

Taxation of Partnerships

Part 43-00-03

This document should be read in conjunction with Part 43 of the Taxes Consolidation Act 1997

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Note: This manual is currently subject to review and may not reflect up-to-date position.

Most recent version.

1 Executive Summary

The purpose of this manual is to provide guidance on the taxation of Irish partnerships and how the use of an Irish partnership impacts on certain other taxing provisions. When looking at a non-Irish partnership, Tax and Duty Manual (TDM) [Part 35C-00-02](#), on the classification of foreign entities, should also be consulted.

2 Background to Partnerships

In order to understand the taxation of partnerships and their interaction with other taxing provisions it is necessary to understand the nature of a partnership.

There are many different types of partnership arrangements, ranging from informal associations between two persons engaged in a short-term commercial enterprise to small family partnerships to large professional or business partnerships with many members, a detailed partnership agreement and a sophisticated management structure.

2.1 Introduction

A partnership is the "default" form of business organisation in Ireland - whenever two or more people carry on a business venture without forming a company, without necessarily documenting their relationship (in a partnership deed etc) an "ordinary" or "general" partnership arises¹.

A partnership is considered to be an unincorporated body of persons², and therefore is a "person" within the meaning of section 18(c) of the Interpretation Act 2005. As an unincorporated body it does not have a separate legal personality.

A partnership is not defined within Irish tax law and therefore, when considering its key characteristics, one must refer to the framework laid down in the Partnership Act 1890 (the "1890 Act"). Section 1(1) of the 1890 Act sets out that:

"Partnership is the relation which subsists between persons carrying on a business in common with a view to profit".

¹ Note that an arrangement which is in the nature of a co-ownership will not be a business carried on in common with a view to a profit.

² See *Bovale Developments Ltd: Director of Corporate Enforcement v Bailey* [2011] 3 IR 278

This definition has six elements:

- (i) The “relation” or relationship between partners is a consensual contractual one. However, it is not necessary for a written contract to exist (refer to [section 2.4](#) for further discussion on this point).

There are certain relationships that are excluded from being a partnership. Section 1(2) of the 1890 Act explicitly excludes relations between members of a company from being viewed as a partnership.

- (ii) It must be between “persons”. A company, or even another partnership can be a partner.
- (iii) “Carrying on” a business requires that the business be extant, rather than a future proposal.
- (iv) There must be a “business”, which per section 45 of the 1890 Act “includes every trade, occupation or profession”. It can be an ongoing venture, a single venture or a series of unrelated ventures. It does not include the passive ownership of property.
- (v) The term “in common” goes to the heart of an Irish partnership. Each partner is liable for the acts of the other(s). Each is therefore a principal and each an agent for the other(s).
- (vi) “With a view to profit” requires that there is an intention to gain. While it is not necessary that the partnership has to make a profit, it must be formed with the intention of making a profit. In the case of *McCarthaigh V Daly*³, while the case was decided on other facts, the judge indicated that a partnership formed for the purposes of loss creation was likely to be found to be invalid.

There are three types of partnership available under Irish law (each type is outlined below).

2.1.1 General Partnerships

A general partnership is governed by the 1890 Act. There is no restriction on the number of partners.

³ [1985] IR 73

2.1.2 Limited Partnerships

The Limited Partnerships Act 1907 (“1907 LP Act”) came into effect on 1 January 1908. Its purpose is to allow for partnerships where some members have limited liability. A Limited Partnership is constituted pursuant to a limited partnership agreement entered into by one or more general partners and a number of limited partners. The partnership may consist of no more than 20 persons, although this limit can be raised to 50 where the limited partnership is formed **“for the purpose of, and whose main business consists of, the provision of investment and loan finance and ancillary facilities and services to persons engaged in industrial or commercial activities”**. There must be at least one general partner with unlimited liability. Limited partners must make a capital contribution to the partnership and their liability is limited up to that amount. Limited partners may not be a part of the management of the firm and if they do so they are liable as if a general partner. A limited partnership does not have a separate legal personality and is transparent for tax purposes. 1907 Limited Partnerships must be registered with the CRO and are not subject to Central Bank regulation.

2.1.3 Investment Limited Partnerships

An Investment Limited Partnership (“ILP”) is a regulated common law partnership structure. ILPs are designed specifically for investment in a collective investment fund.

In Ireland, the Investment Limited Partnership Act 1994 (“1994 ILP Act”) as amended by the Investment Limited Partnerships (Amendment) Act 2020 provides for the establishment of a regulated ILP structure. Like a Limited Partnership, an ILP is constituted pursuant to a limited partnership agreement entered into by one or more general partners and a number of limited partners. However, there is no limit on the number of limited partners as is the case with limited partnerships established under the 1907 LP Act. Also, in contrast to partnerships established under the 1907 LP Act which are unregulated, an ILP must be authorised by the Central Bank of Ireland and will, therefore, be a regulated fund vehicle. Following the 2020 amendments, limited partners in an ILP can participate slightly more actively in the affairs of the ILP than can a limited partner in an LP.

ILPs are subject to certain restrictions, including investment and borrowing limits, requirements as to the suitability of the private equity firm, and the fact that independent custodians and administrators must be appointed.

2.2 Types of Partners

Of relevance to this Tax and Duty Manual, the main types of partners are:

- General partners
- Salaried partners
- Fixed share partners
- Limited partners

A general partner is the most common arrangement in a partnership. Such partners have joint and several liability and may be entitled to a share of the profits or losses which are taxable in their own name.

Salaried partners are usually employees and not partners within the meaning of the 1890 Act, and their salaries should be taxed through PAYE. Fixed share partners are usually partners within the meaning of the 1890 Act and are taxed on their share of the profits or losses of the partnership. However, for both fixed share and salaried partners, the facts and circumstances of each case and the substance of the relationships need to be considered before a final determination can be made as to their legal status and the applicable tax treatment. There is a body of case law in this area which gives examples of the factors considered by the court in making these types of determination. Some examples are set out below.

In *Stekel v Ellice*⁴ Megarry J noted:

“Certain aspects of a salaried partnership are not disputed. The term ‘salaried partner’ is not a term of art, and to some extent it may be said to be a contradiction in terms. However, it is a convenient expression which is widely used to denote a person who is held out to the world as being a partner, with his name appearing as a partner on the notepaper of the firm, and so on. At the same time he receives a salary as remuneration, rather than some share of profits, though he may, in addition to his salary, receive some bonus or other sum of money dependent on profits.

It seems to me impossible to say that as a matter of law a salaried partner is or is not necessarily a partner in the true sense. He may or may not be a partner, depending on the facts. What must be done, I think, is to look at the substance of the relationship between the parties; and there is ample authority for saying that the question of whether or not there is a partnership depends on what the true relationship is and not on any mere label attached to that relationship. A relationship that is plainly not a partnership is no more made into a partnership by calling it one than a relationship which is plainly a partnership is prevented from being one by a clause negating partnership.”

⁴ [1973] 1 All ER 465

In *M Young Legal Associates Ltd v Zahid*⁵ the court found that a solicitor in a law firm who was paid a fixed amount and had no entitlement to profits was a partner because of other elements of his working relationship.

In *Tiffin v Lester Aldridge LLP*⁶ the individual received a fixed share of the profits paid as a monthly amount. He was found not to be an employee.

A limited partner is a partner in a limited partnership under the 1907 Act who is not the general or active partner. The limited partner is not entitled to take any role in the management of the firm. The limited partner's liability is limited to their capital contribution. A limited partner may become a general partner, and vice versa.

2.3 Joint and Several Liability

In a general partnership, under section 9 of the 1890 Act, each partner is jointly liable for the debts of the firm. A partner's estate is also severally liable. Under sections 10 and 11 of that Act, the firm is also liable in tort for wrongful acts of any partner, and for any misappropriation of monies.

Since the 1890 Act was passed, separate legislation⁷ has removed the distinction between joint and several liability and now partners are jointly and severally liable.

For tax purposes, this means that all partners are jointly liable for tax debts of the firm and can be pursued separately for any outstanding amounts.

As previously noted, in a limited partnership only general partners have unlimited liability. A limited partner's liability is capped.

2.4 Formation of a Partnership and Partnership Agreements

A partnership is formed when two or more persons come together to carry on a business with a view to making a profit⁸.

In general, there is no legal requirement for partnerships to have a written agreement. The exceptions to this are:

- Investment Limited partnerships (section 5 of the 1994 ILP Act)
- Legal partnerships under the Legal Services Act 2015

⁵ [2006] EWCA Civ 613

⁶ [2011] IRLR 105 & [2013] EWCA Civ 35

⁷ Civil Liability Act 1961

⁸ Note that the date of formation of the partnership may not necessarily be relevant to the taxation of the partners and regard must be had to the various basis of assessment rules.

For tax purposes, certain partnerships are also required to have written agreements. These are:

- Registered farm partnerships within the meaning of section 667C of the Taxes Consolidation Act (TCA) 1997 (refer to TDM [Part 23-02-09](#))
- Registered succession farm partnerships within the meaning of section 667D TCA 1997 (refer to TDM [Part 23-02-11](#))
- A limited partnership or an investment limited partnership to which is a qualifying investment fund within the meaning of section 508IA TCA 1997 (Employment Investment Incentive) ([refer to TDM Part 16-00-02](#))
- Medical Partnerships within the meaning of section 1008A TCA 1997 ([TDM Part 04-01-15](#))
- Qualifying partnerships within the meaning of Chapter 6A of Part 19 TCA 1997 (investment in innovative enterprises) (refer to Tax and Duty Manuals [Parts 19-06A-01](#), [19-06A-02](#) and [19-06A-03](#)).

In the absence of a legal agreement, section 24 of the 1890 Act dictates some terms that will be deemed to apply to the partnership, including:

- All profits are shared equally amongst partners and all partners must contribute to losses sustained by the partnership.
- Interest is payable to a partner who advances capital beyond the agreed subscription amount.
- Partnership books are to be kept at the place of business of the partnership and each partner has the right to inspect them.

Subject to the exceptions set out above, a partnership may be governed by a written agreement or by the terms set out in section 24 of the 1890 Act. However, section 19 of that Act also provides that both the statutory terms and a partnership agreement can be varied by consent of all partners. Such consent does not have to be express and can be implied from the conduct of the partners and/or the partnership. This may have tax implications for the type of partner a person is and the profit-sharing ratios of the partnership.

2.5 Partnership Property

Under section 20⁹ of the 1890 Act property brought in to or acquired by the partnership is partnership property and must be applied exclusively for the partnership business. It is presumed that:

- i. property used by the partnership is partnership property, and
- ii. property bought from partnership funds is partnership property

unless it can be demonstrated otherwise. In deciding whether or not the property is that of the partnership, it is necessary to consider the intentions and the actions of the partners.

Twomey¹⁰ summarises the matters to be considered as follows:

- did the parties intend the property to be partnership property?
- is the property registered in the firm's name or in a partner's name?
- is the property held on trust for the firm?
- is the property used by the firm for its business?
- does the use of the property earn profits and if so, how are these profits treated in the accounts of the partnership?
- did the firm pay for the property or did a partner pay for it?
- is the property treated as partnership property in the firm's accounts?
- do the partners treat it as partnership property *inter se*?
- do the partners treat the property as partnership property *vis-à-vis* third parties?

Any property acquired or held by a partnership is held by the partners as tenants in common¹¹. They do not have direct ownership of the individual assets but instead, by virtue of sections 39 and 44 of the 1890 Act they have a right to a proportion of the value of the partnership assets in line with their partnership share on dissolution. This concept is explained further at [section 2.6](#) below.

2.6 Nature of Partnership Interest

As outlined previously, as there is no definition of a partnership within Irish tax law, one must refer to partnership law to understand its nature. Some key points are set

⁹ Subsection (1) of section 20 of the 1890 Act provides: All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.

¹⁰ Michael Twomey, "Twomey on Partnership", Second Edition

¹¹ Established under the equity maxim *Aequitas est quasi aequalitas*, or "Equity is a type of equality".

out in the following paragraphs that may be useful when considering the nature of a partnership interest in an Irish context.

A partner's interest in their firm is often referred to as that partner's 'share', however, it is not straightforward to define exactly what is the nature of this share. Case law and commentary on the subject indicates that a partner's share in a partnership is essentially a contingent right to certain monetary sums. Lord Lindley gave the classic definition of the partner's share in a partnership:

"What is meant by the share of a partner is his proportion of the partnership assets after they have been all realised and converted into money, and all the debts and liabilities have been paid and discharged."

This definition focuses on the nature of the interest being a contingent interest to a future monetary amount and will have relevance in terms of the disposal of a partner's interest. However, consideration must also be given to the nature of the continuing partner's interest. Lindley & Banks describe the essential nature of a partner's interest in partnership property as follows (at para. 19-04):

"It is clear that, in the absence of some other agreement (express or implied) all the members of an ordinary partnership have identical and equal interests in its assets and that no partner is entitled, without the concurrence of all his co-partners, to insist that a particular asset (or an interest therein) is vested in him, either during the continuance of the partnership or following its dissolution."

This concept was further explained in the *Ashworth v Munn* case by James LJ¹²:

"Their [sc. the partners] interest is exactly in proportion to what the ultimate amount coming due to them upon the final taking and adjustment of the accounts may be... The share of each of the other partners no doubt is not a share in any specific asset or any specific part of the assets real or personal, but his share of what will ultimately come to him when the accounts are ascertained and when the partners who are to contribute have contributed, and when the assets are got in, the debts paid, and the amounts realised."

¹² [1880]15 Ch. D. 363 at 368

The meaning of partnership share is also considered in *Popat v Shonchhatra* [1997] 1 WLR 1367 by Nourse LJ:

"Although it is both customary and convenient to speak of a partner's "share" of the partnership assets, that is not a truly accurate description of his interest in them, at all events so long as the partnership is a going concern. While each partner has a proprietary interest in each and every asset, he has no entitlement to any specific asset and, in consequence, no right, without the consent of the other partners or partner, to require the whole or even a share of any particular asset to be vested in him. On dissolution, the position is in substance not much different, the partnership property falling to be applied, subject to sections 40–43 (if and so far as applicable), in accordance with sections 39 and 44... As part of that process, each partner in a solvent partnership is presumptively entitled to payment of what is due from the firm to him in respect of capital before division of the ultimate residue in the shares in which profits are divisible: see section 44... it is only at that stage that a partner can accurately be said to be entitled to a share of anything, which, in the absence of agreements to the contrary, will be a share of cash."

In *Inland Revenue Commissioners v Gray* [1994] STC 360, it was stated:

... between themselves, partners are not entitled individually to exercise proprietary rights over any of the partnership assets. This is because they have subjected their proprietary interests to the terms of the partnership deed which provides that the assets shall be employed in the partnership business, and on dissolution realised for the purposes of paying debts and distributing any surplus. As regards the outside world, however, the partnership deed is irrelevant. The partners are collectively entitled to each and every asset of the partnership, in which each of them therefore has an undivided share.

Based on these cases, a partnership interest, being a tenancy in common over the assets of the partnership, has been considered an equitable "chose in action" i.e. a legal right to their share of net proceeds of the assets.

The courts have also considered the ownership of property in the context of a limited partnership. In the matter of Bloxham (in liquidation) and in the matter of the Companies Act, 1963 to 2012 [2017] IEHC 664¹³ it was noted in paragraph 31 and 32:

According to Twomey, Partnership Law, (Dublin, 2000), ('Twomey') (at para. 16.70), it follows from the terms of ss. 39 and 44 of the 1890 Act that '[t]he share of a partner in a partnership is, in fact, simply his proportion of the partnership property after that property has been turned into money and applied to pay off the partnership debts.' In the words of Joy CB in Stuart v Ferguson (1832) Hayes (Ir. Ex.) 452 (at 473), 'the share of each partner is only the share of the clear surplus which would remain after the payment of all of the debts.' The most recent edition of Lindley & Banks on Partnership, 19th edn, (London, 2010), ('Lindley & Banks'), also citing ss. 39 and 44 of the 1890 Act, harks back (at para. 19-05) to Lord Lindley's classic definition that '[w]hat is meant by the share of a partner is his proportion of the partnership assets after they have been all realised and converted into money, and all the debts and liabilities have been paid and discharged', adding the qualification that it would be more accurate to speak of a partner's entitlement to a proportion of the net proceeds of sale of the assets, before concluding (at para. 19-06) that 'to speak of a share in financial terms otherwise than by reference to a partner's net entitlement (whether calculated in the above way or in some other manner prescribed by the partnership agreement) is both misleading and legally incorrect.'

Twomey points out (at para. 19.03) that the term 'a partner's share' can be misleading since, in the absence of any agreement, a partner is not entitled to a share in the partnership, in the sense of being entitled to any particular item of partnership property, before noting that the distinction is sometimes blurred by the use in both the jurisprudence and the 1890 Act of the phrase 'a partner's share in the partnership property'. Twomey goes on to observe (at para. 19.04) that

"While taxation legislation refers to a partnership share in this manner for convenience, in truth, a partner cannot be said to be entitled to any item of partnership property. Instead, each partner has a beneficial interest in the entirety of the partnership property and in this sense a partnership share is a bundle of the different property rights included within the assets of the firm, such as real property, personal property, choses in action etc. However, a partner does not have a right to any particular partnership asset, to the exclusion of the other partners."

¹³ https://www.courts.ie/acc/alfresco/5d964db4-87d8-4dbf-a589-71f758298c51/2017_IEHC_664_1.pdf/pdf#view=fitH

Therefore, while the nature of a partner's interest in the partnership assets will to an extent depend on the contents of the partnership agreement, the interest constitutes an undivided beneficial interest in the entirety of the assets of the partnership while the partnership is continuing.

Essentially, it may be said that during the currency of a partnership, each partner's share in the partnership comprises a bundle of the different types of rights which the partner holds under the Partnership Act and the partnership agreement. Broadly, the rights could consist of:

- a right for the partnership property to be used for the purposes of the partnership business which the partnership carries on (section 20 Partnership Act 1890),
- a right to a share of profits (section 24 Partnership Act 1890),
- on dissolution of the partnership, a right for the partnership property to be applied to discharge the partnership's creditors (section 39 Partnership Act 1890), and
- on dissolution of the partnership, a right for the partnership property to be realised and to receive a return of capital and a share in any surplus (section 44 Partnership Act 1890).

This is best explained by way of the **following example**:

A partnership's assets consist of five shares in Company A and five acres of land. The five shares in Company A represent 50% of the issued share capital of Company A. A particular partner's share in the partnership might amount to 20%, but as the assets are not divided one cannot say that a partner owns one particular acre of the 5-acre holding or one particular share of the 5 shares held; the partner has a beneficial interest of 20% in the totality of the assets. That does not give the partner 100% ownership of all 5 acres or all 5 shares, but rather a beneficial entitlement to 10% of the issued share capital of Company A and to 1 acre, derived from their legal right to their share of net proceeds of the assets of the partnership (although note that this not a specific 10% of the shares or a specific 1 acre).

Therefore, the question as to the nature of a partnership interest is complex. A partnership interest gives rise to a beneficial interest in all the assets of the partnership such that the partner's share is not an asset which is entirely distinct from the partnership property. However, it is likely that a partner acquires something akin to an equitable chose in action on the acquisition of their interest in the partnership which is a future entitlement to a share of the monetary value of the surplus assets.

3 Taxation of Partnerships

3.1 General

Limited partnerships, investment limited partnerships and general partnerships are generally treated the same for direct tax purposes. The partnerships are *treated as* “tax transparent” for Irish direct tax purposes and therefore the partnership is not subject to Irish profit tax on income or gains derived from its investments or on its net asset value. Instead, the partners themselves, rather than the partnership, are subject to tax on their share of the underlying income and gains of the partnership.

3.2 Particular provisions relating to partnership trades

3.2.1 General rule in relation to calculation of profits

Section 1008(3)(a)(iii) TCA 1997 provides that the full adjusted profits or losses of a partnership trade¹⁴ should be determined on the basis that the trade had been carried on by one and the same person. Therefore, the same addbacks/restrictions that apply for sole traders will apply to a partnership in arriving at the tax adjusted profit/loss.

The partnership agreement will set out the profit-sharing ratio to be used to apportion profits/losses between the individual partners. If there is no partnership agreement, the profits/losses are shared equally.

As all profits / losses must be allocated to partners, the profits/losses returned by the partners in their individual tax returns must be computed on the same basis. The partners cannot deduct any personal expenses from their partnership profit allocation in their tax returns.

Under section 1008(2) TCA 1997 losses are allocated in accordance with the relevant “profit-sharing” ratio of the partnership, and are claimed by the individual partners. Normal loss rules apply to individual partner's loss claims.

3.2.2 Capital Allowances

Section 1010 TCA 1997 provides that the rules regarding capital allowances and balancing charges set out in the Income Tax Acts apply to partnerships, subject to certain exceptions set out in that section.

Capital allowances of the partnership are known as a joint allowance and are claimed by the precedent partner when filing the [Form 1 \(firms\)](#). See [4.1](#) **Error! Reference source not found.** for further details on filing.

¹⁴ Section 1008 TCA 1997, and Part 43 TCA 1997 more generally, applies with any necessary modifications to professions as well to trades.

Each partner is entitled to their “appropriate share” of the capital allowances of the partnership trade. The appropriate share of each partner is determined on the same basis as the profit-sharing ratio [section 1010(7) TCA 1997]. Any balancing charge, referred to as a joint charge, is shared in the same manner.

If a partner cannot fully utilise their share of the capital allowance, they cannot carry that allowance forward as would a sole trader. Instead, the unused allowances of all partners are aggregated and carried forward and allocated amongst all partners in future years in accordance with their agreed profit-sharing ratios.

Where a partner is a company, section 1009 TCA 1997 provides that any share in the partnership’s joint allowance or joint charge that the company is entitled to is treated as an expense or income of the company with regards to the partnership trade.

3.2.3 Restriction on limited partners

For limited partners, section 1013 TCA 1997 restricts the losses and capital allowances available for set off by partners who are not active in the trade. Their right to set off losses and capital allowances arising out of a partnership trade is restricted to the amount of their contribution to the partnership trade. In addition, such losses and capital allowances can only be used against the profits of that partnership trade.

3.2.4 Interaction of a sole trade and a partnership in the same business field

When a sole trader also becomes a partner, the two businesses are treated as separate and distinct. The partner can only trade on behalf of the partnership when the partner represents that they are trading on behalf of that partnership. Any trade that is conducted in the partner’s own name only is part of the sole trade. There is a body of case law which has considered these scenarios¹⁵.

Any income of a sole trade cannot be assigned to a partnership. It is always taxable in the sole traders’ hands. However, there is an exception provided for in respect of Medical partnerships –which allows certain types of medical income to be deemed as that of a medical partnership provided certain conditions are met. See [TDM Part 04-01-15](#) for further details.

3.2.5 Changes in Partners

3.2.5.1 Formation and Commencement

The start date of the partnership may not equate with the commencement of the trade for tax purposes. In order to determine the commencement of the trade, it is necessary to consider when the parties began carrying out business in common¹⁶.

¹⁵ Cases include *Inspector Taxes v Cafolla and Co* [1949] IR 210; *Y v O’Sullivan* [1949] IR 264

¹⁶ *Macken V Revenue Commissioners* [1962] IR 302

Where a partnership is formed, the constituent partners may introduce assets other than cash to the partnership. Changing from owning an asset outright, to owing the asset as tenant in common with the other partners is a part disposal for CGT purposes. Market value rules will apply if it is not a bona fide commercial transaction.

Depending on the assets transferred into the partnership, consideration should be given to whether there is a transfer of the right to receive income, which might require the application of provisions such as section 106A TCA 1997, section 815 TCA 1997 etc.

3.2.5.2 Introduction of a new Partner

When a new partner is admitted to the partnership, the new partner is assessed as commencing and the remaining partners are assessed on the ongoing basis. The new partner's commencement date is the date on which they join the partnership and profits from that date are apportioned to them. The remaining partners receive a share of the full year's profits, but that may change from the date of admission of the new partner.

3.2.5.3 Departure of Partner

Where a partner leaves the partnership they are assessed under cessation rules and the remaining partners are assessed on a continuing basis. The departing partner's cessation date is the date on which they leave the partnership and profits are apportioned to them up to that date. The remaining partners received a share of the full year's profits, but that may change from the date of cessation of the old partner.

For capital allowance purposes, as the claim is made by the precedent partner on behalf of the partnership, the departure of a partner does not trigger a balancing event.

3.2.5.4 Cessation of Partnership

A partnership can cease where either all partners resign from the partnership, or where one partner retires from a two-person partnership. In both cases all partners will be assessed under cessation rules. Where the partnership has permanently discontinued the trade or profession, the partners may be entitled to terminal loss relief.

When the partnership ceases, the assets are no longer partnership assets held by the partners as tenants in common (absent agreement to the contrary). There may be CGT implications arising, depending on how the asset is held post cessation.

3.2.6 Companies who are partners in a partnership trade

Under section 26(2) TCA a company is chargeable to corporation tax in respect of its share of profits from a partnership. Having regard to section 78, companies will also be subject to corporation tax on chargeable gains, as opposed to capital gains tax, in respect of disposals of most partnership assets.

Section 1009 TCA 1997 sets out some specific rules that apply where a company is a partner in a partnership trade.

If the accounting period of the partnership does not coincide with the company's accounting period for corporation tax, the share of partnership profits or losses should be apportioned on a time basis to match the corporation tax accounting period.

3.3 Investment Limited Partnerships

Section 739J TCA 1997 specifically provides for tax transparency for Investment Limited Partnerships (ILPs) which means that they (and certain Common Contractual Funds) are taxed differently to other regulated fund vehicles in Ireland. ILPs authorised on or after 13 February 2013 are not chargeable to tax on their profits. Income and gains are instead treated as arising or accruing directly to the ILP partners in proportion to their allocation under the partnership agreement. The section also provides that losses of an ILP must be allocated to the partners. Where the total income, gains and losses allocated to the partners in a period is less than the total income, gains and losses of the partnership for that period, the balance is allocated to the general partner. This ensures that all profits, gains or losses accruing to the ILP are allocated to the partners, as is appropriate for a transparent entity. ILPs authorised before 13 February 2013 (of which it is understood there are very few) are treated as investment undertakings under the gross roll-up regime.

3.4 Connected Party Rules (Section 10(5) TCA 1997)

In addition to the other connected party rules in section 10 TCA 1997, a partner in a partnership is considered connected with other members of that partnership. The additional rule in subsection (5) of that section does not apply regarding acquisitions and disposals of partnership assets which are bona fide commercial arrangements.

3.5 Capital Gains Tax

As set out at [2.6](#), partners are not legally entitled to exercise proprietary rights over any of the individual partnership assets. Instead, the partners are tenants in common who are collectively entitled to each and every asset of the partnership, in which each of them has an undivided share. For the purpose of capital gains tax, Irish partnership property is treated the same way as any other property that is held as tenants in common i.e. regard is had to the effect of the disposal on the persons beneficially entitled to the property.

Section 30 TCA 1997 confirms that, in the case of chargeable gains, any gains arising on the disposal of partnership assets are apportioned between the partners, and then assessed and charged on them separately rather than on the partnership itself. Any partnership dealings in assets are treated as dealings directly by the partners and not by the partnership.

4 Administration

4.1 Filing returns

Partnerships are required to file a [Form 1 \(Firms\)](#), which sets out the profits or losses of the partnership, any gains and any capital allowances. It also sets out each partner's share of profits.

The Form 1 (Firms) should be prepared and filed by the precedent partner in accordance with section 880 TCA 1997. The precedent partner is deemed by section 959M TCA 1997 to be the chargeable person in respect of the Form 1.

4.2 Appeals (Section 1012 TCA 1997)

If an inspector makes a determination as regards the total profits of the partnership and/or the joint capital allowances, they must give notice of same in writing to the precedent partner. Any partner may appeal that determination to the Tax Appeals Commission within 30 days of the date of the notice of determination. If the issue under appeal would have a material effect on partners who are not party to the appeal, then all partners must be given notice of the appeal hearing and can make representations at that hearing.

4.3 Interest, Surcharge and Penalties

Should the precedent partner fail to file the Form 1 (Firms), they may be subject to a fixed penalty in accordance with section 1052 TCA 1997.

Individual partners are each responsible for their own tax returns, and should they fail to meet their obligations, or not discharge those obligations in the proper manner, they may be individually subject to tax, interest and penalties.