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RENTAL PROPERTY POST 1/4/2011 LOSS ATTRIBUTING QUALIFYING COMPANY (LAQC)

The LAQC regime is now deceased. RIP.

Depreciation on buildings will no longer be able to be claimed as a tax deductible expense.

Transfers of shares in a company will trigger tax on recovered depreciation (previously this only happened on a sale of the property).

What happened to my company on the 1st April 2011?

The company became a qualifying company unless you elected to change its status.

A qualifying company is more complex than an ordinary company and accounting advice may be necessary in its administration. Its main benefit is that all profits are allocated to the shareholders for tax purposes and capital gains are distributed tax free to shareholders. However tax losses are carried forward in the company and off-set against future profits.

An ordinary company pays company tax on its profits and any dividends paid to shareholders are taxed at their individual tax rate with a credit for the company tax paid. Losses are carried forward and off-set against future profits. Tax free capital gains can only be realised on liquidation of the company.

Look Through Companies (LTC)

This is the new regime to replace LAQC. Profits and losses are passed through to the shareholders. If losses are anticipated into the near future then this may be an appropriate regime but it may not be advantageous if profits are anticipated in the very near future. Profits will be taxed at the shareholders individual rates and the shareholder's marginal tax rate could be higher than the company tax rate of 28%.

What to do?

1. Consider changing to an LTC if you anticipate continuing taxable losses notwithstanding no longer being able to claim depreciation. See your accountant for this, as there may be tax consequences of changing.
2. Consider changing from the default position of a qualifying company to one of the following if you anticipate taxable profits in the near future:
 - Ordinary company
 - Partnership
 - Special partnership
 - Trust

There are advantages and disadvantages in whatever entity is chosen so a discussion with your accountant and us is desirable before implementing any changes of entity that may be appropriate.

Note: The window for changing without tax consequences closed on 30th September 2011.