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More about Limited Liability Partnerships (LLPs)

An LLP is not really a partnership at all. Strictly, it is a body corporate and were it not for special legislation it would be liable to corporation tax. However, the profits of an LLP are taxed as if the business was being carried on by partners in partnership, and gains on the disposal of business assets are taxed as if the members had each disposed of their share in the assets.

The law actually allows any group of two or more people who want to set up a profit-making business together to form an LLP, unless one of them has previously been disqualified as a company director or LLP member.

The LLP legislation meets a demand from many types of business, to allow a continuation of the partnership style of operation with the protection that limited liability offers.

LLP, Company or partnership?

LLPs are certainly more complicated to set up than ordinary partnerships because they are bound by many of the same requirements as limited companies. An LLP is unlikely to be useful for a small trading company because a conventional limited company is capable of performing a similar role at lower cost. LLPs are designed to be used by profit-making businesses and are not suitable for non-profit making organisations. They do have the following potential advantages over limited companies:

- less public scrutiny because the partnership agreement remains confidential
- easier manipulation of shares between members
- easier changes of membership
- no administration relating to the issue and allotment of shares
- easier definition of administration and management in a partnership agreement

Interest and loss relief

LLPs may be appropriate for an organisation where some members are not actively involved (formerly called 'sleeping' partners). It is important to be aware that relief for interest payments on borrowings lent to an LLP can be restricted more for trades than for professions or vocations. Similar restrictions apply to loss relief.

In general, a person in a profession will be either using his intellect to obtain the end product (e.g. an accountant) or using a manual skill which is controlled by the intellect (e.g. a surgeon). In case law a self-employed actress was held to be in a profession, but an insurance broker was not.

Anti avoidance

As in most areas of taxation, there are specific anti-avoidance measures, particularly targeted at *investment LLPs* or *property investment LLPs* These have particular implications for approved pension funds and life assurance companies, by making income and gains from membership of such LLPs fully taxable.

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When an LLP is wound up, there is a clawback provision where, within two years before the winding-up, a member has withdrawn any profit or capital and should have known that the LLP would be unable to pay its debts.

The decision to form an LLP should not be undertaken lightly, and professional advice is essential.