

Limited Partnerships

What is a Limited Partnership?

The Limited Partnership provides the opportunity for a business to benefit from the company rate of tax as well as the CGT position of a trust or individual.

When properly structured, the Limited Partnership can satisfy all of our characteristics for an ideal structure:

- Asset protection
- Limited Liability
- Distribution flexibility
- Ability to accumulate income
- Accumulated income subject to company tax rate
- Not subject to Division 7A
- Eligible for CGT concessions

Set Up Procedure

A Limited Partnership is formed under the Partnership (Limited Liability) Act. It is necessary to comply with the legislative requirements and register the Limited Partnership before it is recognised under the Income Tax Assessment Act.

A Limited Partnership consists of a general partner and one or more limited partners.

- **The General Partner**
 - Has unlimited liability for the debts of the partnership.
 - Should not hold any assets other than its 1% (as recommended) partnership interest in the Limited Partnership.
 - Should be a company providing limited liability for the shareholders.
 - Undertakes the management and conduct of the partnership operations.
- **The Limited Partner**
 - Liability is limited to the limited partner's contribution of capital to the partnership (usually \$99.00).
 - Does not take any part in the management of the business.
 - Has no power to contractually bind the partnership.
 - Should be a Discretionary Trust providing the highest level of asset protection and income distribution flexibility for the partnership.
 - Should hold the shares in the general partner company, if practicable.

Taxation

Limited Partnerships are taxed in the same way as companies for income tax purposes. A Limited Partnership will lodge a company return making calculations of taxable income in the same way as a company.

Receipt of income by a Limited Partnership is a receipt by the Limited Partnership and not the partners separately. As a Limited Partnership is treated as a company for income tax purposes, the partners are not subject to tax unless a distribution is made by the Limited Partnership to the partners.

Distributions to partners (drawings) are classed as dividends which may be 'franked'.

There are no provisions that deem payments, loans to associates or genuine loans to partners to be dividends as in Division 7A.

Uses and Comments

A Limited Partnership can be used as an operating entity in its own right, for professionals (eg. medical practitioners, engineers, architects, accountants) and other commercial partnerships (eg. real estate agents, service entities, development ventures).

A Limited Partnership provides the advantage of limited liability ordinary partnerships lack.

It is possible to restructure an existing ordinary partnership to a Limited Partnership with minimal taxation and stamp duty costs.

- **Replace Corporate Beneficiary**

When a Limited Partnership is used to replace a corporate beneficiary in a trust, the trust will have great flexibility and asset protection and can avoid the issues associated with Section 109UB in Division 7A.

- **Protecting Company Reserves**

A Limited Partnership can be used to effectively protect, extract and access tax paid and non-tax paid reserve in a company and provides flexibility for distribution purposes.

- **Other Considerations**

Care should be taken with the preparation of accounts for a Limited Partnership. When distributions are made to partners, different taxation legislation applies from that for an ordinary Partnership.

The partnership deed must make allowance for this 'point of difference'.

When properly structured, the Limited Partnership can provide a high level of asset protection, income flexibility and minimise the effect of Division 7A.