

LIMITED LIABILITY PARTNERSHIPS

What are they?

From 6 April 2001, there is a business vehicle in addition to companies, traditional partnerships and sole traders. It is now possible to run your business using what is known as a Limited Liability Partnership (LLP).

MOST IMPORTANT FEATURES OF LLPs:

The key advantage of a LLP compared with a traditional partnership is that the members of the LLP (it is very important that they should not be called partners but members) are able to limit their personal liability if something goes wrong with the business, in much the same way as shareholders in a company have always been able to do. Of course anyone lending money to the LLP such as a bank may still require personal guarantees from the members, as they frequently do with shareholders in a company.

Where business owners have wanted to limit their personal liability in the past, they have normally set up companies and any profits made by those companies are subject to corporation tax. Dividends paid by the companies can then be taken as income of the shareholders. LLPs are taxed quite differently in that the profits are treated as the personal income of the members as if they had run their business as a partnership. The taxation of companies and partnerships is very different but taxation should not be the main consideration in choosing a business vehicle. We would be very pleased to discuss the impact in any particular case.

LLPs will produce and publish financial accounts with a similar level of detail to a similar sized limited company and will have to submit accounts and an annual return to the Registrar of Companies each year. This publication requirement is far more demanding than the position for normal partnerships and some specific accounting rules (which have not yet been finalised) may lead to different profits from those of a normal partnership.

SETTING UP LLPs OR CONVERTING AN EXISTING PARTNERSHIP

A LLP is set up by a legal incorporation process which involves sending certain documents to the Registrar of Companies (more details from Companies House at www.companieshouse.gov.uk or on 0870 3333636) and a fee of £95. Although it is not legally necessary, every LLP should have a thorough and comprehensive members agreement (currently known as a partnership agreement) in place and needs to have taken legal or professional advice about the issues that should be covered by this agreement.

Existing partnerships can convert to a LLP by exactly the same process of incorporation and providing there are no changes in membership or in the way in which the partnership operates, there may well be no impact on the partnership's tax position. Again care and advice needs to be taken before any decisions are made.

It is not possible for a limited company to convert into a LLP and there will be a significant legal and taxation impact where a LLP takes over the business of a company.

WHICH BUSINESSES MIGHT WANT TO USE A LLP?

The types of business that LLPs were originally designed for were professional partnerships such as lawyers, surveyors and accountants. In many of these cases, though not all, they have not been able to operate through limited companies because of restrictions from their professional associations and the option of using a LLP offers some advantages.

However other businesses may also benefit from using LLPs, particularly new start-ups who might otherwise have formed limited companies.

WHAT LIABILITY MIGHT MEMBERS OF A LLP HAVE IF SOMETHING GOES WRONG?

Because LLPs are completely new, there are no decisions yet by the courts where

something has gone wrong. This is therefore a hard question to answer but it looks as if the following describes the position as most people understand it at present:

- if, for example, a member of a LLP were to give bad advice to a client and the client suffered a loss as a result, the client may be able to take the LLP to court and be awarded appropriate compensation
- it is possible that the member who actually gave the advice may also be required by a court to pay compensation to the client
- it is however probable that any other members who were not directly involved in the advice will not have any personal liability. In a normal partnership it is quite possible that they would have had a personal liability.

It will still be essential for LLPs (and individual members) who might find themselves in this position to have suitable insurance cover.

The other area that needs to be considered is to do with what the law calls unlawful or insolvent trading. In just the same way as company directors can be prosecuted for these offences, members of a LLP can also be prosecuted (and can be disqualified from being a member of a LLP in the future).

A DECISION TO USE A LLP?

Relatively few LLPs have been created so far, partly because they are new and partly because there are doubts as to what the detailed impact may be. There is an expectation that they will eventually become widespread but any decision to convert an existing partnership or to set up a new business using a LLP is a complex one, involving legal, accounting and tax issues.

We would be delighted to discuss these issues with you and demonstrate what the impact would be on your business.

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