



Chartered
Institute of
Taxation
Excellence in Taxation

2 May 2014

Mike Crabtree
HM Revenue & Customs
100 Parliament St
London
SW1A 2BQ

via e-mail: mike.crabtree@hmrc.gsi.gov.uk

Dear Mike

Mixed partnerships and incorporation relief (TCGA 1992 section 162)

Following the partnership changes in Finance Bill 2014 a number of 'mixed partnerships' (those whose membership includes both individual and non-individual members) are considering full incorporation.

Commonly, a 'mixed partnership' (LLP) includes individuals and a corporate member; income profits of the partnership are shared between individuals and the corporate member; capital profits are predominantly attributable to individual members.

Incorporation of a mixed partnership

The query we have relates to the scope for the partnership's business to be incorporated into the existing corporate member. To effect this, we would anticipate the following:

1. Individual members would exchange their partnership interests for the issuance of additional shares in the corporate member; and
2. The corporate member would effectively maintain its position as it cannot issue shares to itself, but would take on the business and assets of the LLP.

In the above scenario, individual members would hope to satisfy the requirements of TCGA 1992 section 162.

TCGA 1992 section 162 and the transfer of the 'whole' of the partnership's business

The conditions for section 162 incorporation relief to apply stipulate that the 'whole of a partnership business' should be transferred as a going concern as set out in HM

Revenue & Customs' (HMRC) guidance at <http://www.hmrc.gov.uk/manuals/cgmanual/cg65700.htm> which states that:

'Relief is available to individuals who are partners (even if one or more of the other partners is a company) where the whole of a partnership business is transferred to a company as a going concern.'

In the above scenario, it has been suggested that the corporate member's interest in the partnership is not being 'transferred'. We do not think that this is correct as the business carried on by the LLP is distinct from a member's **interest** in that business. However if the suggestion were right, there would not be a transfer of the 'whole' of the partnership's business.

We would be grateful for confirmation of HMRC's view on whether or not individual members would satisfy the conditions for relief under TCGA 1992 section 162 in the circumstances outlined. We anticipate that a number of taxpayers will be considering incorporation in this way. Therefore, if HMRC are in a position to confirm their view, we would wish to place the confirmation into the public domain via the CIOT website and Tax Adviser, subject of course to HMRC's agreement.

We would be happy to discuss the query further if that is helpful.

Yours sincerely

John Barnett
Chairman, CGT & Investment Income Sub-Committee

The Chartered Institute of Taxation

The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 17,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.