WOULD A PROPERTY LLP STRUCTURE BE USEFUL TO YOU?

By specialist property accountant Stephen Fay ACA

Most investors operate their property business either as a 'private landlord' or as a company. In some cases, an LLP (Limited Liability Partnership) may prove to be a better, or additional, structure to use.

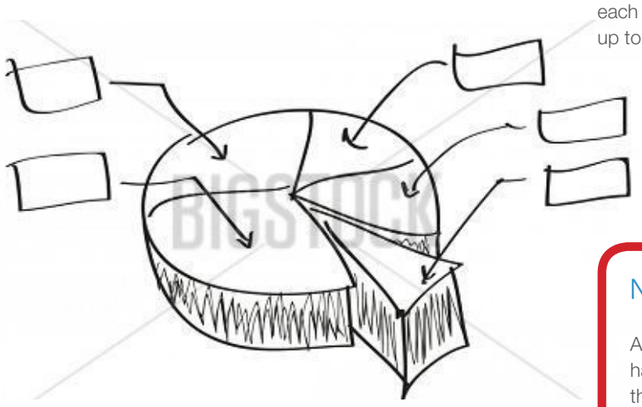
WHAT IS AN LLP?

An LLP is a type of partnership that provides all the flexibility of a traditional partnership with the 'limited liability' that limited companies enjoy.

However, the 'price' of this extra protection is the requirement to file accounts on the public record at Companies House. This is a major issue for some investors who want to keep their affairs away from nosy neighbours! And there are extra accountancy fees to deal with the extra accounts required.

LLPs can enter into contracts in their own name (rather than the investor's personal name) and are a separate legal entity to the owners.

WHAT ABOUT THE TAX TREATMENT OF LLPS?



The profits of an LLP are divided up amongst the partners (owners) and then taxed at the highest personal tax rate of each owner. In other words, there is no tax rate for an LLP as such – the tax rate applied is whatever each partner's rate is – even if this is 40-45%. However, the partnership profit split can be changed year on year if required and beneficial – unlike for companies.

Partners are treated as Self-Employed by HMRC – meaning they get the cashflow advantage of paying their tax annually (rather than monthly for PAYE employees).

This is completely different to a company, where profits are taxed at 20% (up to £300k annual profits) and then paid out to the shareholders.

For shareholders with total income up to £42.5k (2013), there would typically be no further tax to pay, and so 20% is the tax rate paid (additional tax is due on dividends paid to Higher Rate taxpayers).

LLP CORPORATE PARTNERS…

Partners in an LLP can be individuals or companies. The tax benefit of having a company as a partner is that companies only pay 20% tax, whereas individuals pay 40-45% tax.

Dividends up to the Higher Rate of tax (£42.5k per annum per person) can be extracted, although having companies as partners generally works best where the funds are to be retained in the company.

LLPs with corporate partners are common for JV projects where each partner has their own company, and so an LLP is set up to deal with a project and the profits are paid out to the partners (companies) in full. There would be no LLP profit remaining (hence no tax) and each company would pay 20% tax on its own share of the profits. Each JV member can then do what they want to with the profits in their company – there is no requirement to consider the other member's tax position.

NON-RESIDENT LLP MEMBERS…

Another tax reason to use an LLP is the possibility of having a non-UK tax resident sell off property investments that are standing at a capital gain. Remember that for LLP partners, tax is applied on profits at the personal tax rate of the individual – and, if that individual is a non-UK tax resident (and non-UK ordinary resident), zero Capital Gains Tax could be payable on capital gains.

FLEXIBILITY

Just like a 'normal' partnership, the main benefit of an LLP is flexibility, to enable profits to be shared out between partners in any way required.

This is useful where there are multiple parties involved, each with different tax positions (for example a Basic Rate tax-payer may wish to receive profits whereas a Higher Rate taxpayer may not want to).

For companies, profits must be shared out according to the shareholdings, which can be tricky to tweak and amend to suit different requirements. Dividend waivers and 'alphabet shares' are possible, but tend to be difficult to manage and often attract HMRC attention.

Family, friends and business partners can be added to the LLP very easily, and without the problem that companies have of revaluing the shares each time.

So, LLPs are useful for property ventures where there are likely to be lots of changes in terms of incoming new partners and outgoing old partners. This is why LLPs are popular with firms of accountants and solicitors, as there are usually lots of changes as new staff join and leave the partnership – using a company would be more tax-efficient, but wouldn't provide the required flexibility.

One key point to note is that LLP members don't have responsibility for each other's actions – although having a good LLP agreement is wise.

SUMMARY

LLPs are useful to property developers and those investors who have more complex property ownership structures. As most investors operate in their own personal names and in groups of 2-3 at most, it's unlikely that for more 'vanilla' scenarios an LLP will be appropriate.

But, for property development activity funded or managed by individuals with diverse tax positions, and who want the added benefits of limitation to their own personal liability, an LLP could prove the right structure in which to operate.