TAXREP 02/2001

LIMITED LIABILITY PARTNERSHIPS

Memorandum submitted to the Revenue in February 2001 in response to a request for comments on the proposals to prevent tax loss through LLPs used for property investment by the Tax Faculty of the Institute of Chartered Accountants in England and Wales

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LIMITED LIABILITY PARTNERSHIPS

1 We refer to your letter dated 1 February 2001 requesting comments on the proposals to prevent tax loss through LLPs used for property investment.

GENERAL COMMENTS

2 Our main comment is that we think the provisions proposed in the letter are not necessary. We refer you to our earlier comments (published as TAXREP 37/00) where we doubted that LLPs would be used extensively for tax avoidance. Your letter refers to press speculation that LLPs could provide a vehicle comparable to a US REIT.

3 However this speculation has, we believe, been fuelled by one or two professional firms who have raised this as a possibility. We understand that the general view, in both the professional services and investment industries, is that LLPs would not really add anything to the range of vehicles already available. In fact we understand that some lawyers are now suggesting that some of the detailed rules for LLPs in any event make them unsuitable for such purposes.

4 It would appear unfortunate that people should be prevented from using the new entity for property investment where there is no intention of creating a tradeable instrument of the sort we believe the Revenue is concerned about. In our experience, property investment vehicles of this sort are seen by investors as an alternative to direct investment in property as distinct from a freely tradeable investment such as equities.

5 As far as we can see the only feature of LLPs which gives rise to this concern is that they have no restriction on the number of partners. However, this by itself is unlikely to make much difference. To be comparable to a REIT, the LLP interests would have to be traded on the Stock Exchange and treated as securities. This would require a change of the Stock Exchange rules, and would also require a thorough consideration of the regulatory position. In addition to these problems, if LLP interests are traded then they would (we believe) bear stamp duty at property rates. This is likely to make frequent trading uneconomic.

6 We therefore consider that the proposals suggested in your letter are unnecessary as they are designed to prevent a risk which is more imaginary than real.

7 In any event, if it is Government policy not to have a UK tax transparent corporate property investment vehicle with tradeable interests along the lines of a REIT, then the appropriate way to prevent this is via regulatory action rather than through the tax system.

SPECIFIC COMMENTS

8 We accept that if the Revenue insist on introducing rules to make LLPs unattractive to use for property investment purposes, the proposals are probably the most acceptable way of doing this. In particular it is difficult to see that they are likely to catch situations other than those specifically being targeted.

9 If you have any questions, please let us know.

FJH
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8 February 2001