



MALAYSIAN INSTITUTE
OF ACCOUNTANTS
ACCOUNTANTS: MANAGERS OF VALUE

UNDERSTANDING LIMITED LIABILITY PARTNERSHIP

and **its**

Tax

FACETS

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Understanding Limited Liability Partnership and Its Tax Facets

The Companies Commission of Malaysia (SSM) has recently issued the Limited Liability Partnership Bill (LLP Bill) 2011 introducing LLP as an alternative business vehicle in Malaysia.

LLP is a hybrid between company and conventional partnership which gives the benefits of limited liability and at the same time allows its members the flexibility of organising internal structure as in a traditional partnership. LLP is a separate legal entity which has the unlimited capacity to hold property while the partners enjoy the limited liability status. It may be formed by any two or more individuals and/or bodies corporate for any lawful business with a profit motive in accordance with the terms of the LLP agreement.

An LLP may also be formed for the purpose of carrying on a professional practice of which it must consist of natural persons of the same profession and have in force professional indemnity insurance approved by the Registrar which is the Chief Executive Officer or any person so appointed by the SSM. In this respect, approval is required from the Registrar upon consultation with the following governing bodies:

PROFESSIONAL PRACTICE	GOVERNING LAW	GOVERNING BODIES
Chartered Accountant	Accountants Act 1967	Malaysian Institute of Accountants
Advocate and solicitor	<ul style="list-style-type: none"> • Legal Profession Act 1976 • Advocates Ordinance of Sabah • Advocates Ordinance of Sarawak 	<ul style="list-style-type: none"> • Malaysian Bar • Sabah Law Association • Advocates' Association of Sarawak
Secretary	Companies Act 1965	Nil

LLP has been well accepted as an alternative business structure in many jurisdictions. The table below provides a summary of various countries that have adopted LLP:

LLP WORLDWIDE	YEAR ADOPTED	SCOPE OF LLP	LEGISLATION
United Kingdom	2001	Open for all except non profit activities	LLP Act 2000
China	2007	Knowledge-based professions/ technical services	Partnership Enterprise Law (1 June 2007)
Japan	2005	Business activities only	6 May 2005
Singapore	2005	All businesses activities	LLP Act 2005 (25 Jan 2005)
India	2009	All businesses activities	LLP Act 2008
Labuan	1997	All businesses activities	Labuan Limited Partnerships Act 1997
Malaysia	Expected 2012	General business activities/ Professionals	LLP Bill 2011

A Hybrid of Conventional Partnership and Private Company

CONVENTIONAL PARTNERSHIP

Partnership is defined in Section 2 of the Income Tax Act 1967 (ITA 1967) as an association of any kind (including joint adventures, syndicates and cases where a party to the association is itself a partnership) between parties who have agreed to combine any of their rights, powers, property, labour or skill for the purpose of carrying on a business and sharing the profits therefrom, but excludes a Hindu joint family although such a family may be a partner in a partnership and any association which is established pursuant to a scheme of financing in accordance with the principles of Syariah.

A partnership needs not be confined to individuals. It may also include joint venture between two companies or between a company and an individual.

PRIVATE COMPANY

The most common type of company incorporated for carrying on business is a company limited by shares. Such company limited by shares may be incorporated as a private limited company with "Sendirian Berhad" or abbreviation "Sdn Bhd" at the end of its name; or public limited company with "Berhad" or abbreviation "Bhd" as part of the company's name.

The requirement to form a local company is governed under Section 14 of the Companies Act 1965 (CA 1965) where any two (2) or more persons associated for any lawful purpose may be subscribing their names to a memorandum and complying with the registration to form an incorporated company. Every company shall have at least two directors and one or more secretaries each of whom shall be a natural person of full age and has his principal or only place of residence within Malaysia pursuant to Section 122 and Section 139 of CA 1965.

Secretary of a company refers to a member of a professional body prescribed by the Minister of Domestic Trade and Consumer Affairs or any individual licensed by the SSM.

A local company is required to comply with the requirements of the CA 1965 which amongst others,

*Conventional
Partnership*

+

*Private
Company*



*Limited
Liability
Partnership*

include the conduct of annual general meeting, lodgment of annual return and audited accounts and lodging of any other statutory documents as specified by the CA 1965.

A Hybrid of Conventional Partnership and Private Company *(continued)*

LIMITED LIABILITY PARTNERSHIP

LLP offers the hybrid characteristics between a conventional partnership and limited liability company. The table below compares the distinct characteristics of these business vehicles:

No.	What LLP Bill Says	Private Company	Conventional Partnership
1.	<p>Legal Status and Formation</p> <ul style="list-style-type: none"> A limited liability partnership registered under Section 11 or a foreign limited liability partnership registered under Section 45, of the LLP Bill 2011. A body corporate and a separate legal entity from that of its partners. Bears "Perkongsian Liabiliti Terhad" or the abbreviation "PLT" at the end of the name. 	<ul style="list-style-type: none"> An entity incorporated and registered under the Companies Act 1965 (CA 1965). A private company limited by shares will have "Sendirian Berhad" or "Sdn Bhd" as part of its name. 	<ul style="list-style-type: none"> A partnership registered under the Registration of Businesses Act 1956. Governed by the provisions of the Partnership Act 1961 (PA 1961). Partnership is the relation which subsists between persons carrying on business in common with a view of profit. It is a relationship and not an organisation in its own right with a separate legal personality.
2.	<p>Liability of members / owners</p> <ul style="list-style-type: none"> A partner is not personally liable, directly or indirectly, by way of indemnification, contribution, assessment or otherwise, for an obligation of an LLP (arising in contract or torts), solely by reason of being a partner of the LLP. Any change in the partners of an LLP shall not affect the existence, rights or liabilities of the LLP i.e. it has perpetual succession. 	<ul style="list-style-type: none"> Liability of the owners is limited to the amount of shares subscribed by the shareholders. Any change in the structure of the shareholders of the company shall not affect the existence of the companies as both the shareholders and company is distinct by its legal form and has the characteristics of perpetual succession. 	<ul style="list-style-type: none"> Every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner; and after his death his estate may also severally liable in a due course of administration for such debts and obligations. While the business may continue, any change in the composition of the partnership marks the end of the relationship and the creation of a new partnership i.e. members of the original partnership are responsible for contractual obligations incurred prior to the termination.

A Hybrid of Conventional Partnership and Private Company *(continued)*

No.	What LLP Bill Says	Private Company	Conventional Partnership
3.	<p>Financial Year End</p> <p>The bill is silent on whether LLP is allowed to select its financial year end instead of calendar year end, based on the existing rule governing the conventional partnership.</p>	<p>Companies are allowed to choose its financial year end. Thereafter, companies are permitted to change their year end subsequently.</p>	<p>The PA 1961 is silent on selection of year end. However, for tax purposes, the basis period for a YA is restricted to calendar year.</p>
4.	<p>Ownership of properties</p> <p>LLP shall be capable of:-</p> <ul style="list-style-type: none"> • suing and being sued; • acquiring, owning, holding and developing or disposing of property; and • doing and suffering such other acts and things as bodies corporate may lawfully do and suffer. 	<p>Company can own properties under the capacity as a company.</p>	<p>Under Section 43 of the National Land Code 1965, a partnership is not a person or body which can hold land in its name. As such, partners jointly own the said properties.</p>
5.	<p>Appointment of officer/Secretary</p> <p>LLP must appoint at least one compliance officer i.e. either one of the partners (not an un-discharged bankrupt) or persons qualified to act as a secretary under CA 1965 who must be:</p> <ul style="list-style-type: none"> • A citizen or permanent resident of Malaysia; and • Ordinarily resides in Malaysia. <p>The statutory duties of a compliance officer are to:</p> <ol style="list-style-type: none"> 1. register any changes in registered particulars of the LLP; 2. Keep and maintain registers and records of the LLP; and 3. Ensuring publication of names of the LLP. 	<p>Section 139 of CA 1965 requires every company to have one or more secretaries who shall be a natural person of full age who has his principal or only place of residence in Malaysia.</p> <p>Examples of the duties of secretary:</p> <ul style="list-style-type: none"> • keep and maintain books and various registers at the registered office of the company. • submit statutory returns as required by the CA 1965 to SSM. • organise meetings, send out notices for meetings, take down minutes of board and general meetings. • ensure that any changes in the company's statutory information should be duly completed in the relevant prescribed forms and lodged with the Registrar of Companies within the required period of time. 	<p>No such requirement is imposed for conventional partnership.</p> <p style="text-align: right;"><i>(continue next page)</i></p>

A Hybrid of Conventional Partnership and Private Company *(continued)*

No.	What LLP Bill Says	Private Company	Conventional Partnership
5.	<p>Appointment of officer/Secretary (continued)</p> <p>Failure to observe the statutory duties conferred will render the compliance officer personally liable for the contravention of the statutory duties unless the court is satisfied that he is not so liable.</p>	<ul style="list-style-type: none"> advise board of directors of the relevant dates for holding the company's annual general meeting. 	
6.	<p>Registered Office</p> <p>LLP must have a registered office in Malaysia at all times (Section 18 of the LLP Bill).</p> <p>LLP is required to keep certain registers and statutory records at the registered office (Section 19 of the LLP Bill). Such records are:</p> <ul style="list-style-type: none"> Notice of registration Register of partners Copies of all LLP agreement, annual declaration / any statement lodged with the Registrar) Instrument of charges 	<p>Section 119 of CA 1965 requires a company to have a registered office within Malaysia to which all correspondences and notices may be addressed.</p> <p>All statutory books, registers and other records are required to be maintained or kept at the registered office for a period of seven (7) years from the date of registration.</p>	<p>Section 26 of the PA 1961 requires the partnership books are kept at the place of business of the partnership (or the principal place, if there are more than one place).</p>
7.	<p>Maintenance of Accounts, Books and Audit Requirement</p> <ul style="list-style-type: none"> Must keep accounting and other records (not less than 7 years from the end of the financial year) to sufficiently explain its financial position (Section 69 of the LLP Bill). Accounts shall be prepared to give a true and fair view of the state of the affairs of the LLP. Subject to LLP agreement, the accounts are not required to be audited. 	<ul style="list-style-type: none"> Every company (except for private exempt company) is required to keep accounting and other records that would properly reflect true and fair profit and loss and balance sheets of the company. Such records must be duly audited by an appointed auditor. Accounts must be prepared in accordance with approved accounting standards issued by the Malaysian Accounting Standards Board. 	<ul style="list-style-type: none"> No mandatory statutory audit requirement. However, for tax purposes, the Director General may exercise his power, to compel the production of audited accounts within a specific time. Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

A Hybrid of Conventional Partnership and Private Company *(continued)*

No.	What LLP Bill Says	Private Company	Conventional Partnership
7.	<p>Maintenance of Accounts, Books and Audit Requirement (continued)</p> <ul style="list-style-type: none"> Annual declaration by at least two partners on the solvency of the LLP, within ninety (90) days from the end of the financial year of the LLP (Section 68 of the LLP Bill). 	<ul style="list-style-type: none"> Accounts must be duly certified by a director or a manager or a company's secretary. 	
8.	<p>Dissolution and striking off</p> <p>LLP may be dissolved by:</p> <ol style="list-style-type: none"> way of Court order; or voluntary winding-up, only when: <ul style="list-style-type: none"> it ceased to operate; all debts and liabilities have been discharged; application is preceded by way of notice to all partners and published in national newspaper of the intention to winding up; and no objection from IRB, creditor and partner. <p>LLP may be struck-off on the following grounds:</p> <ul style="list-style-type: none"> no longer carrying on business; contravention of the Act; prejudicial to national interests; no liquidator acting for court order winding up; or affairs have been fully wound-up but with insufficient assets to pay the cost to obtain court order. 	<p>Companies may only be dissolved by:</p> <ol style="list-style-type: none"> way of Court order; or voluntary winding-up by members or creditors. <p>The Registrar may strike off the name of defunct companies, if the following requirements are satisfied:</p> <ul style="list-style-type: none"> no assets and liabilities at the time application is made; no outstanding tax or other liabilities with any government department agency; no outstanding charges in the Register of Charges; not involved in any impending legal proceedings within or outside Malaysia; no outstanding penalties or offer of compound under the CA 1965; not a holding company; and not a "guarantor corporation". 	<p>Upon dissolution, there must be a settlement of partnership accounts. Subject to any agreement between the partners, a partnership is dissolved:</p> <ul style="list-style-type: none"> if entered into for a fixed term, by the expiration of that term; if entered into for a single adventure or undertaking, by termination of that adventure/undertaking; or if entered into for undefined time, by any partner giving notice to the other or others of his intention to dissolve the partnership. <p>Where no fixed term has been agreed upon, any partner may determine the partnership at any time on giving notice of his intention to do so to all the other partners.</p> <p>Where the partnership has originally been constituted by written document, a notice in writing, signed by the respective partner, is deem sufficient.</p>

A Hybrid of Conventional Partnership and Private Company *(continued)*

The introduction of LLP is consistent with the Government's aspiration to improve public and Government's service delivery system, simplify procedures; and reduce administrative and compliance burden relating to foster a friendly business environment in Malaysia. An LLP offers a vehicle for combination of capital and expertise for running a business that requires less compliance formalities i.e. less procedures and less expensive in setting up (by just completing a form), no memorandum or Articles of Association is required coupled with the waiver of filing of statutory returns and statutory audit requirement.



As the enactment of the legal structure of LLP is nearing completion, the tax law governing this new business vehicle attracts considerable concerns. While every effort has been spent in promoting the attractiveness of this new business vehicle, concerted effort has to come from the formulation of the suitable tax policy which is supportive in promoting LLP as a preferred vehicle.

Various Facets of Tax in an LLP

A conventional partnership registered under the Registration of Businesses Act 1956 or any partnership established by two or more persons for the carrying on any professional practice and a private company incorporated under the CA 1965 are eligible to convert to an LLP provided that partners of the LLP comprise all partners and no one else of the conventional partnership prior to conversion; and in the case of a private company, there is no security interest in assets subsisting at the time of application and the partners of the LLP comprise all shareholders and no one else of the private company prior to conversion.

The conversion entails transfer of the properties, interests, rights, privileges, liabilities, obligations vested in the conventional partnership/ private company and the undertaking of the conventional partnership/ private company to the LLP.

What would then be the tax implication after conversion to an LLP? Is it beneficial ultimately for such conversion to take place after taking into account the tax consideration? The tax directive for this vehicle has yet to be made known but ones may have many questions on the tax treatment for an LLP.

Tax Perspective of an LLP

AREA	DESCRIPTION
Tax Status	<p>Section 2 of ITA 1967 defines 'company' as "a body corporate and includes any body of persons established with a separate legal identity by or under the laws of a territory outside Malaysia". "Body of persons" as defined under Section 2 of ITA 1967 means "an incorporated body of persons (not being a company), including a Hindu Joint family but excluding a partnership".</p> <ul style="list-style-type: none"> As such, is LLP considered as a chargeable person as in a private company?
Residence Status	<p>Section 7 of the ITA 1967 defines residence status of individual based on his number of days physically presence in Malaysia. Whereas, Section 8 of ITA 1967 deemed a company is resident in Malaysia by virtue of its management and control of its business exercised in Malaysia.</p> <ul style="list-style-type: none"> How is the residence status of an LLP determined?
Tax Rate	<ul style="list-style-type: none"> What is the structure of tax rate applicable to LLP or its partners? Are partners of LLP subject to tax on individual basis similar to the basis used in a conventional partnership i.e. based on the portion of the partners set out in LLP agreement? What will be the rates applicable for resident and non-resident individual? Do small and medium-sized enterprises (SME) enjoy similar preferential tax rate of 20% on first RM500,000, and 25% thereafter on chargeable income after conversion to LLP?
Conversion Cost	<ul style="list-style-type: none"> Is the cost of conversion from conventional partnership or private company to LLP tax deductible?
Stamp Duty	<ul style="list-style-type: none"> Is the stamp duty incurred arising from transfer of existing assets and real properties from conventional partnership or private company to LLP waived or tax exempted?
Capital Allowances, Losses and Tax Incentives	<ul style="list-style-type: none"> What will be the treatment for the unutilised capital allowances or losses or/and tax incentives that the conventional partnership or private company has been previously enjoyed upon conversion to LLP?
Group Relief	<ul style="list-style-type: none"> Does an LLP enjoy group relief which is available for a private company?

Various Facets of Tax in an LLP

(continued)

Tax Perspective of an LLP

AREA	DESCRIPTION
Real Property Gains Tax	<p>Partnership is a chargeable person for Real Property Gains Tax (RPGT) purposes i.e. any gain arising from disposal of real property.</p> <ul style="list-style-type: none"> Is an LLP liable to the RPGT provision upon conversion or on disposal of real property?
Tax Submission	<p>Section 77A of ITA 1967 requires every company to file its tax returns (Form C) within seven (7) months from the date following the close of the accounting period which constitutes the basis period for a Year of Assessment (YA).</p> <p>Section 86(1) of the ITA 1967 requires partnership to file its annual returns (Form P) no later than 30 June in the year following that YA. The responsibility of making a tax return relies on the precedent partner. Where no partner is personally present in Malaysia, the return should be made by the lawyer, agent, manager or factor of the partnership.</p> <ul style="list-style-type: none"> What is then the requirement of an LLP to file its returns and the tax deadline?
Profit Repatriation	<ul style="list-style-type: none"> What is the tax implication in the manner an LLP repays its partners on the capital contributed as compared to a private company which may declare dividends out of reserves to its shareholders?

A Snapshot of Tax Law Governing LLP in Singapore

GENERAL TAX GUIDELINE

Singapore has implemented LLP as an alternative business vehicle in year 2005 and has put in place the applicable tax law governing LLP that provides clarity on the tax position of an LLP.

The Inland Revenue Authority of Singapore (IRAS) has issued several pronouncements applicable to LLP which are briefly summarised below:

- LLP is treated as a partnership (notwithstanding being regarded as body corporate but not as a separate legal entity). Therefore, income from an LLP will not be chargeable to tax at entity level, instead each partner of an LLP will be chargeable to tax based on his/ its share of income from the LLP.
- Where the partner is an individual, his share of income from the LLP will be taxed based on personal tax rate. Whereas, if the partner is a company ("corporate partner"), its share of income from the LLP will be taxed on the prevailing corporate tax rate.
- Each partner's share of capital allowance (CA) and Industrial building allowance (IBA) in excess of his/its income from LLP, trade loss (collectively known as "relevant deductions") and donation is available for off-set against his/its income from other sources. Income from other sources refers to non-trade income from an LLP.

The amount of relevant deductions allowed against each partner's income from other sources for a YA together with all of his/its relevant deduction allowed in all past YAs, shall not exceed his contributed capital as at the end of the basis period relating to that YA.

- Any amount of a partner's share of an LLP's relevant deductions which is in excess of his contributed capital may be carried forward to a future YA for offset against his share of income from the same LLP.



A Snapshot of Tax Law Governing LLP in Singapore *(continued)*

TRANSFER OF A BUSINESS TO AN LLP

An LLP may be formed to take over the business¹ of a sole proprietorship, a partnership (transferor partnership), another LLP (transferor LLP) or a company.

Whether the unabsorbed CA, IBA or trade loss in each case can be carried forward to a future YA for offset will depend on whether the business continuity test and/or the shareholding test are/is satisfied.

BUSINESS CONTINUITY TEST (SAME BUSINESS TEST)

For income tax purposes, the CA or IBA carried forward can only be offset against future profits derived from the same trade or business which gave rise to the CA or IBA.

The business continuity test requires that where the business of a transferor is transferred to an LLP, the unabsorbed CA or IBA of a YA cannot be carried forward to a subsequent YA if during the basis period relating to the YA, there is a cessation of the business. In other words, the unabsorbed CA or IBA of a person may only be carried forward to the next YA for offset against his future income so long as the person continues to carry on the business, after the transfer.

CONTINUITY OF OWNERSHIP TEST (SUBSTANTIAL SHAREHOLDING TEST)

The substantial shareholding or continuity of ownership test for companies requires the shareholders of a company and their respective shareholdings, on the last day of the YA in which the allowances arose or losses incurred, to remain substantially the same i.e. not less than 50% of the company's total number of issued shares are held by or on behalf of the same persons of the company, on the first day of the YA in which such allowances or trade loss is used for offset against the company's income. The examples below provide illustrations for better understanding:

1. For losses carried forward, the relevant dates to utilise trade losses would be 31 December of the year in

which the losses arise and 1 January of the following YA in which the utilisation will take place.

2. For capital allowances carried forward, the relevant dates to utilise the unabsorbed capital allowances would be 31 December of the YA in which the capital allowances arise and 1 January of the following YA in which the utilisation takes place.

For this purpose, where the shares of a company are held by or on behalf of another company, the shares shall be deemed to be held by the shareholders of the last-mentioned company. Similarly, shares held by or on behalf of the trustee or administrators of the estate of a deceased shareholder, are deemed to be held by that deceased shareholder.

¹ Business, in this context refers to a trade, profession or vocation.

A Snapshot of Tax Law Governing LLP in Singapore *(continued)*

TRANSFER OF A BUSINESS TO AN LLP

TAX TREATMENT	IF TRANSFEROR IS A SOLE PROPRIETOR OR A PARTNER	IF TRANSFEROR IS A COMPANY
Unabsorbed CA or IBA	<p>A transfer of the business to an LLP will not result in a cessation of the transferred business;</p> <ul style="list-style-type: none"> • if and only if the transferor becomes a partner of the takeover LLP (i.e. transferee LLP); • the transferor can carry forward his unabsorbed CA or IBA of the transferred business remaining in the YA relating to the basis period in which the business was transferred, to a future YA for offset against his income. 	<p>A company that transfers a business to an LLP:</p> <ol style="list-style-type: none"> 1. may dissolve thereafter; or 2. continue to carry on another business after the transfer. <p>In scenario 1</p> <p>The company will cease to exist. Hence, there is no issue of carrying forward its unabsorbed CA or IBA.</p> <p>In scenario 2</p> <p>(a) If the company becomes a partner of the transferee LLP;</p> <ul style="list-style-type: none"> • the company is considered to continue on the same business; and • thereby can carry forward its unabsorbed CA or IBA of the transferred business remaining in the YA of transfer for offset against its future income. <p>(b) If the company does not become a partner of the transferee LLP;</p> <ul style="list-style-type: none"> • the company is considered to have ceased to carry on that business as the company fails the "continuity test" and • thereby will not be allowed to carry forward its unabsorbed CA or IBA of the transferred business for offset against its future income.
Unabsorbed Trade Loss	<p>Regardless whether the sole proprietor or the partner of the partnership or transferor LLP becomes a partner of the transferee LLP;</p> <ul style="list-style-type: none"> • the unabsorbed trade loss of a transferred business remaining in the YA of transfer are allowed to be carried forward to a future YA for offset against the future income of the transferor LLP. 	<p>A company that transfers a business to a transferee LLP may:</p> <ol style="list-style-type: none"> 1. dissolve thereafter and there will be no issue of carrying forward its unabsorbed trade loss of the transferred business for offset against its future income; or 2. continue carrying on the business after the transfer and its remaining unabsorbed trade loss of the transferred business in the YA of transfer can be carried forward for offset against its future income regardless whether the company becomes a partner of the transferee LLP.

A Snapshot of Tax Law Governing LLP in Singapore *(continued)*

CHANGE OF PARTNER(S) OF AN LLP

An LLP may admit new partner(s) or its existing partner(s) may withdraw from the LLP due to retirement, death or other reasons.

For tax purposes, an admission or withdrawal of a partner in an LLP does not necessarily mean the business has ceased for all the partners. This is because a business carried on through the LLP is considered as being carried on jointly by the partners.

Whether or not there is a cessation of business for a partner will depend on the status of the partner based on the situations described below.

ADMISSION OF NEW PARTNER(S)	WITHDRAWAL OF PARTNER(S) OF AN LLP
<ul style="list-style-type: none"> • Each existing partner of the LLP is considered to have continued to carry on the same business unless facts showing that there is indeed a change in the business carried on through the LLP. • Each existing partner's unabsorbed CA or IBA brought forward from the prior year (if any) can be offset in that YA against: <ul style="list-style-type: none"> □ first, his income from the LLP; and □ then, his income from other sources (subject to the relevant deduction to his contributed capital). • Regardless whether there is a cessation of business, each existing partner of the LLP may be able to carry forward his unabsorbed trade loss from a prior YA to that YA for offset against: <ul style="list-style-type: none"> □ first, his income from the LLP; and □ then, his income from other sources. • If the existing partner of the LLP is a company, the carry forward of its unabsorbed trade loss will be subject to shareholding test i.e. continue to be the partner of the LLP. 	<p>When withdrawing partner is an individual:</p> <ul style="list-style-type: none"> • the partner is considered to have ceased to carry on the same business; and • his unabsorbed CA or IBA cannot be carried forward to a subsequent YA i.e. there is no business continuity. • however, his unabsorbed trade loss of the LLP may be carried forward to future YAs for offset against his income from other sources. <p>If the withdrawing partner is a company:</p> <ul style="list-style-type: none"> • the carry forward of its unabsorbed trade loss of the LLP will be subject to shareholding test.

A Snapshot of Tax Law Governing LLP in Singapore *(continued)*

TAX TREATMENT RELATING TO SALE OF A PROPERTY

A sale of a property (i.e. an asset qualifying for CA or a building qualifying for IBA) is considered to have taken place when:

- a sole proprietor sells his property used in the business carried on through his sole proprietorship, wholly² or partly², to other partners of an LLP or a partnership;
- a partner of an LLP/partnership sells his share of property used in the business carried on through the LLP/partnership to a sole-proprietor (i.e. sole-proprietor is not the partner of the LLP/partnership);
- a partner of an LLP/partnership sells his share of property used in the business carried on through the LLP or partnership, wholly² or partly², to other partners of another LLP/partnership;
- a partner of an LLP/partnership sells his share of property used in the business carried on through the LLP/partnership, wholly (i.e. the partner withdraws from the LLP/partnership) or partly [i.e. which could arise when there is an admission of one or more new partner(s)], to other partners of the LLP/partnership;
- a company sells its property to the partners of an LLP or a partnership; and
- a partner of an LLP/partnership sells his share of property used in the business carried on through the LLP/partnership to a company.

Tax Treatment on Sale of A Property

CIRCUMSTANCES FOR A SALE	TAX TREATMENT
A property is sold wholly (including a transfer of a property to or from a company)	<ul style="list-style-type: none"> • Balancing allowance (BA) or charge (BC) for the YA relating to the basis period during which the property is sold, will be computed for the seller. • The sole proprietor, the partner or the company ceases to own the property.
The buyer and seller are under common control	<ul style="list-style-type: none"> • CA or IBA will be granted to the buyer for the YA relating to the basis period in which the property is purchased, based on the tax written down value of the property. • No BA or BC, nor CA/IBA of the property for the YA of sale shall be made to the seller.
Partial sale of the property i.e. one party to the sale is a partnership/LLP, and the other party is an individual or another partnership/LLP	<p>The transacting partners may have the options:</p> <ul style="list-style-type: none"> • To apply similar treatment as if both buyer and seller are under common control; or • To regard the property as had been sold to all the remaining partners and new partners of the partnership based on open-market-price i.e. BA or BC will be computed and allocated to all the partners.

² Wholly means the sole-proprietor / partner is not one of the partners of the LLP / partnership. Partly denotes the sole-proprietor / partner is still one of the partners of the LLP / partnership.

A Snapshot of Tax Law Governing LLP in Singapore *(continued)*

STAMP DUTY ON TRANSFER OF ASSETS UPON CONVERSION

Where a company or a partnership converts to an LLP, all the assets of that company or partnership would vest in the LLP automatically. Hence ad valorem stamp duty would be payable based on the value of the chargeable assets (such as immovable property, stocks or shares, or any interest thereof) transferred to the LLP. The notice of registration issued by the Registrar of LLP shall be deemed to be a conveyance on sale of the assets of the company or partnership to the LLP.

For this purpose, a company or partnership would be relieved from stamp duty on the conversion subject to the following conditions:

- (a) The partners and assets of the LLP are those of the partnership/company as at the date of conversion;
- (b) The capital contributed by each of the partner of the LLP remain the same as in the original company or partnership as at the date of conversion; and
- (c) At least 75% of the composition of the partnership interest in the LLP held by the partners immediately after the conversion should remain the same for a period of two (2) years after the conversion.

However, the ad valorem duty will be payable where there is a significant change of partners i.e. every partner who has increased his share of the assets of the LLP.

Significant change is defined when, compared against any specified dates:

- (a) 50% or more of the partners have left;
- (b) 50% or more of the partners are new; or
- (c) the partners have transferred their interests in the LLP such that any of the partners have, in the aggregate, increased their share of the assets of the LLP by 50% or more.

Got A Technical Question?

Are you confused with the implementation of the Financial Reporting Standards? Or do you need more clarification on the International Standards on Auditing? If you are facing a technical-related issue, seize the opportunity to submit questions directly to the Institute's Technical team using e-Feedback.

e-Feedback is provided exclusively to MIA members as an online channel to lodge technical query directly to the Technical division in charge of the topic being questioned. All queries submitted via e-Feedback are stored electronically in a central repository by the Institute for documentation and quality control purposes. When a query is submitted, the member will be notified whether an enquiry has been submitted successfully to the Institute.

http://www.mia.org.my/new/feedback/

E-Feedback

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MIA E-Feedback Form

Tell us what you think about our web site, our products, our organization, or anything else that comes to mind. We welcome all of your comments and suggestions.

The Institute will attend to technical enquiries from MIA members only. Members who wish to post technical enquiries, please click [HERE](#)

Personal Details

Yes, I am a member of MIA.

Name * : Tel :

E-mail Address * : Fax :

Feedback Details

Type of Feedback * : Compliment Suggestion Complaint Enquiry

Category * :

Comments * :

The Institute constantly receives many enquiries on Practice, Legal and Technical matters and on the application of various professional pronouncements and laws. In dealing with such queries in an orderly manner, the MIA Council has endorsed the Policy on Answering Technical Enquiries (referred to herein as "the Policy"). In summary, the Policy stipulates that the Institute's Technical staff will address Technical enquiries when:

- (a) The query is made by a member of the Institute (with limited exceptions for regulatory bodies and the media);
- (b) The query is related to the application and interpretation of the Institute's Professional Pronouncements;
- (c) **The query is made strictly in writing;** and
- (d) As a matter of policy, the Institute's staff **should not respond to the following requests:**
 - (i) Provide advice on enterprise-specific and/or detailed fact-specific questions;
 - (ii) Suggest the appropriate audit opinion to be given;
 - (iii) Act as an arbitrator regarding any issue or dispute; and
 - (iv) Assist in research for student assignments.

Members are required to read the Policy prior to submitting a Technical Enquiry via e-Feedback. To read the Policy in detail, please refer to http://www.mia.org.my/new/faqs_policies.asp

The Malaysian Institute Of Accountants (“MIA”)

MIA is a statutory body established under the Accountants Act, 1967 to regulate and develop the accountancy profession in Malaysia. As at the date of this report, MIA has close to 27,730 members. For more information please visit: www.mia.org.my

Vision

To be a globally recognised and respected business partner committed to nation building.

Mission

To develop, support and monitor quality and expertise consistent with global best practice in the accountancy profession for the interest of stakeholders.

Objectives

1. To promote & regulate professional & ethical standards
2. To develop & enhance competency through continuous education & training to meet the challenges of the global economy
3. To enhance the status of members
4. To lead R&D for the enhancement of the profession
5. To inculcate a high sense of social responsibility

The Use of the Word “Accountant”

In Malaysia, the word “accountant” is protected as provided for under the provisions of the Act which states that no one can hold himself out or practise as an accountant unless he is registered as a member of MIA.

DISCLAIMER STATEMENT

Disclaimer

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