

# **IRAS SUPPLEMENTARY CIRCULAR**

## **INCOME TAX TREATMENT OF LIMITED LIABILITY PARTNERSHIPS (LLPs)**



**INLAND REVENUE  
AUTHORITY  
OF SINGAPORE**

Published by  
Inland Revenue Authority of Singapore

Published on 10 June 2005

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## **INCOME TAX TREATMENT OF LIMITED LIABILITY PARTNERSHIPS (LLPs)**

### **INTRODUCTION**

This circular supplements the IRAS circular dated 15<sup>th</sup> July 2004 (and revised on 16<sup>th</sup> July 2004) on “Income Tax Treatment of Limited Liability Partnerships (“LLPs”)” (hereinafter referred to as “the main circular”). This supplementary circular provides further clarification on the following:

- a) Tax treatment of unabsorbed capital allowance (“CA”), industrial building allowance (“IBA”), trade loss or donation of a partner of an LLP (as set out in paragraphs 17 to 33 of the main circular);
- b) Tax treatment of property sold where one party to the sale of a property is a partnership or an LLP, and the other party is an individual or another partnership or LLP (as set out in paragraphs 34 to 37 of the main circular); and
- c) Appointment of manager of LLPs (as set out in paragraphs 39 and 40 of the main circular).

### **TAX TREATMENT OF UNABSORBED CA, IBA, TRADE LOSS OR DONATION OF A PARTNER OF AN LLP**

2 Paragraphs 17 to 33 set out the treatment of unabsorbed CA, IBA, trade loss or donation of a partner of an LLP. These paragraphs made no mention of whether a partner’s share of LLP current year CA, IBA, trade loss or donation which is in excess of his<sup>1</sup> gains and profits chargeable to tax (hereinafter referred to as “unabsorbed current year LLP CA, IBA, trade loss or donation”) can be transferred to his spouse or related company or companies within the same group.

3 It is hereby clarified that a partner’s unabsorbed current year LLP CA, IBA, trade loss or donation may be transferred to a claimant company under section 37C of the Income Tax Act (“ITA”), or to a spouse under section 37D of the ITA, but the amount to be transferred is subject to the relevant deduction restriction (where applicable) and all relevant conditions applicable to such transfer as spelt out under sections 37C and 37D of the ITA.

4 With the introduction of the carry-back relief system with effect from YA 2006, a partner’s unabsorbed current year LLP CA, IBA or trade loss may also be carried back for set-off against his or his spouse’s assessable income<sup>2</sup> of the YA

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<sup>1</sup> In this circular, the term “his” would not be confined to make reference to the male gender, but would also be used to refer to the female gender, or to a company, as the context requires.

<sup>2</sup> “Assessable income” against which unabsorbed current year LLP CA, IBA or trade loss is allowed refers to assessable income as determined under section 37 of the Income Tax Act (“ITA”) and after deducting:

immediately preceding the YA relating to the year in which the CA/IBA was granted or trade loss was incurred, but the carry-back is subject to the relevant deduction restriction (where applicable) and all relevant conditions applicable to such carry-back<sup>3</sup>.

## TAX TREATMENT OF PROPERTY SOLD

5 Paragraph 36 of the main circular states that where a property (i.e. an asset qualifying for CA, or a building qualifying for IBA) is sold partly in the circumstances referred to in paragraph 34 of the said circular, section 24(3) of the ITA shall be deemed elected.

6 Subsequent to the issuance of the said circular, the draft amendments to the ITA providing for the income tax treatment of LLPs (i.e. new sections 24(5) and 36A of the ITA, and revised section 59 of the ITA) were put out for comments by the Ministry of Finance (“MOF”) through its public consultation exercise on the 2004 Income Tax (Amendment No. 2) Bill from the period from 15 Jul 2004 to 11 Aug 2004. Feedback from the public consultation was that election under section 24(3) of the ITA should not be deemed when there is a sale of a property involving a partnership or LLP as the composition and profit sharing ratio may be different in the two partnerships or LLPs. Whether section 24(3) of the ITA is elected or not is up to the partners.

7 MOF had accepted the feedback that it would be more equitable to the partners involved if they are given the option to elect section 24(3) of the ITA, and hence had decided that section 24(3) election would not be made mandatory in law for sales of properties relating to partnerships and LLPs. Nonetheless, where there is a partial sale of a property in the circumstances referred to in paragraph 34 of the main circular and where there is no indication of whether section 24(3) of the ITA is elected, MOF has decided that the Comptroller of Income Tax (“CIT”) would, for administrative expedience, deem election of section 24(3)<sup>4</sup>. Upon deeming election of section 24(3) of the ITA, CA or IBA of the property for the YA relating to the basis period in which the property is purchased will be granted to the buyers based on the tax written down value of the property. No balancing allowance (“BA”)/balancing charge (“BC”) nor CA/IBA of the property for the YA of sale shall be granted to the sellers (as per example 1 of Annex 3 of the main circular).

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- a) in the case of a company, any investment allowance as well as any unabsorbed current year CA, IBA, trade loss and donation transferred from a transferor company or transferor companies under section 37C of the ITA; and
  - b) in the case of an individual, any unabsorbed CA, unabsorbed IBA, unabsorbed trade loss or unabsorbed donation transferred from his spouse under section 37D of the ITA.

<sup>3</sup> The provisions for the carry-back relief have been incorporated as part of the draft 2005 Income Tax (Amendment) Bill [i.e. the new sections 37E and 37F, together with consequential amendments to sections 2, 10D(2)(b) and (d), 10H(1)(a) and (b), 23(3), 36A(4), 36A(10) and 37(5) of the ITA]. The said Amendment Bill is put out for public consultation for the period from 4 June 2005 to 3 July 2005, and it can be downloaded from the Ministry of Finance (“MOF”) website [www.mof.gov.sg](http://www.mof.gov.sg). Further details are also set out in the IRAS Circular on the Carry-Back Relief System, which is published today.

<sup>4</sup> The deeming of section 24(3) election is not confined to cases involving sales of properties relating to LLPs, but is also applicable to cases involving sales of properties relating to partnerships.

8 Where any buyer or seller explicitly indicates to CIT that he<sup>5</sup> does not wish to elect for section 24(3)<sup>6</sup> under the circumstances referred to in paragraph 34 of the main circular, the practice of CIT has been to deem<sup>7</sup> sale of the properties of all the partners of a partnership to the remaining and new partners of the partnership at the open market price. Based on the open market value of the assets, CIT would thereby compute and allocate BA or BC to all the partners of the partnership, and thereafter, compute CA/IBA for the new/remaining partners. The ITA will be amended [via introducing new sections 24(5) and (6)<sup>8</sup>] to clarify this tax treatment.

## **APPOINTMENT OF MANAGER**

9 Paragraph 39 of the main circular states that for income tax purposes, the LLP manager shall be deemed to be the precedent partner for the purpose of sections 62 (relating to notice of chargeability and income tax returns) and 71 (regarding matters relating to returns to be made by a partnership) of the ITA. The LLP manager will be required to make and deliver a return of the contributed capital of each partner of the LLP for any YA, with a return of the income of the LLP, or when required by CIT by notice in writing.

10 It is hereby clarified that after some consideration, it is no longer required to deem the LLP manager to be the precedent partner. In other words, the determination of the precedent partner of an LLP will be based on section 71(1) of the ITA. This change from the earlier position as spelt out in paragraph 39 of the main circular is necessary in view that a manager of an LLP need not be a partner and could be merely an employee of the LLP, and therefore there may be a breach of confidentiality if the current manager of the LLP is allowed to have access to the tax information of past years when he was not the manager (the partners may be all different). In addition, if the ex-manager was only an employee and is no longer employed by the LLP, it would not be reasonable to continue to require him<sup>9</sup> to attend to the tax affairs of the LLP for those past years, especially when it does not concern his own tax liability (since he was not a partner).

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<sup>5</sup> In this circular, the term “he” would not be confined to make reference to the male gender, but would also be used to refer to the female gender, or to a company, as the context requires

<sup>6</sup> Including situations where sellers and buyers of the property in the circumstances referred to in paragraph 34 of the main circular make a request for CIT not to deem election of section 24(3).

<sup>7</sup> Otherwise, the partnership/LLP would have to put up complex tax computations to reflect the remaining partners’ continual claim of capital allowance on the part of the assets owned by them while the new partners/remaining partners would start a new claim on the part of the same assets acquired by them. For the part of the same assets sold by exiting partners/remaining partners, balancing allowance or charge would also have to be computed. The Annex provides an example showing the complexity of such a computation.

<sup>8</sup> These new provisions have been incorporated as part of the draft 2005 Income Tax (Amendment) Bill, which is put out for public consultation for the period from 6 June 2005 to 5 July 2005. The said Amendment Bill can be downloaded from the MOF website [www.mof.gov.sg](http://www.mof.gov.sg).

<sup>9</sup> In this circular, the term “him” would not be confined to make reference to the male gender, but would also be used to refer to the female gender, or to a company, as the context requires

## **ENQUIRIES**

11 For any enquiry or clarification on this circular, please call 6351-3548 (Individual) or 1800-3568622 (Corporate).

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**Example illustrating the complex computation as mentioned in Footnote 4**

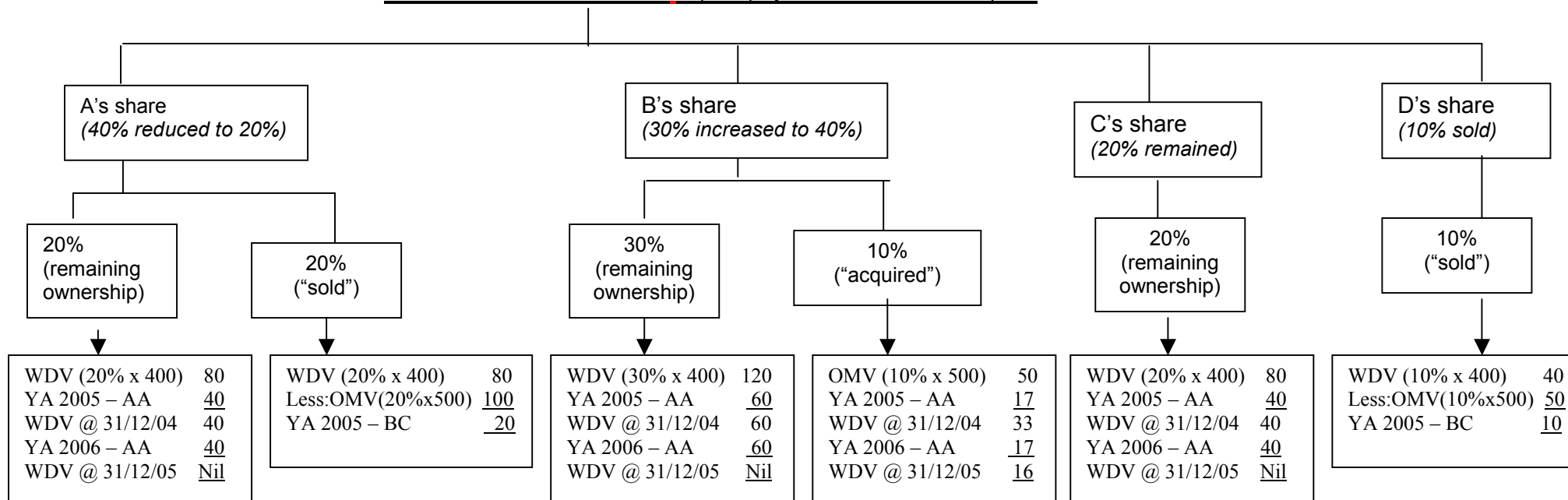
Consider a case of an existing partnership with 4 partners (A, B, C and D). On 1 May 2004, partner D withdrew from the partnership and partners E and F joined the partnership. The details of the profit-sharing ratio and the only asset of the partnership are as follows:

Profit-sharing ratio of each partner	
Before 1 May 2004	Wef 1 May 2004
A (40%)	A (20%)
B (30%)	B (40%)
C (20%)	C (20%)
D (10%)	E (10%)
	F (10%)

Asset of partnership	
Tax written down value ("Tax wdv") of asset as at 31 Dec 2003 (assuming it has only 2 more years over which CA can be claimed):	\$400
Open market value of asset ("OMV") on 1 May 2004	\$500

Computation of AA/BA/BC for each partner

**Tax wdv as at 31 Dec 2003 = \$400, open market value = \$500**



E's share  
(10% acquired)

OMV (10% x 500) 50  
 YA 2005 – AA 17  
 WDV @ 31/12/04 33  
 YA 2006 – AA 17  
 WDV @ 31/12/05 16

F's share  
(10% acquired)

OMV (10% x 500) 50  
 YA 2005 – AA 17  
 WDV @ 31/12/04 33  
 YA 2006 – AA 17  
 WDV @ 31/12/05 16

**Summary of CA given**

Computation of CA (i.e. AA + BA – BC) for each partner		
<b>YA 2005</b>		
A	20	
B	77	
C	40	
D	(10)	
E	17	
F	17	161
<b>YA 2006</b>		
A	40	
B	77	
C	40	
E	17	
F	17	191
<b>YA 2007</b>		
B	16	
E	16	
F	16	48
<b>Total CA</b>		<b>400</b>

