

## **TAXREP 18/99**

### **LIMITED LIABILITY PARTNERSHIPS**

**Comments submitted by the Tax Faculty in July 1999 to the Deputy Technical Director of the Institute of Chartered Accountants in England and Wales in response to the Government's observations on the fourth report from the Trade and Industry Committee (Session 1998-99) on the draft Limited Liability Partnership Bill.**

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### INTRODUCTION

- 1 The Tax Faculty has been asked to consider and comment on the taxation aspects of the above document (HC 529) that was ordered to be printed on 14 June 1999.

### GENERAL COMMENTS

#### *Form of legislation*

- 2 Although we have been asked to comment specifically on the taxation aspects of the observations, we wish to make a general comment in respect of the use of delegated legislation. We have seen an increase in the use of delegated legislation in direct tax matters in recent years. As a policy, we are not in favour of the use of delegated legislation for tax purposes and have expressed this concern in our representations on the Finance Bills, both in 1998 (TAX 13/98) and 1999 (TAXREP 9/99).

- 3 We welcome the fact that the Limited Liability Partnership Bill ('LLP Bill') (rather than any delegated legislation) will include references to the tax provisions as set out in paragraph 80 of the observations. However, it is not clear whether, for example, the specific problems outlined in paragraph 79 will be included in the Bill or instead will be set out in delegated legislation. We propose to write to the Inland Revenue requesting clarification on this aspect.

#### *Consultation*

- 4 We note and share the concerns expressed in paragraph (c) on page iv of the importance of full consultation on any draft secondary legislation. In the event that the draft secondary legislation includes taxation provisions, we will consider them further at that stage.

### TAXATION NEUTRALITY

#### *General Comment*

- 5 We agree with the comment expressed by the Committee that the proposed extension to LLPs of the tax treatment afforded to partnerships should be set out in sufficient detail to prevent any doubt as to which provisions are to apply. The taxation clause in the original draft Bill was inadequate and we therefore welcome the Government's response that the LLP Bill will include all of the references listed in paragraph 80.

### *Areas for clarification*

- 6 There are, however, two particular areas where we believe the taxation position of LLPs still needs to be clarified, namely loss relief and VAT.

#### *Loss relief*

- 7 We note the statement in paragraph 79 that the members of a LLP will be entitled to the same tax reliefs as partners but would welcome confirmation that the loss relief provisions will apply to LLPs, subject we presume to the limitation on loss relief for limited partners. The latter provisions are set out in section 117, Income and Corporation Taxes Act 1988 for individuals and section 118 for companies and we presume that these provisions will need to be amended to include partnerships registered under the LLP Bill.

#### *VAT*

- 8 There are no references to the VAT position of a LLP. The VAT rules contain specific provisions to deal with partnerships. We think it is important that LLPs are treated as partnerships for VAT purposes, and therefore the VAT provisions dealing with partnerships will need to be extended.

#### *Stamp duty*

- 9 We welcome the proposed relief from stamp duty set out in paragraph 83 but we are concerned that the conditions attached to the proposed relief are too restrictive. Stamp duty is becoming a significant burden on business transactions and we are concerned that it does not inhibit, for example, a move to a LLP where the majority of partners are the same before as after. We suggest that the condition that all the partners be the same before as after should be relaxed to one where at least 75% of the partners are the same before and after, thus mirroring the equivalent stamp duty reliefs for transactions within a group.

#### *Statements of Practice*

- 10 We note the Inland Revenue's intention to apply various Statements of Practice etc which are listed in paragraph 85. We would point out that ESC A37 - Directors fees received by a partnership - is currently subject to change on the basis of the proposal to introduce rules to counter the use of personal service companies. The proposals appear to suggest that this concession will in effect be withdrawn. It is our view that any new rules introduced in this area should not apply to the situation as set out in the concession, and we are currently in consultation with the Revenue to limit the impact of this proposal. We think that the time has come to give legislative backing to the concession, thus putting beyond doubt the position that partnerships (including LLPs) are able to receive directorship fees gross.

## **OVERSEAS LLPs**

### *Entity classification*

- 11 We note the comments made by the Revenue as set out in paragraph 90 concerning the method whereby they classify foreign entities (and in particular overseas LLPs) for the purposes of UK taxation. These comments appear merely to set out the current published position of the Revenue and do not appear to reflect adequately the proposed introduction into the UK of limited liability partnerships.

- 12 We are concerned that the existing classification of foreign LLPs is not always consistent. For example, in a recent High Court case, the Revenue refused to confirm that a Jersey registered limited partnership would be treated as a partnership for UK tax purposes rather than a body corporate. However, we understand that certain US LLPs that operate in the UK through branches are treated as partnerships.
- 13 If LLPs are introduced into UK law, we suspect that all of the existing decisions made by the Revenue on the classification of foreign entities that may have the characteristics of limited partnerships will need to be reviewed. In view of the recent High Court decision mentioned above, it would be helpful if the Inland Revenue issued a statement as to whether their view of the characterisation of a Jersey limited partnership for UK tax purposes will change if the UK introduces LLPs.
- 14 We note that the Revenue have said that they will publish in a forthcoming issue of Tax Bulletin a list of their decisions on the UK tax treatment of foreign entities and their tax treatment. However, the list has yet to appear. We think that the list should be published as soon as possible. The list should also include a note for each entity as to whether the Revenue believe that their existing decisions may need to be revised to take account of UK LLPs.
- 15 The proposed introduction of UK LLPs provides an opportunity to ensure that the treatment of overseas LLPs for UK tax purposes is consistent. We think it will make sense (assuming that UK LLPs become UK law) to treat all overseas LLPs as UK LLPs for the purposes of UK taxation. This may require existing entities to be reclassified as a limited partnership.
- 16 In the event that the tax status of an overseas entity needs to be revised, we are concerned that the entity is not disadvantaged and that there are no unexpected charges to UK taxation. This may require legislation, possibly supplemented by an extra statutory concession and a statement of practice.

*Disclosure*

- 17 We agree with the comment in paragraph 87 that the disclosure requirements for overseas LLPs should be the same as those that will apply to UK LLPs.

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FJH  
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