

HATHERLY LOUGHNAN

LAWYERS

THE END OF LAQC'S

LAQC's are ordinary limited liability companies that have a special tax status allowing losses to flow through and capital profits be distributed tax exempt in many circumstances. The losses are attributed to the shareholders. They also allow for depreciation of some of the assets in the company. In May 2010 sweeping changes to tax laws were announced, one of the most significant to property investors was the prohibition of claiming depreciation on buildings after the end of the 2011 financial year. On 15 October 2010 the government released draft legislation to repeal the LAQC rules and the introduction of the Look Through Company ("LTC") rules. The final legislation was enacted on 20 December 2010 and applies from 1 April 2011.

An LTC will be taxed as a limited partnership and all profits and losses of an LTC will be attributed to shareholders in accordance with their shareholding interest. There is however a restriction on the amount of losses that a shareholder may offset. A sale of shares in a LTC will be treated as a sale of the underlying assets so that potentially issues like depreciation recovery will arise. There are extensive transitional rules which allow for existing LAQC's to become LTC's or become limited general partnerships or sole trader structure with neutral tax costs. Following the transitional period of two years, LAQC's will revert to ordinary companies and no longer have the ability to attribute their losses to the shareholders.

The type of business operated by the LAQC will depend on whether or not it should transfer to the LTC regime. There are various dates which are important to note in respect of the transition, two of the most important being, 31 March 2011, which was the last day for existing ordinary companies to elect to become an LAQC effective from 1 April 2011 and 30 September 2011 which is the last day for qualifying companies to elect to become LTC's or transition into a partnership / sole-tradership effective from 1 April 2011. The limitation of liabilities is removed from LAQC's once they become a LTC although this change is probably not relevant to most Mum and Dad property owners. Obviously it is important to discuss these matters with your accountant however, we are more than happy to assist you in making the decision and dealing with any necessary legal work.