



HM Revenue
& Customs

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Our ref

Dear Mr Barnett

Mixed Partnerships and Incorporation Relief (s162 TCGA 1992)

Further to Owen Jones' letter of 16 May 2014 I write to update you on HMRC's current position concerning mixed partnerships and incorporation relief (CG65700). Specifically occasions involving the incorporation of an LLP into an existing corporate member of that LLP.

For tax purposes an LLP to which s59A(1) TCGA1992 applies is treated as 'transparent' and any dealings by the LLP are treated as dealings by the members of the LLP. A transfer of part or all of its assets by an LLP is treated for capital gains purposes in the same way as a transfer by a partnership.

In the case of a partnership the partners are regarded as each having a fractional share in all of the partnership assets and it follows that "the whole assets of the business", as required by s162 TCGA 1992, cannot therefore be transferred to a corporate partner. SP D12 makes it clear that an existing partner to whom an asset is distributed by a partnership will not be regarded as disposing of their fractional share. As a consequence, where there is the incorporation of an LLP into an existing corporate member, the effect of s59A is that s162 TCGA92 cannot apply because "the whole assets of the business" have not been transferred.

After further consideration of the issue HMRC has altered its advice from that outlined in Mr Jones' letter of 16 May 2014. To ensure a fair treatment I am proposing to introduce this change with an effective date of 30 April 2016. HMRC did not publish any new guidance in relation to this issue so I would suggest that the CIOT may wish to advise their members of the change in position. We will update our published guidance as soon as possible to cover this issue in more detail.

Information is available in large print, audio and Braille formats.
Text Relay service prefix number – 18001

If you wish to discuss any of the above further please do contact me on the information contained at the head of this letter.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'K Acton', with a stylized flourish at the end.

Katherine Acton
Technical Adviser

To find out what you can expect from us and what we expect from you go to www.gov.uk/hmrc/your-charter and have a look at 'Your Charter'.