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| ***Newsletter*** |
| **20 December 2010** | |

LAQC – Loss Attributing Qualifying Companies

Very Important – read with care

The LAQC regime comes to an end on 1 April 2011.

There are very important changes from that date, combined with no depreciation claims on most buildings.

Decisions must be made on the best structure to replace your LAQC, before that date, 1.4.2011.

There are four options available to restructure to without incurring any tax cost, being

1 Continue as a qualifying company (QC).

2 Change to an ordinary company.

3 Change to a look through company (LTC).

4 Become a limited partnership, or ordinary partnership.

The default option, to remain as a QC, is not desirable as you cannot attribute the annual losses. Also for an ordinary company.

We will advise what is best for you, calculating your taxable position, income or loss, with building depreciation removed.

We will need your input and discussion before mid March, to be sure the legal changes can be completed before 1 April, if they are required.

If you elect to a LTC you can still attribute losses the same way as under a LAQC regime, and we expect to advise loss making companies to opt to be taxed as a LTC.

Many of our LAQC’s have the higher earning partner holding the majority of shares for the greatest tax benefit. With nil building depreciation, a profit is now very possible, and a change in shareholding will be advisable.

It is vital that any changes in shareholding are completed before 1 April 2011, as any changes after that date will trigger a deemed disposal of assets, and tax liability on depreciation recoveries – as IRD treats you as owning property as a partnership, but taxed as a LTC.

We will be required to value your shares before a transfer, and the value of your property will be required.

You can transfer shares by

(a) via a Relationship Property Agreement, so shares can be held 50/50 as relationship property, or

(b) selling shares at our calculated market value via agreement for sale and purchase, with the purchase price recorded in a Deed of Debt.

In some cases, your solicitors will be required to transfer property titles, re-document mortgages and complete share transfers.

So forward planning to achieve this by mid March 2011 is essential.

**LTC**

The election to be a LTC must be before 30 September 2011 and signed for by the owners.

LTC profits and losses are passed onto its shareholders in proportion to their shareholding.

LTC have five or fewer shareholders, with one class of share, income is taxed in the shareholder’s personal return, and taxed at their personal tax rate – losses also claimable personally. There is a loss limitation rule. Losses made can continue to be claimed equal to the owner’s equity in the company, including personal loans advanced.

The look through applies for income tax purposes only. Under general Companies Office rules, the LTC retains its limited liability benefits.

There is no tax cost to transfer from a LAQC, or QC to this new elected company, ie no depreciation recovery, as if the assets were sold.

If you do nothing, you will remain as a Qualifying Company. You cannot attribute losses direct to shareholders – that advantage ceases at 1 April 2011. One large advantage remains with QC’s – distribution from capital gains will remain tax exempt, and it appears, subject to future confirmation, if profitable, the new 28% company rate applies.

We will need to ask each of you, as LAQC clients, what is the future intention with your property ownership. If you expect part or all to be sold, and not by share transfer, to obtain personally the capital profits tax free are available with a QC, This is a major advantage over an ordinary company.

We will offer all our LAQC clients a discounted consultation ($250 + GST) to review the best option to change to. We need to see you from 1st February to 15th March, to start the changes from 1 April 2011, especially if share transfers and valuations are required.

Please phone for an appointment from 11 January 2011.

We will help you to achieve a more prosperous year in 2011.

**Withers & Co Ltd**