businesses may be owned by other passthrough entities. This study avoids the problem because the tax data it relies on reports business income allocated from passthrough entities to corporations and individuals.

2. Definition of income generated from business. In addition to income directly attributable to sale of goods and services (trading income, professional income, farm income, *etc*.), business activity may generate various other types of income. For example, rental income, interest income, and capital gains are often significant components of the total income reported by active corporations. Ideally, the comparison between the incomes taxed at the entity level and the individual level would be made using the same definition of income. However, people may receive income from interest and capital gains from investments they hold rather than from their ownership of a business. Although passthrough entities may be required to distinguish these categories of income in their information returns to owners, publicly available tabulations of personal tax returns generally do not separate, for example, interest income that flows through such an entity from interest income received on debt the individual holds directly. Further, for sole proprietorships, there is no obvious distinction in the data between interest income generated from business activity and interest income generated from investment activity. Therefore, because available data do not allow interest and capital gains income to be separated into business and non-business components, and because a small portion of this income arises directly from business activity, the tables exclude all interest and capital gains income of individuals. As a result, the tables understate the amount of business income earned directly by individuals or through passthrough entities.

3. Net income. Income reported in the tables is generally net of losses incurred in the reporting year, whether or not the loss has an impact on that year's tax liability. This measure (labeled taxable income in some countries' statistical presentations) may be different from a measure of income subject to tax because income subject to tax is generally not negative for any taxable entity and may reflect losses incurred in years other than the reporting year. For corporations, dividends received are generally removed from the income measure.

II. SUMMARY OF TYPES OF PASSTHROUGH ENTITIES BY COUNTRY

Business passthrough entities differ among the five countries studied. Types of business passthrough entities as well as applicable tax rates are summarized below for Australia, Canada, Germany, Japan, and the United Kingdom.[4]

A. Australia

1. Tax rates

The maximum marginal individual income tax rate is 46.5 percent on income over AUS $180,001 (US $168,964) in 2013.[5]

The corporate income tax rate is a flat 30 percent (in 2013), and a shareholder imputation credit generally applies for shareholders that are Australian residents. The top individual tax rate generally has exceeded the corporate tax rate in Australia in recent decades.

Tax is imposed on capital gains generally at regular rates. However, there is a 50-percent deduction (called a discount in Australian tax terminology) for net capital gains of individuals. In contrast to this favorable treatment of capital gains of individuals, the capital gains discount is not available for capital gains of corporations (called companies in Australia).

In addition to the income tax, Australia imposes a goods and services tax known as the GST (a value-added tax or VAT). The GST was added to the law in 2000. The GST has the effect of imposing tax at the consumer level, and generally applies with respect to businesses on a credit and invoice basis, whether the business is in corporate or passthrough form.[6] The GST rate is 10 percent.

2. Partnerships

<u>Partnerships that are passthrough entities</u>

Under Australian tax law, a partnership that is a passthrough entity for tax purposes is defined as an association of persons (other than a company or limited partnership) carrying on a business as partners or in receipt of ordinary income or statutory income jointly. A partnership that provides for limited liability of at least one of the partners is not within this definition and is taxed as a company (as described below).

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[4] Though not the subject of this study, each of the five countries' tax laws also provide for common investment vehicles that are not generally subject to entity-level tax. These types of vehicles are generally analogous to mutual funds ("RICs," Code sections 851-855) or real estate investment trusts ("REITs," Code sections 856-859) in the United States. See below at notes 7 (Australia), 15 (Canada), 23 (Germany), 31 (Japan), and 37 (United Kingdom).

[5] Currency conversions in this document reflect October 1, 2013, exchange rates.

[6] Australian Government, Australian Taxation Office, *GST*, QC 22410 (last modified 03 Dec. 2012), http://www.ato.gov.au/Business/GST/ .

The income or loss of the partnership is calculated at the partnership level. The partners include their interest in any partnership net income in their assessable income, whether or not the partnership income is distributed, or claim a deduction for their interest in any partnership loss. Similar rules apply for exempt income derived by the partnership. A partner's share of partnership loss is not limited to basis, on the theory that all partners are jointly and severally liable for partnership liabilities. Recent case law has raised issues as to what extent differential allocations of income or deductions are permitted.

Australian corporate law provides that a partnership cannot have more than 20 partners without incorporating, with exceptions for professional partnerships and limited partnerships.

Limited partnerships not generally passthroughs

Legislation enacted in 1992 to limit tax shelters provides generally that limited partnerships are treated as corporations (companies in Australian terms) for tax purposes. Thus, limited partnerships generally are subject to tax at the entity level. Losses of the limited partnership do not flow out to the partners, who are generally treated as shareholders. Exceptions allowing passthrough tax treatment are provided for foreign hybrid limited partnerships (used for outbound investment in what would otherwise be a controlled foreign company of an Australian investor), and for venture capital limited partnerships (which, subject to restrictions, are available for investment in Australian start-ups but are infrequently used).

3. Trusts

Trust net income, but not loss, passed through

In Australia, trusts are the entity chosen when a combination of limited liability and transparent taxation is desired. Trusts have come to be used for the conduct of business activities and as investment vehicles as a result of changes in Australian trust law to permit this. Trusts are also used for their more traditional purposes such as for estates of decedents and for family wealth planning. Activity limitation rules impose restrictions on the use of widely held trusts for some commercial activities, with the result that the activities of publicly marketed trusts are generally limited to investing in land or securities.

Under Australian tax law, trusts are treated as passthroughs in that net income of the trust is generally included in beneficiaries' income and is not taxed at the trust level. However, any net loss of the trust is carried forward at the trust level and does not pass through.

Trust beneficiaries are currently taxed on trust net income to which they are presently entitled. Present entitlement to income does not require any distribution of the income, but rather, depends under applicable law on whether the beneficiary has the right to demand immediate payment by the trustee. The trust is taxed at a 46.5 percent rate (the maximum marginal statutory individual tax rate) on trust net income to which no beneficiary is presently entitled (if any).

Unlike Australian partnerships, trusts provide for inside basis and outside basis, that is, a separate basis of the trust in its assets and of the beneficiary in its interest in the trust. Also unlike partnerships, in certain circumstances distributions from the trust may be taxed to

beneficiaries in addition to the trust net income for which the beneficiary is presently eligible. However, the distribution tax does not apply to the amount to which the beneficiary is presently entitled under trust law that exceeds such amount as determined under tax law.

The trust tax regime includes several sets of rules that cater more specifically to the variety of uses of trusts. In common parlance, these are referred to as bare trusts (similar to grantor trusts under U.S. tax rules), discretionary trusts (used for closely held family businesses and investments), and unit trusts (used as collective investment vehicles similar to the use of regulated investment companies (RICs or mutual funds) and real estate investment trusts (REITs) in the United States).[7] Activity limitations restrict the activities of publicly marketed trusts to investment activities such as real estate and securities investments.

There may be uncertainty under Australian tax or trust law as to the tax treatment of trust beneficiaries in particular circumstances, and possible legislative changes relating to tax rules affecting trusts have been proposed.[8]

4. Companies (subject to entity-level tax)

Companies (corporations) are subject to tax at the entity-level. Australia has an imputation system for distributed corporate income. Under the imputation system, a credit is allowed for distributions to Australian resident shareholders by resident companies from profits taxed in Australia. The resident company keeps a "franking account" in which it keeps track of tax paid. When the company distributes a dividend to shareholders, it may attach a franking credit to the dividend and debit the franking account by the amount of the credit. An Australian resident shareholder includes the dividend in assessable income and uses the franking credit to offset tax liability. In the case of corporate shareholders subject to the 30-percent income tax rate, this system eliminates a second level of tax on distributed intercorporate dividends. There is no equivalent to S corporations, which are generally passthrough entities under U.S. tax law.

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[7] PricewaterhouseCoopers, *Compare and contrast: Worldwide Real Estatement Investment Trust (REIT) Regimes*, May 2013, pp. 2-3, http://www.pwc.com/en_GX/gx/asset-management/publications/assets/pwc-compare-and-contrast-complete-worldwide-reit-regimes-2013.pdf . As of March 2013, there were 46 Australian real estate investment trusts, or "A-REITs," that were listed on the Australian Stock Exchange. These A-REITs use the unit trust structure, and while they are not subject to statutory distribution requirements like U.S. REITs, they generally distribute their income and gains in full (thus avoiding the 46.5 percent tax on undistributed income and gains).

[8] See Richard J. Vann, "Corporate Tax Reform in Australia: Lucky Escape for a Lucky Country?," *British Tax Review*, 2013, No. 1, p. 59, April 21, 2013, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2254726 ; Graeme S. Cooper, "Reforming the Taxation of Trusts - Piecing Together the Mosaic," *Sydney Law Review*, Vol. 35, No. 1, p. 187, April 21, 2013, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2254722&rec=1&srcabs=2254726&alg=1&pos=1 .

B. Canada

1. Tax rates

For individuals, the Canadian income tax is the sum of the federal and the provincial tax. The maximum federal marginal individual income tax rate is 29 percent on income over CAN $135,054 (US $130,705) in 2013. Provincial top marginal rates range from 10 to 21 percent for 2013.[9]

For corporations, the Canadian tax is similarly the federal plus the provincial tax. Effective after January 1, 2012, after taking into account the federal tax abatement and the general tax reduction, the net tax rate at the federal level is 15 percent. For Canadian-controlled private corporations claiming the small business deduction, the net tax rate is 11 percent. Provincial top corporate tax rates range from 10 to 16 percent for 2013.[10]

In addition, Canada imposes a goods and services tax (GST) on the supply of most goods and services. The tax is paid at the consumer level and generally is collected and remitted by businesses whether in passthrough or corporate form. Businesses generally claim an input credit to recover the tax paid on purchases used in their commercial activities. The federal rate is five percent, which is increased by a provincial tax rate in some provinces, resulting in an overall rate in those provinces ranging from 12 to 15 percent.[11]

2. Partnerships

<u>Passthrough treatment for nonpublicly traded general and limited partnerships</u>

In Canada, a partnership that is not publicly traded generally is treated as a passthrough entity. Income and losses pass through to partners, and may be specially allocated among partners in accordance with the partnership agreement. The contribution to a partnership of property that does not meet applicable restrictions (generally relating to the type of property and the partner status of the contributor) is taxable. The distribution of property from a partnership to a partner is generally taxable, except that dissolution of a partnership is not a taxable event. A partner may deduct partnership losses only up to the amount that the partner has at risk in the partnership.

A restriction on eligible members applies: if a partner is a nonresident of Canada, the partnership loses its status as a partnership (passthrough) and is itself treated as a nonresident subject to Canadian withholding tax.

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[9] Canadian Revenue Agency, *What are the income tax rates in Canada for 2013?* , http://www.cra-arc.gc.ca/tx/ndvdls/fq/txrts-eng.html .

[10] Canadian Revenue Agency *Corporation tax rates* , http://www.cra-arc.gc.ca/tx/bsnss/tpcs/crprtns/rts-eng.html .

[11] Canadian Revenue Agency, *How GST/HST Works*, http://www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/gnrl/menu-eng.html ; PwC, *Worldwide Tax Summaries: Corporate Taxes 2012-2013*, "Canada," pages 308-309, www.pwc.com/taxsummaries.

A limited partnership that provides limited liability to limited partners can be treated as a partnership with passthrough tax treatment, but the partners are subject to anti-tax-shelter restrictions such as at-risk rules.[12] Some provinces of Canada provide for limited liability partnerships for professional service providers.

Publicly traded partnerships subject to tax on nonportfolio income

A publicly traded partnership is subject to an entity-level tax on nonportfolio income. This rule applies to specified investment flow-through ("SIFT") partnerships, defined as any partnership the interests of which are listed or traded on a stock exchange or other public market and that holds at least one non-portfolio property. Non-portfolio property includes property used to carry on a business in Canada, certain securities, and certain Canadian real, immovable, or resource property. The SIFT rules for partnerships (and trusts, below) were announced October 31, 2006,[13] and resulted in the effective repeal of passthrough tax treatment for many publicly traded partnerships and income trusts. The change became effective in 2011 for existing entities. The imposition of entity-level tax was considered necessary due to the reduction in revenue to the Canadian government under prior law.[14]

3. Trusts

Income trusts and royalty trusts generally subject to tax

A trust whose interests are publicly listed or traded, is resident in Canada, and holds one or more non-portfolio properties,[15] is subject to an entity-level tax as a SIFT trust. The rate of tax is generally the sum of the 15-percent Canadian federal SIFT tax (for 2012) and the

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[12] See, e.g., Elizabeth J. Johnson and Genevieve C. Lille, "The Taxation of Partnerships in Canada," *Bulletin For International Taxation,* August/September 2009, page 381-394, http://www.wilsonandpartners.ca/WP-Publications/Taxation%20of%20Partnerships%20in%20Cda.pdf .

[13] See, *e.g*., Barbara Balfour, "The income trusts 'Halloween massacre': handling the fallout one year on," *The Lawyers Weekly*, September 14, 2007, http://www.lawyersweekly.ca/index.php?section=article&articleid=538 ; Lauren Krugel, "Halloween Massacre Not So Scary After All," *The Canadian Press*, October 7, 2010, http://money.ca.msn.com/savings-debt/yourmoney/article.aspx?cp-documentid=25867408 .

[14] See Forefactor, "Income Trusts in Canada: the SIFT Tax," http://www.forefactor.com/income-trusts-in-canada-the-sift-tax/ , stating, " The decision to proceed with the new SIFT tax regime was primarily due to the estimated loss of government tax revenue allegedly associated with the use of income trusts."

[15] For example, Canada provides passthrough treatment for REITs, generally structured as trusts. No tax is imposed at the entity level provided applicable requirements are met, including requirements that "the trust derives at least 75% of its revenues from rent from, and capital gains from the dispositions of, real or immovable property, and interest from mortgages on real or immovable property." Canada Revenue Agency, "Types of Trusts," http://www.cra-arc.gc.ca/tx/trsts/typs-eng.html .

provincial rate.[16] Some income trusts may have converted to corporations in response to the change in law.[17]

Passthrough treatment of cross-border income trusts

The SIFT tax applies if an income trust holds nonportfolio property, which includes property used to carry on a business in Canada, but does not apply to an income trust that holds only property used to carry on a business outside Canada. As a result, passthrough tax status continues to apply to income trusts whose income is from doing business outside Canada.[18]

4. Sole proprietorships

The Canadian corporate tax does not apply to a sole proprietorship.

5. Corporations (subject to entity-level tax)

Corporations are subject to income tax at the entity level. There is no equivalent to S corporations, which are generally passthrough entities under U.S. tax law.

[16] Canada Revenue Agency, "Specified investment flow-through (SIFT) trust income and distribution tax," http://www.cra-arc.gc.ca/tx/trsts/sifts/wht-eng.html .

[17] PriceWaterhouseCoopers (PWC), "Decision Time for Income Trusts: The SIFT Tax is coming in 2011. Will you make the switch to a corporation?," *Doing Business In Alberta*, http://www.pwc.com/ca/en/doing-business-in-alberta/decision-time-income-trusts.jhtml . Similarly, Canadian royalty trusts in the oil and gas sector may have converted to corporate status as the SIFT tax applicable at the entity level became effective in 2011.

[18] See, *e.g*., Tim Cestnick, "Tax Matters: A New Breed of Tax-efficient Cross-Border Income Trusts," *The Globe and Mail*, August 22, 2012, http://www.theglobeandmail.com/globe-investor/personal-finance/taxes/a-new-breed-of-tax-efficient-cross-border-income-trusts/article4493606/ .

C. Germany

1. Tax rates on business income

The German income tax divides income into types with different tax attributes and potentially different rates; for example, businesss income, investment income, rent and lease income, capital gains, and other types.

In Germany, business income of an individual generally is subject to income tax at graduated rates. The top marginal rate is 45 percent on income over 500,000 euros (US $676,695) for married couples, and on income over 250,000 euros for single individuals (US $338,348).[19]

Business income of a corporation is subject to corporate income tax at a fixed rate of 15 percent. In addition, the German trade tax (*Gewerbesteuer*) is imposed at a rate of up to 17 percent (varying locally, from 14 to 16 percent in most cities[20]) on business income. The trade tax is applied in addition to the corporate tax, effectively doubling the tax rate on business income of corporations at the entity level.

Distributed corporate income of an individual on corporate stock that is qualifying business property is eligible for shareholder relief that works by applying the shareholder-level tax (up to 45 percent) to only 60 percent of the distributed amount, thus leaving 40 percent of the distributed amount tax-free. This results in a 27-percent maximum individual rate on such distributed income. Distributed corporate income that is treated as private investment income (a particular category of income under German tax law) of an individual is taxed at a flat rate of 25 percent rather than the maximum individual rate of 45 percent.

Private capital gains (generally referring to investment-type gains under German tax law) generally are not subject to tax, but gain on sale of business assets is subject to tax.

Germany also imposes a VAT generally at a rate of 19 percent with reduced rates of seven percent and zero percent in some circumstances.[21] No distinction is made as to the form of a business subject to the VAT, although an exception may be available for small entrepreneurs in some circumstances.[22]

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[19] Personal Income Tax in Germany, *Confederation Fiscal Europeene*, http://www.cfe-eutax.org/taxation/personal-income-tax/germany .

[20] PwC, *Worldwide Tax Summaries: Corporate Taxes 2012-2013*, "Germany," page 658, www.pwc.com/taxsummaries.

[21] Deloitte Global Indirect Tax Rates, http://www.deloitte.com/view/en_GX/global/services/tax/indirect-tax/5715912aff1fb110VgnVCM100000ba42f00aRCRD.htm .

[22] KPMG Global, *Germany: VAT Essentials*, states, "Certain entities are not required to submit periodical VAT returns and are not liable for German VAT such as, for example, non-taxable legal entities and small entrepreneurs. However, if in the preceding year these entities acquired goods in other EU Member States in excess of EUR 12,500 (total amount of consideration paid for acquisitions), which were transported to Germany (acquisition threshold), or if it is anticipated that acquisitions during the current year will exceed this amount, the tax

2. Sole proprietorships

Business income of a sole proprietorship is subject to individual income tax.

3. Partnerships are passthrough entities

A German partnership is treated as a passthrough entity in that individual or corporate partners are subject to individual or corporate tax on partnership income determined at the partnership level, whether or not distributed. However, the trade tax at a rate up to 17 percent (varying locally) is imposed at the partnership level on business income, and is imputed (*i.e.*, credited) to partners.

Partnership distributions generally are not taxed. Losses of the partnership are passed through to partners.

The type of income is determined at the partnership level and, if the partnership is engaged in a business, all its income is treated as business income (and is subject to the trade tax at the partnership level). Anti-abuse rules apply to prevent recharacterization of business income as other types of income through transactions between the partners and the partnership.

An individual partner is subject to tax on business income of a partnership under the individual tax regime. A corporate partner is subject to tax under the corporate tax regime.

A partnership must meet two requirements for passthrough tax treatment: its partners must qualify as entrepreneurs or *Mitunternehmer* (generally not a particularly restrictive criterion), and the partnership must be an eligible entity.

Entities eligible for passthrough treatment include general partnerships (no partner has limited liability), private partnerships (GbR, for very small businesses, and no partner has limited liability), and silent partnerships in the relatively uncommon situation in which the silent partner's income is considered business income. Passthrough tax treatment also applies with respect to limited partnerships (*Kommanditgesellschaft*, or KG, in which at least one partner has general liability and partners have limited liability). In addition, passthrough treatment applies to the noncorporate part of limited partnerships with stock (*Kommanditgesellschaft auf Aktien*, or KGaA, a form of association uniting stockholders and at least one general partner with unlimited liability).[23]

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authorities must be notified, and VAT returns must be submitted.” http://www.kpmg.com/global/en/issuesandinsights/articlespublications/vat-gst-essentials/pages/germany.aspx .

[23] Profits of an investment fund are passed through to investors, taxed as income on investments, and treated as distributed for tax purposes even if not distributed. In addition, in 2007, the German REIT Act allowed for the formation of German REITs (“G-REITs”). A G-REIT is a passthrough entity for tax purposes. Like U.S. REITs, a G-REIT must distribute at least 90 percent of its profits and must satisfy real-estate-related restrictions. The amount distributed by a G-REIT is taxed at the shareholder level as income on investments. PricewaterhouseCoopers, *Compare and contrast: Worldwide Real Estatement Investment Trust (REIT) Regimes*, May 2013, pp. 19-21, http://www.pwc.com/en_GX/gx/asset-management/publications/assets/pwc-compare-and-contrast-complete-worldwide-reit-regimes-2013.pdf.

In Germany, because stock exchanges are accessible only to corporations, partnerships that have passthrough tax treatment are not publicly traded.

4. Corporations (subject to entity-level tax)

A corporation is subject to entity-level tax at rates described above. There is no equivalent to S corporations, which are generally passthrough entities under U.S. tax law.

D. Japan

1. Tax rates

For individuals, Japanese tax law classifies income into ten categories, which include business income, income from immovable property (real estate), and miscellaneous income among them. The categories are aggregated and subject to tax under a progressive individual rate structure ranging from five percent to 40 percent. The 40-percent top marginal rate applies to income over 18 million yen (US $183,582).[24] Local, prefectural and municipal inhabitant tax rates are added to these rates.

The basic corporate tax rate is 25.5 percent, though a reduced rate of 19 percent (15 percent from April 1, 2012 to March 31, 2015) applies to the first 8 million yen (US $81,592) for corporations with capital less than or equal to 100 million yen (US $1,019,900).[25] Local, prefectural, and municipal inhabitant tax rates are added to the basic corporate tax rate.[26] The Japanese corporate tax is partially integrated with the shareholder level individual income tax by means of a dividend received credit.

There are no publicly traded partnerships in Japan, as the NK contract (below) does not contemplate free transferability of interests.

In addition to the income tax, Japan imposes a VAT at a rate of five percent, scheduled to increase to eight percent in April 2014 and 10 percent in October 2015.[27] This consumption tax generally applies to individuals and businesses, though a small business exception is provided.[28]

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[24] Japan Income Tax Rates and Tax Laws: Japan Tax Rates 2013: Japan Individual Income Tax, http://www.worldwide-tax.com/japan/japan_tax.asp .

[25] Corporate tax changes that would increase tax benefits have been proposed by Japanese Prime Minister Shinzo Abe. See Yuriko Nagao, "Japan's Ruling Parties Propose 2014 Corporate Tax Break Measures," *BNA Daily Tax Report,* October 9, 2013, http://news.bna.com/dtln/DTLNWB/split_display.adp?fedfid=37098448&vname=dtrnot&fcn=8&wsn=497902000&fn=37098448&split=0 .

[26] KPMG, Global corporate tax rates table, http://www.kpmg.com/global/en/services/tax/tax-tools-and-resources/pages/corporate-tax-rates-table.aspx . The local, prefectural and municipal inhabitant rates can raise the overall Japanese corporate income tax rate to approximately 38 percent.

[27] Deloitte Global Indirect Tax Rates, http://www.deloitte.com/view/en_GX/global/services/tax/indirect-tax/2d00855bb41fb110VgnVCM100000ba42f00aRCRD.htm .

[28] KPMG Global Indirect Tax: Japan, *Who is required to register for Japanese CT?*, states, "For a taxable year in which the annualized value of a business operator's domestic taxable supplies and export exempt supplies in the taxable year prior to the preceding year did not amount to more the JPY 10 million (and having taxable sales of no more than JPY 10 million for the specified period), the operator will not be treated as a Consumption Taxpayer." http://www.kpmg.com/Global/en/services/Tax/GlobalIndirectTax/Documents/vat-gst-essentials-2012/japan-2011-vat-gst-essentials.pdf .

2. Types of passthrough entities

***Ninn'i Kumiai* (NK)**

The NK is a type of partnership formed by contract and not subject to a registration requirement. An NK is defined as a contractual arrangement in which two or more parties make contributions (including personal services), and a common undertaking is carried on. Partners do not have limited liability. The NK form is little used compared to forms subject to corporate tax, although precise data is not available.

For tax purposes, income and loss pass through to partners in an NK in accordance with the contract. If sharing ratios are not specified, they are deemed to be in proportion to contributed capital. If allocations lack economic rationality (for example, are aimed at reduction of tax for a particular NK partner), amounts allocated to partners are disallowed.

A passive NK is one in which most of the partners are passive investors. Passive NKs have been used as tax shelters to pass through deductions such as depreciation, interest, and losses from leasing aircraft and ships. Reform legislation enacted in 2005 denies losses to individual NK partners, and limits losses of a corporate NK partner to the adjusted basis of what the partner contributed.

***Tokeumei Kumiai* (TK)**

A TK is a type of investment partnership not subject to a registration requirement. A TK is defined as a contractual arrangement in which two or more parties make contributions to an operator and the operator engages in business with a view to sharing the profits with the investors. Both corporate and individual investors are permitted. Contribution of personal services is not permitted. The TK lacks the feature of co-ownership by investors. Investors have limited liability.

Profit distributions to investors are subject to a 20-percent withholding tax collected and remitted by the operator. Profit distributions do not include a return of the originally invested capital. Income arising from a TK business is not directly attributed to TK partners who are individuals, but is first attributed to the operator. In the case of a corporate operator and a corporate TK investor, the timing of profit and loss recognition is on an accrual basis, consistent with the application of the accrual method under the corporate tax.

The TK contract is not frequently used as a mainstream form of conducting business in Japan. One situation in which the TK has been used is a cross-border arrangement in which profit distributions were not subject to withholding tax under a provision of the Dutch-Japanese tax treaty. The treaty, however, was renegotiated in 2010, and the protocol to the 2010 treaty provides that profit distributions from a TK are subject to Japanese withholding tax.[29]

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[29] Ernst & Young, Internationa tax alert: New Japan-Netherlands tax treat," August 31, 2010, http://www.ey.com/Publication/vwLUAssets/Japan_Newsletters_-_tax_alert_aug_2010/$FILE/tax_alert_aug2010_en.pdf .

Trusts

Passthrough treatment is available for some types of trusts. Profits and losses attributable to trust property are considered the profits and losses of the beneficiary. Individual and corporate beneficiaries are permitted. Special rules are provided for two categories of trusts, however. In the case of a Securities Investment Trust, profits and losses are not taxed or taken into account until distributions are made to beneficiaries. By contrast, a Corporation Taxation Trust is subject to corporate tax which the trustee is legally obligated to pay.

Investment LPs

An investment LP (*Toshi Jigyo Yugen Sekinin Kumiai*) is a type of partnership whose undertakings are limited to investing in securities, making loans to businesses, and other investment activities. Partners have limited liability.

The investment LP has passthrough tax treatment similar to that of an NK (above).

LLPs

An LLP (*Yugen Sekinin Jigyo Kumiai* or limited liability partnership) is a vehicle for active joint business. LLPs were introduced in 2005 to encourage entrepreneurship, facilitate joint ventures by business corporations, and promote joint business by individuals in professions. Partners have limited liability. Partners have the right to participate in management of the business.

The LLP has passthrough tax treatment similar to that of an NK (above).

3. Joint stock companies, unlimited partnership companies, limited partnership companies, and limited liability companies (subject to entity-level tax)

Joint stock companies (*Kabushiki Kaisha*) are the principal corporate vehicle for business in Japan and are subject to corporate tax. Other corporate entities, also subject to entity-level tax, are the unlimited partnership company (*Gomei Kaisha*), the limited partnership company (*Goshi Kaisha*), and the limited liability company (*Godo Kaisha*). Other forms of entity are also subject to corporate tax with some modifications. These types of entities are public interest corporations (which are subject to entity-level tax only on profit-seeking business at a reduced rate of 19 percent),[30] cooperatives, and associations without legal personality. Further, certain collective investment vehicles and securitization vehicles are subject to corporate tax, though a deduction is permitted for distributed profits.[31] There is no equivalent to S corporations, which are generally passthrough entities under U.S. tax law.

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[30] A similar but separate type of entity, the public corporation, however, is not subject to entity-level tax, and is used for limited purposes such as for local public entities and national university corporations.

[31] These are organized as either companies or trusts, and are called investment corporations, specified investment trusts, special purpose companies, and specified purpose trusts. In addition, Japanese REITS ("J-REITs") were introduced in 2000. Although J-REITs are subject to entity-level tax, the deduction for dividends allows J-REITs to achieve passthrough treatment. The number of J-REITs grew at one point to 40, although that

E. United Kingdom

1. Tax rates

Income tax rates in 2013 for individuals are 20 percent on taxable income above the personal allowance up to £35,000 (US $56,814) (bottom bracket), 40 percent from £35,000 to £150,000 (US $243,061) (middle bracket), and 45 percent over £150,000 (top bracket).

In addition, National Insurance Contributions (NICs) payments (analogous to U.S. payroll taxes) are imposed on individuals, but at a lower rate for self-employed persons (such as sole traders or partners in partnerships) than for wages of employees. For 2013-2014, the NICs is imposed generally on employees at a 12-percent rate on weekly earnings of £797 (US $1,291) and two percent above that, and the NICs is imposed generally on employers at a 13.8-percent rate for each employee whose weekly earnings exceed £148 (US $240). For 2013-2014, the NICs is imposed generally on self-employed persons at a 9-percent rate on annual earnings of £41,450 (equivalent to weekly earnings of £797 (US $1,291)), plus a flat rate of £2.70 per week.[32] Other (generally lower) NICs rates apply in a variety of specified circumstances.

Capital gains of individuals are treated as the top tranche of income, and above an annual exemption amount of £10,600 (US $17,176), for 2012-13, are subject to tax at 18 percent or 28 percent depending on the individual's rate bracket. Specifically, capital gains are subject to tax at 18 percent for individuals in the middle bracket and at 28 percent for individuals in the top bracket. An entrepreneur's relief rule provides that, in the event of the sale by an individual of business assets or shares in a small company, the tax rate on the capital gain is 10 percent subject to a lifetime maximum of £10 million (US $16.2 million) in gains.

U.K. corporations generally are subject to entity-level tax at a rate of 23 percent on profits above £1.5 million (US $2.4 million) in 2013. A lower "small profits" rate of 20 percent in 2013 applies to corporations with profit below £300,000 (US $486,122), and this 20-percent rate is phased up to the regular corporate rate at profits of £1.5 million or greater. British corporate tax rates have generally declined gradually from 1982, when the regular rate was 52 percent and the small profits rate was 38 percent. The 23 percent corporate rate is scheduled to decline to 21 percent in 2014.

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number had declined to 33 by April 2012 on account of consolidation; Ernst & Young, *Global perspectives: 2012 REIT report*, p. 16, http://www.ey.com/Publication/vwLUAssets/2012_REIT_report/$FILE/2012REITReport.pdf . J-REITs are subject to a requirement that at least 90 percent of taxable income be distributed through dividends). See PricewaterhouseCoopers, *The Growth of J-REITS in the Japanese Real Estate Market and Real Estate Investment Structures: An Overview*, 2006, http://www.pwc.com/jp/ja/tax-global-highlights/assets/vol29_finance_e.pdf . In order to qualify for the tax deduction, more than 50 percent of the total shares of the J-REIT must be offered in Japan. See Linklaters, *The REIT Structures*, http://www.linklaters.com/pdfs/publications/realestate/REITstructuresASIA.pdf .

[32] On the benefits side, these NICs payments do not entitle the self-employed to a "state second pension," whereas employees can be eligible for the state second pension unless they "contract out" of this benefit, which then permits a lower NICs rate or rebate.

The recipient of distributed corporate income takes a 10-percent dividend credit that has the effect of reducing tax on the dividend for individual recipients who are in the 20-percent (lower) or 40-percent (basic) rate brackets. For higher bracket individuals, the dividend tax is at a rate of 32.5 or 42.5 percent. Dividends are not subject to the NICs tax.

The United Kingdom also imposes a VAT generally at a rate of 20 percent with reduced rates of five percent and zero percent in some circumstances.[33] Businesses collect and remit VAT and reclaim VAT on payments for business-related goods and services.[34] An exception from business VAT registration is provided for small businesses.[35]

2. Sole traders (comparable to U.S. sole proprietorships)

A sole trader (comparable to a sole proprietorship in the United States) is not a separate legal entity and does not provide limited liability. The sole trader's personal and business assets are subject to the debts of the business.

For tax purposes, an individual sole trader is taxed at individual rates on income from the business and may use losses from the business against unrelated income. Under an initial loss relief rule, losses in the first four years of the sole trader's business can be carried back three years against the individual's income, potentially giving rise to a tax refund. Anti-avoidance rules are provided to prevent using the loss relief provision for non-active or hobby losses.

On the sale of business assets, an individual sole trader is subject to tax at capital gains rates (described above).

3. Partnerships (passthrough entities)

A partnership is a relationship "between persons carrying on a business in common with a view of profit" (Partnership Act 1890). The United Kingdom does not have publicly traded partnerships, but does provide for unlimited partnerships, limited partnerships, and limited liability partnerships (LLPs).

In an unlimited partnership, partners have full personal liability to the extent of their business and personal assets. In a limited partnership, limited partners have limited liability so long as they do not participate in management; at least one general partner is required to have unlimited personal liability. Limited partnerships are not numerous, as private companies (corporations) have generally supplanted them.

LLPs were added by 2000 legislation and have a hybrid of partnership and corporate features somewhat resembling limited liability companies (LLCs) created under state law in the

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[33] Deloitte Global Indirect Tax Rates, www.deloitte.com/view/en_GX/global/services/tax/indirect-tax/6d48f86b282fb110VgnVCM100000ba42f00aRCRD.htm .

[34] GOV.UK, *Businesses and charging VAT*, https://www.gov.uk/vat-businesses .

[35] GOV.UK, *Guide: VAT registration*, which states, "You must register for VAT with HM Revenue & Customs (HMRC) if your business turnover is more than £79,000." https://www.gov.uk/vat-registration

United States. LLPs are separate legal entities. All partners have limited liability and are permitted to participate in management. LLPs have been used for professional businesses and as a vehicle for collaboration between two or more firms, as well as for tax structuring, investment related structures, and tax planning or tax sheltering. Because LLPs are still relatively new, obtaining loans may be difficult.

As for tax treatment of partnerships, they are not subject to entity-level tax, but rather, the partners are taxed separately on their shares of profit or loss. In general, the character passes through, though the taxation of capital gains in the hands of partners is complex.

Partner losses generally are allowed to the extent of the partner's economic contribution to the partnership. This includes amounts borrowed by the partner to acquire a share in a partnership that is engaged in a trade or profession. It also includes amounts loaned by the partner to the partnership to acquire plant or machinery used in the partnership's trade or business and is at the risk of the business (*i.e.*, there is significant uncertainty as to whether the level of return will secure a post-tax surplus for the investor).

Partners' shares generally are determined in accordance with the profit-sharing arrangement, but are subject to restrictions designed to prevent the allocation of losses in excess of a partner's economic contribution to the partnership.

Thus, for the first four years in which a partner carries on a trade, losses are allowed against income from sources other than the trade or business of the partnership. Thereafter, under the restrictions, except in the case of professions, if the partner does not devote "a significant amount of time" to the partnership's business, losses generally are restricted to the partner's contribution to the business at the end of the tax year in which the loss is sustained. A special rule permits non-active partners to deduct up to £25,000 (US $40,510) of losses against non-partnership income ("sideways" loss relief). Additional restrictions apply to losses of non-active partners from exploiting a license and from films. Further, a general anti-avoidance provision limits partnership tax losses arising directly or indirectly from certain tax avoidance arrangements.

The government, in the Autumn Statement 2012, announced a further investigation into abusive use of the partnership tax rules, suggesting that problems remain despite existing anti-rules.

Partners of LLPs can be treated as self-employed, if they meet applicable requirements, and, as self-employed, are not subject to the NICs tax applicable to wages of employees.

4. Companies (subject to entity-level tax)

Companies are subject to entity-level tax. In the United Kingdom, the most common form of limited liability business organization is the private company limited by shares.[36] In such a company, shareholders' liabilities are limited to their investments (including amounts

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[36] Pinset Mansons, "Forms of companies in the UK," February 2012, http://www.out-law.com/en/topics/corporate/company-law-and-corporate-governance/forms-of-companies-in-the-uk.

committed but as yet unpaid). Another type of limited liability is provided by companies limited by guarantee, which are typically used for charities or nonprofit activities.[37]

Companies may be privately or publicly held.

In addition, U.K. law provides for unlimited companies, in which there may be shareholders but their liability is not limited to their investment. Unlimited companies do not have to file accounts, and so are used where privacy is desired. The number of unlimited companies is small (5,700 in 2011-2012).

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[37] On the investment side, UK-REITs are companies that are exempt from corporate tax on the income profits and capital gains from qualifying property rental business. A UK-REIT pays no entity-level tax on profits from its qualifying property rental business, although it does pay entity-level tax on any income derived from other businesses, and it must distribute dividends each accounting period that total to at least 90 percent of its property rental business profits. Further, it must have one class of ordinary shares that are listed on a recognized stock exchange, and other restrictions apply with respect to types of profits and assets. Chris Luck & Michael Cant, Nabarro LLP, "How to qualify as a UK-REIT," London Stock Exchange, May 2008, http://www.londonstockexchange.com/specialist-issuers/reits/howtoqualifyasauk-reit.pdf. BDO LLP, *UK-REIT Survey 2012*, http://static.bdo.uk.com/assets/documents/2012/12/BDO_UK-REIT_SURVEY_2012_.pdf. The United Kingdom's REIT regime was created by the Finance Act 2006 and Finance Act 2007; by 2012, there were 25 REITs in the United Kingdom, and they owned (in the aggregate) assets over £45 billion. BDO LLP, *UK-REIT Survey 2012*, http://static.bdo.uk.com/assets/documents/2012/12/BDO_UK-REIT_SURVEY_2012_.pdf.

III. SUMMARY OF CHOICE OF ENTITY ANALYSIS BY COUNTRY

A. Australia

Choice of business entity

Table 7 in Part II, above, shows that in Australia in 2009, corporations earned 81.9 percent of total net business income, and that individuals, including income earned through passthroughs, earned 18.1 percent of total net business income.

Limited liability is an important criterion for choice of business form in Australia. The choices of business forms that provide limited liability are a company (corporation), a limited partnership, and a trust.

For widely held businesses in Australia, the preferred vehicle is generally a company (corporation), which is subject to entity-level tax. A limited partnership has no tax superiority to a company because it, too, is taxed at the entity level under the corporate tax (except for certain venture capital limited partnerships and foreign hybrid limited partnerships). Further, the regulatory regime surrounding limited partnerships is less well understood. As for other partnerships that are not subject to entity-level tax and do not provide limited liability, the number of partners is restricted to 20 for most businesses other than certain service businesses. In the case of trusts, activity limitations restrict the activities of publicly marketed trusts to investment activities such as real estate and securities investments.[38]

Otherwise, for nonpublicly traded business activities, trusts are attractive because of their tax transparency (for profits and for the 50-percent capital gains discount, though not for losses), coupled with limited liability.

Potential changes to Australian law

During the period 2008 through 2012, the Australian government gave consideration to ways of financing a reduction in the corporate tax rate from 30 to 25 percent and whether to adopt a revenue-neutral restructuring of the corporate tax system.[39] At the same time, consideration was given to a proposal permitting carryback of business tax losses, a change from the present rule that corporate and trust losses are carried forward but not back. Possible elimination or reduction of tax expenditures such as capital allowances, research and development measures, and interest deductibility (thin capitalization) was considered as an offset to the corporate rate reduction. None of these was adopted.

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[38] This differs from the United States, where businesses (other than sole proprietorships) can choose limited liability for owners coupled with passthrough tax treatment and/or public ownership and trading of interests. Nevertheless, business income of individuals from sole proprietorships (without limited liability) in the United States and business income of individuals overall in Australia are comparable based on Tables 6 and 1, above: 22.1 percent in the United States and 18.1 percent in Australia.

[39] Richard Vann, "Corporate Tax Reform in Australia: Lucky Escape for Lucky Country?," 2013 *British Tax Review* No. 1, page 59, 2013.

On a smaller scale, in February 2013, the government released a report and accepted the recommendations for liberalization of rules for passthrough treatment of limited partnerships used as venture capital vehicles.

B. Canada

Choice of entity

Table 7 in Part II, above, shows that in Canada in 2009, corporations earned 74.5 percent of total net business income, and that individuals, including income earned through passthroughs, earned 25.5 percent of total net business income.

Partnerships that provide passthrough tax treatment in Canada can provide limited liability to partners, but are subject to restrictions in that they may not be publicly traded, may not include nonresidents of Canada as partners, and may be subject to anti-tax shelter limitations such as at-risk rules.[40]

SIFT legislation

In Canada, the form of passthrough entity known as the income trust enjoyed a surge of popularity in the early 2000s during a period of declining interest rates. Because no tax applied at the entity level, income trusts were more tax-efficient than corporations, which are taxable at the entity level. The market capitalization of Canadian income trusts in the aggregate grew (through initial public offerings) from CAN $14 billion (US $13.5 billion) in early 2001 to CAN $210 billion (US $203.2 billion) by the end of October 2006.[41] On October 31, 2006, the Department of Finance announced legislation that imposes entity-level tax on publicly traded income trusts and publicly traded partnerships with Canadian non-portfolio assets, with an exception for REITs.[42] This is known as the SIFT legislation (specified investment flow-through taxation).

Subsequent to the 2006 announcement, some businesses used an alternative "stapled" structure designed to replicate, through interest deductions, the passthrough tax treatment of income trusts before SIFT. The structure involved linking the performance of, or stapling, common shares of a public corporation to high yield subordinated debt of the corporation, and providing that the stock and debt were purchased or sold together. On July 20, 2011, the Department of Finance announced that the interest deduction would be disallowed for certain

[40] In the United States, by contrast, businesses (other than sole proprietorships) can choose limited liability for owners coupled with passthrough tax treatment and/or public ownership and trading of interests. Nevertheless, business income of individuals from sole proprietorships (without limited liability) in the United States and business income of individuals overall in Canada (including business forms with and without limited liability) are comparable based on Tables 6 and 2, above: 22.1 percent in the United States and 25.5 percent in Canada.

[41] Davies Ward Phillips & Vineberg LLP, "Perspective - The Rise and Fall of Canadian Income Trusts," October 20, 2009, http://www.dwpv.com/~/media/Files/PDF/Perspective_Rise_and_Fall_of_Canadian_Income_Trusts.ashx .

[42] However, as noted above, passthrough tax status continues to apply to income trusts whose income is from doing business outside Canada; see, *e.g*., Tim Cestnick, "Tax Matters: A New Breed of Tax-efficient Cross-Border Income Trusts," *The Globe and Mail*, August 22, 2012, http://www.theglobeandmail.com/globe-investor/personal-finance/taxes/a-new-breed-of-tax-efficient-cross-border-income-trusts/article4493606/ .

stapled interests of a corporation or SIFT entity if either instrument were publicly traded.[43] Without interest deductibility, the stapled structure became no more attractive than corporate equity financing.

[43] Department of Finance Canada, "Government of Canada Announces Amendments to the Taxation of Specified Investment Flow-Through Entities, Real Estate Investment Trusts and Publicly-Traded Corporations," July 20, 2011, http://www.fin.gc.ca/n11/11-058-eng.asp . The change also affected stapled REITs.

C. Germany

Choice of business entity

Table 7 in Part II, above, shows that in Germany in 2007, corporations earned 34.1 percent of total net business income, and individuals, including income earned through passthroughs, earned 65.9 percent of total net business income.

Business in Germany may be conducted through sole proprietorships, several types of partnerships (passthrough entities) which are not publicly traded, or several types of types of corporations (subject to entity-level tax) interests in which may be publicly traded. The factors for choosing among these forms of doing business depend on a variety of circumstances and are not heavily skewed by any one factor. Limited liability for owners is provided both by corporations and by some types of partnerships in Germany, so this factor is not necessarily determinative.[44]

The combined tax rate applicable to distributed corporate income on shares that are treated as business property of an individual can amount to 50.4 percent.[45] The tax rate would be 49 percent if the distribution is private investment income to the individual.[46] The tax rate applicable to business income of an individual through a partnership, assuming the maximum tax rates and imputation to the partner of the partnership-level trade tax, is 45 percent.

Thus, differences in the tax rate on business income derived through a corporation or though a passthrough is not necessarily a major or determining factor in choice of business entity in Germany.

Two other tax factors may be more significant. The first is the ability to pass losses through a partnership but not a corporation. This factor weighs in favor of a partnership if losses are anticipated (for example, initial losses when starting a business). A second factor relates to the repatriation of earnings from abroad. When a foreign permanent establishment of a partnership repatriates earnings to Germany, the repatriation is generally tax-free to the partners. By contrast, when comparable foreign earnings of a corporation are repatriated to Germany, they are subject to dividend tax when distributed to shareholders. This factor tends to weigh in favor of choosing a partnership rather than a corporation for cross-border investment.

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[44] This result is similar in one respect to the United States, where businesses (other than sole proprietorships) can choose limited liability for owners coupled with passthrough tax treatment; however, in the United States, businesses may combine these features with public ownership and trading of interests, whereas in Germany passthrough tax treatment is not available for publicly traded business entities.

[45] The corporate level tax rate totalling 32 percent is the sum of the 15-percent corporate tax and the 17-percent trade tax (assuming the maximum rate). The shareholder level tax rate of 18.4 percent is the 68 percent of the profit distributed (that is, 100 percent minus the 32-percent corporate level tax), multiplied by the 60-percent shareholder relief and multiplied by the 45-percent individual tax (assuming the maximum rate). The sum of 32 and 18.4 percent is 50.4 percent.

[46] If the corporate distribution is private investment income to the individual, the shareholder level tax rate is 17 percent, determined as the 68 percent of the profit distributed (that is, 100 percent minus the 32-percent corporate level tax), multiplied by the 25-percent flat rate. The sum of 32 and 17 percent is 49 percent.

Potential changes in German law

Due to modifications in investment fund regulation under new European Union legislation, the German tax rules for investment funds have been the subject of transitional rules promulgated in summer 2013.[47]

[47] Uwe Bärenz and Ronald Buge, "Germany: German Act On The Adaption Of Investment Fund Taxation In Connection With AIFM-D Have Ceased Temporarily," *Mondaq*, July 9, 2013, http://www.mondaq.com/x/248198/Fund+Management+REITs/German+Act+On+The+Adaption+Of+Investment+Fund+Taxation+In+Connection+With+AIFMD+Have+Ceased+Temporarily .

D. Japan

Choice of entity

Table 7 in Part II, above, shows that in Japan in 2010, corporations earned 50.1 percent of total net business income, and individuals, including income earned through passthroughs, earned 49.9 percent of total net business income.

The disparity between the top individual tax rate of 40 percent and the top corporate tax rate of 25.5 percent (reduced to 15 percent from April 1, 2012 to March 31, 2015), with partial shareholder integration, would tend to create an incentive favoring corporate form over noncorporate form for businesses if the additional local, prefectural and municipal inhabitant rates were not taken into account. However, the local, prefectural and municipal inhabitant rates can raise the overall Japanese corporate income tax rate to approximately 38 percent in some parts of the country, not very different from the top individual rate of 40 percent. The incentives created by differing rates vary geographically across Japan. Differences in tax treatment among the various forms of Japanese passthroughs (NK, TK, trust, investment LP and LLP) do not appear to be a significant factor in choice of business entity. Limited liability is available either through a corporation (subject to entity-level tax) or through some forms of passthroughs (*e.g.*, the TK, the investment LP, and the relatively new LLP), so limited liability also does not appear to be a significant factor in choice of business entity.

Potential changes to Japanese law

Corporate tax base changes that would increase tax benefits have been proposed in October, 2013, in Japan.[48] This could increase incentives to conduct business in corporate form. In addition, a proposal to carry out the scheduled increase in the VAT rate from five to eight percent has been made.

[48] See Yuriko Nagao, "Japan's Ruling Parties Propose 2014 Corporate Tax Break Measures," *BNA Daily Tax Report,* October 9, 2013, http://news.bna.com/dtln/DTLNWB/split_display.adp?fedfid=37098448&vname=dtrnot&fcn=8&wsn=497902000&fn=37098448&split=0 .

E. United Kingdom

Choice of business entity

Table 7 in Part II, above, shows that in the United Kingdom in 2010, corporations earned 67.5 percent of total net business income, and individuals, including income earned through passthroughs, earned 32.5 percent of total net business income.

Rate incentive for corporate form

In the United Kingdom, businesses may take one of several passthrough forms: sole trader (analogous to a sole proprietor in the United States), unlimited partnership, limited partnership, or LLP. Alternatively, a business may operate as one of several types of company (analogous to a U.S. corporation), which is subject to entity-level taxation and distributions from which are eligible for a partial shareholder credit.

The U.K. tax rate for companies of 23 percent (dropping to 21 percent in 2014) is relatively low compared to the top individual tax rate of 45 percent. Taking into account the partial shareholder credit for distributed corporate income, and the availability of the small profits rate of 20 percent on corporations' profit below £300,000 (US $486,122), the income tax rate on distributed corporate income can be comparable to the lowest individual income tax rate of 20 percent on taxable income above the personal allowance up to £35,000 (US $56,714).

The U.K. rate structure tends to create a tax incentive to operate a business in corporate form rather than in the form of a passthrough or sole trader subject to individual tax rates, even at relatively low business income levels. Further, the corporate form provides limited liability for shareholders with respect to corporate liabilities and obligations.

On the other hand, nontax considerations may weigh in favor of other forms. For example, administrative and paperwork burdens may be greater in corporate form than as a sole trader or unlimited partner (no registration required, no limited liability), and unlimited partnerships are the most common form of partnership in the United Kingdom. Limited partnerships and LLPs provide some aspects of limited liability but have restrictions that make them relatively less popular.

Tax incentive to incorporate rather than work as an employee

Another tax factor favoring use of the corporate form in the U.K. relates to the NICs (social insurance) tax. NICs do not apply to distributions of corporate income to shareholders. Thus, dividends are taxed at a lower aggregate rate than most labor income. This creates an incentive for an individual to incorporate a business and take profits as dividends, rather than to work as an employee in the business and receive wages.

NICs apply to employers and employees with respect to wages and salaries, generally at a rate of 12 to 13.8 percent up to a threshold and 1 to 2 percent above the threshold (reduced by a "contracted-out rebate" of 1.4 or 1.6 percent if the employee contracts out of certain social insurance benefits). In 2000, anti-avoidance legislation was added that treats income as employment income rather than corporate income if a worker provides services through a

personal service corporation, that is, in a relationship that would be treated as employment ignoring the interposed company.

Tax incentive to incorporate rather than to be a sole trader or partner

NICs applies to sole traders and partners (although at a lower rate than to employees), making the choice to incorporate rather than to be a sole trader or partner relatively more attractive, as NICs do not apply to dividends. Relatedly, when NICs applicable to sole traders and partners is combined with individual income tax rates, the incentive to incorporate rather than operate a business in sole trader or partnership form is strengthened.

Tax incentive to be a sole trader or partner rather than work as an employee

Because NICs apply to profits of a sole trader or partner at a lower rate than to wages and salaries of employees, self-employment is more attractive than direct employment. As between self-employment as a sole trader, and working as an employee, a further tax incentive for self-employment may be created by looser rules for expense deduction and the availability of losses against other income for sole traders but not for employees. Self-employment status has been litigated and is generally governed by case law. Anti-avoidance provisions limit use of hobby losses against other income.

Limited liability

Because limited liability for business owners in the U.K. is available either through companies (subject to entity-level tax) or through passthroughs (*e.g*., through limited partnerships or through a relatively new vehicle, LLPs), the element of limited liability does not appear to be a significant factor in choice of business entity as between a corporation and a passthrough.

Potential changes to U.K. law

Legislation that took effect on April 1, 2013, provides temporary relief over a five-year period for companies that wish to carry on their business activities through a noncorporate structure (*i.e*., to disincorporate). Under the temporary relief, the transfer of qualifying assets with an aggregate value of £100,000 (US $162,041) or less from a company to its shareholders does not trigger capital gains tax. Qualifying assets are defined as goodwill and real estate interests (with certain exceptions). As a requirement for relief, the business must be transferred as a going concern to shareholders who are individuals and who have held their shares for at least twelve months prior to the date of the transfer.[49]

A cap has been proposed to limit use of self-employed persons' losses against other income ("sideways" use of losses). As noted elsewhere, the corporate income tax rate is scheduled to drop from 23 to 21 percent in 2014.

[49] Gabelle LLP, "Finance Bill Update: Disincorporation Relief," Mar. 1, 2013, http://www.gabelletax.com/our-news/finance-bill-update-disincorporation-relief.

IV. COMPARISON CHARTS OF THE FEATURES OF BUSINESS FORMS IN AUSTRALIA, CANADA, GERMANY, JAPAN, THE UNITED KINGDOM, AND THE UNITED STATES

Table 8.─Comparison of the Features of Business Forms in Australia

	Passthrough Tax Treatment	**Limited Liability for Owners**	**May Be Publicly Traded**	**Other Features**
Partnerships	Generally yes	Generally no, for partnerships with passthrough tax treatment	Generally no	• Deductible loss is not limited to basis on the theory that all partners are jointly and severally liable for partnership liabilities • Partnership cannot have more than 20 partners without incorporating (exceptions for professional partnerships and limited partnerships)
Trusts	Generally yes with respect to net income; no with respect to net losses, which are carried forward at the trust level	Yes	Generally no for business activities; yes for certain investment activities	• Trust are subject to maximum marginal statutory individual tax rate (46.5 percent) with respect to net income to which no beneficiary is presently entitled; present entitlement does not require immediate distribution • Special rules for "bare" trusts (similar to U.S. grantor trusts), "discretionary" trusts (used for closely held businesses), and "unit" trusts (similar to RICs and REITs in U.S.)
Companies	No; subject to flat 30% rate at entity level (but imputation system reduces owner-level tax)	Yes	Yes	

Table 9.─Comparison of the Features of Business Forms in Canada

	Passthrough Tax Treatment	**Limited Liability for Owners**	**May Be Publicly Traded**
Partnerships	Generally yes, but not for publicly traded business partnerships under the SIFT limitations, and not for partnerships with any partners that are nonresidents of Canada	Generally yes, subject to partner level anti-tax shelter restrictions	Generally no for business partnerships under SIFT limitations
Trusts	Generally yes, but not for publicly traded income trusts under SIFT limitations	Yes	In some circumstances yes, but under SIFT rules, publicly traded income trusts that hold Canadian non-portfolio property are subject to entity-level tax
Corporations	No; subject to net federal tax rate at entity level of 15% (+10% to 16% provincial corporate tax)	Yes	Yes

Table 10.─Comparison of the Features of Business Forms in Germany

	Passthrough Tax Treatment	Limited Liability for Owners	May Be Publicly Traded
Partnerships	Generally yes	Generally yes	No
Corporations	No; subject to corporate-level tax rate of up to 32%. Shareholders generally subject to tax on 60% of distributed income at rates up to maximum individual rate	Yes	Yes

Table 11.─Comparison of the Features of Business Forms in Japan

	Passthrough Tax Treatment	Limited Liability for Owners	May Be Publicly Traded	Other Features
Ninn'i Kumiai (NK)	Yes	No	No	• Deduction for losses is generally not allowed for individual NK partners; for corporate NK partners, deduction for losses is limited to adjusted basis of partner's contribution
Tokeumei Kumiai (TK)	Generally yes, but entity-level withholding tax is imposed on profit distributions to investors	Investors (similar to limited partners) have limited liability; operators (similar to general partners) do not.	No	
Trusts	In some cases	Yes	In some cases	
Investment LPs	Yes	Yes	No	• Activities limited to investing in securities, lending to businesses, and certain other investing activities
Limited Liability Partnerships (LLPs)	Yes	Yes	No	• Added in 2005 legislation • Deduction for losses is generally not allowed for individual partners; for corporate partners, deduction for losses is limited to adjusted basis of partner's contribution
Joint Stock Companies	No; subject to entity-level tax of up to 25.5% (plus local, prefectural, and municipal taxes that raise this rate to up to 38%)	Yes	Yes	

Table 12.─Comparison of the Features of Business Forms in the United Kingdom

	Passthrough Tax Treatment	Limited Liability for Owners	May Be Publicly Traded	Other Features
Partnerships	Yes	Yes in the case of limited partnerships and limited liability partnerships	Generally no	
Companies Limited By Shares	No; subject to entity-level tax of up to 23% (scheduled to decline to 21% in 2014), with partial shareholder credit for distributed corporate income	Yes	Yes	• Temporary window (2013-2018) during which companies can transfer certain assets ≤£100,000 (US $162,041) to shareholders without triggering capital gains tax.

Table 13.─Comparison of the Features of Business Forms in the United States

	Passthrough Tax Treatment	Limited Liability for Owners	May Be Publicly Traded	Other Features
Partnerships	Generally yes (except publicly traded partnerships that does not meet the qualifying income requirement)	Yes if permitted under State law	Generally no, but a partnership may be publicly traded if ≥90% of its income is qualifying income (including interest, dividends, real property rents, capital gains, and certain income related to minerals, natural resources, and commodities trading)	• States may provide for limited liability for some or all partners/members through a variety of organizational forms, including limited partnerships (LPs), limited liability partnerships (LLPs), limited liability companies (LLCs), and professional corporations (PCs)
S Corporations	Yes	Yes	Generally no	• Must have ≤100 shareholders • Shareholders must not include partnerships, corporations, or non-residents • Must only have one class of stock • Certain types of institutions (*e.g.*, certain financial institutions and insurance companies) are ineligible for S corporation status
C Corporations	No	Yes	Yes	

Table 14.—Summary of Factors Affecting Choice of Business Form in Countries Studied

Countries	Corporate Share of Net Business Income	Tax-Related Factors Affecting Choice of Business Form	Other Factors Potentially Affecting Choice of Business Form
Australia	81.9% (2009)	– Corporate income tax rate (flat rate of 30%) is well below top marginal individual income tax rate (46.5%) – Shareholder imputation regime allows resident shareholders to claim credit against individual income tax to the extent that corporation has already paid Australian tax on profits prior to distribution	– Partnership generally cannot have more than 20 partners without incorporating – No limited liability for partners in partnerships that are passthrough entities (with certain exceptions) – Trusts provide limited liability and passthrough treatment for income (but not losses)
Canada	74.5% (2009)	– Corporate income tax rate (up to 15% at federal level plus 10% to 16% at provincial level) is well below top marginal individual income tax rates (29% at federal level plus 10% to 21% at provincial level) – Publicly traded partnerships and trusts generally subject to entity-level tax under "SIFT" rules	– Partnerships that are passthrough entities cannot have partners who are nonresidents of Canada and cannot be publicly traded
Germany	34.1% (2007)	– Modest rate-related incentive to carry out business activities through partnership rather than corporation (combined rate applicable to distributed corporate income can total 50.4%, while maximum rate applicable to income of individual through partnership is 45%) – Passthrough of losses via partnership, but not via corporation – Repatriation of foreign profits of partnership may be tax-free, while repatriation via corporation results in tax on dividends	

Countries	Corporate Share of Net Business Income	Tax-Related Factors Affecting Choice of Business Form	Other Factors Potentially Affecting Choice of Business Form
Japan	50.1% (2010)	– Due to different local, prefectural, and municipal rates, tax-related incentives affecting choice of business form vary geographically	– Ninn'i Kumiai (NK) passthrough structure does not provide limited liability; LLP structure allows limited liability but was only recently introduced (2005)
United Kingdom	67.5% (2009)	– Top corporate income tax rate (23%, scheduled to decline to 21% in 2013) is well below top marginal individual income tax rate (45%) – National Insurance Contributions (NICs) not imposed on dividends	– While partners may maintain limited liability while participating in management through LLP structure, LLPs are still relatively new in the UK (since 2000)
United States	42.1% (2009)	– Corporate income tax rate (top federal rate of 35% in 2013) plus additional tax on dividends and capital gains may result in higher tax burden for business activities operated through C corporations than for activities operated through partnerships and S corporations	– State law generally allows for business activity to be conducted with limited liability through entities other than a corporation (e.g., LLC, LP, LLP)