

BC'S BUSINESS BRIEFS

STOP PRESS - LAQC CHANGES LOOMING

LAQC's (or Loss Attributing Qualifying Companies as they are more correctly known) have been widely used since they were introduced, many years ago now. As part of the taxation review undertaken by the current government, a recommendation was made that the current regime was inherently unfair in that tax relief was obtained while the company was in a loss situation, often brought about by Depreciation and Interest claims (particularly in the area of residential rental property) by the shareholders of the company at their marginal tax rate (which may be as high as 39% in recent times) whereas when that company turned to profit, tax would be paid at the company tax rate (which is currently 30% and due to decrease to 28% from 1 April 2011).

The Government announced on 15th October the first draft of legislation to amend the LAQC tax treatment. While the legislation is in draft form and inevitably be altered before it becomes law, the majority of the following highlights will likely become law.

- 1 A new tax entity will be available from 1 April 2011 to be known as a **Look Through Company ("LTC")**. A LTC is the entity which the legislation envisages will take over from LAQC's which attributes losses directly down to shareholders and likewise attributes profits from the company to shareholders ensuring the same tax treatment when a company is in loss or profit;
- 2 Existing LAQC's will have the option to convert to a LTC or a partnership or a sole trader within 6 months of the start of the 2011/12 income year which for those LAQC's with a 31 March balance date means 30 September 2011. Those elections will be deemed to apply from the start of the 2012 income year and there will be no tax cost in the transition;
- 3 Existing LAQC's who do not make an election will continue to be a LAQC but will not be able to attribute the losses to shareholders so for most taxpayers this will not be an option;
- 4 If the taxpayer chooses to move to either a partnership or sole trader, the LAQC must be put into liquidation prior to the end of the 2012 income year. No provision exists for a LAQC to transition to a trust;
- 5 To transition to a LTC all shareholders must elect to do so.
- 6 Should a company become a LTC but subsequently drop out of the regime, it can not re-enter the LTC regime for 2 years after exiting.

While there will be further changes likely prior to implementation this writer thinks it likely that most current LAQC's will decide to become LTC's meaning a fresh election to do so prior to 30 September 2011. We will keep you informed.

Ross Baigent

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