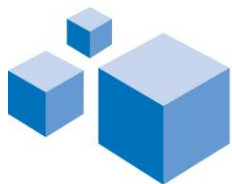


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# Partnerships – A Consultation

A joint presentation prepared by Cummings and Throgmorton

June 2013



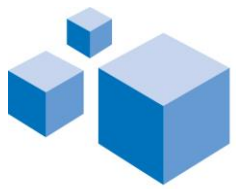
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## Partnerships – A Consultation

### Introduction and Background

- Budget 2013 announced a consultation to tackle tax avoidance using partnerships.
- Consultation issued 20 May 2013.
- Changes to be introduced from 6 April 2014.
- Separate review by the Office of Tax Simplification.
- LLPs and partnerships remain an important and legitimate commercial structure.

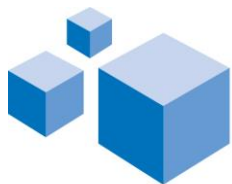


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### Who is impacted?

- All partnerships involving a corporate member/partner.
- All LLPs in relation to “salaried members”.



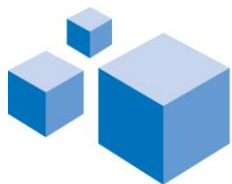
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## Partnerships – A Consultation

### Two Areas of Focus

- Removing the presumption of self-employment for some LLP members to tackle the disguising of employment relationships through LLPs; and
- Countering the manipulation of profit and loss allocations to achieve a tax advantage.



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### Salaried Member

- The presumption that individual LLP members are partners and hence self-employed will be removed.
- Objective conditions which, if met, will mean a member is a “salaried member” who will be taxed as an employee.

### First Condition

- An individual member who, assuming the LLP is a “traditional partnership”, would be regarded as an employee of the partnership.



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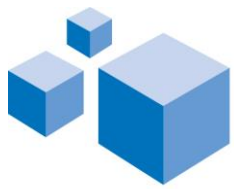
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### Salaried Member - Continued

#### Second Condition

- The first condition does not apply but the individual:
  - ❖ *has no economical risk (loss of capital or repayment of drawings) in the event that the LLP make a loss or is wound up;*
  - ❖ *is not entitled to a share of the profits; and*
  - ❖ *is not entitled to a share of any surplus assets on a winding-up.*
- Any risk or entitlement will be ignored if, broadly, it is reasonable to regard the risk or entitlement as insignificant.
- Targeted anti-abuse rule to prevent circumvention of the conditions by the use of terms of LLP deed that have no other practical effect.

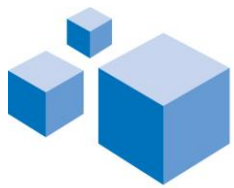


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### Consequences of Being a Salaried Member

- Member is treated as an employee for all income tax and National Insurance purposes.
- Costs of employing salaried members tax deductible against LLP profits.



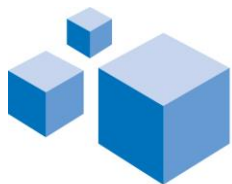
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# Partnerships – A Consultation

## Profit and Loss Allocation Schemes

- Wide ranging changes are proposed which will impact on wholly commercial arrangements as well as those seeking to gain a tax advantage. Three targets:
  - ❖ Mixed Partnerships where profits are allocated to a member paying a lower rate of tax.
  - ❖ Mixed Partnerships where losses are allocated to a member paying a higher rate of tax.
  - ❖ Members reducing their profit entitlement in return for a payment from other members who will be taxed more favourably on those profits being allocated to them.





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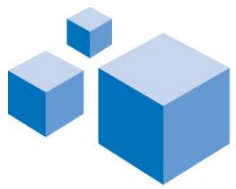
## Partnerships – A Consultation

### a) Profit Allocations of Mixed Partnerships – “The Profit Condition”

- It is reasonable to assume that the main purpose, or one of the main purposes, of the partnership profit-sharing arrangement [for the period] is to secure an income tax advantage for any person.
- There is an economic connection between the [individual] and the [company] so that the [individual] can benefit from profits allocated to the [company].

Then the advantage is countered by a “just and reasonable” reallocation of profits. HMRC suggest that this will catch arrangements including:

- ❖ *allocations for working capital purposes;*
- ❖ *profit deferrals; and*
- ❖ *tax schemes such as wholly owned companies and recapitalisation.*



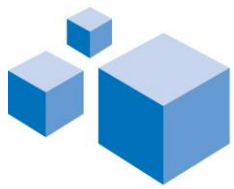
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### **b) Loss Allocations of Mixed Partnerships**

- It is reasonable to assume that the main purpose, or one of the main purposes, of arrangements in force [for the period] is to allocate a partnership loss to a partner with a view to that partner obtaining a reduction in tax liability by way of income tax reliefs or capital gains relief.

Then the advantage is countered by denying the reliefs sought. This is more likely to attack contrived loss relief schemes rather than commercial arrangements.



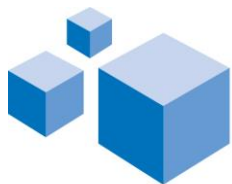
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### c) Partners with Different Tax Attributes

- Aimed at preventing a partner from selling profits to a purchaser who pays less tax than the seller would. Again the purpose or main purpose test applies.

The advantage is countered by taxing the transferor on the income.



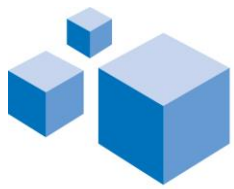
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### Wrap Up

- If the targeted changes do not do their job, HMRC will look at the general anti-abuse rule.
- All LLPs have to review the terms which apply to their members, in particular the junior members, to ensure they would not be reclassified as Salaried Members.
- All partnerships with corporate members will have to consider how these are used.
- Deferral arrangements, which are a focus given regulatory requirements, are unlikely to be effective from April 2014. HMRC suggest those impacted by deferral might elect to be treated as a salaried member or retrospective relief given if a contingent or deferred allocation does not vest.



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## Partnerships – A Consultation

### Timing and Next Steps

- Consultation closes 9 August 2013.
- HMRC to hold meetings or open days to explain the proposals and answer questions.
- Responses to the consultation and draft legislation published Autumn 2013.
- Consultation process on the draft legislation.
- Legislation 2014 with 6 April 2014 start date.
- Existing structures and arrangements are NOT grandfathered.