

# Association of Accounting Technicians response to the HMRC consultation document “Partnership Taxation: proposals to clarify tax treatment consultation”

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## 1. Introduction

- 1.1. The Association of Accounting Technicians (AAT) is pleased to have the opportunity to respond to the HMRC consultation document “Partnership Taxation: proposals to clarify tax treatment consultation” (condoc), published on 9 August 2016.
- 1.2. AAT is submitting this response on behalf of our membership and for the wider public benefit of achieving sound and effective administration of taxes.
- 1.3. AAT has added comment in order to add value or highlight aspects that need to be considered further.
- 1.4. AAT has focussed on the operational elements of the proposals and has provided opinion on the practicalities of implementing the measures outlined.
- 1.5. Furthermore, the comments reflect the potential impact that the proposed changes would have on SMEs and micro-entities, many of which employ AAT members or would be represented by AAT’s 4,200 licensed accountants.

## 2. Executive summary

- 2.1. The proposals are intended to eliminate any uncertainty by making the calculation and reporting of partnership profits clearer for taxpayers (1.5, condoc).
- 2.2. The proposals will apply to general and limited partnerships, as well as to Limited Liability Partnerships (LLPs). They will also apply to foreign entities which are treated as partnerships for UK tax purposes (1.1, condoc).
- 2.3. Although the majority of partnerships that have simple structures will remain unaffected, the rules could impact on those that are more complex, such as larger trading partnerships and investment partnership structures.
- 2.4. AAT agrees with HMRC that existing partnership tax rules give rise to a number of areas of uncertainty or ambiguity (1.13, condoc). Therefore, AAT welcomes attempts to limit the scope for misunderstanding.
- 2.5. Certain administrative aspects have caused problems for businesses, advisors and HMRC alike. Currently there are no special provisions for investment funds which are structured as partnerships, which are taxed in the same way as ordinary partnerships. This creates administrative problems as the funds can have large numbers of partners, many of whom may be non-UK resident or entities which are not taxable, but for whom the same return and filing requirements apply (4.2, condoc) (3.7, below). The willingness, in 4.2 (condoc), to move away from a ‘one-size-fits-all’ approach and potentially introduce alternative return and filing requirements for investment partnerships with large numbers of investors is positive.

- 2.6. Some of the proposals may affect genuine commercial arrangements, that is, the proposals for the allocation and calculation of partnership profit may restrict the ability of partnerships to operate a flexible profit sharing policy. However, HMRC has indicated that they are willing to listen to representations on practical difficulties that may be caused (questions 3, 6 and 8, condoc) (3.11, below). In general, a partner's share of a partnership's profits is determined by a written profit sharing agreement and there is no dispute as to the amount of the partner's share. However, there is no legal requirement that profit sharing arrangements must be specified in writing (6.2, condoc) (3.10, below).

**3. AAT response to the HMRC consultation document "Partnership Taxation: proposals to clarify tax treatment consultation"**

**Proposal 1: The government proposes that for tax purposes a person will be treated as a partner in a partnership if they are notified to HMRC as partners in the partnership return.**

**Question 1: Do you consider that the proposal is sufficient to provide certainty of treatment, including in cases where the partners registered at Companies House are different?**

- 3.1. AAT agrees that the proposal is sufficient to provide certainty and notes that tax legislation currently relies on the definition in the relevant Partnership Act 1890 (2.1, condoc).

**Question 2: Do you consider that the proposal would have any unintended impacts?**

- 3.2. AAT recognises that this proposal could have an unintended impact where a nominee company holds the interest on behalf of a number of individuals, and the profit sharing arrangements at the nominee level may not be known by the underlying partnership. This would usually be the case for investment partnerships rather than trading partnerships. To address this impact the nominee company could be made accountable for the collection of tax on behalf of the individuals represented by the company.

**Proposal 2: The government is looking to legislate to provide that those responsible for paying the tax on a share of partnership profit are treated as partners in the first partnership for the purposes of income tax, capital gains tax and corporation tax. Details of the partners, including those treated as partners under these proposals, and their share of the partnership profit or loss will be reported by the nominated partner of the first partnership return and statement for the first partnership.**

**Question 3: Are there any tax or practical issues that need to be considered in relation to this proposal?**

- 3.3. It is noted that the consultation does not identify how the necessary information would be obtained by the individual responsible for the completion of the tax return and statement of the first partnership.
- 3.4. In proposal 2, the first partnership is not necessarily going to know the profit sharing arrangements in the second partnership; this could create some confidentiality issues and will require extra information to ensure that the allocation of profits is reflected correctly.
- 3.5. It is of concern that an increase in the level of information required to complete partnership tax returns may result in a corresponding increase in the number of penalties issued for late or incorrect partnership returns.

**Question 4: How do you think the tax administration of partnerships with investment income could be improved?**

- 3.6. In respect of the tax administration of investment income, the consultation makes no specific proposal. It simply notes the intention to amend the return and filing requirements in recognition of the fact that partnerships whose only income is from investments may have partners who are not UK-resident or are non-taxable entities. The consultation notes that, “the government wants to consider ways in which the administration could be improved whilst ensuring that HMRC and investors have the information they need to report the right amount of income and tax”.
- 3.7. AAT considers that tax legislation could be amended to cater for partnerships solely with investment income. Investment funds, structured as partnerships, currently taxed in the same way as ordinary partnerships, can have large numbers of partners, many of whom may be non-UK resident or entities which are not taxable. AAT recommends a unique style of investment partnership return whereby the partnership is responsible for the calculation and collection of income tax.

**Proposal 4: The government wishes to explore options for protecting the Exchequer where the details of partners entitled to trading or property business partnership profits are not provided by the partnership. One such option could include a payment being made on account to HMRC on behalf of any partners who are not identified.**

**Question 5: What options could be considered to protect the Exchequer where a partnership does not provide details of some partners entitled to trading or property business profits?**

- 3.8. AAT supports the suggestion in proposal 4 that a payment on account be made to HMRC on behalf of any partners who are not identified.

**Question 6: What practical issues would arise from the idea raised of payment on account, or from any other options to protect the Exchequer in respect of trading or property business profits, where information provided about partners is incomplete?**

- 3.9. One practical issue is that payments on account made in respect of unidentified partners will remain unallocated on HMRC’s systems.

**Proposal 5: In order to provide certainty, the government considers that legislation should be introduced to confirm that the profit sharing arrangements as set out in the partnership or LLP agreement are the determining factor in identifying the partners’ profit shares. However, in order that the flexibility of partnerships is maintained this proposed default position could be overridden by notification to HMRC from the nominated partner of the partnership or LLP, in either written or electronic format, or any changes to this agreement.**

**Proposal 6: Legislation would be introduced to provide that the basis of allocation of tax adjusted profit should be the same as the allocation of the accounting profit or loss between the partners. This legislation would apply to both partnerships and LLPs. Partners or members would only share in profits or losses for the period in which they were partners or members.**

**Question 7: Do you consider that the proposed clarifications would provide certainty of treatment?**

- 3.10. Whilst legislation may be introduced to confirm that the profit sharing arrangements as set out in the partnership or LLP agreement are the determining factor in identifying the partners’ profit shares, since there is currently no legal requirement that profit sharing

arrangements must be specified in writing, AAT questions whether the proposed legislation may fail if the agreement is verbal, and may vary from year to year.

**Question 8: Do you consider that the proposals would have any unintended impacts or create practical difficulties?**

- 3.11. The proposals for the allocation and calculation of partnership profit may restrict the ability of partnerships to operate a flexible profit sharing policy, which may affect genuine commercial arrangements.
- 3.12. AAT notes and supports the fact that HMRC has indicated in this question that it is willing to listen to representations on practical difficulties that may be caused.

**Question 9: Are there any other areas in the current rules for allocating or calculating profits that should be changed to increase certainty in the tax treatment of partnerships?**

- 3.13. AAT has not identified any other areas that could be changed to increase certainty.

**4. About AAT**

- 4.1. AAT is a professional accountancy body with approximately 50,000 full and fellow members and 80,000 student and affiliate members worldwide. Of the full and fellow members, there are over 4,200 licensed accountants who provide accountancy and taxation services to individuals, not-for-profit organisations and the full range of business types.
- 4.2. AAT is a registered charity whose objectives are to advance public education and promote the study of the practice, theory and techniques of accountancy and the prevention of crime and promotion of the sound administration of the law.

**5. Further information**

If you have any questions or would like to discuss any of the points in more detail then please contact Aleem Islan, AAT Technical Consultation Manager, at:

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