

## UK LIMITED LIABILITY PARTNERSHIP (LLP)

A LIMITED LIABILITY PARTNERSHIP is a UK incorporated entity which can offer many benefits to non UK residents wishing to carry on business outside of the UK.

The legal activities of these types of companies are not restricted in any way and can operate anywhere in the world.

LLP companies must have a UK registered office address and any invoices raised will show the UK registered office address.

As long as there is no permanent establishment in the UK and no business activities take place in the UK and the business is conducted and managed abroad, the LLP and its members will not be subject to UK taxation.

Unlike a limited company, profits earned by a LLP are shared between the individual members in proportion to their agreed profit sharing or capital contribution percentages and it is the individual partners or designated members that are subject to taxation.

Therefore, the tax residency of the members becomes imperative to deciding where taxes are paid; **if the members are non UK tax residents then unless the income is UK sourced they will not be subject to UK taxation.**

Normally the partners or designated members are responsible for paying the income tax on these profits via the partnership pages of their self assessment tax return. However, from the details above it is explained that none of the designated members are UK tax resident, hence not subject to UK taxation and furthermore the business activities of the LLP are conducted with the expectations to future profits and takes place outside the UK; consequently there is no requirement on the LLP itself or its members to be assessed to UK taxation.

Nonetheless, the LLP must complete and submit an annual LLP tax return with nil tax liability irrespective of the profits or losses reported by the partnership. Should this become an administrative burden it may be possible to apply to Her Majesty Revenue & Customs (HMRC) to treat the LLP as dormant for tax purposes; should this be granted, it will normally be for a specified period of time.

Although companies can also be members of a LLP and if so they will pay corporation tax on their share of the profits and therefore should show details on the Corporation Tax return

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(CT600). As stated in the paragraphs above none of these will be required for reasons of non UK tax residency and overseas trade income arising.

It is worth noting that designated members should be careful with remittances into the UK as in rare cases this could be subject to UK taxation.

### **Value Added Tax (VAT)**

As long as the LLP trades outside the UK and the European Union it will not have to register for VAT.

Where a LLP trades within the UK or the EU and has (or has a reasonable expectation of having) a turnover in excess of £67,000 per annum (effective from 01 April 2008) it will need to register with HMRC for VAT, but only needs to do so and only has to charge and pay VAT if it trades inside the UK and European Union Zone, and only charges and pays VAT for those items that are invoiced to firms or clients within the European Union. In other words, if business is traded outside the UK and European Union Zone, the UK LLP will not be liable for VAT and will therefore have no need to register for VAT. Nevertheless, if the LLP purchased goods inside the UK or European Union Zone, the LLP may register for VAT in order to claim back taxes.

If the LLP does not have a UK bank account it is possible that the UK LLP will not be able to process the VAT application as long as the members are outside the UK and European Union Zone. It may become appropriate for the LLP to seek registration if there will be some activities inside the scope of UK or European Union Zone.

However, should VAT registration be granted, charged and collected, then it must account for its worldwide turnover and invoices in its VAT returns and charge, collect and pay for those invoices connected with UK and the European Union Zone.

Please note that it is possible for an LLP with international operations to voluntarily apply for and to be subject to UK taxes, this usually happens if there is recourse to double taxation treaties to claim appropriate relief.

In general law a LLP is regarded as a body corporate and for tax purposes a LLP is normally treated as a partnership.

The original legislation relating to the taxation of LLPs was included in Section 10 of the LLP Act 2000. There followed the amendments which were included in the Finance Acts 2001

Section 75 and Schedule 25 (i.e. FA01IS75 and FA0IISCH25) to clarify those provisions and to prevent tax loss where the LLP carries on an investment or a property investment business.

Income and Corporation Taxes Act 1988 Section 1 18ZA (i.e. ICTA88IS118ZA for Ct purposes) and Income Tax (Trading and Other Income) Act 2005 Section 863 (i.e. ITTOIA05IS863 for income tax purposes) provide that where an LLP carries on a trade profession or other business with a view of profit:

- a. all the activities of the LLP are treated as being carried on in partnership by its members (and not by the LLP as such),
- b. anything done by, to or in relation to the LLP for the purposes of, or in connection with, any of its activities is treated as done by, to or in relation to the members as partners, and
- c. the property of the LLP is treated as held by the members of the LLP.

Except as the otherwise provided, in the Tax Acts:

- a. references to a partnership include an LLP to which ICTA88IS118ZA apply,
- b. references to members of a partnership include members of such an LLP,
- c. references to a company do not include such a LLP, and
- d. references to members of a company do not include members of such a LLP.

Hence the LLP will normally be regarded as transparent for tax purposes and each member will be assessed to tax on their share of the LLPs income or gains as if they were members of a general partnership governed by the Partnership Act 1890. Furthermore, it follows that where a LLP carries on, a business with of profit it will be treated as a partnership in respect of all of its activities, including any activities which are not carried on with a view of profit.