

CONTENTS

CHAPTER ONE	4
INTRODUCTION	4
BACKGROUND	4
LIMITED PARTNERSHIPS	4
CHAPTER TWO	6
OVERVIEW	6
FISCAL TRANSPARENCY PRINCIPLE	6
UNDERLYING TAX STATUS OF PARTNER	6
CHAPTER THREE	9
LIMITED PARTNERSHIP - LEGISLATIVE FRAMEWORK	9
INTRODUCTION	9
LIMITED PARTNERSHIP RULES	9
CHAPTER FOUR	14
REGISTRATION REQUIREMENTS	14
INTRODUCTION	14
HOW IT WORKS	15
REGISTRATION PROCESS	16
CHANGES	18
REGISTERED OFFICE / SERVICE	18
REGISTER	19
SEARCHING THE LIMITED PARTNERSHIP REGISTER	19
CHAPTER FIVE	22
STRUCTURE OF A LIMITED PARTNERSHIP	22
STANDARD STRUCTURE	22
CAPITAL CONTRIBUTIONS	22
RESOLUTIONS	24
DISTRIBUTIONS	24
PARTNERSHIP STRUCTURE - GENERAL	25
STRUCTURAL CONSIDERATIONS – GENERAL PARTNER	26
UNINCORPORATED OR INFORMAL BODY	29
STRUCTURAL CONSIDERATIONS – LIMITED PARTNERS	30
STRUCTURAL CONSIDERATIONS - CONCLUSION	31
CHAPTER SIX	32
TAXATION OF LIMITED PARTNERSHIPS	32
GENERAL	32
INCOME	34
LOSSES	36
DISTRIBUTIONS	40
FILING REQUIREMENTS	44
CHAPTER SEVEN	45
ENTRY AND EXIT OF PARTNERS	45
OVERVIEW	45
TPLA RULES	46
DEPRECIABLE PROPERTY	50
OTHER ASSETS	51
TRADING STOCK	52
FINANCIAL ARRANGEMENTS	53
SHORT-TERM AGREEMENT FOR SALE AND PURCHASE OF PROPERTY OR SERVICES	54

LIVESTOCK	55
LIMITATION ON ABOVE RULES	55
CHAPTER EIGHT	56
FINAL DISSOLUTION OF LIMITED PARTNERSHIPS	56
DISPOSAL	56
TAXATION ISSUES	56
CHAPTER NINE	57
LIMITED PARTNERSHIP AGREEMENT	57
GENERAL	57
MUST HAVES	58
SHOULD HAVES	60
CHAPTER TEN	63
ADVANTAGES AND DISADVANTAGES OF LIMITED PARTNERSHIPS	63
ADVANTAGES	63
DISADVANTAGES	66
ADVANTAGES / DISADVANTAGES	68
CHAPTER ELEVEN	71
ALTERNATIVE STRUCTURES	71
STANDARD COMPANY	71
QUALIFYING COMPANY	73
LOSS ATTRIBUTING QUALIFYING COMPANY	75
STANDARD PARTNERSHIP	76
JOINT VENTURE	77
INVESTMENT OR BUSINESS TRUST	79
SOLE TRADER	80
CONCLUSION	81
APPENDIX ONE	83
APPENDIX TWO	89
APPENDIX THREE	90
SCHEDULE	90
APPENDIX FOUR	91
SUMMARY OF COMPARISON OF STRUCTURES	91

CHAPTER ONE

INTRODUCTION

BACKGROUND

Standard partnerships have existed in New Zealand for many many years. They continue to exist and are still governed by the Partnerships Act 1908 (“the PA08”). For 30 years people have been carrying on business in partnership in New Zealand and have been confronted with large tax liabilities when a partnership ends or one party leaves. There have been significant taxation issues arising from the use of standard partnerships, which have been in part addressed by the 2008 taxation of partnership legislation changes.

Some of these tax issues have been frequently overlooked or ignored in practice with a reliance instead being placed on a general understanding between the Inland Revenue Department (“IRD”) and taxpayers and their advisors. There have been some understandings as to how partnerships and their partners are treated for taxation purposes, but there is no legal foundation for this position. The legal position on key issues has often been unclear with basic questions like how one assesses the purpose of a partnership activity and who owns partnership assets and liabilities, being subject to interpretation (for example, see Case W2 (2003) 21 NZTC 11,003).

LIMITED PARTNERSHIPS

The Limited Partnerships Act 2008 (“the LPA”) and the supplementary amendments in the Tax (Limited Partnerships) Act 2008 (“the TLPA”) have presented us with new opportunities for tax planning and business structuring in the form of limited partnerships.

The LPA was introduced primarily to encourage business investment and growth both nationally and internationally, and to provide a means for foreign investors to invest in New Zealand in a tax effective manner. However, there are a wide range of situations where a limited partnership will be the most appropriate structure. While historically joint ventures and companies have been modified to achieve the desired structure, limited partnerships achieve many of these objectives without the added complications.

The structure of the limited partnership is similar to limited partnership structures available in Australia, the USA, and the UK.

According to the Officials Report at the time the TLPA was mooted, in order to resolve some of the problems, the TLPA has been designed to clarify and modernise the tax treatment of partnerships generally. In addition, limited partnerships have been legislatively established to provide another vehicle that has many attributes of a standard partnership, and yet does away with many of the limiting factors.

This course, and booklet, intends to provide you with details of the limited partnership structures, the taxation features of limited partnerships, the advantages and disadvantages of using them for various transactions.

There are numerous different ways / structures in which people can carry on business or carry out an investment activity. These are both incorporated and unincorporated and allow people to act in a joint manner without having to operate through a separate legal entity. This course also provides an overview of how limited partnerships fit into the structuring options available.