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Partnerships

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Partnerships and tax—overview

The statutory definition of a partnership is the "relation which subsists between persons carrying on a business in common with a view of profit". Those persons could be natural persons, or other legal entities such as companies or trustees. However, a registered company under the Companies Act (Cap. 50) (2006 Rev. Ed.) is not a partnership.

References:
Partnership Act (Cap. 391) (1994 Rev. Ed.), ss 1(1), (2)

There are a number of different types of partnership that may be formed under Singapore law:

- a general partnership, in which all partners are jointly liable for debts and obligations of the partnership;
- a limited partnership, which consists of:
  - one or more general partners, who are liable for all debts and obligations of the partnership, and
  - one or more limited partners, whose liability for the partnership's debts and obligations is limited to the amount they have each invested; and
- a limited liability partnership ("**LLP**") which, unlike a general or limited partnership, is liable for its own debts; the liability of the members of an LLP is normally limited to the amount of their financial contribution

A general or a limited partnership is not a corporate entity and does not have separate legal personality. By contrast, an LLP is a body corporate and can contract with third parties in its own name.

In this note the term partner is used as a shorthand for a general partner, a limited partner, or a member of an LLP.

Tax transparency and partnerships

General partnerships, limited partnerships and LLPs are 'tax transparent'. This means that the partnerships are not themselves liable to tax. Instead, the relevant legislation 'looks through' the partnership and taxes the partners directly. Partners are each separately taxable on their share of any profits or gains of the partnership as and when these arise.

Partnership tax computations

Although a partnership is not a taxable entity, it has to draw up tax computations for practical purposes. These calculations enable each separate partner to work out his own tax liability.

Taxable gains or profits from a partnership must first be determined at the partnership level. The income of a partnership is computed in the largely same way that the income of a person carrying on a trade or business would be computed. Income is assessed under section 10(1)(a) of the Income Tax

Act (Cap 134.) (2014 Rev. Ed.) ("**ITA**") and all expenses wholly and exclusively incurred by the partnership in the production of income may be deducted from the assessable income.

One key difference between the computation of the income of a partnership and that of a company is that salaries and interest paid to partners are generally treated as allocations of profits and may not be deducted as business expenses. Furthermore, a partnership's taxable profit or loss is calculated without taking account of any losses carried forward or back from another period. Relief for losses in other periods is not computed at partnership level. Rather, it is only computed in the tax calculations of each separate partner after the profits of a partnership have been distributed.

After taxable gains or profits from a partnership have been determined at the partnership level, divisible profits will be apportioned amongst the partners based on their agreed profit-sharing ratio. Each of the partners is then assessed for tax based on his total taxable income from all his business ventures. His total taxable income includes profits and losses allocated to him from the partnership.

If an individual partner carries on his or her own business in addition to the business of the partnership, the partnership activities are treated as a separate business for tax purposes. Losses from the partnership attributable to a partner may be used to set-off against other sources of income which the partner may have.

Allocation of partnership profits and losses between partners

Partners are free to agree the terms of any profit-sharing arrangement between themselves. There is no requirement for the terms of their agreement to allow for a proportionate reflection of their individual input (e.g. capital contribution or time) in the business.

Profit-sharing arrangements are normally set out in the partnership agreement. In the absence of any express stipulation as to the profit-sharing ratio, a division of profits between partners in the partnership accounts can provide evidence of the agreed profit-sharing ratios. Should evidence be inconclusive in implying the terms of a profit sharing agreement, partners will be entitled to equal shares of the profits.

Each partner may be able to apply his share of the partnership's unabsorbed losses to his income from other sources or income from the previous year of assessment. Alternatively, he may carry-forward the unabsorbed losses to future years of assessment. Partners might be entitled to treat their share of capital allowances and donations similarly, though different conditions apply. Certain kinds of partners may be subjected to some restrictions on the maximum amount of relevant deductions which they may utilise.

For details on the tax treatment of a partnership's relevant deductions, see Practice Note: Relevant Deductions.

Partnerships and GST

General partnerships and limited partnerships should register in the name of the firm, separate from any individual registration of the partners. This is despite the fact that general and limited partnerships

are not persons for tax or legal purposes. An LLP is a body corporate and should be registered for GST in the same way as a company; in its own name.

Limited partnerships as fund vehicles

Limited partnerships are often used as investment vehicles by firms in the venture capital and private equity industries. They are sometimes also employed as general investment fund vehicles. A limited partnership is an appropriate vehicle for such purposes due to its tax transparency and limited liability protection for investors. The investors who are limited partners are only exposed to third party liabilities to the extent of their own investment.

A private equity limited partnership fund will typically have one general partner. In order to benefit from separate legal personality and limited liability, the general partner will often itself be a limited liability partnership with a company as its own partner. The fund will have one or more 'founder' limited partners, usually representing the fund's investment managers. The third party investors are admitted as additional limited partners.

For more details, see Practice Note: Taxation of limited partnerships.

Tax Exemptions Which Specifically Exclude Partnerships

There are certain tax benefits which specifically exclude partnerships.

The ITA specifically provides that partnerships are not eligible to enjoy certain tax exemptions. Part IV of the ITA provides for a number of general and specific tax exemptions. For example, section 13(7A) generally exempts income arising from sources outside Singapore and received in Singapore (remitted foreign-sourced income) for individuals. However, this general exemption does not apply to income received through a partnership in Singapore. Other specific tax exemptions have a more narrowly-defined scope. There are other more narrowly-defined specific tax exemptions that will not apply when income is derived through a partnership in Singapore.

References:
Income Tax Act (Cap 134.) (2014 Rev. Ed.), ss 13(1)(ze), (zf), (zh), (zi), (zj), (zk), (zl), (7A)

Taxation of general partnerships

This Practice Note is about the tax treatment of a general partnership formed under Singapore law (as opposed to a limited partnership, or a limited liability partnership).

A general partnership is not a separate legal entity and is not taxable in its own right. Instead, partners are taxed on their share of the partnership's profits and gains whether or not the profits and gains are distributed to the partners. Similarly, partners may claim relief individually for their share of the losses under the partnership. For this reason, a partnership is sometimes referred to as being transparent for tax purposes; the legislation 'looks through' the partnership to tax the underlying partners.

References:
Meyer & Co v Faber (No.2) [1923] 2 Ch 421
Rose v FC of T (1951) 84 CLR 118
Ng Chwee Poh v PP (1950-1985) MSTC 573
Income Tax Act (Cap 134.) (2014 Rev. Ed.), s 36(1)(a)

For the purposes of this note, a partner means an equity partner who takes a share of the partnership's profit or loss rather than being paid a fixed salary (even if there is a performance-related bonus). A salaried partner is not a partner for these purposes, but an employee. Accordingly, his earnings will be assessed under s 10(1)(b) of the Income Tax Act (Cap 134.) (2014 Rev. Ed.) ("**ITA**"). If a salaried partner is under a contract for service, he will be assessed under s 10(1)(a) of the ITA instead.

For details on the tax treatment of a partnership's relevant deductions, see Practice Note: Relevant Deductions.

Identifying a partnership

The statutory definition of a partnership is the "relation which subsists between persons carrying on a business in common with a view of profit'. Those persons can be individuals or other legal entities such as companies or trustees. However, a registered company under the Companies Act (Cap. 50) (2006 Rev. Ed.) is not a partnership.

References:
Partnership Act (Cap. 391) (1994 Rev. Ed.), ss 1(1), (2)

Whether a relationship is a partnership is a question of fact and the label ascribed to the relationship is not conclusive. The courts will look at the substance of the relationship, applying *inter alia*, the rules prescribed under section 2 of the Partnership Act (Cap. 391) (1994 Rev. Ed.) ("**PA**").

References:
Weiner v Harris (1910) 1 KB 285
Saywell v Pope [1979] STC 824
Partnership Act (Cap. 391) (1994 Rev. Ed.), s 2

The term "firm" is a collective term used to refer to persons who have entered into partnership with one another for the purposes of the PA. However, one should take note that "firm" is not synonymous with "company" and a partnership is not a separate legal entity.

References:
Partnership Act (Cap. 391) (1994 Rev. Ed.), s 4

Partnership tax computations

Although a general partnership is not a taxable entity, it has to draw up tax computations for practical purposes to enable each partner to calculate his own tax liability. Taxable gains or profits from a general partnership must first be determined at the partnership level. The income of a general partnership is computed in the largely same way that the income of a person carrying on a trade or business would be computed. Income is assessed under section 10(1)(a) of the ITA and all expenses wholly and exclusively incurred by the general partnership in the production of income may be deducted from assessable income. The precedent partner is responsible for lodging an income return for the general partnership.

One key difference between the computation of income of a general partnership and that of a company is that salaries and interest paid to partners are generally treated as allocations of profits. Unlike companies, these may not be deducted as business expenses. Furthermore, a general partnership's taxable profit or loss is calculated without taking account of any losses carried forward or back from another period. Relief for losses is not computed when calculating a partnership's taxable profit or loss. If available, relief for losses in other periods is given when computing tax payable by each separate partner for their own personal income tax returns.

References:
Income Tax Act (Cap 134.) (2014 Rev. Ed.), ss 10(1)(a), 14(1), 71(1), (2)

After taxable gains or profits from a general partnership have been determined at the partnership level, the income from the general partnership will be apportioned amongst the partners based on their agreed profit-sharing ratio. Each separate partner is then assessed for tax based on his total taxable income from all his business ventures, including profits and losses allocated to him from the general partnership.

If any of the partners carries on their own business in addition to the business of the general partnership, the partnership activities are treated as a separate business for tax purposes. Losses from the general partnership attributable to a partner may be used to set-off against other sources of income which the partner may have.

References:
JJ Farrell v The Sunderland Steamship Co Ltd [1903] 4 TC 605

Allocation of partnership profits and losses between partners

Partners are free to agree the terms of any profit-sharing arrangement between themselves. There is no requirement for the terms of their agreement to allow for a proportionate reflection of their individual input (e.g. capital contribution or time) in the business.

Profit-sharing arrangements are normally set out in the partnership agreement. In the absence of any express stipulation as to the profit-sharing ratio, a division of profits between partners in the partnership accounts can provide evidence of the agreed profit-sharing ratios. Should evidence be inconclusive in implying the terms of a profit sharing agreement, partners will be entitled to equal shares of the profits.

References:
Partnership Act (Cap. 391) (1994 Rev. Ed.), s 24(1)

A general partnership has no separate legal personality and cannot own any fixed assets. Partners have joint ownership of such assets and are entitled to claim capital allowances on the assets in accordance with their agreed profit-sharing ratio.

References:
Income Tax Act (Cap 134.) (2014 Rev. Ed.), s 36(1)

Partners may be able to apply their share of the partnership's unabsorbed losses to their income from other sources, to income from the previous year of assessment, or to income in future years of assessment. They may be able to do the same for capital allowances, subject to different conditions.

For details on the tax treatment of a partnership's relevant deductions, see Practice Note: Relevant Deductions.

Partners joining or leaving a general partnership

Technically, the addition or removal of any of the partners in a general partnership will result in the termination of a partnership. With respect to its assets and liabilities, however, a new general partnership immediately arises and steps into the shoes of the old one. There is no break in the continuity of the business. In terms of tax computations, the income earned before the change in partnership composition will be attributable to the old partnership, while any income earned after the change will be attributable to the new partnership.

References:
Chiam Heng Chow & Anor v Mitre Hotel & Ors (1995) 2 MSTC 7,269

With respect to capital allowances, the partners of the old partnership will be deemed to have sold their assets to those of the new partnership at market value. Balancing adjustments will have to be computed. If part of the cost of a fixed asset has previously been claimed as a capital allowance, adjustments will have to be made to ensure that the sale price of that asset does not deviate from the portion of the cost price not yet been claimed.

For example, consider an asset that is purchased for $30 and which qualifies for capital allowances under section 19 of the ITA. Capital allowances can be claimed on it over three years. After the first year, $10 would have been claimed on it, leaving $20 to be claimed over the next two years. Assuming the asset is sold for $22, the capital allowance previously claimed will have to be adjusted accordingly ($22 -$20 =$2). Accordingly, the taxpayer will have to account for the fact that he claimed $10 in capital allowances for the asset when he would only have been entitled to claim $8.

The Comptroller grants an administrative concession to the effect that as long as at least one partner of the old partnership stays on in the new partnership, it will not deem that the partners of the old partnership have sold their assets to those of the new partnership at market value. In such circumstances, no balancing adjustment will need to be made. However, only partners of the new partnership will be able to claim capital allowances for those assets in that year.

Any of the partners may notify the Comptroller of his intention not to take advantage of the administrative concession. In such a case, the default position of a deemed sale will apply, requiring a balancing adjustment.

References:
Income Tax Act (Cap 134.) (2014 Rev. Ed.), ss 24(3)

Goods and Services Tax (GST)

A business is required to be registered under the Goods and Services Tax Act (Cap. 117A) (2005 Rev. Ed.) ("**GSTA**") if it makes or reasonably believes that it will make taxable supplies exceeding S$1 million within a 12 month period. In the case of a partnership, the GST registration must be made in the name of the firm. Partners wishing to exit a GST-registered partnership must notify the Comptroller of Goods and Services Tax of this change immediately, for he will remain liable for the GST obligations of the partnership until the Comptroller is so notified. Note that Group Registration may apply.

References:
Goods and Services Tax Act (Cap. 117A) (2005 Rev. Ed.), ss 8(2), 31(1)(a), (3), Sch 1 para 1
IRAS e-Tax Guide: GST: General Guide on Group Registration, Second Edition, 5 September 2013

Tax Exemptions Which Specifically Exclude Partnerships

There are certain tax benefits which specifically exclude partnerships.

The ITA specifically provides that partnerships are not eligible to enjoy certain tax exemptions. Part IV of the ITA provides for a number of general and specific tax exemptions. For example, section 13(7A) generally exempts income arising from sources outside Singapore and received in Singapore (remitted foreign-sourced income) for individuals. However, this general exemption does not apply to income received through a partnership in Singapore. Other specific tax exemptions have a more narrowly-defined scope. There are other more narrowly-defined specific tax exemptions that will not apply when income is derived through a partnership in Singapore.

References:
Income Tax Act (Cap 134.) (2014 Rev. Ed.), ss 13(1)(ze), (zf), (zh), (zi), (zj), (zk), (zl), (7A)

Non-Tax Considerations

General partnerships are easily created with no strict formality requirements. They do not incur significant administrative or regulatory costs. However, there are several serious non-tax risks that accompany an election to utilise a general partnership in business. Firstly, the PA expressly provides that every partner is an agent of the firm and his other partners and has the power to bind the firm and his partners when he acts for carrying on in the usual way, the business of the firm. Secondly, the PA further provides that an act or instrument relating to the business of the firm and done or executed showing an intention to bind the firm, is binding on the firm and all the partners. The person acting on behalf of the firm must have general authority to do so, but need not be expressly authorised to do that particular act. Thirdly, the firm will be liable for the wrongful acts or omissions of its partners acting in the ordinary course of business.

These risks are particularly serious in light of the facts that partners are jointly and severally liable for wrongs committed by the firm; and jointly liable for the debts and obligations of the firm incurred while he is a partner. The estate of a partner may be severally liable for such debts and obligations after his death. The risks involved in using a general partnership mean that in practice, parties receiving competent legal advice will need to carry out a detailed risk-assessment exercise before deciding to use a general partnership for their business purposes.

References:
Partnership Act (Cap. 391) (1994 Rev. Ed.), s 5, 6, 9, 10, 12

Relevant deductions

This note considers the calculation and use of relevant deductions for general partnerships, limited partnerships and limited liability partnerships ("**LLPs**"). There are three different kinds of relevant deductions: 1) business losses, 2) capital deductions, and 3) donations.

Business losses

Computation of partnership losses

A partnership will need to draw up its own accounts. Although a partnership is not itself a taxable entity, it will also have to prepare its own tax computations for practical purposes. The precedent partner is responsible for lodging a return of the income of the partnership.

A partnership's losses are calculated using the same principles as would be used for calculating a partnership's profits. Income is assessed under section 10(1)(a) of the Income Tax Act (Cap 134.) (2014 Rev. Ed.) ("**ITA**") and all expenses wholly and exclusively incurred by the partnership in the production of income may be deducted from the assessable income. Salaries and interest paid to partners are generally treated as allocations of profits and may not be deducted as business expenses. A partnership's taxable profit or loss is calculated without taking account of any losses carried forward or back from another period. Relief for losses in other periods is given when computing taxes for separate partners, rather than when computing taxes for the partnership.

References:
Income Tax Act (Cap 134.) (2014 Rev. Ed.), ss 10(1)(a), 14(1), 71(1), (2)

Allocating losses between partners

Partners are free to agree the terms of any profit-sharing arrangement between themselves. There is no requirement for the terms of their agreement to allow for a proportionate reflection of their individual input (e.g. capital contribution or time) in the business.

Profit-sharing arrangements are normally set out in the partnership agreement. In the absence of any express stipulation as to the profit-sharing ratio, a division of profits between partners in the partnership accounts can provide evidence of the agreed profit-sharing ratios.

Same-year deductions

Partners within the charge to income tax can obtain relief for their share of unabsorbed partnership losses by using them to reduce their taxable income arising from sources other than the partnership. Examples of such income from alternative sources include income the partner receives from separate employment, or from investments (that are not partnership property). The utilisation of unabsorbed partnership losses must be done in a specific manner. It is to be deducted against statutory income from the same business, then statutory income from any other business, and finally, against statutory income from any other source. In the case of partnership income, the relevant charging provision is s

10(1)(a) of the ITA. If there is still a net loss after using partnership losses to offset s 10(1)(a) income, then the remaining losses can be applied against other sources of income.

References:
JJ Farrell v The Sunderland Steamship Co Ltd [1903] 4 TC 605
Income Tax Act (Cap 134.) (2014 Rev. Ed.), ss 10(1)(a), 37(4)

Corporate partners may transfer their share of the unabsorbed partnership losses to qualifying companies under the group relief scheme. Partners who are individuals may transfer their share of the unabsorbed partnership losses to their spouses.

Income Tax Act (Cap 134.) (2014 Rev. Ed.), ss 37C. 37D
IRAS e-Tax Guide: Group Relief System, 6 September 2011

Carry-forward

Partners may also obtain relief for their share of unabsorbed partnership losses by carrying them forward to future years of assessment. They may then apply them against their future income in a subsequent year of assessment. There is no limit to the number of years for which the unabsorbed losses can be carried forward.

If the partner is a company, the carrying-forward of unabsorbed losses is subject to the company passing the shareholding condition. This condition requires the company to satisfy the Comptroller that the shareholder composition is substantially the same in the calendar year where the losses were incurred and the year of assessment where the company seeks to apply the losses.

References:
Income Tax Act (Cap 134.) (2014 Rev. Ed.), ss 37(5), (13), (14), (15)

An application may be made to the Minister for Finance for a waiver of the shareholding condition. This may be granted if the Minister is satisfied that that the substantial change in the shareholders is not for the purpose of deriving any tax benefit or obtaining any tax advantage, and has a commercial purpose.

References:
Income Tax Act (Cap 134.) (2014 Rev. Ed.), s 37(15)

Carry-back

Unabsorbed losses may also be carried back to the immediately preceding year of assessment so that the taxpayer may apply them against the income for that year of assessment. The maximum amount of combined unabsorbed losses and capital allowances that may be carried-back is $100,000. Again, if the partner is a company, the carrying-back of unabsorbed losses is subject to the company passing the shareholding condition.

References:
[Income Tax Act (Cap 134.) (2014 Rev. Ed.), s 37E]
[IRAS e-Tax Guide: Carry-Back Relief System (Second Edition) (26 May 2014)]

Contributed capital

Several restrictions apply to the utilisation of losses under same-year deductions, carry-forward and carry-back relief. These restrictions refer to the concept of contributed capital. The ITA defines "contributed capital" in sections 36A(10) (for LLPs) and 36C(8) (for limited partnerships). Essentially, this refers to the sum of the partner's contributions to the partnership in cash or in kind, and the profits from the partnership which he is entitled to, but has not received. The "contributed capital" restriction only applies to partners in LLPs and to limited partners in general partnerships. It does not apply to partners in a general partnership or general partners in a limited partnership.

References:
Income Tax Act (Cap 134.) (2014 Rev. Ed.), ss 36A(10), 36C(8)

Restrictions

For same-year deductions, a partner may deduct his share of unabsorbed losses from a partnership against his statutory income from any other source to a maximum of his contributed capital in that year of assessment, less the past relevant deductions allowed to him and the capital allowances in excess of his income that was deducted in that year of assessment. Similar concepts apply to the restrictions on carry-forward and carry-back qualifying losses that may be deducted. As noted above, these restrictions only apply to partners in LLPs and limited partners in Limited Partnerships.

References:
Income Tax Act (Cap 134.) (2014 Rev. Ed.), ss 36A(4), 36C(3)

Capital Allowances

Computation of capital allowances

General partnerships and limited partnerships have no separate legal personality and thus, cannot own any fixed assets. The partners have joint ownership of such assets and are entitled to claim capital allowances on the assets in accordance with their agreed profit-sharing ratio. LLPs have separate legal personality and can own fixed assets. For tax purposes, the partners the partners are similarly entitled to claim capital allowances on the assets in accordance with their agreed profit-sharing ratio.

References:
Income Tax Act (Cap 134.) (2014 Rev. Ed.), s 36(1)

Set-off and restrictions

The general set-off regime (i.e. same-year set-off, carry-forward relief and carry-back relief) for capital allowances is substantially similar to that for unabsorbed partnership losses. A key distinction is an additional requirement for capital allowances requiring the partnership to satisfy the business continuity test in order for them to carry-forward or carry-back their share of the capital allowances. To pass the business continuity test, the partnership must continue to carry on the trade, profession or business in respect of the gains or profits of which the capital allowances fall to be made.

Income Tax Act (Cap 134.) (2014 Rev. Ed.), ss 23, 37E

Donations

Deductions and restrictions

The rules as to same-year deductions and carry-forward relief for donations are substantially similar to that for unabsorbed partnership losses. However, it is noted that donations can only be carried forward for a maximum of five years. Donations cannot be carried-back.

Income Tax Act (Cap 134.) (2014 Rev. Ed.), s 37

Partners joining or leaving a partnership

Technically, the addition or removal of any of the partners in a general partnership will result in the termination of a partnership. With respect to its assets and liabilities, however, a new general partnership immediately arises and steps into the shoes of the old one. There is no break in the continuity of the business. In terms of tax computations, the income earned before the change in partnership composition will be attributable to the old partnership, while any income earned after the change will be attributable to the new partnership.

It follows that partners of the old partnership may deduct qualifying losses from the old partnership up to the point of the change in composition of the partners. The new partners may deduct qualifying losses from the new partnership from the point of the change in composition of the partners up to the end of the year of assessment.

References:
Chiam Heng Chow & Anor v Mitre Hotel & Ors (1995) 2 MSTC 7,269

Taxation of LLPs

A limited liability partnership ("**LLP**") is a recognised legal entity with separate legal personality. It is registered under the Limited Liability Partnerships Act (Cap. 163A) (2006 Rev. Ed.) and must have a minimum of two partners. An LLP is generally taxed as though it were a partnership (i.e. it is tax transparent). This means that an LLP's profits and gains will be taxed in the hands of its members, rather than being assessed on the LLP itself. Tax transparency also means that the members will be taxed on the LLP's profits and gains at the time they arise, whether they have been distributed to the members or not. LLPs are a popular choice of business vehicle for professional services firms such as law and accounting firms.

References:
Meyer & Co v Faber (No.2) [1923] 2 Ch 421
Rose v FC of T (1951) 84 CLR 118
Ng Chwee Poh v PP (1950-1985) MSTC 573
Income Tax Act (Cap 134.) (2014 Rev. Ed.), s 36(1)(a)
Limited Liability Partnerships Act (Cap. 163A) (2006 Rev. Ed.), ss 4, 8, 14
IRAS e-Tax Guide: Income Tax Treatment of Limited Liability Partnerships (LLPs), Second Edition, 1 March 2014

For the purposes of this note, and for tax legislation generally, a partner means an equity partner, who takes a share of the partnership's profit or loss rather than being paid a fixed salary (even if there is a performance-related bonus). A salaried partner is not a partner for these purposes, but an employee. Accordingly, his earnings will be assessed under s 10(1)(b) of the Income Tax Act (Cap 134.) (2014 Rev. Ed.) ("**ITA**"). If a salaried partner is under a contract for service, in which case, he will be assessed under s 10(1)(a) of the ITA instead.

For details on the tax treatment of a partnership's relevant deductions, see Practice Note: Relevant Deductions.

Uses of LLPs

LLPs were originally introduced in Singapore in 2005, following the introduction of LLPs in the UK in 2000. Since then they have become popular for a wide variety of industries, including fund management and financial advisory services, as well as for accountants, lawyers, consultants.

General features of an LLP

Like a company, an LLP:

- is liable for its own debts;
- contracts with third parties in its own name, and
- can sue and be sued in its own right

The liability of the members of an LLP is limited to the amount of their financial contribution, although as for the directors of a company they may become personally liable if they contract in their own name, or for their own acts of negligence.

Partnership tax computations

Although an LLP is not a taxable entity, it has to draw up tax computations for practical purposes to enable partners to work out their individual tax liability. Taxable gains or profits from an LLP must first be determined at the partnership level. The income of an LLP is computed in the largely same way that the income of a person carrying on a trade or business would be computed. Income is assessed under section 10(1)(a) of the ITA and all expenses wholly and exclusively incurred by the LLP in the production of income may be deducted from the assessable income.

One key difference between the computation of the income of an LLP and that of a company is that salaries and interest paid to partners are generally treated as allocations of profits and may not be deducted as business expenses. Also, an LLP's taxable profit or loss is calculated without taking account of any losses carried forward or back from another period. Relief for losses is not computed when calculating a partnership's taxable profit or loss. If available, relief for losses in other periods is given when computing tax payable by each separate partner in their own personal income tax returns.

References:
Income Tax Act (Cap 134.) (2014 Rev. Ed.), ss 10(1)(a), 14(1), 71(1), (2)

After taxable gains or profits from an LLP have been determined at the partnership level, the divisible profits will be apportioned amongst the partners based on their agreed profit-sharing ratio. At the partner level, each of the partners are assessed for tax based on their total taxable income from all their business ventures, including profits and losses allocated to them from the LLP.

If any of the partners carries on their own business (in addition to the business of the LLP), the partnership activities are treated as a separate business for tax purposes. Losses from the LLP attributable to a partner may be used to set-off against other sources of income which the partner may have.

References:
JJ Farrell v The Sunderland Steamship Co Ltd [1903] 4 TC 605

Allocation of partnership profits and losses between partners

Partners are free to agree the terms of any profit-sharing arrangement between themselves. There is no requirement for the terms of their agreement to allow for a proportionate reflection of their individual input (e.g. capital contribution or time) in the business.

Profit-sharing arrangements are normally set out in the partnership agreement. In the absence of any express stipulation as to the profit-sharing ratio, a division of profits between partners in the partnership accounts can provide evidence of the agreed profit-sharing ratios.

An LLP has separate legal personality and can own fixed assets. The partners are entitled to claim capital allowances on the assets in accordance with their agreed profit-sharing ratio.

References:
Income Tax Act (Cap 134.) (2014 Rev. Ed.), s 36(1)

Partners may be able to apply their share of the LLP's unabsorbed losses to their income from other sources, income from the previous year of assessment, or carry-forward the losses to future years of assessment. They may also be able to do the same for their share of capital allowances, though different conditions apply.

For details on the tax treatment of a partnership's relevant deductions, see Practice Note: Relevant Deductions.

Goods and Services Tax (GST)

A business is required to be registered under the Goods and Services Tax Act (Cap. 117A) (2005 Rev. Ed.) ("**GSTA**") if it makes or reasonably believes that it will make taxable supplies exceeding S$1 million within a 12 month period. As noted above, an LLP has separate legal personality. Thus, the provisions of the GSTA will apply to it. Note that Group Registration may apply.

References:
Goods and Services Tax Act (Cap. 117A) (2005 Rev. Ed.), ss 8(2), 31(1)(a), (3), Sch 1 para 1
IRAS e-Tax Guide: GST: General Guide on Group Registration, Second Edition, 5 September 2013

Change in Composition of Partners

Stamp duties are payable on instruments effecting or evidencing a transfer of interests in immovable property. Section 32 of the Stamp Duties Act (Cap. 312) (2006 Rev. Ed.) ("**SDA**") is a specific anti-avoidance provision that seeks to catch instances of partners avoiding the payment of stamp duty by transferring their interests in the LLP instead of the immovable property itself. This provision treats an instrument effecting or evidencing a significant change in partners as a conveyance of immovable property, on which stamp duties are payable. There are detailed rules in section 32(2) detailing what constitutes a significant change in partners. A change in the composition of partners or an increase in the asset shares of partners may be considered to be a significant change.

References:
Stamp Duties Act (Cap. 312) (2006 Rev. Ed.), ss 32, 32A, 32B

If the business holds residential property, it is important to note that sections 23 to 23D of the SDA (known as the Additional Conveyance Duties Regime) may levy stamp duty on transfers of interests in business vehicles which are "property heavy". Business vehicles which are "property heavy" in residential property are labelled "property-holding entities". They are currently defined as those entities wherein residential property directly or indirectly make up at least 50% of the total value of the entity.

References:
Stamp Duties Act (Cap. 312) (2006 Rev. Ed.), ss 23, 23A, 23B, 23C, 23D

It is unclear whether the duties imposed under sections 23 and 32 of the SDA can simultaneously apply to a single transaction. A plain reading of the relevant sections suggests that nothing would preclude such an interpretation. If faced with the possibility of having to pay both duties on a single transaction, the taxpayer may wish to check with the Inland Revenue Authority of Singapore on whether they would be able to avail themselves of stamp duty remission for one of the duties.

References:
Stamp Duties Act (Cap. 312) (2006 Rev. Ed.), s 74.

Tax Exemptions Which Specifically Exclude Partnerships

There are certain tax benefits which specifically exclude partnerships.

The ITA specifically provides that partnerships are not eligible to enjoy certain tax exemptions. Part IV of the ITA provides for a number of general and specific tax exemptions. For example, section 13(7A) generally exempts income arising from sources outside Singapore and received in Singapore (remitted foreign-sourced income) for individuals. However, this general exemption does not apply to income received through a partnership in Singapore. Other specific tax exemptions have a more narrowly-defined scope. There are other more narrowly-defined specific tax exemptions that will not apply when income is derived through a partnership in Singapore.

References:
Income Tax Act (Cap 134.) (2014 Rev. Ed.), ss 13(1)(ze), (zf), (zh), (zi), (zj), (zk), (zl), (7A)

Conversion of a Company to an LLP

There are stamp duty implications to be considered when converting a company into an LLP. Section 31 of the SDA provides that notice of registration of an LLP is treated as a conveyance of the immovable properties and stocks and shares held outside the Central Depository System from the company to the LLP. Consequently, stamp duties are payable on the deemed conveyance. However, taxpayers may apply for relief from stamp duties if they meet the prescribed rules. Similar rules apply for the conversion of a firm to an LLP. For more details, see the IRAS e-Tax Guide: Stamp Duty: Relief for the Transfer of Assets upon Conversion of an Existing Firm to a Limited Liability Partnership (LLP).

References:
Stamp Duties Act (Cap. 312) (2006 Rev. Ed.), ss 15, 31
Stamp Duties (Relief from Stamp Duties Upon Conversion of Private Company to Limited Liability Partnership) Rules 2013
IRAS e-Tax Guide: Stamp Duty: Relief for the Transfer of Assets upon Conversion of an Existing Firm to a Limited Liability Partnership (LLP), 18 February 2011

Group membership

An LLP cannot be a member of a loss relief group. Section 37C of the ITA limits group relief to "Singapore Companies", defined as any company incorporated in Singapore. LLPs do not fall within this definition as they cannot be registered under the Companies Act (Cap. 50) (2006 Rev. Ed.)

References:
Income Tax Act (Cap 134.) (2014 Rev. Ed.), s 37C
Companies Act (Cap. 50) (2006 Rev. Ed.), s 4(1)

Taxation of limited partnerships

This note is about the tax treatment of a limited partnership formed under Singapore law (as opposed to a general partnership or a limited liability partnership ("**LLP**")). It is registered under the Limited Partnerships Act (Cap. 163B) (2010 Rev. Ed.). Like a general partnership, but unlike an LLP, a limited partnership is not a body corporate but is a relationship between its partners. Limited partnerships are a popular choice of business vehicle for funds.

Limited Partnerships Act (Cap. 163B) (2010 Rev. Ed.), s 3

As a limited partnership is a type of partnership. As it is not a body corporate, it is treated for most tax purposes in the same way as a general partnership (see Practice Note: Taxation of general partnerships).

In particular, a limited partnership is not taxable in its own right. Instead the partners are taxable on their share of the partnership's profits and gains (or can claim relief for their share of its losses), whether or not the profits and gains are distributed to the partners. This is sometimes referred to as tax transparency; the legislation 'looks through' the limited partnership to tax the underlying partners.

References:
Meyer & Co v Faber (No.2) [1923] 2 Ch 421
Rose v FC of T (1951) 84 CLR 118
Ng Chwee Poh v PP (1950-1985) MSTC 573
Income Tax Act (Cap 134.) (2014 Rev. Ed.), s 36(1)(a)
IRAS e-Tax Guide: Income Tax Treatment of Limited Partnerships (LPs), 1 March 2014

General features of a limited partnership

A limited partnership consists of:

- one or more general partners, who are liable for all debts and obligations of the partnership, and
- one or more limited partners, whose liability for the partnership's debts and obligations is limited to the amount they have invested

Although a limited partnership has to have at least one general partner (with unlimited liability), the general partner can be a company with limited liability. This is often done in practice.

Limited partners may not take part in managing the partnership, nor can they have the authority to enter into contracts on the partnership's behalf. A limited partner who takes part in the management of the partnership will lose his limited liability status and will be treated a general partner.

Partnership tax computations

Although a limited partnership is not a taxable entity, it has to draw up tax computations for practical purposes to enable partners can work out their own tax liability. Taxable gains or profits from a partnership must first be determined at the partnership level. The income of a limited partnership is computed in the largely same way that the income of a person carrying on a trade or business would be computed. Income is assessed under section 10(1)(a) of the Income Tax Act (Cap 134.) (2014 Rev. Ed.) ("**ITA**") and all expenses wholly and exclusively incurred by the limited partnership in the production of income may be deducted from the assessable income. The precedent partner is responsible for lodging a return of the income of the limited partnership.

One key difference between the computation of the income of a limited partnership and that of a company is that salaries and interest paid to partners are generally treated as allocations of profits and may not be deducted as business expenses. Also, a limited partnership's taxable profit or loss is calculated without taking account of any losses carried forward or back from another period. After profits are distributed to each of the partners, they may then apply unabsorbed losses and other relevant deductions from other periods when computing their own personal income.

References:
Income Tax Act (Cap 134.) (2014 Rev. Ed.), ss 10(1)(a), 14(1), 71(1), (2)

After taxable gains or profits from a limited partnership have been determined at the partnership level, the divisible profits will be apportioned amongst the partners based on their agreed profit-sharing ratio. At the partner level, the partners are assessed for tax based on their total taxable income from all their business ventures, including profits and losses allocated to them from the limited partnership.

If any of the partners carries on their own business (in addition to the business of the limited partnership), the partnership activities are treated as a separate business for tax purposes. Losses from the partnership attributable to a partner may be used to set-off against other sources of income which the partner may have.

References:
JJ Farrell v The Sunderland Steamship Co Ltd [1903] 4 TC 605

Allocation of partnership profits and losses between partners

Partners are free to agree the terms of any profit-sharing arrangement between themselves. There is no requirement for the terms of their agreement to allow for a proportionate reflection of their individual input (e.g. capital contribution or time) in the business.

Profit-sharing arrangements are normally set out in the partnership agreement. In the absence of any express stipulation as to the profit-sharing ratio, a division of profits between partners in the partnership accounts can provide evidence of the agreed profit-sharing ratios.

A limited partnership has no separate legal personality and cannot own any fixed assets. The partners have joint ownership of such assets and are entitled to claim capital allowances on the assets in accordance with their agreed profit-sharing ratio.

References:
Income Tax Act (Cap 134.) (2014 Rev. Ed.), s 36(1)

Partners may be able to apply their share of the partnership's unabsorbed losses to their income from other sources, to income from the previous year of assessment, or to income in future years of assessment. They may be able to do the same for capital allowances, subject to different conditions.

For details on the tax treatment of a partnership's relevant deductions, see Practice Note: Relevant Deductions.

Restrictions

Certain restrictions apply to the limited partners of a limited partnership. For same-year deductions/set-off, a limited partner may deduct relevant deductions from a partnership against his statutory income from any other source to a maximum of his contributed capital in that year of assessment, less the past relevant deductions allowed to him and the capital allowances in excess of his partnership income that may be deducted in that year of assessment. Similar concepts apply to the restrictions on carry-forward and carry-back qualifying losses that may be deducted. General partners are not subject to such restrictions.

References:
Income Tax Act (Cap 134.) (2014 Rev. Ed.), ss 36A(4), 36C(3)

Partners joining or leaving a limited partnership

Technically, the addition or removal of any of the partners in a general partnership will result in the termination of a partnership. With respect to its assets and liabilities, however, a new general partnership immediately arises and steps into the shoes of the old one. There is no break in the continuity of the business. In terms of tax computations, the income earned before the change in partnership composition will be attributable to the old partnership, while any income earned after the change will be attributable to the new partnership.

References:
Chiam Heng Chow & Anor v Mitre Hotel & Ors (1995) 2 MSTC 7,269

With respect to capital allowances, the partners of the old partnership will be deemed to have sold their assets to those of the new partnership at market value. Balancing adjustments will have to be computed. If part of the cost of a fixed asset has previously been claimed as a capital allowance, adjustments will have to be made to ensure that the sale price of that asset does not deviate from the portion of the cost price not yet been claimed.

For example, consider an asset that is purchased for $30 and which qualifies for capital allowances under section 19 of the ITA. Capital allowances can be claimed on it over three years. After the first year, $10 would have been claimed on it, leaving $20 to be claimed over the next two years. Assuming the asset is sold for $22, the capital allowance previously claimed will have to be adjusted accordingly ($22 -$20 =$2). Accordingly, the taxpayer will have to account for the fact that he claimed $10 in capital allowances for the asset when he would only have been entitled to claim $8.

The Comptroller grants an administrative concession to the effect that as long as at least one partner of the old partnership stays on in the new partnership, it will not deem that the partners of the old partnership have sold their assets to those of the new partnership at market value. In such circumstances, no balancing adjustment will need to be made. However, only partners of the new partnership will be able to claim capital allowances for those assets in that year.

Any of the partners may notify the Comptroller of his intention not to take advantage of the administrative concession. In such a case, the default position of a deemed sale will apply, requiring a balancing adjustment.

References:
Income Tax Act (Cap 134.) (2014 Rev. Ed.), ss 24(3)

Goods and Services Tax (GST)

A business is required to be registered under the Goods and Services Tax Act (Cap. 117A) (2005 Rev. Ed.) ("**GSTA**") if it makes or reasonably believes that it will make taxable supplies exceeding S$1 million within a 12 month period. In the case of a partnership, the GST registration must be made in the name of the firm. Partners wishing to exit a GST-registered partnership must notify the Comptroller of Goods and Services Tax of this change immediately, for he will remain liable for the GST obligations of the partnership until the Comptroller is so notified. Note that Group Registration may apply.

References:
Goods and Services Tax Act (Cap. 117A) (2005 Rev. Ed.), ss 8(2), 31(1)(a), (3), Sch 1 para 1
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Income Tax Act (Cap 134.) (2014 Rev. Ed.), ss 13(1)(ze), (zf), (zh), (zi), (zj), (zk), (zl), (7A)

Limited partnerships as fund vehicles

Limited partnerships are often used as investment vehicles by the venture capital and private equity industries, and are sometimes also used as general investment funds. A limited partnership model is apt for this purpose for reasons including tax transparency and the fact that investors who are limited partners are only exposed to third party liabilities to the extent of their own investment.

A private equity limited partnership fund will typically have one general partner. This general partner will often itself be a limited liability partnership with a company as its own general partner. This enables it to acquire the protection of limited liability. The fund will have one or more 'founder' limited partners, usually representing the fund's investment managers. The third party investors are admitted as additional limited partners.