



## QUALIFYING COMPANY, PARTNERSHIP/LIMITED PARTNERSHIP AND LOOK-THROUGH COMPANY TAX REGIMES

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	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p><b>(1) What are the corporate (or partnership) requirements to enter the respective tax regimes?</b></p>	<p>For a company to be a QC:</p> <ul style="list-style-type: none"> <li>(a) It must have been a QC at the end of the income year before the 1st income year that started on or after 1 April 2011, and not amalgamated with a non-QC on or after 2 November 2012 – i.e. no new QCs.</li> <li>(b) There must be 5 or fewer shareholders who are only natural persons, trustees of trusts (see <b>(3) on page 7</b> for rules affecting trustee shareholders), or another QC (see <b>(2) on page 6</b> for determining relatives treated as a single shareholder).</li> <li>(c) It must be tax resident in NZ.</li> <li>(d) It must have no income interest in a CFC, and <u>no interest</u> (whether attributing or non-attributing) in a FIF in which the company’s income interest is ≥ 10%.</li> <li>(e) It’s foreign non-dividend income cannot be more than \$10,000, after subtracting allowed concessions – see <b>(8) on page 12</b>.</li> <li>(f) It cannot be a unit trust. However, it can be a <u>flat-owning company</u> – i.e. the constitution provides that every registered shareholder is entitled to the use of a specific residential property in NZ owned by the company, and the only significant assets are residential properties available for use by specific shareholders, and funds reserved for meeting the company’s costs.</li> <li>(g) From the 2017-18 income year onwards, a minimum continuous shareholding of 50% from 30 March 2017 to the end of the relevant income year. (See <b>(6) on page 10</b>)</li> </ul> <p>[s. HA 6, HA 7, HA 8B, HA 9 &amp; CD 31(2)]</p>	<p>A partnership is treated as a partnership or a limited partnership for tax purposes if it fits the tax definitions of “partnership” or “limited partnership”.</p> <ul style="list-style-type: none"> <li>(a) A <u>partnership</u> for tax purposes means: <ul style="list-style-type: none"> <li>(i) Any two or more persons who have the relationship described in section 4(1) of the Partnership Act 1908.</li> <li>(ii) A joint venture if the joint venture owners all choose to be treated as a partnership for tax purposes.</li> <li>(iii) Co-owners of property if the co-owners all choose to be treated as a partnership for tax purposes.</li> <li>(iv) A limited partnership.</li> </ul> </li> <li>(b) A <u>limited partnership</u> for tax purposes: <ul style="list-style-type: none"> <li>(i) Means a limited partnership registered under the <i>Limited Partnerships Act 2008</i> (“LPA”) (see <b>(4) on page 8</b>);</li> <li>(ii) Includes an <u>overseas limited partnership</u> as defined in s. 4 of the LPA (see <b>(4) on page 8</b>);</li> <li>(iii) <u>Excludes</u>: <ul style="list-style-type: none"> <li>a. A <u>listed limited partnership</u> (a limited partnership that is listed on a recognised exchange); and</li> <li>b. A <u>foreign corporate limited partnership</u> (an overseas limited partnership that is treated as a separate legal entity in the country where it is established).</li> </ul> </li> </ul> </li> </ul> <p>[s. YA 1 definitions]</p>	<p>For an entity to be a <b>look-through company</b></p> <ul style="list-style-type: none"> <li>(a) It must be a body corporate or other entity that has a legal existence separate from that of its members.</li> <li>(b) Viewed as a company, it must be tax resident in NZ, domestically and under all double tax agreements.</li> <li>(c) There must be 5 or fewer <u>look-through counted owners</u> (see <b>(5) on page 9</b> and <b>(2) on page 6</b> for treatment of relatives).</li> <li>(d) All the owners must have only <u>look-through interests</u> (see <b>(7) on page 11</b>)</li> <li>(e) It must not be a flat-owning company (as defined in s. CD 31(2) – see (f) in the QC column on the left.</li> <li>(f) <u>No owner can be a tax charity</u>, unless the tax charity is a grandparented tax charity for the LTC – meaning a tax charity that before 3 May 2016 is an owner of the LTC, or has entered into an arrangement to become an owner of the LTC.</li> <li>(g) <u>No owner can be a Maori authority</u>, unless the Maori authority is a grandparented Maori authority for the LTC – meaning a Maori authority that before 3 May 2016 is an owner of the LTC, or has entered into an arrangement to become an owner of the LTC, or is a beneficiary of a trust that is an owner of the LTC.</li> <li>(h) Special rules apply where a <u>trustee is a look-through counted owner</u> – see <b>(5) on page 9</b> and <b>(3) on page 7</b>.</li> <li>(i) Foreign income restrictions if more than 50% of the ownership interests are held by foreign LTC holders – <b>(8) on page 12</b>.</li> <li>(j) A valid s. HB 13 election must be made [“look-through company” in s. YA 1]</li> </ul>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p><b>(2) Which relatives can be treated as a single shareholder or owner?</b></p>	<p>If a shareholder in a qualifying company is connected within the first degree of relationship to another shareholder in the company by blood relationship, marriage, civil union or de facto relationship, or adoption, they are treated as a single shareholder, and this treatment continues while they remain a shareholder in the company despite any later death or dissolution.</p> <p>The degrees of separation are explained on pages 9 – 10 of the <u>Inland Revenue Guide to Qualifying Companies – IR435</u> published April 2017. It is stated that:</p> <p>To clarify the degrees of separation in a relationship between individual shareholders, think of a family tree. Count the steps back to a common ancestor and then forward to the other person. Each link is a one-degree relationship.</p> <p>Shareholders related by blood relationship, marriage, civil union or de facto relationship, or adoption, are seen as being related within one degree and are counted as a single shareholder for QC purposes.</p> <p>For example, a son and daughter are related to the parent within one degree. But, if the parent was not a shareholder, the brother and sister would count as two shareholders because they are related within two degrees.</p> <p>The relationship between a step-parent and step-child is a second-degree relationship for QC purposes.</p> <p>Shareholder relationships with two degrees of separation between them are still counted as two separate shareholders for QC purposes.</p>	<p>Not applicable</p>	<p>Relatives are treated as one person – i.e. a single look-through counted owner - ignoring any later death or dissolution of marriage, union, or relationship.</p> <p>Identifying relationships between natural persons for the purposes of the LTC rules is explained on pages 48 – 49 of <i>Tax Information Bulletin</i> Vol. 23, No. 1, February 2011.</p> <p>A <u>relative</u> is a person who is connected with another person:</p> <ul style="list-style-type: none"> <li>(i) By being within the <u>second degree of blood relationship</u> (see the QC column on the left for an explanation of what this means);</li> <li>(ii) By marriage, civil union, or a de facto relationship;</li> <li>(iii) By being the spouse of a person who is within the 2<sup>nd</sup> degree of blood relationship;</li> <li>(iv) By being an adopted child or the adopted child of another person within the 1<sup>st</sup> degree of blood relationship to the person;</li> </ul> <p>[Note: a trustee of a trust under which a relative has benefited or is eligible to benefit is not a relative for LTC purposes – <u>excluded for LTCs from the 1st income year starting on or after 3 November 2012</u>]</p> <p>[s. YA 1]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p><b>(3) What are the special rules for trustee shareholders or owners?</b></p>	<p>1. <u>Dividends derived by trustees</u> All dividends that the trustee of a trust derives from a qualifying company in an income year must be beneficiary income of 1 or more persons who are not trustees or non-QC companies. However, this requirement does not apply to non-cash dividends other than taxable bonus issues.</p> <p>2. <u>Number of shareholders when a trustee is a shareholder</u> See <b>(5) on page 9.</b></p>	<p>No special rules</p>	<p>1. <u>No distributions to companies</u> A trustee owner cannot make a distribution (i.e. any distribution – income or capital) to a company that is directly or indirectly a beneficiary of the trust. This rule applies effective from 1 April 2017.</p> <p>2. <u>No distributions of income to a tax charity (except where tax charity has no control)</u> A trustee owner cannot make a distribution of income to a tax charity that is a beneficiary of the trust, unless the tax charity has no control or influence in relation to either the operation of the LTC or the distributions of the trust – i.e. “no strings attached” distributions of income. This rule applies effective from 1 April 2017.</p> <p>3. <u>No distributions to a Maori authority other than a grandparented Maori authority for the LTC</u> A trustee owner cannot make a distribution (i.e. any distribution – income or capital) to a Maori authority that is directly or indirectly a beneficiary of the trust, unless the Maori authority is a grandparented Maori authority for the LTC, meaning a Maori authority that before 3 May 2016 is an owner of the LTC, or has entered into an arrangement to become an owner of the LTC, or is a beneficiary of a trust that is an owner of the LTC. This rule applies effective from 1 April 2017.</p> <p>4. <u>Number of shareholders when a trustee is a shareholder</u> See <b>(5) on page 9.</b></p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p><b>(4) What are a “limited partnership” and an “overseas limited partnership”?</b></p>	<p>Not applicable</p>	<p>A <u>limited partnership</u> registered under s. 51 of the <i>Limited Partnerships Act 2008</i> [LPA] has the following characteristics and requirements:</p> <ul style="list-style-type: none"> <li>(a) It is a separate legal person. [s. 11 LPA]</li> <li>(b) It must have at least one general partner (see <b>(5) on page 9</b> for requirements as to the general partner) and one limited partner. [s. 8 LPA]</li> <li>(c) There must be a written partnership agreement that covers a number of matters referred to in s.10 of the LPA. [s. 9 LPA]</li> <li>(d) Only general partners must be responsible for management, and limited partners must not take part in management, although a partner’s status is allowed to change. [s. 19, 20 and 24 LPA] [Activities not part of management are in the Schedule to the LPA]</li> </ul> <p>An <u>overseas limited partnership</u> under the LPA means a partnership formed or incorporated outside New Zealand with:</p> <ul style="list-style-type: none"> <li>(a) 1 or more general partners who are liable for all of the debts and liabilities of the partnership; and</li> <li>(b) 1 or more limited partners who have only limited liability for the debts and liabilities of the partnership.</li> </ul> <p>[s. 4 LPA: “overseas limited partnership”]</p>	<p>Not applicable</p>



	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p><b>(5) What are the shareholder (or partner) requirements to qualify for the respective tax regimes?</b></p>	<p>A shareholder in a QC can only be:</p> <ol style="list-style-type: none"> <li>1. A <u>natural person</u>. Natural person shareholders in the company who are connected within the first degree of relationship either by blood relationship, marriage, civil union or de facto relationship, or adoption, are treated as a single shareholder, and this treatment continues while they remain a shareholder in the company despite later death or dissolution. (See <b>(2) on page 6</b> for an explanation of persons within the first degree of relationship)</li> <li>2. A <u>trustee</u>, but only if all dividends from the QC (other than non-cash dividends that are not taxable bonus issues) are distributed as beneficiary income. The trustee is not counted as a shareholder in the QC - instead the larger of the following is counted in the 5 shareholders count:                     <ol style="list-style-type: none"> <li>(a) The group who signed the election as shareholder; or</li> <li>(b) All beneficiaries who have derived dividends from the QC as beneficiary income, from the beginning of the 1992 income year to the time of counting.</li> </ol> </li> <li>3. <u>Another QC</u>. This QC is not counted, but it is “looked through” to its shareholders, who are counted in the 5 shareholders count.</li> </ol> <p>[s. HA 7]</p>	<p>Any person (including a company or a trustee) may be a partner in a partnership. <u>In a limited partnership:</u> Any person may be a limited partner, but one of the following <u>requirements for a general partner</u> in s. 8(4) of the LPA must be met:                     <ol style="list-style-type: none"> <li>(a) There must be a general partner who is a natural person who lives in NZ or lives in an enforcement country and is a director of a company registered in that enforcement country; or</li> <li>(b) There must be a general partner that is a limited partnership that has 1 or more general partners who are natural persons who live in NZ or live in an enforcement country and are directors of a company registered in that enforcement country; or</li> <li>(c) There must be a general partner that is a partnership governed by the <i>Partnership Act 1908</i> that has 1 or more partners who are natural persons who live in NZ or live in an enforcement country and are directors of a company registered in that enforcement country; or</li> <li>(d) There must be a general partner that is a company (and similar requirements to live in NZ apply to directors in NZ companies); or</li> <li>(e) There must be a general partner that is an overseas company registered under the Companies Act 1993 that has 1 or more directors who are natural persons who live in NZ or live in an enforcement country and are directors of a company registered in that enforcement country.</li> </ol> <p>Under s. 8(5) of the LPA, every natural person who is a general partner, or who is a director, partner, or general partner of a general partner, must be qualified under s. 19A, LPA.</p> </p>	<p>A look-through counted owner must be:</p> <ol style="list-style-type: none"> <li>(a) A natural person who is not a trustee with a <u>look-through interest</u> for the LTC (see <b>(7) on page 11</b>); or</li> <li>(b) A natural person who has derived, as beneficiary income of a trust, income that arose from a direct or indirect beneficial interest in a look-through interest for the LTC for the current income year or 1 of the last 3 income years; or</li> <li>(c) A natural person who:                     <ol style="list-style-type: none"> <li>(i) On or after the first day of the 2017–18 income year, receives a distribution from a trust, other than a distribution sourced from income derived before 2017–18; and</li> <li>(ii) The distribution is received in the current income year, or 1 of the last 3 income years if the relevant year is after the 2016–17 income year; and</li> <li>(iii) The trust has a direct or indirect beneficial interest in a look-through interest for the LTC in the current, or 1 of the last 3, income years if the relevant year is after 2016–17;</li> </ol> </li> <li>(d) A trustee (treating co-trustees as 1 person) of a trust that:                     <ol style="list-style-type: none"> <li>(i) Has a look-through interest for the LTC or has a direct or indirect beneficial interest in a look-through interest for the LTC, treating co-trustees as 1 person; and</li> <li>(ii) Has no beneficiary that is a look-through counted owner;</li> </ol> </li> <li>(e) A natural person shareholder in a company that derived beneficiary income from a trust sourced from an LTC interest for the current or 1 of the last 3 years.</li> </ol>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p><b>(6) What are the shareholding continuity requirements to remain in the regime?</b></p>	<p>A company is not eligible to be a qualifying company unless, at all times in an income year, a group of persons holds for the QC continuity period, minimum QC interests in the company that add up to at least 50%, where:</p> <p>(a) “Minimum QC interest”, means the lowest voting interest or market value interest a person holds in the company during the QC continuity period; and</p> <p>(b) “QC continuity period”, means the period starting on 30 March 2017 and ending on the last day in the income year.</p> <p>There is an exception for close relatives:</p> <p>(a) A share transferred by a transferor to a close relative is treated as being held by a single notional person for the company from the time that the transferor acquired the share.</p> <p>(b) A share subsequently transferred to a “close relative” of a subsequent transferor is similarly treated as held by the same single notional person.</p> <p>“Close relative”, in this context means: A spouse, civil union partner, or de facto partner of the person; or Another person who is within the second degree of relationship to the person.</p> <p>In addition, changes to shareholding resulting from property relationship settlements or the death of a shareholder will be ignored when measuring a change of control.</p> <p>[s. HA 6(3), 6(4), &amp; 6(5) and s. YA 1]</p>	<p>Not applicable</p>	<p>There are no shareholding continuity requirements as such.</p> <p>However, more than 50% ownership by foreign LTC holders is not allowed if specified foreign-sourced income thresholds are breached – see <b>(8) on page 12</b>.</p> <p>It is also worth noting that “grandparented” tax charities and Maori authorities that had interests in LTCs prior to 3 May 2016 may change – i.e. increase or decrease – the shareholding they held in LTCs prior to 3 May 2016 without affecting their grandparented status. However, they cannot acquire interests in new LTCs that they did not have an interest in before that date.</p> <p>[See <i>Tax Information Bulletin</i>, Vol. 29, No. 5, June 2017, pages 35-36]</p>

	<b>Qualifying Company (QC)</b>	<b>Partnership/Limited Partnership</b>	<b>Look-through Company (LTC)</b>
<b>(7) What restrictions are there on rights attached to shares on voting and distributions?</b>	There are no restrictions on the nature of QC shares.	<p>Each partner must be allocated that partner’s partnership share (see <b>(13)</b> on <b>page 17</b>) of the partnership’s income, tax credit, rebate, gain, expenditure or loss that the partnership has from a particular source, or of a particular nature (i.e. there can be no streaming).</p> <p>[s. HG 2(2)]</p>	<p>All the owners must have only look-through interests, meaning a person’s shares in an entity or in an LTC, treating the LTC as a company for the purposes of the definition if:</p> <p>(a) Every other shareholder has the same rights, proportionally, as the person in relation to a distribution by the entity or LTC; and</p> <p>(b) The entity or LTC has only shareholders that are natural persons, or corporate trustees.</p> <p>From the 2017-18 income year, there is no longer a requirement that rights carried by every share in the company must be identical in relation to voting on distributions, the constitution, varying the capital, and appointing or electing directors.</p> <p>Therefore, from the 2017-18 income year onwards, an entity or an LTC may have shares that carry different voting rights provided that all shares still have the same rights to distributions.</p> <p>[s. YA 1: “look-through interest”]</p>

	<b>Qualifying Company (QC)</b>	<b>Partnership/Limited Partnership</b>	<b>Look-through Company (LTC)</b>
<b>(8) What restrictions are there on deriving foreign income?</b>	<p>A QC's foreign non-dividend income in an income year cannot be more than \$10,000, after subtracting the lesser of:</p> <p>(a) Any income under s. CC 3 from financial arrangements; (CCH Q&amp;A implies only foreign income from financial arrangements); or</p> <p>(b) 10% of the company's gross income for the income year.</p> <p>[s. HA 9]</p>	<p>There are no restrictions for a partnership on the derivation of foreign non-dividend income.</p>	<p>For income years beginning on or after 1 April 2017, treating the LTC as a company, if more than 50% of the total ownership interests in the LTC are held by "foreign LTC holders", the LTC's total foreign-sourced amounts for the income year cannot exceed the greater of:</p> <p>(a) \$10,000; or</p> <p>(b) 20% of the LTC's gross income for the year.</p> <p>A "foreign LTC holder" means:</p> <p>(a) A non-resident (applying the standard tests of tax residence for individuals);</p> <p>(b) A trustee of a trust, if the trust has a non-resident settlor, but only to the extent of the proportion of the trust's ownership interests that is equal to the proportion of settlements, by value, made by non-resident settlors, ignoring settlements arising from services provided for less than market value.</p> <p>For example, if a trust held 50% of the shares in an LTC and 50% of the value of settlements made on the trust were by non-residents, then 25% of the ownership interests in the company would be considered to be held by foreign LTC holders.</p> <p>[s. YA 1 definitions]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p><b>(9) What are the usual election / registration requirements to elect into the regime?</b></p>	<p>It is no longer possible for a company to elect to be a QC.</p> <p>However, under current tax rules at the time of writing, existing QCs may remain QCs as long as the requirements to remain a QC are met.</p> <p>Historically, a “new” company could only elect to be a QC if it is filing a tax return for the “grandparenting income year”, being its 1<sup>st</sup> income year that began <i>before</i> the 1<sup>st</sup> income year that starts on or after 1 April 2011.</p> <p>The election had to have been made – in Form IR436 - within the time by which the tax return for that 1<sup>st</sup> year was due to be filed under s. 37 of the Tax Administration Act 1994, and:</p> <p>(a) Nominate its 1<sup>st</sup> income year as the year the election is to take effect; and</p> <p>(b) Be signed by all directors and shareholders.</p> <p>Otherwise, a QC must already have been a QC at the end of the income year before the 1<sup>st</sup> income year that starts on or after 1 April 2011 and must not have amalgamated, on or after 2 November 2012, the date on which the Taxation (Annual Rates, Returns Filing and Remedial Matters) Act 2012 received the Royal assent, with another company that is not a qualifying company.</p> <p>[s. HA 5 &amp; s. HA 7B]</p>	<p>No election is required (except for a transition from a QC using Form IR891 from 2011-13). A partnership is treated as a “partnership” or a “limited partnership” for tax purposes if it fits the tax definitions.</p> <p>There are no registration requirements or elections required for an ordinary partnership; the partners either are, or choose to be, a partnership for tax purposes and comply with the partnership return filing obligations in section 42(3) of the Tax Administration Act 1994.</p> <p>An application to register a limited partnership under the Limited Partnerships Act 2008:</p> <p>(a) Must be made on form LP1;</p> <p>(b) Must be accompanied by the consent of the general partner on form LP 5;</p> <p>(c) Must contain a list of all the proposed limited partners;</p> <p>(d) Must include a certificate by the applicant that the proposed partners have entered into an agreement complying with section 10 of the LPA [s. 52 LPA]</p> <p>The limited partnership’s name must include the words “limited partnership” or “LP” or “L.P.” at the end. [s. 32 LPA].</p> <p>A person becomes a general or limited partner of a limited partnership when their name is entered in the register of limited partnerships as a general or limited partner, respectively.</p> <p><u>An overseas limited partnership:</u> must apply for registration within 10 working days of commencing to carry on business in NZ.</p> <p>Note: activities that do not constitute carrying on business in NZ are set out in s. 105, LPA. [s. 104 &amp; s. 105 of the LPA]</p>	<p>A company that meets the requirements of a “look-through company” can elect to become an LTC.</p> <p>(Refer to <b>(1)</b> on <b>page 5</b>)</p> <p>Any loss balance the company had before becoming an LTC is cancelled.</p> <p>[s. HB 3]</p> <p>The election notice to be an LTC (Form IR862) <a href="http://www.ird.govt.nz/forms-guides/number/forms-800-899/ir862-form-ltc-election.html">http://www.ird.govt.nz/forms-guides/number/forms-800-899/ir862-form-ltc-election.html</a> :</p> <p>(a) Must be signed and dated by a director or other agent with appropriate authority.</p> <p>(b) Must specify the income year on or after 1 April 2011 for which it first operates.</p> <p>(c) Must have as attachments to the election notice: notices signed and dated by all owners of look-through interests evidencing their unanimous agreement to elect for LTC status.</p> <p>For a company to become an LTC the election notice must be received by the Commissioner:</p> <p>(a) For an existing company to become an LTC from the beginning of an income year specified in the election notice, before the beginning of that income year;</p> <p>(b) For a new company to be an LTC from the time of incorporation, by the last day under s. 37 for filing the tax return required under s. 42B of the Tax Administration Act 1994.</p> <p>(c) For a QC transitioning between 2011 and 2013, within 6 months of the start of the transitional year (see <b>(47)</b> on <b>page 49</b>).</p> <p>[s. HB 1 &amp; s. HB 13]</p>

	<b>Qualifying Company (QC)</b>	<b>Partnership/Limited Partnership</b>	<b>Look-through Company (LTC)</b>
<b>(10) What is the cost of electing into the regime?</b>	Not applicable	Not applicable	<p>Effective from the 2017-18 income year, a person has dividend income in an income year, taxable at their marginal tax rate, if:</p> <p>(a) On the 1st day of that year the person had a look-through interest in an LTC and the company existed in a previous year but not as an LTC; or</p> <p>(b) An LTC amalgamates in the income year with a non-LTC and the LTC is the continuing company.</p> <p>There are 2 different calculations depending on whether the LTC was previously an ordinary company or a QC. The dividend for an LTC owner is:</p> <p><math>(\text{Untaxed Reserves} + \text{ICs}) \times (\text{Effective Interest})</math></p> <p>Where:</p> <p>(a) "Untaxed reserves" refers to the net cash available to distribute to the LTC owners, after a notional liquidation, that would be treated as taxable dividends, reduced by:</p> <p>(i) Amounts that would be treated as net taxable income in future (e.g. proceeds from the notional disposal of assets held on revenue account less allowable tax deductions); and</p> <p>(ii) The exempt dividend allowance under s. CX 63 if the company had previously been an LTC.</p> <p>(b) "ICs" refers to the imputation credits (plus unpaid tax) available to be attached to the amount of the dividends, capped at the maximum allowed IC ratio;</p> <p>(c) "Effective interest" refers to the LTC owner's interest in the LTC.</p> <p>For a company that was previously a QC, the dividend is capped at the amount that could be fully imputed, consistent with the QC rules. [s. CB 32C]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<b>(11) Are there any special rules for a QC electing to become an LTC?</b>	<p>The QC will cease to exist at the end of the year before the year in which it elects to become an LTC.</p> <p>Any loss balance the QC had at the end of the year before it becomes an LTC is cancelled.</p> <p>[s. HB 3]</p>	Not applicable	<p>A QC must elect to become an LTC in the same way as an ordinary company.</p> <p>The election notice to be an LTC (Form IR862) <a href="http://www.ird.govt.nz/forms-guides/number/forms-800-899/ir862-form-ltc-election.html">http://www.ird.govt.nz/forms-guides/number/forms-800-899/ir862-form-ltc-election.html</a>:</p> <ul style="list-style-type: none"> <li>(a) Must be signed and dated by a director or other agent with appropriate authority.</li> <li>(b) Must specify the income year for which it first operates.</li> <li>(c) Must have as attachments to the election notice: notices signed and dated by all owners of look-through interests evidencing their unanimous agreement to elect for LTC status.</li> <li>(d) Must be received by the Commissioner before the beginning of the income year from which it is to first operate.</li> </ul> <p>Each shareholder in the QC must calculate whether they will derive dividend income, taxable at their relevant marginal tax rates, in the year in which the QC becomes an LTC. See <b>(10) on page 14</b> for the details.</p> <p>The dividend is capped at the amount that could be fully imputed, consistent with the QC rules.</p> <p>[s. HB 1, s. HB 13 &amp; s. CB 32C]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<b>(12) What are the special rules if the entry into the tax regime occurs via an amalgamation?</b>	<p>A QC can amalgamate with other QCs. Such an amalgamation will be a <u>resident's restricted amalgamation</u> under the amalgamation rules if the amalgamated company is a QC immediately after the amalgamation and each of the amalgamating companies was a QC at the time of amalgamation.</p> <p>A QC cannot amalgamate with a non-QC and retain its QC status. A QC that amalgamates with a non-QC on or after 2 November 2012 will lose its QC status.</p> <p>[s. HA 7B]</p>	Not applicable	<p>When an LTC is the continuing company after amalgamation with a non-LTC each person with an effective look through interest must calculate whether they will derive dividend income, taxable at their relevant marginal tax rates, in the year of the amalgamation.</p> <p>See <b>(10) on page 14</b> for the details.</p> <p>[s. CB 32C]</p> <p>If a company that is not an LTC amalgamates with an LTC, any loss balance that arose before the amalgamation is cancelled.</p> <p>[s. HB 3]</p>



	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p><b>(13) What is a shareholder's or partner's liability for income tax on the company's or partnership's income?</b></p>	<p>All persons who make elections as shareholders are jointly and severally personally liable based on their <u>effective interest</u> (see below) in the company:</p> <ul style="list-style-type: none"> <li>(i) For their share of the QC's income tax liability for the income year; and</li> <li>(ii) If the QC has made an election as shareholder in another QC, for any income tax payable in relation to that other QC for the income year.</li> </ul> <p>[s. HA 8]</p> <p><u>Effective interest</u> for a person and a QC at a particular time or for an income year, means:</p> <ul style="list-style-type: none"> <li>(a) If <u>there is no market value circumstance</u> at the time or at any time during the year, the person's voting interest in the QC at the time or for the income year.</li> <li>(b) If <u>there is a market value circumstance</u> at the time or at any time during the income year, the average of: <ul style="list-style-type: none"> <li>(i) The person's voting interest in the QC at the time or for the income year; and</li> <li>(ii) The person's market value interest in the QC at the time or for the income year.</li> </ul> </li> </ul> <p>[s. HA 43]</p> <p>A <u>market value circumstance</u> can arise when an option is granted on non-arm's length terms, as well as in other ways.</p> <p><u>Market value interest</u> is essentially the percentage of the market value of shares and options in a company held by a person.</p> <p>[See ss. YA 1 and YC 2 to YC 20 for more]</p>	<p>For the purposes of a partner's liabilities and obligations under the Income Tax Act 2007 in their capacity of partner of a partnership, each partner is treated as if they were:</p> <ul style="list-style-type: none"> <li>(a) Individually carrying on the partnership's business; and</li> <li>(b) Individually holding the partnership's property; and</li> <li>(c) Individually a party to any arrangement to which the partnership is a party; and</li> <li>(d) Individually doing a thing and being entitled to a thing the partnership does, in proportion to their individual <u>partnership shares</u> (see below), and their tax liability is determined individually.</li> </ul> <p>[s. HG 2(1)]</p> <p><u>Partnership share</u> means, for a particular right, obligation, or other property, status, or thing, the share that a partner has in respect of it.</p> <p>[s. YA 1 definition of "partnership share"]</p>	<p>Each LTC look-through owner is treated as if they are individually carrying on the LTC's business, holding the LTC's property, individually a party to any arrangement to which the LTC is a party, and doing a thing and being entitled to a thing the LTC does, in proportion to their individual <u>effective look-through interests</u>, and their tax liability is determined individually. [s. HB 1(4)]</p> <p><u>Effective look-through interest</u> means for an owner (treating the LTC as a company):</p> <ul style="list-style-type: none"> <li>(a) If <u>there is no market value circumstance</u> (see the QCs column) for the LTC: <ul style="list-style-type: none"> <li>Either the owner's average daily look-through interest for the income year;</li> <li>Or the owner's effective look through interest at a particular time of look-through, but only if individual effective look-through interests change during the year and the LTC's income <math>\geq</math> \$3m <i>and</i>:</li> <li>(i) All the LTC's owners choose this; or</li> <li>(ii) The Commissioner has notified the LTC that this method must be used.</li> </ul> </li> <li>(b) If <u>there is a market value circumstance</u> (see the QCs column) for the LTC: <ul style="list-style-type: none"> <li>Either the average for the income year of: the owner's average daily look-through interest <u>and</u> the owner's average daily market value interest;</li> <li>Or, if the requirements to determine the look-through interest at a particular time of look-through are met, the average for the particular time of look-through of: the owner's average daily look-through interest <u>and</u> the owner's average daily MV interest.</li> </ul> </li> </ul> <p>[s. HB 1(5) &amp; see also QCs column on left]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p><b>(14) What else is a shareholder or a partner liable for?</b></p>	<p>A QC's limited liability offers shareholders protection against additional liabilities.</p>	<p>Partners can be additionally liable as follows:</p> <p><u>Liability for the partnership's debts and liabilities:</u></p> <p>(a) In an <u>ordinary partnership</u> covered by the Partnership Act 1908, every partner is jointly liable for debts and liabilities incurred while a partner. [Partnership Act 1908 s. 12]</p> <p>(b) In a <u>limited partnership</u>:</p> <p>(i) Each <i>general partner</i> is jointly and severally liable for partnership debts and liabilities incurred while a general partner;</p> <p>(ii) A <i>limited partner</i> who does not take part in management is not liable for the debts and liabilities of the limited partnership.</p> <p>[Note: activities which do not constitute management are set out in the Schedule to the Limited Partnerships Act 2008] [Limited Partnerships Act s. 26 and s. 31]</p> <p><u>Agent of an absentee partner:</u> A partner, or in the case of a limited partnership a general partner, in a partnership that carries on business in NZ, is treated as the agent of an absentee partner or limited partner, in relation to the absentee's share of partnership income.</p> <p>[s. HD 20B]</p>	<p>An LTC's limited liability offers shareholders protection against additional liabilities.</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<b>(15) What are the company's or partnership's tax obligations?</b>	<p>(a) A QC has the same return filing obligations as a non-QC company.</p> <p>(b) Other tax obligations are the same as those for a non-QC company.</p> <p>(c) In addition, a QC must meet the requirements to maintain QC status.</p>	<p>(a) A partnership or a limited partnership that carries on business in NZ (ignoring the transparency rules) must file a joint return of income showing the partnership's total income, and each partner's share (see <b>(13)</b> on <b>page 17</b>) of the income and deductions.</p> <p>[s. 42(3): Tax Administration Act 1994]</p> <p>(b) A partnership or limited partnership is responsible for PAYE, FBT, NRWT, RWT, ESCT, RSCT and GST.</p> <p>(c) A partnership or limited partnership is responsible for all Inland Revenue Act elections and methods relating to the determination of the gross income and allowable deductions of the partnership, and is responsible for meeting all disclosure requirements under the Inland Revenue Acts.</p> <p>(d) Transparency only applies for the purposes of a partner's liabilities and obligations under the Income Tax Act 2007 in their capacity of partner of a partnership.</p> <p>[s. HG 2(1) and various other sections]</p>	<p>An LTC must file a return showing:</p> <p>(a) The income of the LTC;</p> <p>(b) The income for each owner; and</p> <p>(c) The deductions for each owner.</p> <p>Each owner must file a separate return that includes the income and deductions from the LTC.</p> <p>[s. 42B: Tax Administration Act 1994]</p> <p>An LTC is treated as a company for the purposes of: PAYE, FBT, NRWT, RWT, ESCT, RSCT and GST and the GST grouping rules.</p> <p>Inland Revenue Act elections and methods relating to an LTC are chosen by the company ignoring transparency, and then transparency applies so that the elections and methods are those of an owner of an effective look-through interest in the LTC.</p> <p>[s. HB 1(6)]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p><b>(16) Can losses be attributed to shareholders or partners?</b></p>	<p>A QC's losses cannot be attributed to a QC's shareholders:</p> <p>(a) The LAQC regime was repealed for income years commencing on or after 1 April 2011.</p> <p>(b) No losses have been able to be attributed from the 2012 income year (for early balance date LAQCs from the 2013 income year).</p> <p>(c) Pre-existing LAQCs could attribute losses to shareholders for the 2011 income year.</p> <p>(d) LAQCs automatically became ordinary QCs from the 2012 income year (2013 income year for early balance date LAQCs), unless an election to transition to a partnership, LTC or sole trader was made.</p> <p>[s. 74 of 2010 No. 130]</p>	<p><u>Partnership loss attribution:</u></p> <p>(a) Unlimited losses can be attributed by an ordinary partnership to a partner, or by a limited partnership to a general partner.</p> <p>(b) A limited partner in a limited partnership can have an attributed partnership loss which can be set off against non-partnership income for the year only if:</p> <p>(i) The partnership deductions attributed to the limited partner for the year exceed the limited partners attributed partnership income for the year; <u>and</u></p> <p>(ii) The attributed deductions do not exceed the limited partners "<u>partner's basis</u>" for the partnership at the end of that year (see <b>(22)</b> on <b>page 24</b>).</p> <p>[s. HG 11]</p>	<p>Yes, with effect from the 2017-18 income year, a person with an effective look-through interest in an LTC can have an unlimited attributed LTC loss for a year (i.e. the LTC deductions attributed to the person for the year exceed the person's attributed LTC income for the year) providing that:</p> <p>(a) The LTC is not in a partnership that includes another LTC; or</p> <p>(b) The LTC is not a member of a joint venture, as described in s. HG 1, that includes another LTC.</p> <p>[s. HB 11(1)]</p> <p>This means that there is no longer any limitation on deductions for an LTC that is not in a partnership or a joint venture with another LTC.</p> <p>In addition, all previous deductions denied under the pre-existing deduction limitation rule and carried forward may be deducted in the 2017-18 income year.</p> <p>[s. HB 12(2) &amp; s. HB 12(3)]</p> <p>A person with an effective look-through interest in an LTC that is a partnership or a joint venture with another LTC can have an attributed LTC loss for a year (i.e. the LTC deductions attributed to the person for the year exceed the person's attributed LTC income for the year) only if the attributed deductions do not exceed the person's "<u>owner's basis</u>" for that LTC at the end of the year (refer to <b>(22)</b> on <b>pages 24-27</b>).</p> <p>[s. HB 11 &amp; s. GB 50]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<b>(17) How is the income of the company or partnership taxed?</b>	<p>The QC is taxed on taxable income just like an ordinary company.</p> <p>[s. BB 2(1)]</p>	<p>A partnership is not taxed.</p> <p>[s. HG 2]</p> <p>(a) Each partner has their share of the partnership income, exempt income and excluded income for the year.</p> <p>[s. CB 35, s. CW 55B, s. CX 62 &amp; s. HG 2]</p> <p>(b) Each partner has their share of allowable partnership deductions.</p> <p>[s. DV 20]</p> <p>(c) There can be no streaming: the amount of each partner’s income, tax credit, rebate, gain, expenditure or loss from a particular source, or of a particular nature, is calculated, by multiplying the total of these things from each source or of each nature, by the partner’s partnership share in the partnership’s income.</p> <p>[s. HG 2(2)]</p>	<p>An LTC is not taxed.</p> <p>[s. HB 1]</p> <p>(a) Each person with an effective look-through interest has their share of the LTC income for the year.</p> <p>[s. CB 32B &amp; s. HB 1]</p> <p>(b) Each person with an effective look-through interest has their share of attributed LTC deductions.</p> <p>[s. DV 22]</p> <p>(c) A person may be treated as deriving LTC income or incurring LTC expenditure or loss even if the person does not have an effective look-through interest at the relevant time.</p> <p>However, a person is not allowed 2 deductions for 1 item of expenditure. This rule may apply to income derived before the LTC becomes an LTC.</p> <p>[s. HB 2]</p> <p>(d) Taxable LTC income can arise even if a person’s LTC attributed deductions exceed LTC attributed income, if the person’s “owners basis” in the LTC, at the end of the year, is less than attributed income from the LTC (refer to <b>(22)</b> on <b>page 24</b>) if:</p> <p>(i) The LTC is in a partnership that includes another LTC; or</p> <p>(ii) The LTC is a member of a joint venture, as described in s. HG 1, that includes another LTC.</p> <p>[s. HB 11 &amp; s. GB 50]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<b>(18) What are the tax rates that apply?</b>	<p>A company tax rate of 0.28 has applied from 1 April 2011 for income years from 2011-12 onwards.</p> <p>From the 2008-09 to 2010-11 income years, the tax rate was 0.30.</p> <p>Prior to that, for the 2007-08 income years and earlier it was 0.33.</p> <p>[Schedule 1, Clause 2]</p>	<p>An individual partner is taxed at the following rates:</p> <p>(a) <u>For a partner who is a natural person</u>: the rates are as set out in the LTC column on the right.</p> <p>(b) <u>For a partner who is a trustee</u>: the rate is 0.33.</p> <p>(c) <u>For a partner that is a company</u>: see the QCs column on the left for the company tax rates that have applied.</p>	<p>An individual LTC owner is taxed at the following rates:</p> <p>(a) <u>For an LTC owner who is a natural person</u>: the rates applying for the 2011-12 and later income years are:                      \$0 - \$14,000: 0.105                      \$14,001 - \$48,000: 0.175                      \$48,001 - \$70,000: 0.300                      \$70,001 upwards: 0.330</p> <p>[The rates applying for the 2010-11 year were:                      \$0 - \$14,000: 0.1150                      \$14,001 - \$48,000: 0.1925                      \$48,001 - \$70,000: 0.3150                      \$70,001 upwards: 0.3550]</p> <p>(b) <u>For an LTC owner who is a trustee</u>: the rate is 0.33.</p>
<b>(19) What is the tax treatment of dividends received from a NZ company?</b>	<p>Dividends derived by a QC are taxable unless the wholly-owned group exemption in s. CW 10 or the foreign dividend exemption in s. CW 9 apply.</p> <p>For a dividend that is derived from another company in the same wholly-owned group, the exemption in s. CW 10 will apply, except if:</p> <p>(a) The dividend is derived less than 7 years after the company ceases to be a QC; and</p> <p>(b) The QC paid a dividend that was exempt under s. HA 17 (i.e. a dividend that could not be fully imputed) while it was a QC.</p> <p>[s. CW 14 &amp; s. CW 10]</p>	<p>Dividends derived by a partnership from a NZ company, are derived by the partners in proportion to their <u>partnership interests</u>. (See <b>(13)</b> on page 17).</p> <p>[s. HG 2]</p> <p>An individual partner's share of the partnership's imputation credits is limited to the proportion of the partner's income to the total partnership income.</p> <p>[s. LE 6]</p>	<p>Dividends derived by an LTC, from a NZ company, are treated as being derived by the look-through owners, in proportion to their effective look-through interests. (See <b>(13)</b> on page 17).</p> <p>[s. HB 1]</p>

	<b>Qualifying Company (QC)</b>	<b>Partnership/Limited Partnership</b>	<b>Look-through Company (LTC)</b>
<b>(20) What is the tax treatment of foreign dividends received?</b>	<p>Foreign dividends received by a QC are exempt, except for:</p> <p>(a) Dividends from a non-attributing FIF interest of less than 10%.</p> <p>(b) Dividends paid on fixed-rate foreign equity.</p> <p>(c) Dividends paid on rights to a deductible foreign equity distribution (i.e. tax-deductible by the paying company, or paid from non-taxable income of the paying company arising from dividends that were tax-deductible to the original paying company).</p> <p>Dividends from a non-attributing FIF interest of 10% or more are prohibited from 1 July 2009 (see <b>(8)</b> on <b>page 12</b>).</p> <p>[s. CW 9]</p>	<p>Foreign dividends derived by a partnership, will be foreign dividend income from the partnership derived by the individual partners, based on their partnership interests.</p> <p>[s. HG 2]</p>	<p>Foreign dividends will be LTC foreign dividend income derived by the individual LTC owners, based on their effective look-through interests.</p> <p>[s. HB 1]</p>
<b>(21) What is the general rule applying to tax deductions?</b>	<p>The deduction rules applying to ordinary companies apply to QCs, with some modifications.</p> <p>[s. BC 3]</p>	<p>A partner is allowed a deduction for expenditure or loss to the extent to which the deduction results from the application of subpart HG to them and their partnership.</p> <p>[s. DV 20]</p>	<p>A person who has an effective look-through interest for an LTC has a deduction to the extent to which the deduction results from the application of subpart HB to them and the LTC.</p> <p>[s. DV 22]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p><b>(22) What are the restrictions on tax deductions attributed to an owner of an LTC in a partnership or to a partner in a limited partnership?</b></p>	<p>N/A</p>	<p>There is a limitation on deductions by a partner in a limited partnership who is:</p> <p>(a) A <u>limited partner</u> (other than an exiting partner – see <b>(39)</b> on <b>page 42</b>); or</p> <p>(b) A <u>general partner who was a limited partner within 60 days of year-end</u> and who will revert to being a limited partner within 60 days after year-end.</p> <p>The partner is denied a deduction for an income year to the extent to which their limited partner deduction is greater than the <u>partner’s basis</u> measured as:</p> <ol style="list-style-type: none"> <li>1) [Investments] - [Distributions] Plus</li> <li>2) [Income] - [Deductions] Less</li> <li>3) [Disallowed amounts]</li> </ol> <p><u>See the following pages for definitions of these components of a “partner’s basis”</u></p> <p><u>Note:</u> This deduction limitation does not deny an exiting partner a deduction that is equal to or less than the amount of net income that the exiting partner has for the amount paid or payable to the exiting partner for the disposal of their partner’s interests, ignoring other transactions.</p> <p>[s. HG 11(1) to (3) &amp; HG 11(10)]</p>	<p>With effect from the 2017-18 income year, there is <u>no limitation on deductions</u> from an LTC that can be deducted by an LTC owner unless:</p> <p>(a) The LTC is in a partnership with another LTC; or</p> <p>(b) The LTC is a member of a joint venture, as describe in s. HG 1, that includes another LTC.</p> <p>All previous deductions that were limited and carried forward may be deducted in the 2017-18 income year.</p> <p>There is a deduction limitation that continues to apply to owners of an LTC that is in a partnership or a joint venture with another LTC. The deductions from the LTC for a year, that can be deducted by an owner of such an LTC in that year cannot exceed the <u>owner’s basis</u> at the end of the year, measured as:</p> <ol style="list-style-type: none"> <li>1) [Investments] - [Distributions] Plus</li> <li>2) [Income] - [Deductions] Less</li> <li>3) [Disallowed amounts]</li> </ol> <p><u>See the following pages for definitions of these components of an “owner’s basis”</u></p> <p><u>Note:</u> This deduction limitation does not deny an exiting owner a deduction that is equal to or less than the amount of net income that the exiting owner has for the amount paid or payable to the exiting owner for the disposal of their owner’s interests, ignoring other transactions.</p> <p>[s. HB 11(1) to (3), s. HB 11(10), s. HB 12(2) &amp; s. HB 12(3)]</p>



	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p><b>(22) What are the restrictions on tax deductions attributed to an owner of an LTC in a partnership or to a partner in a limited partnership? (continued)</b></p>	<p>N/A</p> <p>Note: For the initial measurement of “investment” upon transition from a QC to either a partnership or an LTC, see <b>(x)</b> on page x.</p>	<p><u>Investments</u> are:</p> <p>(a) “Capital contributions” (including loans and current account credit balances) made by the limited partner valued at market value at the time the contribution is made or agreed to be made; plus</p> <p>(b) “Capital contributions” assigned to the limited partner valued at the amount paid by the limited partner for the assignment; plus</p> <p>(c) “Secured amounts”, meaning the lesser of:</p> <p>(i) The limited partnership’s debt for which the partner (including associates) is a guarantor, divided by the total number of guarantors for the secured debt; and</p> <p>(ii) The market value of recourse property (i.e. property the guarantee expressly provides the creditor has recourse to) that the partner (including associates) has an interest in, net of actual, future or contingent higher ranking calls, divided by the total number of guarantors with an interest in the recourse property.</p> <p>For the purposes of “secured amount”, <u>partner’s associate</u> is a non-partner who is:</p> <p>(a) A relative of the partner (Note: relative is defined the same way as for an LTC see <b>(2)</b> on page 6; or</p> <p>(b) A company in the same wholly owned group as the partner.</p> <p>[s. HG 11(5) and definitions of <i>secured amounts, guarantor</i> and <i>recourse property</i> in s. HG 11(12)]</p>	<p><u>Investments</u> are:</p> <p>(a) The market value of the person’s shares in the LTC at the time the person purchases or subscribes for them; <u>plus</u></p> <p>(b) Amounts that the LTC is debtor for in relation to the person, including a loan to the LTC and a credit balance in a current account; <u>plus</u></p> <p>(c) The secured amounts (if not already treated as an amount the LTC is debtor for by the person or another person), meaning the lesser of:</p> <p>(i) The LTC’s debt for which the owner (including associates) is a guarantor, divided by the total number of guarantors for the debt; and</p> <p>(ii) “The market value of recourse property (i.e. property the guarantee expressly provides the creditor has recourse to) that the owner (including associates) has an interest in, net of actual, future or contingent higher ranking calls, divided by the total number of guarantors with an interest in the recourse property.</p> <p>For the purposes of “secured amount” “owner’s associate”:</p> <p>(a) Includes a trustee that is associated with the owner; but</p> <p>(b) Excludes a trustee of a trust under which a relative is eligible to benefit.</p> <p>Note: for <u>transition investment</u> – see <b>(47)</b> on page 49)</p> <p>[s. HB 11(5) and definitions of <i>secured amounts, guarantor</i> and <i>recourse property</i> in s. HB 11(12)]</p>

	<b>Qualifying Company (QC)</b>	<b>Partnership/Limited Partnership</b>	<b>Look-through Company (LTC)</b>
<b>(22) What are the restrictions on tax deductions attributed to an owner of an LTC in a partnership or to a partner in a limited partnership? (continued)</b>	N/A	<p><u>Distributions</u> are:</p> <p>(a) The market value of distributions to the limited partner from the limited partnership; plus</p> <p>(b) The amounts paid to the partner for the assignment of capital contributions by them.</p> <p>[s. HG 11(6)]</p>	<p><u>Distributions</u> are:</p> <p>(a) The market value of LTC distributions to the owner; including</p> <p>(b) Loans to the owner from the LTC; and</p> <p>(c) Payments by the LTC to the owner, other than payments to a working owner. (A payment under section DC 3B to a working owner will not reduce the working owner's basis.)</p> <p>[s. HB 11(6)]</p>
<b>(22) What are the restrictions on tax deductions attributed to an owner of an LTC in a partnership or to a partner in a limited partnership? (continued)</b>	N/A	<p><u>Income</u> is:</p> <p>(a) Income from the partnership that the limited partner has in the current and has had in previous income years;</p> <p>(b) If the limited partner has a share of dividends from a FIF, the exemption for FIF dividends in s. CD 36(1) is ignored and the limited partner has income equal to:</p> <p>(i) The amount by which the partner's FIF dividends exceed FIF income; or</p> <p>(ii) The amount of the partner's FIF dividends in the case of a FIF loss.</p> <p>(c) Capital gain amounts the partner would have if the partner was treated as a company (excluding double-counting of gains already included in income).</p> <p>(d) Assessable income the partner has in previous income years from goods and services contributed to the limited partnership (if not already included in "Investments" or "Income").</p> <p>[s. HG 11(7), s. HG 11(7B) &amp; s. HG 11(7C)]</p>	<p><u>Income</u> is:</p> <p>(a) Income the owner has from the LTC in the current and previous income years;</p> <p>(b) If the owner has a share of dividends from a FIF, the exemption for FIF dividends in s. CD 36(1) is ignored and the limited partner has income equal to:</p> <p>(i) The amount by which the owner's FIF dividends exceed FIF income; or</p> <p>(ii) The amount of the owner's FIF dividends in the case of a FIF loss.</p> <p>(c) Capital gain amounts the owner would have if the owner was treated as a company (excluding double-counting of gains already included in income).</p> <p>(d) Assessable income the owner has in previous income years from goods and services contributed to the LTC (if not already included in "Investments" or "Income").</p> <p>[s. HB 11(7), s. HB 11(7B) &amp; s. HB 11(7C)]</p>

	<b>Qualifying Company (QC)</b>	<b>Partnership/Limited Partnership</b>	<b>Look-through Company (LTC)</b>
<b>(22) What are the restrictions on tax deductions attributed to an owner of an LTC in a partnership or to a partner in a limited partnership? (continued)</b>	N/A	<p><u>Deductions are:</u></p> <p>(a) Expenditure or loss attributed to the partner by the partnership in previous income years, excluding deductions previously denied.</p> <p>(b) Capital loss amounts the partner would have if the partner was treated as a company (excluding double-counting of losses already included in expenditure).</p> <p>(c) Deductions the partner is allowed in previous income years in relation to assessable income from goods and services contributed to the limited partnership (if not already included in “Distributions” or “Deductions”).</p> <p>[s. HG 11(8)]</p>	<p><u>Deductions are:</u></p> <p>(a) Expenditure or loss attributed to the owner by the LTC in previous income years, excluding deductions previously denied.</p> <p>(b) Capital loss amounts the owner would have if the owner was treated as a company (excluding double-counting of losses already included in expenditure).</p> <p>(c) Deductions the owner is allowed in previous income years in relation to assessable income from goods and services contributed to the LTC (if not included in “Distributions” or “Deductions”).</p> <p>[s. HB 11(8)]</p>
<b>(22) What are the restrictions on tax deductions attributed to an owner of an LTC in a partnership or to a partner in a limited partnership? (continued)</b>	N/A	<p><u>Disallowed amount is:</u></p> <p>Investments made within 60 days of year-end that are or will be distributed or reduced within 60 days after year-end.</p> <p>[s. HG 11(9)]</p>	<p><u>Disallowed amount is:</u></p> <p>Investments made within 60 days of year-end that are or will be distributed or reduced within 60 days after year-end, unless the total amount distributed or reduced within 60 days of year-end is \$10,000 or less.</p> <p>[s. HB 11(9)]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p><b>(23) What is the new rule for deducting the loss on a debt that is self-remitted by a shareholder in a QC, an LTC owner or a limited partner?</b></p>	<p>When a debt owed by a QC is forgiven by a creditor that is in the same wholly-owned group of companies as the QC, the debt is treated as having been paid by the QC and having been paid to the creditor company.</p> <p>When a debt owed by a QC is forgiven by a creditor that is not in the same wholly-owned group of companies as the QC, the creditor is deemed to have been repaid the amount forgiven and the QC is deemed to have paid the amount forgiven if the “proportional debt ratio” (the proportion of the forgiven debt owned by the creditor) is equal to the “proportional ownership ratio” (the creditor’s ownership or, as applicable, market value interests in the QC).</p> <p>[s. EW 46C]</p>	<p>When a partner is both a creditor (due to having advanced an amount to the partnership or limited partnership) and a debtor (because of the attribution of the partnership’s debt to the partner), and the partner wholly remits a debt, a new “self-remission” rule will allow the partner a tax deduction for the amount remitted so as to cancel out the income from debt remission attributed to the partner from the partnership or limited partnership.</p> <p>This is effected by: Excluding the self-remitted amount from being “consideration” received by the partner in the base price adjustment formula; When performing the base price adjustment, allowing a deduction for a loss for a fall in market value when the debt is disposed of upon dissolution of the partnership; and Allowing a deduction for the resulting negative base price adjustment in both cases.</p> <p>A separate, more general, rule applies to partial debt remittance under which a partner who is a creditor is deemed to have been repaid an amount forgiven and the partnership or limited partnership as debtor is deemed to have paid the amount forgiven if the “proportional debt ratio” (the proportion of the forgiven debt owned by the partner) is equal to the “proportional ownership ratio” (the partner’s interest in the partnership).</p> <p>[s. EW 31(11), DB 11(1B), EW 39(4), EW 46C, and “self-remission” as defined in s. YA 1]</p>	<p>When an LTC owner is both a creditor (due to having advanced an amount to the LTC) and a debtor (because of the attribution of the LTC’s debt to the owner), and the LTC owner wholly remits a debt, a new “self-remission” rule will allow the owner a tax deduction for the amount remitted so as to cancel out the income from debt remission attributed to the owner from the LTC.</p> <p>This is effected by: (a) Excluding the self-remitted amount from being “consideration” received by the owner in the base price adjustment formula; (b) When performing the base price adjustment, allowing a deduction for a loss for a fall in market value when the debt is disposed of upon cessation of the LTC; and (c) Allowing a deduction for the resulting negative base price adjustment in both cases.</p> <p>A separate, more general, rule applies to partial debt remittance under which an LTC owner who is a creditor is deemed to have been repaid an amount forgiven and the LTC as debtor is deemed to have paid the amount forgiven if the “proportional debt ratio” (the proportion of the forgiven debt owned by the LTC owner) is equal to the “proportional ownership ratio” (the LTC owner’s effective look-through interest in the LTC).</p> <p>[s. EW 31(11), DB 11(1B), EW 39(4), EW 46C, and “self-remission” as defined in s. YA 1]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<b>(24) What is the “retrospective amount” for debts forgiven by third parties and how is it taxed?</b>	<p>Forgiveness of debt by third parties is not “self-remission” and remains taxable under the financial arrangements rules.</p> <p>However, there is no rule that retrospectively applies to tax credit impairment income from financial arrangements disposed of previously by the QC, as the income would have been captured in prior years under the existing tax rules.</p>	<p>Forgiveness of debt by third parties is not “self-remission” and remains taxable under the financial arrangements rules.</p> <p>However, there is no rule that retrospectively applies to tax credit impairment income from financial arrangements disposed of previously by the partnership, as the income would have been captured in prior years under the existing tax rules.</p>	<p>Forgiveness of debt by third parties is not “self-remission” and remains taxable under the financial arrangements rules.</p> <p>A new rule introduced in 2017-18 that applies from the inception of LTCs on 1 April 2011 requires that upon disposal of an LTC, the market value of an owner’s interest in a financial arrangement as debtor must take into account the amount of any adjustment for credit impairment.</p> <p>The base price adjustment for disposal of the financial arrangement must take into account a reduced repayment if the LTC’s balance sheet shows the LTC is unable to repay the debt in full.</p> <p>The retrospective application of this rule means that all past LTC disposals involving financial arrangements must be reviewed using the revised base price adjustment calculation.</p> <p>The past year income calculation is: [retrospective amount] – [current amount] where: “Retrospective amount” is Income for all years before 2017-18 arising from credit impairment under the new base price adjustment calculation; and “Current amount” is income returned for years before 2017-18 in connection with disposals of the financial arrangements. The past year income must be returned in the 2017-18 income year.</p> <p>[s. HB 4(7) &amp; s. HZ 8]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p><b>(25) What are the restrictions on interest deductions by the company or partnership?</b></p>	<p>The interest deduction permitted for companies under s. DB 7, which supplements the general permission, does not apply to QCs.</p> <p>However:</p> <p>(a) A QC is allowed a deduction for interest incurred, under the general rule.</p> <p>[s. DA 1, s. DA 2 &amp; s. DB 6(1)]</p> <p>(b) This rule overrides the capital limitation, but the general permission, and the other general limitations apply.</p> <p>[s. DB 6(4)]</p> <p>(c) Interest paid by a QC on a stapled debt security is not treated as a dividend. Therefore, the deduction is determined under the above rules applying to interest deductions.</p> <p>[s. FA 2B(6)]</p>	<p>A partnership is allowed a deduction for interest incurred, under the general rule.</p> <p>This rule overrides the capital limitation, but the general permission, and the other general limitations apply.</p> <p>[s. DA 1, s. DA 2, s. DB 6(1) &amp; s. DB 6(4)]</p>	<p>The interest deduction permitted for companies under s. DB 7, which supplements the general permission, does not apply to LTCs due to the transparency rule. [s. HB 1]</p> <p>However:</p> <p>An LTC is allowed a deduction for interest incurred, under the general rule.</p> <p>This rule overrides the capital limitation, but the general permission, and the other general limitations apply.</p> <p>In <i>Questions We've Been Asked</i> QB 11/03 the Commissioner has stated that:</p> <ul style="list-style-type: none"> <li>• It is the use of borrowed funds by an LTC that is relevant to the issue of interest deductibility, not the use by the owner.</li> <li>• The LTC's use of the funds is attributed to the owner under s. HB 1(4)(d) in their capacity as LTC owner, which is a separate capacity from their capacity as an individual.</li> </ul> <p>In <i>QB 12/08 &amp; QB 12/09</i> the Commissioner has stated that interest payable by an LTC:</p> <ul style="list-style-type: none"> <li>• Will be deductible if the funds were borrowed to repay a shareholder's current account, replace past years' profits or contributed capital; but</li> <li>• Will not be deductible if the funds were borrowed to replace current year income or to make a payment to a shareholder out of an asset revaluation.</li> </ul> <p>[s. DA 1, s. DA 2, s. DB 6(1) &amp; s. DB 6(4)]</p> <p>[Refer also to the separate PDF attachment on LTC interest deductibility]</p>

	<b>Qualifying Company (QC)</b>	<b>Partnership/Limited Partnership</b>	<b>Look-through Company (LTC)</b>
<b>(26) What are the restrictions on a shareholder's or a partner's interest deductions relating to the investment in the company or partnership?</b>	<p>A shareholder in a QC is allowed a deduction for interest incurred on money borrowed to acquire the shares in the QC.</p> <p>This rule overrides the capital limitation, but the general permission, and the other general limitations apply.</p> <p>[s. DA 1, s. DA 2, s. DB 6(1) &amp; s. DB 6(4)]</p> <p>For the purpose of determining the deductibility of interest, exempt dividends are treated as if they were not exempt.</p> <p>[s. DB 9(2) – overrides the exempt income limitation]</p> <p>A deduction that a shareholder in a QC has for interest in an income year is reduced by the amount of non-cash dividends (other than taxable bonus issues) that either they, or an associated person, has derived from the QC in the year.</p> <p>For this purpose, if the dividend arises from company property that has been made available to the shareholder, the dividend is deemed to be derived at the end of the quarter in which the amount of the dividend is calculated under the dividend rules.</p> <p>[s. DB 9(1) &amp; (4) &amp; s. CD 39]</p>	<p>A partner in a partnership, including a limited partner in a limited partnership, is allowed a deduction for interest incurred on money borrowed to acquire the interest in the partnership.</p> <p>This rule overrides the capital limitation, but the general permission, and the other general limitations apply.</p> <p>[s. DA 1, s. DA 2, s. DB 6(1) &amp; s. DB 6(4)]</p> <p>For a limited partner, the interest deduction is not limited to the partner's basis, which applies to limit tax deductions attributed from the partnership.</p> <p>[s. HG 11]</p> <p>There is no reduction of interest deductions of an individual partner, who may or may not be a working partner, for any private use of partnership property by the partner:</p> <ul style="list-style-type: none"> <li>• However, the cost of making the property available will be non-deductible to the partnership.</li> <li>• The same applies to private use of partnership property by a working partner, as it is not subject to FBT (see <b>(32)</b> on <b>page 37</b>).</li> </ul> <p>[s. DA 1 &amp; s. DA 2]</p>	<p>An LTC owner is allowed a deduction for interest incurred on money borrowed to acquire the shares in the LTC.</p> <p>The use of borrowed funds by an LTC owner in their personal capacity is separate from the use of such funds in their capacity as owner of the LTC.</p> <p>This rule overrides the capital limitation, but the general permission, and the other general limitations apply.</p> <p>[s. DA 1, s. DA 2, s. DB 6(1), s. DB 6(4) &amp; s. HB 1(1)]</p> <p>Even where an LTC is in a partnership, an LTC owner's interest deduction is not limited to the owner's basis, which applies to limit tax deductions attributed from an LTC in a partnership.</p> <p>[s. HB 1(1) &amp; s. HB 11]</p> <p>There is no reduction of interest deductions for any private use of company property by an LTC owner.</p> <p>However, the cost of making the property available will be non-deductible to the LTC.</p> <p>The definitions of "employee" and "employer" in s. YA 1 mean that private use of company property by a working owner will not be subject to FBT (see <b>(32)</b> on <b>page 37</b>).</p> <p>[s. DA 1, s. DA 2 &amp; s. HB 1(1)]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<b>(27) Can a tax loss be grouped with another group company?</b>	<p>A QC with a net profit can only receive a loss offset from another group company if it's a QC.</p> <p>A QC with a net loss can make a loss offset to another group company and it doesn't have to be a QC (e.g. it can be a close company).</p> <p>[s. HA 22 &amp; s. IC 5]</p>	<p>A partnership cannot group losses with a company.</p>	<p>An LTC is not a taxable entity in its own right.</p> <p>A person with an effective look-through interest in more than one LTC can offset a net loss from one LTC against net income from another LTC, subject to the deduction restrictions if an LTC is in a partnership (see also <b>(22)</b> from <b>page 24</b> onwards).</p> <p>[s. HB 1]</p>



	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p><b>(28) What are the rules for carrying forward a tax loss?</b></p>	<p>There must be a minimum continuous shareholding (of voting and, if relevant market value, interests) of 49% in order to carry forward tax losses.</p> <p><b>Note:</b> This rule applies to existing LAQCs from the 2012 income year (for early balance date LAQCs from the 2013 income year). Pre-LAQC tax losses can be carried forward by existing LAQCs subject to these continuity requirements being met.</p> <p>[s. HA 5 &amp; s. HA 24(5) – (5C) before repeal]</p>	<p>A limited partner in a limited partnership can carry forward excess attributed partnership deductions that could not be deducted, because of an insufficient partner’s basis (“restricted deductions”).</p> <p>The partner can set off the restricted deductions against income from the partnership in later years, provided there is a sufficient partner’s basis to warrant the later deductions (see <b>(22)</b> from <b>page 24</b> onwards).</p> <p>If a partner ceases to be a partner in a limited partnership or the limited partnership ceases to exist, any remaining restricted deductions the partner has are extinguished.</p> <p>If a limited partner, subject to restricted deductions, becomes a general partner, the restrictions no longer apply.</p> <p>[s. HG 11 &amp; s. HG 12]</p>	<p>An LTC owner with restricted deductions carried forward to the 2017-18 income year can deduct them in the 2017-18 income year, providing the LTC is not in a partnership (see <b>(22)</b> from <b>page 24</b> onwards).</p> <p>An LTC owner of an LTC in a partnership may carry forward any restricted deductions from the LTC that could not be deducted, because of an insufficient owner’s basis (see <b>(22)</b> from <b>page 24</b> onwards).</p> <p>An LTC owner of an LTC in a partnership can set off the restricted deductions against income from the LTC in a later year only if:</p> <ul style="list-style-type: none"> <li>(a) LTC status is retained by the LTC; and</li> <li>(b) The LTC owner continues to have an effective look-through interest in the LTC; and</li> <li>(c) The LTC owner has a sufficient owner’s basis, in the later year, to use the restricted deductions (see <b>(22)</b> from <b>page 24</b> onwards).</li> </ul> <p>If LTC status is lost, any remaining restricted deductions (the “protected amount”) can be set off against dividends received from the ex-LTC.</p> <p>If the LTC ceases to exist, any remaining restricted deductions are extinguished.</p> <p>A loss balance is cancelled if it arose in relation to an income year when the company was not an LTC, or when a company that amalgamates with an LTC was not an LTC.</p> <p>[s. HB 3, s. HB 11 &amp; s. HB 12]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p><b>(29) Can payments to a working owner or partner be deducted?</b></p>	<p>A payment to a shareholder-employee of a QC is deductible whether or not PAYE tax is deducted.</p> <p>(a) Under the PAYE rules, effective from 30 March 2017, a shareholder-employee can elect that: All payments are not PAYE income payments and are not subject to PAYE tax deductions; or</p> <p>(b) Payments are a combination of PAYE income payments subject to PAYE tax deductions and non-PAYE income payments.</p> <p>However, once a choice is made, if it is changed, the shareholder-employee is locked out of making any subsequent changes for 3 income years.</p> <p><b>Note:</b> “Employment income” in s. YA 1 includes salary or wages or other income that is not subject to PAYE tax deductions. Therefore, employment income of a shareholder-employee remains treated as employment income for the purpose of the non-PAYE provisions including:</p> <ul style="list-style-type: none"> <li>• s. DA 2(4): employment income deduction limitation.</li> <li>• s. EA 4(3): extension of deferred employment income payment period for shareholder-employees.</li> <li>• s. EI 9: matching rule for employment income of shareholder-employees.</li> </ul> <p>The Commissioner has issued Standard Practice Statement SPS 18/01 on 8 February 2018 setting out the Commissioner’s approach to dealing with retrospective adjustments to salaries paid to shareholder-employees.</p> <p>[s. DA 2(4), EA 4(3), EI 9 &amp; s. RD 3B &amp; RD 3C]</p>	<p>A partner is allowed a deduction for their share of a payment to a partner who works in the partnership, under a contract for service.</p> <p><u>Exclusion:</u> This rule does not apply to a partnership engaged wholly or mainly in investing money, or in holding, or dealing in, shares, securities, investments or land.</p> <p><u>Amount of deduction:</u> The deduction is limited to the payment authorised by the contract of service and any additional bonus (whether or not authorised by the contract).</p> <p><u>Requirements:</u> the contract for service must:</p> <p>(a) Specify terms and conditions of service.                  (b) Specify the amount payable.                  (c) Be signed by all partners.                  (d) Be in writing.</p> <p><u>Payments deemed excessive:</u> The provisions of s. GB 23 apply in relation to a payments deemed excessive.</p> <p><u>PAYE tax deductions:</u> A payment to a working partner under s. DC 4 is included in their salary or wages, and PAYE tax deductions must be made.</p> <p>[s. DC 4, GB 23, RD 3(1)(a)(i) &amp; s. RD 5(3)]</p>	<p>An LTC owner is allowed a deduction for their share of a payment made under a contract of employment to a <u>working owner</u>.</p> <p>(a) A “working owner” is an owner who personally and actively performs duties relating to the LTC’s business, under a contract of employment, for the duration of the contract.</p> <p>(b) There can be no working owner in an LTC that is wholly or mainly engaged in investing money, or in holding, or dealing in, shares, securities, investments or land.</p> <p><u>Amount of deduction:</u> The deduction is limited to the payment authorised by the contract of employment, and any additional bonus (whether or not authorised).</p> <p><u>Requirements:</u> the contract of employment must:</p> <p>(a) Specify terms and conditions of service.                  (b) Specify the amount payable.                  (c) Be signed by all parties.                  (d) Be in writing.</p> <p><u>Payments deemed excessive:</u> The provisions of s. GB 23 apply in relation to a payments deemed excessive.</p> <p><u>PAYE tax deductions:</u> A payment to a working partner under s. DC 3B is included in their salary or wages, and PAYE tax deductions must be made.</p> <p>[. DC 3B, s. GB 23, s. RD 3(1)(a)(i), s. RD 5(3) &amp; s. YA1 definition of “working owner”]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p><b>(30) When does income have to be attributed to a working owner or partner?</b></p>	<p>Income must be attributed to a “working person” (WP) if:</p> <p>(a) The WP is associated with the QC (i.e. the WP and associates together hold at least 25% of the QC); and</p> <p>(b) At least 80% of the QC’s income from personal services for the year is from a single buyer (including persons associated with the buyer); and</p> <p>(c) At least 80% of the QC’s income from personal services comes from services personally performed by the WP; and</p> <p>(d) The WP’s net income and taxable value of fringe benefits &gt; \$70,000; and</p> <p>(e) The QC’s services business does not require use of depreciable property that:</p> <p>(i) Cost more than \$75,000 and private use is 20% or less; or</p> <p>(ii) Cost more than 25% of the QC’s income from services and private use is 20% or less.</p> <p><u>The WP is attributed with the least of:</u></p> <ul style="list-style-type: none"> <li>• QC’s net income from personal services;</li> <li>• QC’s net income;</li> <li>• QC’s net income reduced by any loss carried forward relating to personal services.</li> </ul> <p><u>QC’s net income calculation:</u></p> <ul style="list-style-type: none"> <li>• QC can deduct the WP’s employment income and taxable value of fringe benefits.</li> <li>• QCs can deduct a dividend to the WP in the year or 6 months after year-end.</li> </ul> <p>If there is more than 1 WP, attribution must reflect the value of services performed.</p> <p>[s. GB 27, s. GB 28, s. GB 29 &amp; s. YB 3]</p>	<p>The same attribution rules apply as for a QC, treating the partnership as if it were a taxable entity, and a working partner as the “working person”. (See the QCs column on the left.)</p> <p>Rule of association: A WP and a partnership are associated, if:</p> <p>(a) The WP is a partner; or</p> <p>(b) The WP is a limited partner who, together with associated persons, holds an interest of at least 25% in the partnership.</p> <p>The WP is attributed with the least of:</p> <ul style="list-style-type: none"> <li>• The partnership’s net income from personal services.</li> <li>• The partnership’s net income.</li> </ul> <p>The partnership can deduct:</p> <ul style="list-style-type: none"> <li>• Employment income paid to the WP.</li> <li>• The WP’s share of partnership profits.</li> <li>• Market value of administrative services.</li> </ul> <p>If there is more than 1 WP, attribution must reflect the value of services performed.</p> <p>[s. GB 27, s. GB 28, s. GB 29 &amp; s. YB 12]</p>	<p>The same attribution rules apply as for a QC, treating the LTC as if it were a taxable entity, and a working owner as the “working person”. (See the QCs column on the left.)</p> <p>Rule of association: A WP and an LTC are associated, if:</p> <p>(a) The WP is an owner of the LTC owner, and also either a director, or an employee of the LTC; or</p> <p>(b) The WP, and associated persons together have an effective look-through interest of at least 25% in the LTC.</p> <p>The WP is attributed with the least of:</p> <ul style="list-style-type: none"> <li>• The LTC’s net income from personal services.</li> <li>• The LTC’s net income.</li> </ul> <p>The LTC can deduct employment income paid to the WP; but</p> <p>Fringe benefits are not subject to FBT and will not be tax deductible (see <b>(32)</b> on <b>page 37</b> for more on this).</p> <p>If there is more than 1 WP, attribution must reflect the value of services performed.</p> <p>[s. GB 27, s. GB 28, s. GB 29 &amp; s. YB 13]</p>

	<b>Qualifying Company (QC)</b>	<b>Partnership/Limited Partnership</b>	<b>Look-through Company (LTC)</b>
<p><b>(31) What are the anti-avoidance rules that apply to payments to relatives of shareholders and partners, and to partnerships and LTC partnerships?</b></p>	<p>A QC will be treated as having paid a dividend to a service provider if the Commissioner considers that the remuneration for the services is excessive and the service provider is:</p> <ul style="list-style-type: none"> <li>(a) A shareholder or director of the company; or</li> <li>(b) A relative of a shareholder or director of the company; and</li> </ul> <p>This rule does not apply if:</p> <ul style="list-style-type: none"> <li>(a) The service provider is an adult employed substantially full-time in the business of the QC; and</li> <li>(b) The service provider participates in the management or administration of the QC; and</li> <li>(c) The amount provided to the service provider was not influenced by their relationship with a shareholder or director; and</li> <li>(d) The service provider is a New Zealand resident.</li> </ul> <p>If the amount is treated as a dividend paid by the QC, it is not covered by the rules requiring the mandatory attachment of imputation credits in s. HA 15, so does not have to be imputed; however, the dividend would be non-deductible to the QC.</p> <p>[s. GB 25 &amp; s. HA 15]</p>	<p>The Commissioner can ignore amounts paid to a relative of a partner and re-allocate profits or losses (and where a partner is a company, treat any re-allocation to the company as a dividend to the relative) if:</p> <ul style="list-style-type: none"> <li>(a) A partnership employs a relative of a partner, or a relative of a director or shareholder of a company that is a partner, and                             <ul style="list-style-type: none"> <li>(i) The Commissioner considers that the income payable to the relative is excessive; and</li> <li>(ii) The employment contract is not a genuine contract of employment as described in s. GB 24; or</li> </ul> </li> <li>(b) A partner (partner 1) has another partner (partner 2) who is: a relative, or a relative of a director or shareholder if partner 1 is a company, or a company in which a relative of partner 1 is a director or shareholder, and                             <ul style="list-style-type: none"> <li>(i) The Commissioner considers that partner 2's share of the partnership profit or loss is excessive; and</li> <li>(ii) The partnership is not "genuine" as described in s. GB 24.</li> </ul> </li> </ul> <p>If a partner enters into an arrangement involving a consideration that is not market value, and the arrangement has a purpose or effect of defeating the intent and application of the partnership rules, a market value amount can be substituted.</p> <p>[s. GB 23, s. GB 24 &amp; s. GB 50]</p>	<p>Anti-avoidance rules can apply to the remuneration, or profit share, of a relative, of a person with an effective look-through interest in an LTC, in the following circumstances:</p> <p>Where an LTC employs a relative of an LTC owner, or, where a company is an LTC owner, the LTC employs a relative of a director or shareholder of that company, and</p> <ul style="list-style-type: none"> <li>• The Commissioner considers that the income payable to the relative is excessive; and</li> <li>• The employment contract is not a genuine contract of employment as described in s. GB 24.</li> </ul> <p>The Commissioner may allocate the relative's income among the parties to the contract, as the Commissioner considers reasonable, without taking into account any amount paid to the relative.</p> <p>Where 2 or more LTC owners are relatives, one of whom is aged under 20, and the Commissioner considers that the LTC income of the under-20-year-old, is excessive, the Commissioner can adjust the effective look-through interest of an owner in the LTC without taking into account any amount paid to the under-20 year old.</p> <p>If an LTC that is in a partnership enters into an arrangement involving a consideration that is not market value, and the arrangement has a purpose or effect of defeating the intent and application of the partnership rules, a market value amount can be substituted.</p> <p>[s. GB 23, s. GB 24, s. GB 25B &amp; s. GB 50]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p><b>(32) How are payments in kind to owners or partners treated?</b></p>	<p>A benefit provided to an employee under the FBT rules is a fringe benefit.</p> <p>The provision of a benefit in kind to a shareholder–employee is treated as a fringe benefit, unless:</p> <ul style="list-style-type: none"> <li>(a) It is an unclassified benefit; and</li> <li>(b) It would be a dividend if paid to a shareholder; and</li> <li>(c) The company chooses to treat it as a dividend.</li> </ul> <p>If the QC chooses to treat an unclassified benefit as a dividend, the QC must give notice to the Commissioner of the election on or before the due date for filing the FBT return for the period in which the benefit is provided.</p> <p>A QC could choose to pay FBT on fringe benefits provided to a shareholder-employee on an income year basis, under the close company option. In that case, the FBT rate which applies from 1 April 2011, is:</p> <ul style="list-style-type: none"> <li>(a) 49.25% of the benefit’s taxable value; or</li> <li>(b) A rate based on the total pay of each employee under s. RD 50 and s. RD 53.</li> </ul> <p>[s. CX 2, s. CX 17, s. RD 50, s. RD 53 &amp; s. RD 60]</p>	<p>A provision of a benefit in kind to a working partner is not a fringe benefit:</p> <p>The working partner is excluded from being an “employee” for the purposes of the FBT rules.</p> <p>The cost of providing the benefit is a distribution to the working partner, to the extent of the private use element. The private use costs are non-deductible to the other partners.</p> <p>The anti-avoidance rule in section GB 32, that applies so as to treat a benefit that is provided to a person who is associated with an employee as a fringe benefit provided to the employee will not apply when:</p> <ul style="list-style-type: none"> <li>(a) The employer is a partnership or a limited partnership; and</li> <li>(b) The person associated with the employee is a partner in the partnership or limited partnership.</li> </ul> <p>[s. GB 32(2B), s. RD 5(3) and the definitions of “employee” and “employer” in s. YA 1]</p>	<p>An LTC is treated as a company for FBT purposes (i.e. the “look-through” transparency rule does not apply).</p> <p>An owner who is a “working owner” is included within the definition of “employee”.</p> <p>FBT will not apply to fringe benefits received by a “working owner”. An LTC will be excluded from being an employer of a “working owner” for FBT purposes.</p> <p>The cost of providing the benefit is a distribution of profit to the working owner, to the extent of the private use element. The private use costs are non-deductible to the other owners.</p> <p>The anti-avoidance rule in section GB 32, that applies so as to treat a benefit that is provided to a person who is associated with an employee as a fringe benefit provided to the employee will not apply when:</p> <ul style="list-style-type: none"> <li>(a) The employer is an LTC; and</li> <li>(b) The person associated with the employee is an owner of the LTC.</li> </ul> <p>[s. GB 32(2B) and the definition of “employee” and “employer” in s. YA 1]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p><b>(33) How are distributions and dividends paid treated for tax purposes?</b></p>	<p>A cash dividend is taxable income only to the extent that it is fully imputed.</p> <p>Attachment of imputation credits (ICs) is mandatory. As long as ICs are available to attach to dividends, the ICs must be attached to the maximum extent possible.</p> <p>ICs are not attached to dividends at the time they are paid. ICs are retrospectively attached to dividends at the end of the year based on the available balance of ICs in the QC's ICA.</p> <p>A dividend paid by a QC to a NZ resident is exempt income, to the extent it is not fully imputed.</p> <p>Exempt dividends received by a NZ resident trustee remain exempt when distributed as beneficiary income to a NZ resident beneficiary.</p> <p>No RWT deductions are required when dividends are paid. A dividend paid to a NZ resident is not resident passive income.</p> <p>When a non-cash dividend is paid to a <u>NZ resident</u> shareholder who is not an employee, or when an unclassified benefit is provided to a shareholder-employee and the QC chooses to treat it as a dividend:</p> <ul style="list-style-type: none"> <li>(a) It is exempt income; and</li> <li>(b) The cost is non-deductible; and</li> <li>(c) The shareholder can request that the dividend statement includes non-cash dividends.</li> </ul> <p>Interest paid by a QC on a stapled debt security: is not a dividend.</p> <p>[s. DA 1, s. CW 15, s. FA 2B(6), s. HA 14, s. HA 15, s. HA 16 &amp; s. HA 19(5)]</p>	<p>Distributions from, and payments by, a partnership to a partner are ignored for tax purposes, except for the purpose of calculating the "partner's basis" of a limited partner (see <b>(22)</b> from <b>page 24</b> onwards).</p> <p>An exception to this rule is a disposal payment to a partner by a partnership, if the net gain is \$50,000 or more, such that the formula in s. HG 5(1) is not less than zero: the disposal payment is not ignored for tax purposes. (See <b>(37)</b> on <b>page 41</b>)</p> <p>Private use of a partnership asset by a limited partner will reduce the limited partner's basis, and the partnership will be denied a deduction for any private use element. (See <b>(22)</b> from <b>page 24</b> onwards.)</p> <p>Rules apply to a distribution from a limited partnership:</p> <ul style="list-style-type: none"> <li>(a) A distribution from a limited partnership must be authorised in writing by the general partner.</li> <li>(b) A limited partnership cannot make a distribution unless it meets the solvency test: <ul style="list-style-type: none"> <li>(i) It must be able to pay its debts as they become due in the normal course of business; and</li> <li>(ii) The value of its assets must be greater than its liabilities, including contingent liabilities.</li> </ul> </li> </ul> <p>[s. DA 1, s. DA 2 s. HG 5(1) &amp; s. 38, s40, s. 41 &amp; s. 42 of the Limited Partnerships Act 2008]</p>	<p>Distributions from, and payments by, an LTC to an owner are ignored for tax purposes.</p> <p>If the LTC is in a partnership, distributions from and payments by the LTC to the owner are relevant for the purpose of calculating the "owner's basis". (see <b>(22)</b> from <b>page 24</b> onwards).</p> <p>If the LTC is in a partnership, distributions that reduce an owner's basis are:</p> <ul style="list-style-type: none"> <li>(a) All distributions to the owner from the LTC.</li> <li>(b) Loans from the LTC to the owner.</li> <li>(c) Other payments that are not payments to a working owner.</li> </ul> <p>A non-pro rata capital reduction should be regarded as a distribution under this definition.</p> <p>An LTC will be denied a deduction for any private use by an owner of its assets. If the LTC is in a partnership, private use of an LTC's assets by an owner will reduce the owner's basis (See <b>(22)</b> from <b>page 24</b> onwards.)</p> <p>The standard company law rules apply to distributions (dividends) from an LTC.</p> <p>[s. DA 1, s. DA 2 &amp; s. HB 11]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<b>(34) How are capital reductions or reductions in partners' contributions treated for tax purposes?</b>	The standard rules on capital reductions apply, modified by the treatment of QC dividends.	<p>A pro rata reduction in a partner's contribution has no tax consequences, except that it will reduce a limited partner's basis.</p> <p>The definition of "distribution" in section 38 of the Limited Partnerships Act 2008 ("LPA") would include the return of part or all of a partner's contribution.</p> <p>A non-pro rata reduction in a partner's capital contribution should be regarded as a disposal of some of the partner's interest in the partnership, but there is no specific tax deeming provision regarding this. If it is regarded as a disposal, the payment will be taxable under general rules if:</p> <p>(a) The net gain is \$50,000 or more (in which case the general safe harbour rule will not apply because the formula in s. HG 5(1) will not be less than zero); and</p> <p>(b) The disposal safe harbour rules do not apply. (See <b>(37)</b> on <b>page 41</b>.)</p> <p>A reduction in a partner's contribution may affect the partner's ability to claim interest deductions (if any) on money borrowed to invest in the partnership.</p> <p>[s. HG 5(1) s. HG 11 &amp; s. 38 LPA]</p>	<p>Anything received by an LTC owner from a capital reduction, is ignored for tax purposes. However:</p> <p>(a) A pro rata capital reduction would be treated as a distribution which, if the LTC is in a partnership, would affect the owners' basis of LTC owners.</p> <p>(b) In the case of a non-pro rata capital reduction or share buyback by an LTC, the LTC owner is treated as disposing of their owner's interests in the LTC, to the extent to which their capital is reduced, to a single third party, for a payment equal to the interests' market value, and the disposal payment will be taxable under general rules, if:</p> <p>(i) The proceeds exceed the tax book value by \$50,000 or more (in which case the general safe harbour rule will not apply, because the formula in s. HB 5(1) will not be less than zero); and</p> <p>(ii) The disposal safe harbour rules do not apply (See <b>(37)</b> on <b>page 41</b>.)</p> <p>[s. HB 4, s. HB 5, s. HB 11]</p>

	<b>Qualifying Company (QC)</b>	<b>Partnership/Limited Partnership</b>	<b>Look-through Company (LTC)</b>
<b>(35) Is there a requirement to maintain an ICA?</b>	<p>A QC is required to maintain an ICA and complete company and shareholder dividend statements.</p> <p>If a QC is part of an imputation group, all companies in the imputation group must be QCs.</p> <p>Tax refunds due to a QC are not limited by the credit balance in the QC's ICA.</p> <p>There are no imputation consequences of any attribution of income under s. GB 29.</p> <p>[s. HA 19, s. FN 4(3), s. RM 32 &amp; s. OB 16]</p>	A partnership cannot maintain an ICA.	An LTC is not taxed as an entity, and cannot maintain an ICA.
<b>(36) Are there shareholder continuity requirements to carry forward ICs?</b>	<p>There are no shareholder continuity requirements in order for a QC to carry forward ICs.</p> <p>[s. OA 8(3B)]</p>	N/A	N/A



	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p><b>(37) What are the usual tax consequences if QC or LTC status ends or a partnership is dissolved?</b></p>	<p>QC status ends from the beginning of a year in which a QC no longer meets the requirements to be a QC.</p> <p>The dividend rules in s. HA15 apply up to the day before the status ends.</p> <p>After all dividends paid up to the date QC status ends in the year QC ends have been fully imputed, the shareholding continuity rules for carrying forward imputation credits apply from the date QC status ends as if the rules had always applied. This means that all remaining credits (if any) must be reduced by corresponding debits to the extent that shareholding continuity has not been maintained from the time they arose.</p> <p>Unimputed dividends cease to be exempt, and become resident passive income, from the day that QC status ends.</p> <p>[s. HA 11, s. HA 18]</p>	<p>If a partnership is finally dissolved:</p> <p>(a) Each partner is treated as having disposed of all of their partner’s interests to a single third person for a payment equal to the interests’ market value.</p> <p>(b) The deemed disposal payment will be taxable under general rules if:</p> <p>(i) The net gain is \$50,000 or more (in which case the general safe harbour rule will not apply, because the formula in s. HG 5(1) will not be less than zero); and</p> <p>(ii) The specific disposal safe harbour rules do not apply. (See <b>(40)</b> on page 43.)</p> <p>(c) Anything actually received by a partner in relation to the dissolution of the partnership is ignored.</p> <p>(d) A person that is a party to a financial arrangement in their capacity as owner and also a party in a private capacity must calculate a bas price adjustment.</p> <p>[s. HG 4, s. HG 5 &amp; s. EW 29(14)]</p>	<p>When an LTC ceases to exist:</p> <p>(a) Anything received by an owner is ignored; and</p> <p>(b) There is a deemed disposal of an owner’s interest at market value.</p> <p>If the LTC ceases to be an LTC:</p> <p>(a) There is a deemed disposal at market value of all owners’ interests to a third person and a deemed reacquisition at market value by the ex-LTC.</p> <p>(b) The disposal payment rules will apply: See <b>(40)</b> on page 43.</p> <p>(c) If land is held which the ex-LTC later sells: The ex-LTC and the owners are deemed to be associated when applying the tax rules for sales of land in sections CB 6 to CB 15.</p> <p>Dividends paid after an LTC ceases to be an LTC are excluded income to the extent that they are paid out of revenue reserves (i.e. amounts that would be dividends upon a notional liquidation) existing at the time the company ceased to be an LTC.</p> <p>For this purpose, the ex-LTC’s available subscribed capital (ASC) is adjusted for capital returns while it was an LTC.</p> <p>A person that is a party to a financial arrangement in their capacity as owner and also a party in a private capacity must calculate a bas price adjustment.</p> <p>[s. HB 4, s. CX 63, s. CD 43(1) &amp; s. EW 29(14)]</p>

	<b>Qualifying Company (QC)</b>	<b>Partnership/Limited Partnership</b>	<b>Look-through Company (LTC)</b>
<b>(38) What are the transitional rules that apply under certain circumstances?</b>	<p>If the transition concessions for conversion into an LTC in 2012 or 2013 applied (see <b>(47)</b> on <b>page 49</b>), the last day before QC status ends will be the last day of the year preceding the transitional year.</p> <p>[s. HA 33B]</p>	<p>Not applicable</p>	<p>A special transitional rule in s. HZ 4E applies when an entity that is a LTC at the end of the 2016–17 income year ceases to be an LTC because of an amendment to LTC-related provisions that came into effect on 1 April 2017 (see <b>(1)</b> on <b>page 5</b>).</p> <p>Under this transitional rule:</p> <p>(a) The market value exit adjustment in s. HB 4(6) will not apply; and</p> <p>(b) The company is treated as having the same tax position post-LTC as it had as an LTC.</p> <p>Inland Revenue has stated that this means that any assets of the LTC are transferred at book value, and the company is treated as having acquired them on the same date as the LTC and with the same intention.</p> <p>[s. HZ 4E]</p>
<b>(39) Is an exit payment taxable to an exiting partner or owner?</b>	<p>Not applicable</p>	<p>A payment to a partner, for a disposal of the partner’s interest, may be taxable on general principles, subject to the application of the safe harbour limits. (See <b>(41)</b> on <b>page 44</b>.)</p> <p>If a partner derives income from a disposal payment: the loss limitation rule does not apply, and deductions are not limited to the partner’s basis, to the extent they do not exceed the net income from the disposal payment.</p> <p>[s. HG 5 &amp; s. HG 11]</p>	<p>A sale of shares by an LTC owner, will be a disposal of the owner’s interest, and may be taxable on general principles, subject to the application of the safe harbour limits. (See <b>(41)</b> on <b>page 44</b>)</p> <p>For an LTC that is in a partnership, to which the loss limitation rules would otherwise apply, if an LTC owner derives income from a disposal payment, the loss limitation rules will not apply to the extent that deductions claimed do not exceed the net income from the disposal payment.</p> <p>[s. HB 5 &amp; s. HB 11]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p><b>(40) What are the safe harbour disposal rules applying to a partner or owner?</b></p>	<p>Not applicable</p>	<p>When an exiting partner disposes of their partner’s interest in a partnership to an entering partner, and the disposal payment is within the specified disposal safe harbour limits (see <b>(41)</b> on <b>page 44</b>):</p> <ul style="list-style-type: none"> <li>(a) The disposal payment is excluded income of the exiting partner.</li> <li>(b) The entering partner is denied a deduction for the disposal payment.</li> <li>(c) The entering partner is treated as always having owned the acquired partnership interest, for the purpose of the entering partner’s tax returns filed in relation to the period from acquisition onwards.</li> <li>(d) The exiting partner is denied deductions allowed to the entering partner as a result of applying this rule (i.e. there can be no doubling up of deductions).</li> </ul> <p>If the safe harbour limits do not apply, the entire disposal payment could be subject to tax.</p> <p>A small partnership - i.e. not a limited partnership and five or fewer partners – can elect not to use the safe harbours if, all the exiting and entering partners and the partnership, file returns of income ignoring the safe harbour limits.</p> <p>For disposals of specified livestock, a special rule applies: in circumstances described in s. HG 10 if the entering partner and the partnership so choose, the cost base can be determined under s. EC 26B.</p> <p>[s. HG 3, s. HG 5 &amp; s. HG 10]</p>	<p>When an exiting LTC owner disposes of their LTC owner’s interest in an LTC to an entering owner, and the disposal payment is within the specified disposal safe harbour limits (see <b>(41)</b> on <b>page 44</b>):</p> <ul style="list-style-type: none"> <li>(a) The disposal payment is excluded income of the exiting owner.</li> <li>(b) The entering owner is denied a deduction for the disposal payment.</li> <li>(c) The entering owner is treated as always having owned the interests for the purpose of the entering owner’s tax returns covering the period from acquisition onwards.</li> <li>(d) The exiting owner is denied deductions allowed to the entering owner as a result of applying this rule.</li> </ul> <p>If the safe harbour limits do not apply, the entire disposal payment could be subject to tax.</p> <p>For disposals of specified livestock, a special rule applies, in circumstances described in s. HB 10, to disposals of specified livestock: if the entering owner so chooses, the cost base can be determined under the partnership rules as if the entering owner is a new partner.</p> <p>[s. HB 5 &amp; s. HB 10]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p><b>(41) What are the safe harbour disposal limits applying to a partner or owner?</b></p>	<p>Not applicable</p>	<p>The general disposal safe harbour limit is that the amount, by which the disposal payment exceeds the net tax book value (i.e. gross tax book value <i>less</i> liabilities) of the transferred interests, must be less than \$50,000.</p> <p>For this purpose:</p> <p>(a) Gross tax book value is calculated as: revenue account property, depreciable property and financial arrangements at their tax values, and other assets at market values.</p> <p>(b) Liabilities are measured under GAAP.</p> <p>In addition to the general exclusion above, amounts received by an exiting partner will be excluded income of the exiting partner in the following circumstances:</p> <p>(a) An amount received for the disposal of trading stock (excluding livestock) if the partnership's turnover in the year of disposal is not more than \$3 million.</p> <p>(b) An amount received for the disposal of depreciable property (other than depreciable intangible property), which cost no more than \$200,000.</p> <p>(c) An amount received for the disposal of financial arrangements (including interest-free NZ\$ loans), which are necessary for the partnership's business, provided the partnership does not derive income from a business of holding financial arrangements.</p> <p>(d) An amount received for the disposal of a short-term agreement for sale and purchase.</p> <p>[s. HG 5, s. HG 6, s. HG 7, s. HG 8 &amp; s. HG 9]</p>	<p>The general disposal safe harbour limit is that the amount, by which the disposal payment exceeds the net tax book value (i.e. gross tax book value <i>less</i> liabilities) of the transferred interest, must be less than \$50,000.</p> <p>For this purpose:</p> <p>(a) Gross tax book value is calculated as: revenue account property, depreciable property and financial arrangements at their tax values, and other assets at market values.</p> <p>(b) Liabilities are measured under GAAP.</p> <p>In addition to the general exclusion above, amounts received by an exiting partner will be excluded income of the exiting partner in the following circumstances:</p> <p>(a) An amount received for the disposal of trading stock (excluding livestock) if the LTC's turnover in the year of disposal is not more than \$3 million.</p> <p>(b) An amount received for the disposal of depreciable property (other than depreciable intangible property), which cost no more than \$200,000.</p> <p>(c) An amount received for the disposal of financial arrangements (including interest-free NZ\$ loans), which are necessary for the LTC's business, provided the LTC does not derive income from a business of holding financial arrangements.</p> <p>(d) An amount received for the disposal of a short-term agreement for sale and purchase.</p> <p>[s. HB 5, HB 6, HB 7, HB 8 &amp; s. HB 9]</p>

	<b>Qualifying Company (QC)</b>	<b>Partnership/Limited Partnership</b>	<b>Look-through Company (LTC)</b>
<b>(42) What are the tax return filing obligations?</b>	A QC has the same return filing obligations as an ordinary company.	A limited partnership or a partnership that carries on business in NZ (ignoring the transparency rules) must file a joint return of income showing the partnership's total income, and each partner's share of the income and deductions.  [See <b>(15)</b> on <b>page 19</b> ]	An LTC must file a return showing: (a) The income of the LTC; (b) The income for each owner; and (c) The deductions for each owner.  Each owner must file a separate return that includes the income and deductions from the LTC.  [See <b>(15)</b> on <b>page 19</b> ]
<b>(43) Are there any agency rules that apply to tax liabilities?</b>	Not applicable	A partner, or in the case of a limited partnership a general partner, in a partnership that carries on business in NZ, is treated as the agent of an absentee partner or limited partner, in relation to the absentee's share of partnership income.  [s. HD 20B]	There are no specific agency provisions that apply in relation to an LTC and an owner.

	<b>Qualifying Company (QC)</b>	<b>Partnership/Limited Partnership</b>	<b>Look-through Company (LTC)</b>
<b>(44) Are there any special rules that apply to tax disputes?</b>	A QC has the same rights and obligations as an ordinary company in relation to tax disputes.	Each partner is treated as an individual taxpayer and the tax disputes rules apply accordingly.	<p>The LTC is treated as if it is an entity that is assessed for tax, based on its tax return.</p> <p>Only an LTC may propose adjustments in a NOPA and complete the disputes process in relation to a tax position taken in an LTC return.</p> <p>The Commissioner can correct a tax position taken by an LTC owner without issuing a NOPA once the disputes process with the LTC has been completed.</p> <p>A taxpayer may respond to a NOPA issued directly to the taxpayer by the Commissioner.</p> <p>An owner can challenge an assessment relating to LTC income once the disputes process has been completed with the LTC.</p> <p>[s. 89C(ka), s. 89D(1), s. 89DA(1)(a) &amp; (b), s. 89DA(4) &amp; s. 138B Tax Administration Act 1994]</p>

	<b>Qualifying Company (QC)</b>	<b>Partnership/Limited Partnership</b>	<b>Look-through Company (LTC)</b>
<b>(45) Are there any special rules that apply to tax penalties?</b>	<p>A QC is subject to tax penalties and interest in the same way as an ordinary company.</p> <p>The shareholders in a QC are not liable for use-of-money interest or penalties, but an officer in a QC can be penalized in some circumstances.</p> <p>[s. 141F, s. 147 &amp; s. 148: Tax Administration Act 1994]</p>	<p>All partners are liable individually, and collectively, for a shortfall penalty imposed in respect of a tax position taken by a partnership; the penalty is imposed on each partner in proportion to the partner’s interest.</p> <p>For the purpose of applying a shortfall penalty for an unacceptable tax position, a partnership tax return is treated as if it is a return by each partner.</p> <p>The tax rate that is used for this purpose is the company tax rate applying at the time.</p> <p>[s. 94B(2), s. 94B(3), s. 141B(8)(a)(i) &amp; s. 141B(8)(b): Tax Administration Act 1994]</p>	<p>LTC owners are not specifically mentioned, but they could be a “group of persons” for the purposes of s. 94B of the Tax Administration Act 1994, in which case, a shortfall penalty would be imposed on each owner in proportion to their look-through interests.</p> <p>When applying the unacceptable tax position shortfall penalty, an LTC’s tax return is treated as if it is a return by each owner.</p> <p>The tax rate that is used for this purpose is the company tax rate applying at the time.</p> <p>[s. 94B(2), s. 94B(3), s. 141B(8)(a)(ib) &amp; s. 141B(8)(b): Tax Administration Act 1994]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p><b>(46) Are there any other specific rules that apply?</b></p>	<p>If the attribution rule in s. GB 27 applies, a QC is able to transfer overpaid provisional tax to the working person if the requirements of s. RC 34 are met.</p> <p>[s. RC 34]</p>	<p>Other specific rules that apply to a partnership:</p> <p>Income sourced from NZ: Income from a <i>NZ partnership</i> is deemed to have a source in NZ if, treating all of the partners as resident in NZ, the income would have a source in NZ under any of the source rules in s. YD 4.</p> <p>A <i>NZ partnership</i> means a partnership that:</p> <ul style="list-style-type: none"> <li>(a) Is a limited partnership registered under the Limited Partnerships Act 2008; or</li> <li>(b) Has 50% or more of its partners' interest in capital, by value, held by NZ residents; or</li> <li>(c) Has its centre of management in NZ ignoring s. HG 2.</li> </ul> <p>Excepted financial arrangement: An interest in a partnership is an excepted financial arrangement.</p> <p>FIF income interests: Individual partners are treated as holding FIF income interests held by the partnership.</p> <p>Company for GST: A limited partnership is treated as a company for GST purposes.</p> <p>[s. EW 5(11), s. EX 30(8), s. YD 4(17B), and s. YA 1 definition of "New Zealand partnership" in the Income Tax Act 2007, and the s. 2 definition of a company in the GST Act]</p>	<p>There are some other specific provisions applying to LTC's:</p> <p>Excepted financial arrangement: A look-through interest is an excepted financial arrangement.</p> <p>Property for subpart FC purposes: A look-through interest is property for the purposes of subpart FC (which deals with transfers to charity, gifts etc).</p> <p>Relationship property transfer: When a look-through interest is transferred as part of a relationship property settlement, the transferee is treated as always having had the interest.</p> <p>Separate interest in livestock: A person's interest in livestock via a look-through company is treated separately from any other interest in livestock the person has.</p> <p>[s. EC 12(5), s. EW 5(11B), s. FB 10B &amp; s. FC 1(2)]</p>



	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p><b>(47) What are the election rules for a concessional transition from existing QCs?</b></p>	<p>If the transition concessions applied, there was no tax cost when a QC or LAQC becomes a partnership, LTC or sole trader.</p> <p>The concessions applied to the 1<sup>st</sup> or 2<sup>nd</sup> income years beginning on or after 1 April 2011,</p> <p>The transition election had to be filed within 6 months of the start of the chosen transition year.</p> <p>Under the Canterbury earthquake relief measures, there was an extension of time granted for a period of 6 months (up to 31 March 2012) from the date by which the election or notification had to be made under sections HB 13(3)(c), HZ 4B or HZ 4D for QCs where any person was unable to comply with the time limits for any of the following:</p> <ul style="list-style-type: none"> <li>• Electing to transition into the LTC rules.</li> <li>• Notifying IR about transitioning into a partnership or sole tradership.</li> </ul> <p>The reasons for the inability to comply with the time limit as a result of the Canterbury earthquake had to be provided in writing when the election or notification was submitted. IR could also request additional information.</p> <p><a href="http://www.ird.govt.nz/earthquake/cq-grants-subsidies/#11">http://www.ird.govt.nz/earthquake/cq-grants-subsidies/#11</a></p> <p>[s. CB 32C(2), s. HB 13(3)(c), s. HZ 4B &amp; s. HZ 4D]</p>	<p>If a QC transitioned to a partnership, under the QCP transitional process, there was no transition income. The process was as follows:</p> <p>(a) A QC had to elect to become a partnership, or a limited partnership, in the 1<sup>st</sup> or 2<sup>nd</sup> income year beginning on or after 1 April 2011.</p> <p>(b) The election had to be filed within 6 months of the start of the chosen transition year. (But see the extension of time under the Canterbury earthquake relief measures in the QC column).</p> <p>(c) All the QCs shareholders (excluding anyone who died in the transitional year) had to continue as partners, and a company could be added as a general partner of a limited partnership.</p> <p>(d) All assets, liabilities, rights and obligations of the QC were moved to the partnership, excluding those that were inappropriate for a partnership.</p> <p>(e) Each partner had to have the same net position as would have arisen if the QC had been wound up just before the transitional year began.</p> <p>For a limited partnership, the partners could calculate the partners basis for allowed deductions, (see <b>(22)</b> from <b>page 24</b> onwards), for the transitional and later income years:</p> <p>(a) As the market value or accounting book value of the QC shares at year-end before transitioning; or</p> <p>(b) As if the QC had always been a limited partnership.</p> <p>[s. HZ 4B]</p>	<p>If a QC transitioned to an LTC under the concessional transition rules, there was no transition income if the following requirements were met:</p> <p>(a) A QC had to elect to become an LTC in the 1<sup>st</sup> or 2<sup>nd</sup> income year beginning on or after 1 April 2011.</p> <p>(b) The election had to be filed within 6 months of the start of the chosen transition year.</p> <p>(c) The Commissioner has the discretion, on a case-by-case basis, to accept late LTC elections where exceptional causes are the sole cause of the lateness. (See also the earthquake relief extension of time measures in the QC column on the left).</p> <p>(d) Any elections and valuation methods previously adopted by a transitioning QC carried over to the LTC.</p> <p>An LTC owner can calculate the owners basis for allowed deductions (see <b>(22)</b> from <b>page 24</b> onwards), for the transitional and later income years:</p> <p>(a) As the market value or accounting book value of the QC shares at year-end before transitioning; or</p> <p>(b) As if the QC had always been an LTC.</p> <p>[s. CB 32C(2), HB 13(3)(c), s. HB 13(5) &amp; s. HZ 4C]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p><b>(48) What happens if a QC has tax losses at the time of transitioning into an LTC, partnership or sole tradership?</b></p>	<p>Under the transition concessions, a QC ceased to exist, for tax purposes, from the beginning of the transitional year.</p> <p>[s. HA 33B]</p>	<p>When a QC became a partnership under the QCP transitional process (see <b>(47)</b> on <b>page 49</b>):</p> <p>(a) There was no transitional income.</p> <p>(b) The partnership was treated as existing, in place of the QC, from the beginning of the transitional year.</p> <p>(c) The QC loss balance at the end of the year preceding the transitional year was extinguished.</p> <p>(d) Each partner was allowed a deduction for their share of the loss, every year, to the extent of their net income from the partnership for that year, until the loss is exhausted.</p> <p>CFC and FIF losses are ring fenced for the purposes of applying this rule.</p> <p>(e) The deduction of losses carried forward from a QC is not limited to the partner's basis: a partner's share of a carried forward QC loss could be set off, against the partner's net income from the partnership for year, even if that net income arose because some partnership deductions could not be used and had to be carried forward due to an insufficient partner's basis at the end of that year.</p> <p>[s. DV 21 7 s. HZ 4B]</p>	<p>When a QC became an LTC under the transition concession (see <b>(47)</b> on <b>page 49</b>):</p> <p>(a) There was no transitional income if the transition took place in one of the two transitional years.</p> <p>(b) All QC elections under s. HA 5 were revoked with effect from the beginning of the transitional year in which the QC became an LTC.</p> <p>(c) If a loss was carried forward from a QC, each person with an effective look-through interest is allowed a deduction for their share of the loss, to the extent of their LTC net income for each year, until the loss is exhausted.</p> <p>CFC and FIF losses are ring fenced for the purposes of applying this rule.</p> <p>(d) The deduction of losses carried forward, from a QC is not limited to the owner's basis: an owner's share of a carried forward QC loss can be set off against the owner's LTC net income for a year, even if that net income has arisen due to some LTC deductions having to be carried forward due to an insufficient owner's basis at the end of that year.</p> <p>(e) A QC's loss balance before becoming an LTC is extinguished.</p> <p>(f) Similarly, a non-QC's loss balance that arose before becoming an LTC is cancelled.</p> <p>[s. CB 32C(2), s. DV 23, s. HA 5 &amp; s. HA 33B, s. HB 3]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p><b>(49) What are the transition rules that apply to special partnerships?</b></p>	<p>Not applicable</p>	<p>When a special partnership which existed on 1 April 2008 became a limited partnership:</p> <ul style="list-style-type: none"> <li>(a) The partners simply continue as the same partners of the limited partnership.</li> <li>(b) When calculating the partner’s basis for allowed deductions, the partners can:                             <ul style="list-style-type: none"> <li>(i) Value the initial investment, either at market value, or at accounting book value, when the calculation first has to be done; or</li> <li>(ii) Calculate the partner’s basis as if the special partnership had always been a limited partnership.</li> </ul> </li> </ul> <p>When subpart HG applies to a partner in an Overseas Limited Partnership which existed before 1 April 2008:</p> <ul style="list-style-type: none"> <li>(a) When initially calculating the partners basis, the partner can:                             <ul style="list-style-type: none"> <li>(i) Value the initial investment, either at market value, or at accounting book value, when the calculation first has to be done; or</li> <li>(ii) Calculate the partner’s basis as if the Overseas Limited Partnership had always been a limited partnership subject to subpart HG.</li> </ul> </li> <li>(b) The initial partner’s basis cannot be less than zero.</li> </ul> <p><b>[s. HZ 3 &amp; s. HZ 4]</b></p>	<p>Not applicable</p>