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Limited Liability Partnerships

Advantages

- Limited liability for members subject to guarantees and other criteria
- Catalyst for cultural change
- Contemporary image
- Move to corporate image
- Attracting new members
- Salaried partners – tax savings
- Flexible for partners to retire and for admitting new partners
- Flexible for changing profit shares each year
- On retirement, partners' capital can be left in the LLP as a loan earning interest

Disadvantages

- Cost
- Public disclosure
- Loss of partnership ethos
- Accounting standards e.g. FRS 12 - annuities
- The members of an LLP may be liable to contribute to its assets on winding up
- Salaried partners – potential loss of employment rights

Tax

- No personal tax advantage – incorporation is tax neutral
- If the LLP takes on ALL of the business of the partnership there is no cessation of trade for income tax and there will be no deemed disposal of assets by the partners
- Taxation of salaried members – self employed for tax but question over employment status
- SDLT exemption on transfer of property or stampable leases within one year of incorporation

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Limited Companies

Advantages

- Limited liability for members subject to guarantees
- Catalyst for cultural change
- Contemporary image
- Move to corporate image
- Potential investors post Legal Services Act
- Attracting new members
- Potential to leave capital in the business post retirement to receive a return on that investment – care to be taken re Entrepreneurs Relief – this could also be achieved with the other potential trading structures
- Remuneration can reflect the rewards for fee earning/management and rewards for ownership as two distinct returns – this could also be achieved with the other potential trading structures as a basis for determining the remuneration/profit share package. With a Limited Company, it is also possible to have 'income shares' and 'capital shares' so that shareholders can have access to an income stream without having invested capital. Those with capital shares would have the opportunity to have a greater return on their investment.
- Potentially large tax savings – see below

Disadvantages

- Cost
- Public disclosure
- Loss of partnership ethos – partners need to grasp the corporate governance aspects and the link between decision making and relative share ownership
- Accounting standards e.g. FRS 12 - annuities
- The shareholders of a company may be liable to contribute to its assets on winding up
- Not as easy for retiring 'partners' or admitting new partners – tax consequences of not valuing the shares on disposal at market value particularly if disposed of goodwill to the company
- Not as easy for changing profit shares each year – may need to have alphabet shares to distinguish between classes of shareholders and declare different dividends to different classes of shareholders
- More difficult to implement than other corporate hybrid structures
- Benefit in Kind tax issues
- Inheritance Tax issues
- Associated companies and only one small companies rate band for tax
- Difficult to reverse once implemented

Tax

- Completely different tax regime – the company is taxed at corporate rates and the individuals are taxed as employees
- Cessation of trade as self-employed – deemed disposal of assets by the partners
- Potentially significant tax savings if not all profit is withdrawn
- Smaller tax savings if all profit is withdrawn assuming mostly via dividends
- Ability to value and dispose the partnership goodwill to the company – the partners would pay 10% capital gains tax but would then be able to draw down on the balance completely tax-free thus potentially generating very large tax savings
- No SDLT exemption on transfer of property or stampable leases
- Salaried partners could remain as employees of the company and very little would change, or they could become shareholders and receive dividends – if they do become shareholders, very little capital need be invested but they would not be able to benefit from the sale of goodwill to the company unless they become equity partners and invest capital pre incorporation. They could also be brought in as a different class of shareholder and benefit from tax efficient remuneration.

Hybrid – Corporate Partner

This could easily be achieved by admitting a new partner to the existing partnership that happens to be a company. This takes the advantages of the limited company regime and matches them with the advantages of the partnership/LLP regime.

Advantages

- Very simple to implement compared to the other structures
- Potential investors post Legal Services Act
- No loss of partnership ethos
- Attracting new members
- No major changes to the practice
- No changes to accounting requirements of the partnership
- No public disclosure since the company could be an unlimited company
- Flexible for partners to retire and for admitting new partners
- Potential to leave capital in the business post retirement to receive a return on that investment – care to be taken re Entrepreneurs Relief – this could also be achieved with the other potential trading structures
- Flexible for changing profit shares each year
- Potentially large tax savings – see below
- Avoids the Benefit in Kind and Inheritance Tax issues of full incorporation
- Very easy to reverse once implemented

Disadvantages

- Needs to be an active partner
- No limited liability for partners, unless done as part of an LLP conversion where the company would become a member
- Share valuation methods to determine on retirement
- Associated companies and only one small companies rate band for tax
- Cost

Tax

- The same tax regime for the individuals – the company would be taxed at lower tax rates than the personal tax rates on undrawn profits
- Continuation of trade as self-employed – but also employed by the company, so very flexible in allocating profits or salary/dividends to suit
- Potentially significant tax savings if not all profit is withdrawn
- Smaller tax savings if all profit is withdrawn assuming mostly via dividends
- Ability to value and dispose the partnership goodwill to the company – the partners would pay 10% capital gains tax but would then be able to draw down on the balance completely tax-free thus potentially generating very large tax savings
- Salaried partners could remain as they are, or also become shareholders in the company and receive dividends – if they do become shareholders, very little capital need be invested but they would not be able to benefit from the sale of goodwill to the company unless they become equity partners and invest capital pre incorporation

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Hybrid – Multiple Corporate Partner

This could be achieved by replacing the partners with their own limited companies. This takes the advantages of the limited company regime and matches them with the advantages of the partnership/LLP regime.

Advantages

- Limited liability subject to guarantees
- Potential investors post Legal Services Act
- No loss of partnership ethos
- Attracting new members
- No major changes to the practice
- No changes to accounting requirements of the partnership
- No public disclosure since the companies could be unlimited companies
- Extremely flexible for partners to retire and for admitting new partners
- On retirement funds can be left in the companies to draw against over a period of time like a pension – if below the higher rate band this would be tax free if paid as a dividend – care to be taken re Entrepreneurs Relief
- Extremely flexible for changing profit shares each year
- Potentially large tax savings – see below – including the use of more than one small rate corporation tax band
- No additional associated companies

Disadvantages

- Higher cost
- Difficult to reverse once implemented

Tax

- The tax regime for the individuals changes to employees – the individual companies would be taxed at lower tax rates than the personal tax rates on undrawn profits
- Potentially significant tax savings if not all profit is withdrawn
- Smaller tax savings if all profit is withdrawn assuming mostly via dividends
- Ability to value and dispose the partnership goodwill to the companies – the partners would pay 10% capital gains tax but would then be able to draw down on the balance completely tax-free thus potentially generating very large tax savings
- Salaried partners could remain as they are