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PUBLICATION

The Benefits of Limited Partnerships to Non-Residents of Canada

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Author: Dan Giantsopoulos

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A Limited Partnership (LP) offers many advantages to non-residents of Canada, making LPs a popular investment vehicle for foreign investors contemplating doing business in Canada.

In Ontario, an LP is created when the prescribed declaration is filed in accordance with the *Limited Partnerships Act*. Registering an LP in Ontario is a popular option for non-residents because doing so:

1. Allows for the creation and use of a highly prestigious Canadian business vehicle;
2. Offers a plethora of tax advantages; and
3. Minimizes Canadian tax liabilities and filing obligations.

An LP must be composed of one (1) general partner and at least one (1) limited partner. Canadian residency is not required for the general partner nor the limited partner. The same person can be both the general partner and a limited partner. General and limited partners may be individuals or legal entities. Corporations incorporated outside of Canada are permitted to be partners of an LP if any such corporation is registered extra-provincially in Ontario (before becoming a partner).

Typically, the general partner of an LP has liability for all debts and obligations of the LP, while the liability of a limited partners is restricted to the amount such limited partner has contributed or agreed to contribute to the LP. There is no minimum contribution a limited partner must make to an LP. A limited partner’s contribution must, however, consist of money or property.

Since an LP is not considered a separate legal entity subject to taxation, all profits realized by the LP flow through the LP to its partners, who subsequently pay tax as required by the legislation of their country of residence. As such, LPs that do not carry on business in Canada are not required to file tax returns or pay any income tax in Canada. However, LPS that do carry on business in Canada may need to file an information return (T5013).

Canadian residents must pay personal income tax on the profits received from the LP, however non-resident partners have no tax liability in Canada (except to the extent that the profits of the LP are derived from certain Canadian sources). There is no withholding tax on amounts distributed to non-resident partners of an Ontario LP, but LPs are <u>not</u> exempt from withholding tax.

If a payment is made to an LP which has non-resident partners, and such payment consists of amounts which would normally be subject to Part XIII tax (e.g. Canadian-source rents, royalties, or dividends), then the third-party making the payment must typically withhold tax for the payment to the LP, as per form NR302 of the Canada Revenue Agency (CRA). This is the case even when some of the limited partners of the LP are Ontario residents, because even one (1) non-resident limited partner triggers a requirement for Part XIII withholding tax under Canada's *Income Tax Act*.

LPs are regularly used as vehicles for making venture capital and private equity investments, as one benefit of LPs includes confidentiality of partner identity and the amount committed to an LP. LPs are also a suitable and a popular choice for:

1. Online based businesses (website developers and auction sites, for example); and
2. Software developers, computer support specialists, and IT service providers.

In order to register an LP in Ontario, a mailing address for the LP's principle place of business in Ontario must be given, as an LP is required to retain the following items at the noted address:

1. A record of its partners;
2. Its partnership agreement; and
3. Copies of all minutes and supporting records.

When an LP has no principle place of business in Ontario, the documents may be maintained by a representative or agent of the LP in Ontario.

Blaney McMurtry LLP can assist non-resident clients seeking to create an LP in Ontario, and individuals or corporations seeking to register an LP in Ontario are encouraged to retain the services of Blaney McMurtry LLP.

Dan Giantsopoulos is a partner in Blaney McMurtry's corporate/commercial and international trade and business practice groups. His practice focuses on advising a wide variety of businesses corporations and partnerships and their owners/operators in corporate and commercial law. He is frequently called upon to negotiate Share/Asset Purchase and Sales Agreements, structure tax-driven corporate reorganizations, and to advise on shareholder *disputes. He advises and represents a growing number of American public and private companies with respect to establishing and growing their Canadian business operations.*

Dan can be reached at (416) 593-2984 and dgiantsopoulos@blaney.com.