



Using Partnerships in International Tax planning

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-  What is a partnership
-  Types of partnerships
-  The OECD position
-  Problems and issues
-  Opportunities

Partnerships

-  More permanent structures for long-term trading or business relationships between the partners.

-  Three types:
 -  - General (GP)
 -  - Limited (LP)
 -  - Limited Liability (LLP)

-  Specific tax rules

-  Strong legal relationship – partners are agents

Limited Partnerships

- ➡ Governed by LPA 1907
- ➡ Tax transparent; no treaty relief in their own right.
- ➡ LPs in England & Wales have no separate legal personality.
- ➡ Scottish LPs are separate legal entities.
- ➡ Mostly used for investment funds.
- ➡ LPs have general unlimited liability partners and limited liability partners.

- ➡ Similar legislation allows LPs in:
 - ➡ - Delaware
 - ➡ - Cayman Islands
 - ➡ - Bermuda
 - ➡ - Guernsey
 - ➡ - Jersey.

- ➡ HMRC consider Cayman and Guernsey LPs as transparent, but not Delaware LLCs.

- ➡ FSMA 2000 operator must be authorised by FSA

- ➡ LPs lend investment capital as capital controls allow it to be clawed back.

Limited Liability Partnerships

- ➡ LLP Act 2000 created hybrid tax transparent entity.
- ➡ Created 'with a view to a profit'
- ➡ LLP's partners collectively liable to extent of original investment.
- ➡ Failure to carry on business = loss of tax transparency.
- ➡ Not used for funds
- ➡ Management of investments = trade (confirmed by HMRC).

- ➡ Two 'designated' partners with added compliance roles.
- ➡ Additional compliance duties (annual returns)
- ➡ S.59TCGA ignores corporate status for CGT and taxes partners.
- ➡ FA 2011 exemption of foreign branch profits from corporation tax for UK resident company members of LLPs
- ➡ LLPs cannot be treated as 'group companies' for CT purposes.

Partnerships – Crown dependencies

- ➡ Jersey incorporated LP (body corporate)
- ➡ Jersey separate LPs (legal personality; not corporates)
- ➡ Jersey LLP (partnership with separate legal personality; not corporate)
- ➡ Guernsey – incorporated/unincorporated
- ➡ Isle of Man – LPs or general partnerships.
- ➡ Distinctions crucial for tax, asset protection or succession.

Limited Liability Companies

- ➡ Hybrid of company and partnership benefits.
- ➡ Statutory insulation for investors against liability
- ➡ Elimination of double taxation (tax transparency in US).
- ➡ HMRC sees them as taxable entities.
- ➡ US corporate image (for Delaware and others US States)
- ➡ No public accounts

- ➡ Low annual registration costs (any US state, common in Delaware)
- ➡ To be transparent in US must meet two out of four:
 - ➡ limited liability
 - ➡ central management
 - ➡ continuity of life
 - ➡ stock freely transferable.

The OECD position

- ➡ Partnership defined by legal not tax position
- ➡ Includes transparent and non-transparent entities.
- ➡ No problem if both contracting states treat partnerships the same way.
- ➡ Recognises that different states treat same entities differently (see *Swift*)
- ➡ OECD Report 1999 and revision to commentary to model convention.
- ➡ OECD recognises there are problems

Model Convention points

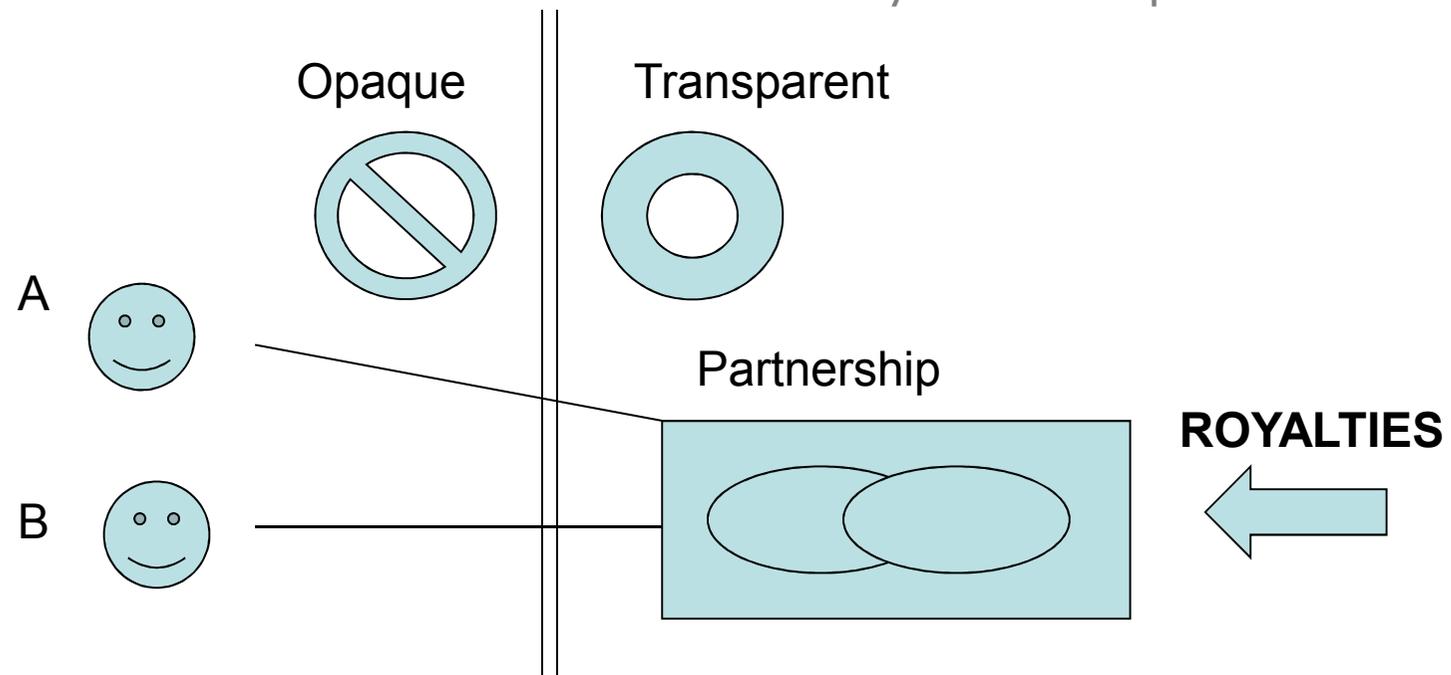
- ➡ LLP has to be '*a person who is resident*' (Art. 1) in a contracting state.
- ➡ LLPs and partners will either be 'companies' or 'bodies of persons' (Art. 3)
- ➡ As a person, it has to be 'resident' (Art. 4)
- ➡ To be resident, it must be 'liable to tax' by reference to Art. 4(1) criteria (e.g. domicile, residence etc).
- ➡ Usually irrelevant as residence determined by what it does and where.

Entitlement to treaty benefits

- ➡ Not resident where it is tax transparent.
- ➡ Opaque partnerships will be resident.
- ➡ Partners resident where partnerships are transparent.
- ➡ Receive income from state where they are not transparent.
- ➡ Partners should get treaty benefit
- ➡ OECD encourages states to make special provisions (see Germany/Italy DTA).

The other way round?

- ➡ Partners resident where partnerships are opaque.
- ➡ Receive income from state where they are transparent.



- ➡ A and B not liable to tax on P income; not entitled to benefit under convention; not beneficial owners of income.

Problems

- ➡ Arise when contracting state does not regard partnership as resident.
- ➡ (Art. 7) Recognition of loans and interest paid to/from partners and partnerships.
- ➡ Problems where one or both contracting states take different approaches.
- ➡ Conflicts in income allocation.

Tax planning issues

- ➡ Establish how each contracting state treats partnerships.
- ➡ Key to operation of treaty articles, not just Arts. 3 & 4.
- ➡ Drafting of operating agreement is crucial.
- ➡ Often needs to be more than just 'off the shelf' agreement
- ➡ Apply your mind to partnership constitution.

Issues continued

-  Check treatment of loans by partners to partnerships.
-  If loans not recognised, consider altering funding.
-  Check treatment on allocation of profits.

Transparency – *Swift decision*

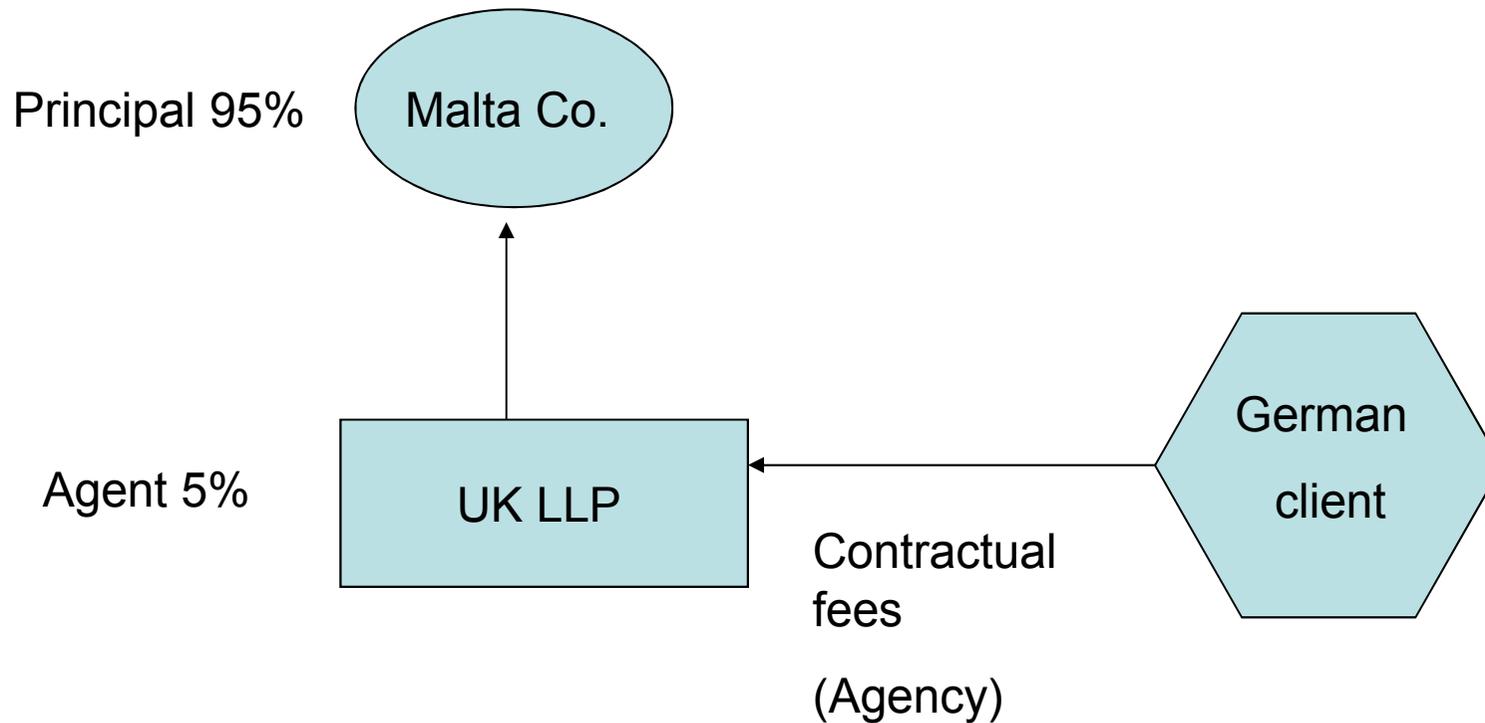
- ➡ Separate legal existence to its members?
- ➡ Issue share capital, or equivalent?
- ➡ Members entitled to profits as they arise?
- ➡ Who has/does the following: business or members?
 - ➡ conducts the business activity;
 - ➡ Responsible for debts;
 - ➡ Beneficial ownership of business assets

Opportunities

-  Partnerships can be body corporates and get benefit of participation exemption.
-  Relief on transfer of assets between entities (i.e. to/from LLP to company)
-  No gain/no loss.
-  Check domestic legislation to see if treated as group company.

Uses – Participation Exemption

- ➡ Relief from corporate income tax from qualifying shareholding in another.
- ➡ LLP is a body corporate in Malta





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