

PARTNER'S TAX STATUS TURNED UPSIDE DOWN IN BUDGET

As we covered in our post budget summary, the chancellor of the Exchequer announced consultation on legislation to counter the use of LLPs, as part of the Government's anti-avoidance strategy. By way of reminder, the government are looking to remove the presumption of self-employment for LLP partners and looking to counter the artificial allocation of profits/losses to partners.

We do, of course, hope that perceived 'abuse' can be blocked without adding additional burden to those running businesses or those advising them! Legislation will be introduced in Finance Bill 2014, following consultation.

THE REMOVAL OF PRESUMPTION OF SELF-EMPLOYMENT

The tax position of members of LLPs has previously been straight forward, with members being self-employed and taxed accordingly. The presumption of self-employment made it attractive to some, where in reality those in the business are actually employees. The LLP, of course, has no obligation to pay employers National Insurance Contributions (NICs), producing a tax saving.

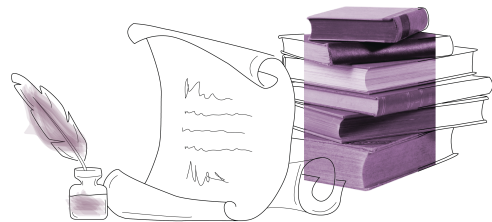
PROFIT AND LOSS ALLOCATIONS

The Government are also countering the artificial allocation of profits/losses to partners to secure tax advantages. They want to further tighten the rules on the use of partnerships to generate sideways loss reliefs.

IMPLICATIONS FOR EXISTING LLPs

Identifying the 'equity' partners who should remain as 'self-employed' in an LLP should be straightforward, likewise, it should also be straightforward to identify individuals who are in fact employees but have been made members of an LLP to save tax. However, the status of fixed share members will be more problematic as it is not yet clear what characteristics these members will need in order to retain their status as 'self-employed'.

Employment law complicates the matter further; a number of members of LLPs have argued successfully in tribunals that they are in fact employees, therefore holding employment



rights. The answer here, where clarity is required, would appear to be to adopt very clear distinctions between equity and fixed share partners, so the balance of 'rights' between them is not open for challenge by HMRC.

It is, of course, also a concern that the Government are looking to attack the use of corporate members, who provide a means for LLPs to 'warehouse' profits at a low tax rate, particularly where the profits need to be reinvested in the business. Corporate members are used for a range of purposes such as structuring and commercial purposes, any restrictions on them would, we hope, recognise this importance.