IRAS e-Tax Guide

Stamp Duty : Relief for the Transfer of Assets upon Conversion of an Existing Firm to a Limited Liability Partnership (LLP)

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<u>Stamp Duty Relief for the Transfer of Assets upon Conversion of an Existing Firm to a Limited Liability Partnership (LLP)</u>

1. Aim

1.1 This guide serves : -

- to provide you with the conditions for relief for transfer of assets upon conversion of an existing firm to an LLP pursuant to the introduction of LLP by the Limited Liability Partnerships Act.

- to inform you that the Minister of Finance, in Budget 2011, has announced stamp duty relief will be extended for the transfer of assets on the conversion of a company to an LLP. To align to the conditions imposed on the transfer of assets upon the conversion of a company to an LLP, an additional condition is now imposed on the relief allowed on the transfer of assets from a firm to an LLP upon the conversion of a firm to an LLP. These changes apply to firms or companies converted to LLPs on or after 19 February 2011.

2. At a Glance

2.1 Stamp duty relief is allowed to a firm converting to an LLP if certain conditions are met.

2.2 For firms that are converted to LLPs on or after 19 February 2011, an additional condition applies. That is, at least 75% of the composition of the partnership interest in the LLP held by the partners immediately after the conversion should remain the same for 2 years from the date of conversion.

3. Glossary

3.1 "LLP" has the same meaning as in the Limited Liability Partnerships Act (Cap. 163A)

3.2 "Firm" has the same meaning as in section 2(1) of the Business Registration Act (Cap. 32)

3.3 "Registered Business Trust" has the same meaning as in section 2 of the Business Trust Act (Cap. 31A)

3.4 "Entity" means company, statutory body, registered business trust or LLP

3.5 "Date of Conversion" means the date of registration specified in the notice of registration issued by the Registrar of Limited Liability

Partnerships under section 20 or 21 of the Limited Liability Partnership Act (Cap. 163A)

4. Background

4.1 The relief will facilitate the conversion of existing firms to LLPs.

4.2 The additional condition introduced is to align to the conditions imposed on the transfer of assets upon the conversion of a company to an LLP.

5. Current Tax Treatment

5.1 Limited Liability Partnerships

5.1.1 An LLP is a legal person. Accordingly, it would be liable to pay stamp duties on any dutiable instrument as provided under the Stamp Duties Act. Hence, if an LLP acquires immovable property on its formation, it would have to pay stamp duty on the conveyance of that immovable property.

5.2 Conversion of a Company or Firm to an LLP

5.2.1 Under the Limited Liability Partnerships Act (Cap.163A), where a company or firm converts to an LLP, all the assets of that company or firm would vest in the LLP automatically. In other words, there may not be any written instrument effecting the transfer of those assets.

5.2.2 Nonetheless, stamp duty would be payable on the transfer of assets from the company or firm to the LLP. For this purpose, the notice of registration issued by the Registrar of Limited Liability Partnerships shall be deemed to be a conveyance on sale of the assets of the company or firm to the LLP. Ad valorem stamp duty would be payable on the value of the chargeable assets (assets chargeable to stamp duties, i.e. immovable property situated in Singapore, stocks or shares, or any interest thereof).

5.2.3 The notice of registration is required to be stamped within 14 days from the date of registration.

5.3 Conditions for Relief Upon Conversion of a Firm to an LLP

5.3.1 Currently, to facilitate the conversion of existing firms to LLPs, relief from the above stamp duty is allowed to a firm converting to an LLP if the following conditions are met :-

(a) The partners ("original partners") of the LLP are those of the firm as at the date of conversion.

(b) The assets of the LLP are those of the firm as at the date of conversion

(c) The capital contributed by each of the partner of the LLP remains the same as in the original firm as at the date of conversion

6 What's New and the Effective Date

6.1. Additional Condition for Relief

6.1.1 As announced in Budget 2011, an additional condition (d) is introduced to the stamp duty relief for conversion of firm to LLP. The following conditions for relief of stamp duty apply to conversions of firms to LLPs on or after 19 February 2011 :-

(a) The partners ("original partners") of the LLP are those of the firm as at the date of conversion.

(b) The assets of the LLP are those of the firm as at the date of conversion

(c) The capital contributed by each of the partner of the LLP remains the same as in the original firm as at the date of conversion

(d) At least 75% of the composition of the partnership interest in the LLP held by the original partners immediately after the conversion should remain the same for 2 years from the date of conversion

6.1.2 The relief that has been allowed will be withdrawn in the event that the original partners collectively or individually dispose of more than 25% of their/its interest in the LLP within 2 years from the date of conversion except where the original partners dispose of their/its interest to its wholly associated entity. This change applies to firms that are converted to LLPs on or after 19 February 2011.

6.2 Illustrations

6.2.1 Illustrations on subsequent disallowance can be found in Annex A.

7 Administrative Procedure

7.1 Application for Relief Upon Conversion of Firm to LLP

7.1.1 An application for such relief on conversion of the firm to an LLP must be accompanied by:

(a) A statutory declaration by an advocate and solicitor or a partner of the LLP. The statutory declaration should include the following information :-

- Whether the conditions for relief have been/will be met

- Names & NRIC No. of the partners of the firm and the LLP as at the date of conversion (supporting documents should be furnished)

- The amount of capital that had been contributed by the respective partners of the firm as at the date of conversion (any supporting documents e.g. partnership agreement etc, should be submitted)

- The amount of the capital that the respective partners of the LLP are entitled to as on the date of conversion (any supporting documents should be submitted)

- A list of all the chargeable assets of the firm and of the LLP as at the date of conversion (any supporting documents should be submitted)

(b) A copy of the notice of registration issued by the Registrar of Limited Liability Partnerships

(c) Copies of the instruments executed to transfer the chargeable assets to the LLP (for conversions that take place prior to 19 February 2011)

8 Frequently Asked Questions

8.1 Why is there a limit that only up to 25% change in partnership interest can take place within 2 years of the conversion?

The relief is meant to facilitate pure changes of corporate forms, where the partners, as well as the assets concerned, remain substantially unchanged. We have allowed up to 25% change in partnership interest to accord some degree of flexibility in the restructuring process.

8.2 Why is there a requirement that the relevant assets, as well as the partners, and their corresponding interests, must be unchanged before and after the conversion for the new relief?

The relief is meant to facilitate conversions of firms to LLPs. As such, any changes in partners, and their corresponding interests in the relevant assets, would not be granted the relief. There is however some flexibility accorded, as up to 25% change in partnership interest can take place within 2 years of the conversion, without resulting in a withdrawal of the relief given.

9 Contact Information

9.1 For enquiries on this Guide, please contact :-

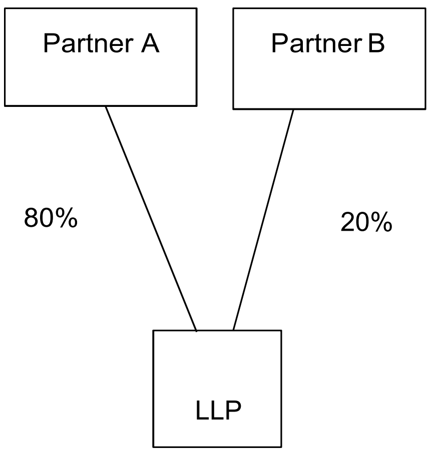
Property tax Division
Valuation and Stamp Duty Branch
Inland Revenue Authority of Singapore
55 Newton Road
Revenue House
Singapore 307987

Tel : 1800 460 4923
Email : estamp@iras.gov.sg

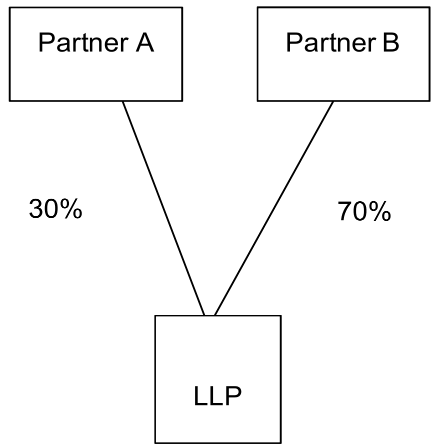
Annex A - Illustrations on Subsequent Disallowance

<u>Example 1</u>

Date of conversion
position as at 1/5/2011



Position after Partner A disposed of
50% interest to Partner B

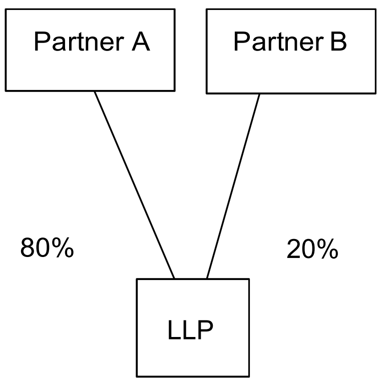


Partner A disposes of his 50% interest in the LLP to Partner B on 1/11/2012 while retaining his 30% interest.

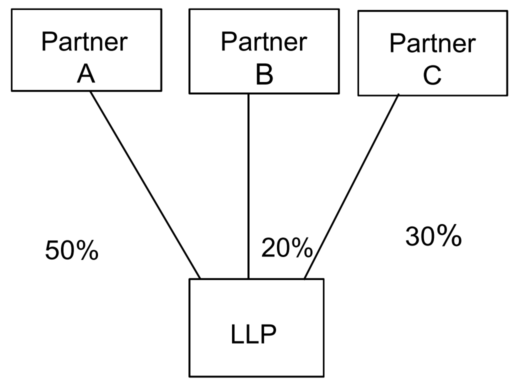
The relief previously allowed on the conversion would be withdrawn and there would be a claw back of the duty as there is a change of partnership interest involving >25% of the interest in the LLP within 2 years from the date of the conversion.

Example 2

Date of conversion
position as at 1/5/2011



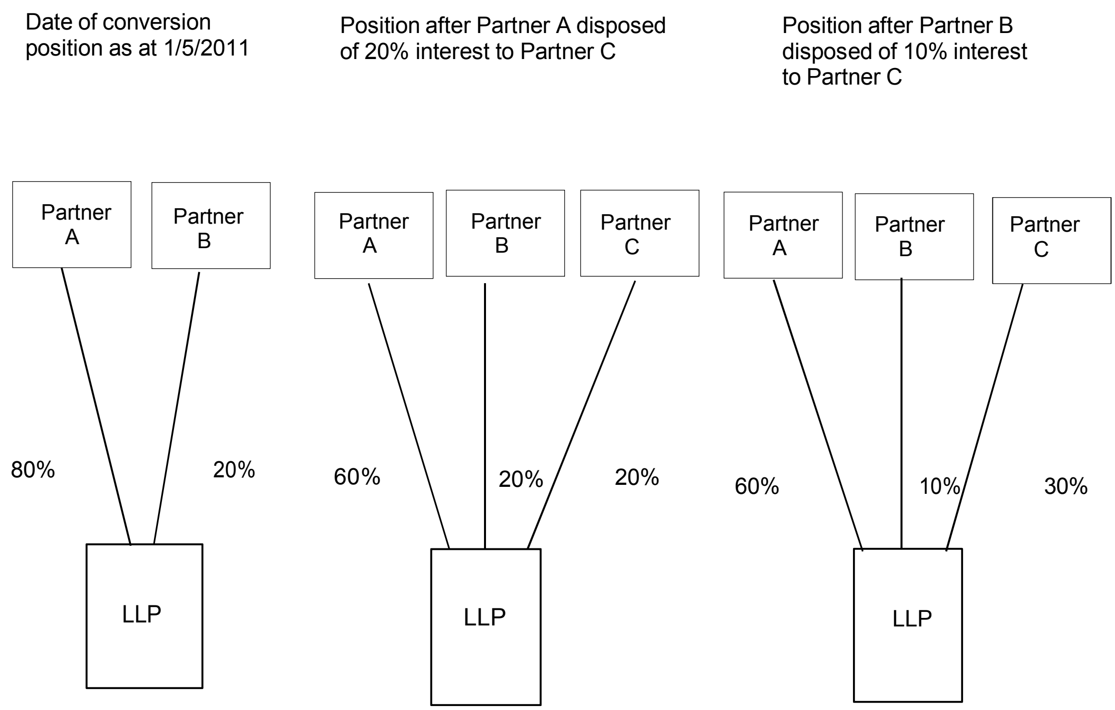
Position after Partner A disposed of
30% interest to Partner C



Partner A disposes of his 30% interest in the LLP to Partner C on 1/11/2012 while retaining his 50% interest.

The relief previously allowed on the conversion would be withdrawn and there would be a claw back of the duty as there is a change of partnership interest involving > 25% of the interest in the LLP within 2 years from the date of the conversion.

Example 3

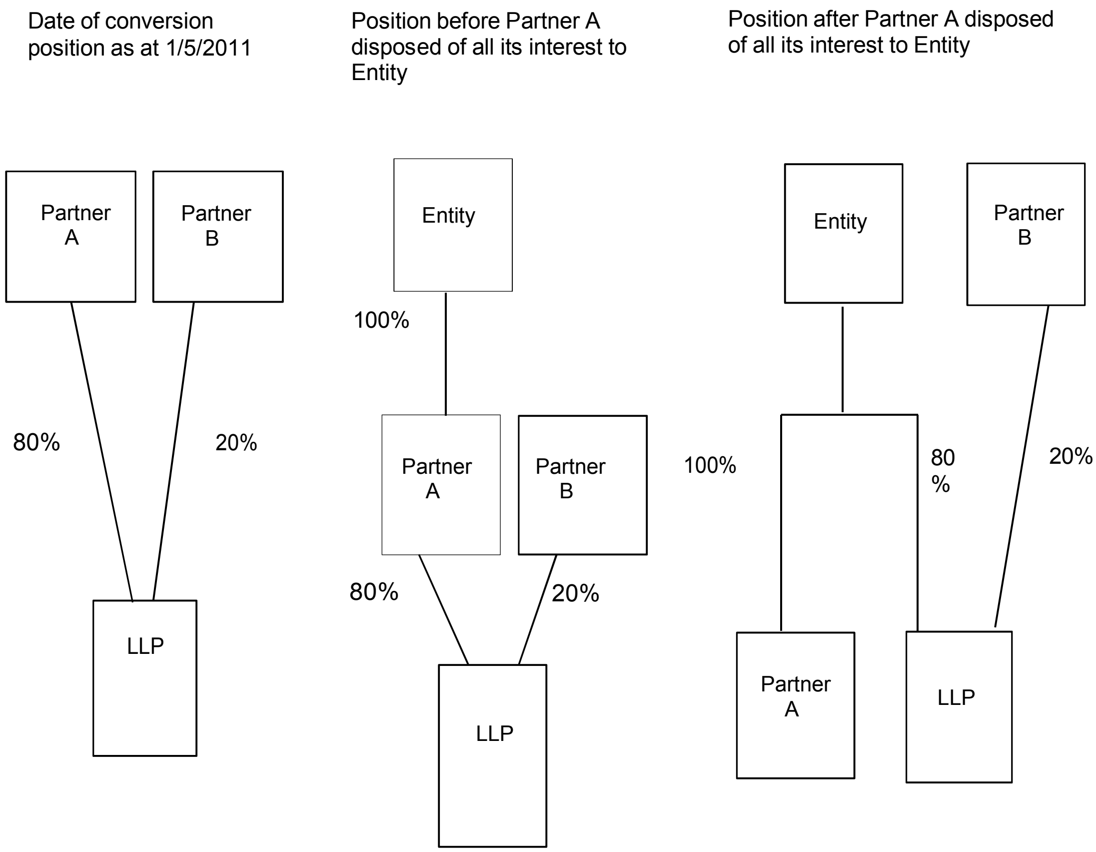


Partner A disposes of his 20% interest in the LLP to a third party, Partner C on 1/10/2011 while retaining his 60% interest. Partners A, B and Cs' interests in the LLP after the disposal by Partner A would be 60% : 20% : 20%. The relief allowed on the conversion would not be withdrawn as there is a change of partnership interest involving ≤25% interest in the LLP.

On 1/3/2012, Partner B disposes of his 10% interest in the LLP to Partner C while retaining his 10% interest. Partners A, B and Cs' interests in the LLP would be 60% : 10% : 30%. The relief allowed on the conversion would be withdrawn as Partners A & B had, in total, disposed of > 25% of their interest in the LLP within a period of 2 years from the date of conversion. There would be a claw back of the duty.

The relief would not be withdrawn if Partner B had disposed of the 10% interest in the LLP to Partner C on or after 1/5/2013.

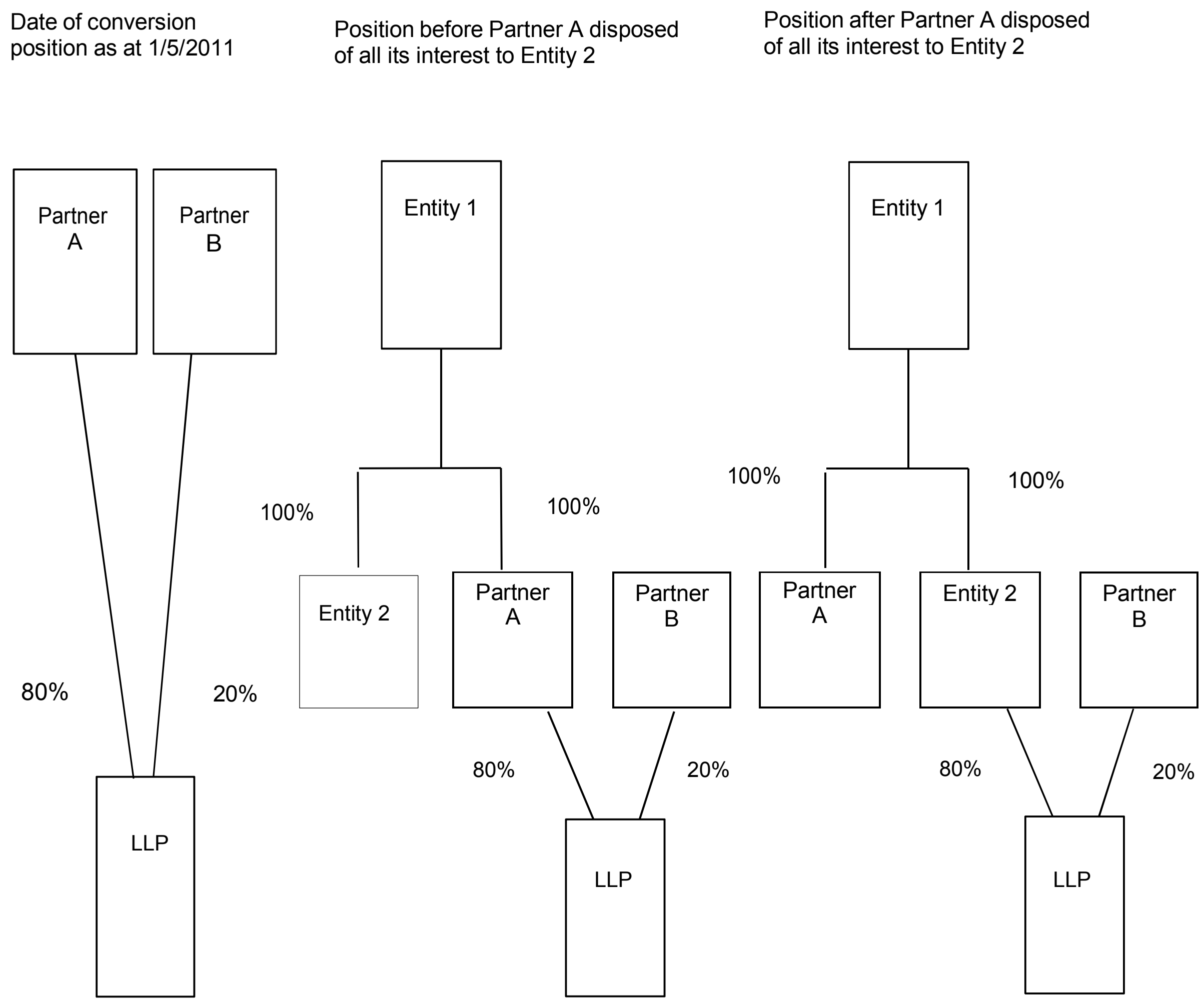
Example 4



Entity holds 100% of Partner A. Partner A disposes all his interest in the LLP to Entity on 1/10/11.

Although Partner A had disposed of more that 25% interest in the LLP within 2 years from the date of conversion, the relief allowed would not be withdrawn as Partner A had disposed of his interest in the LLP to a wholly directly associated entity.

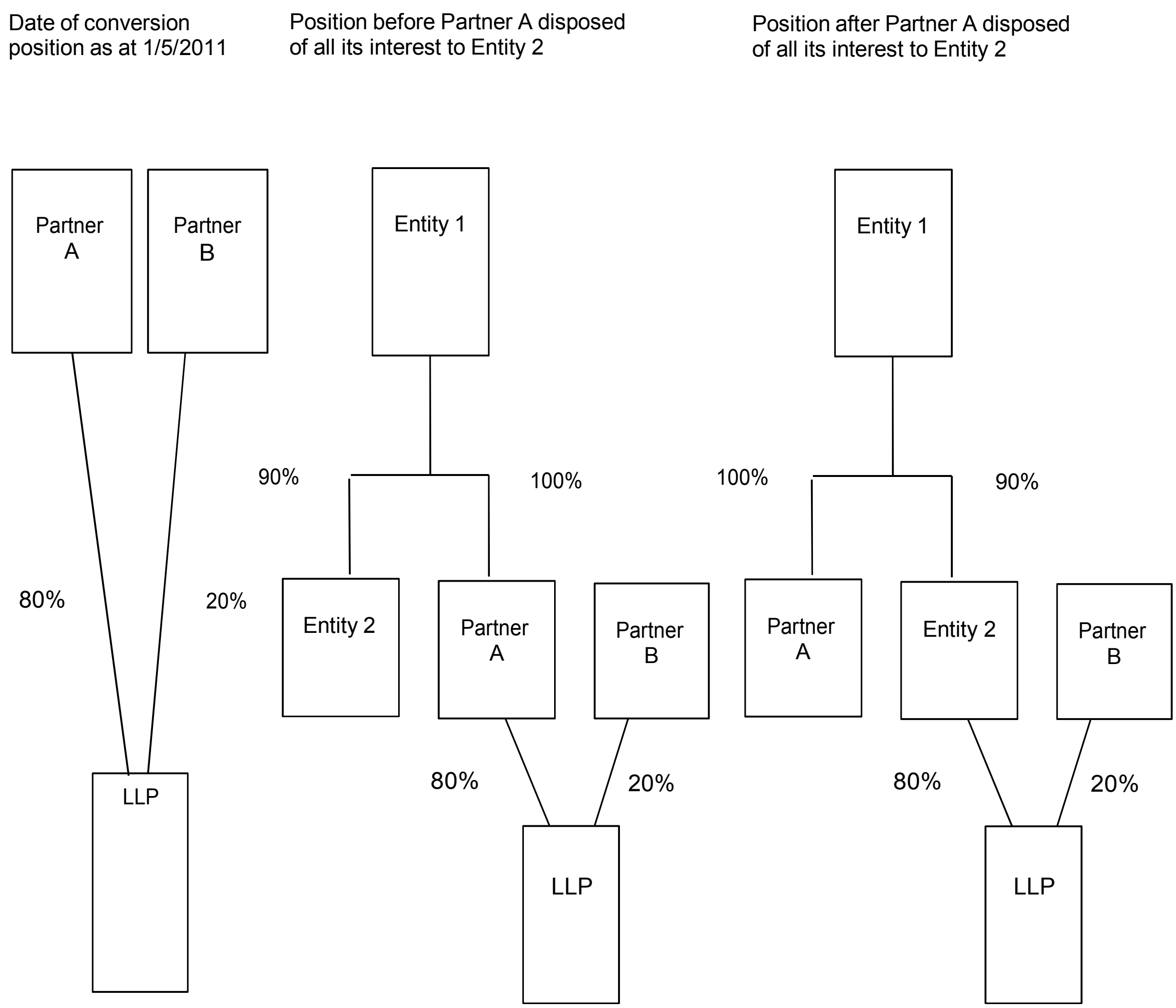
Example 5



Entity 1 holds 100% of Entity 2 and 100% of Partner A. On 1/10/2011 Partner A disposes of his interest in the LLP to Entity 2.

Although Partner A had disposed of more that 25% interest in the LLP within 2 year from the date of conversion, the relief allowed on the conversion would not be clawed back as Partner A had disposed of his interest in the LLP to a wholly indirectly associated entity.

Example 6



Entity 1 holds 90% of Entity 2 and 100% of Partner A. On 1/10/2011 Partner A disposes of his interest in the LLP to Entity 2.

The relief allowed on the conversion would be withdrawn and there would be a claw back of the duty as there is a change of partnership interest involving >25% of the interest in the LLP within 2 years from the date of the conversion to an entity that was not wholly associated with Partner A.