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## Tax man says 'howdy partner'

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The limited liability partnership is a new form of business structure that offers tax efficiencies and is expected to make overseas investment in New Zealand more appealing.

The Limited Partnerships Act, which allows limited liability partnerships in New Zealand, came into force on April 1. The limited liability partnership is a model that is already well established overseas. It is believed the absence of a workable structure here was con-straining investment.

"This is after years of petitioning by the New Zealand Venture Capital Association," says a Kensington Swan tax partner, Peter Speakman. "The limited liability partnership is considered an

appropriate vehicle to encourage foreign investment into New Zealand. It delivers a structure for investment that would be the same as a typical overseas investor would have at home."

A limited liability partnership offers limited liability in the same way as a limited liability company, and also enables tax results to be treated in the same way as an ordinary partnership.

There is no tax on distributions, creating a more "tax-efficient" vehicle for investment, says Speakman.

In the case of the typical company structure, by contrast, there is limited liability for shareholders, but there's a two-stage tax regime, with the company taxed on earnings and then shareholders taxed separately for earnings that are distributed but able to claim credits.

The existing partnership structure offers better "flow-through", with the

individual treated as one person, who is both a partner and a shareholder receiving distributions, but not limited liability. The new structure promises to deliver the best of both worlds, in a tax and legal sense.

New Zealand already had a possible structure that is "technically equivalent to a limited liability partnership" in the form of the special partnership regime, but that has not proved popular with overseas investors, says Speakman. It appears it was too different from overseas structures in both name and actual detail. Special partnerships are to be phased out, with no ability to renew a special partnership or start up a new one after April 1, 2009.



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To register a limited liability partnership, a detailed statement signed by all the partners needs to be filed with the registrar of limited partnerships who then issues a certificate of registration.

A limited partner is able to participate in the management of the limited partnership without losing limited liability status within certain parameters known as "safe harbour" activities, Speakman explains.

"These include giving advice to the limited partnership, being an employee of the partnership, giving a guarantee in respect of a partnership or general partner's debt, and limited participation in general meetings of the partners."

The legislation also includes a loss limitation rule which limits an investor's deduction to the amount of his/her actual economic contribution, to "prevent geared investments on a non or limited recourse basis," says Speakman.

## Tax man's 'howdy'

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"For example, as has been common in some industries, notably films, investors have funded the production costs to say 20% on the basis that a bank (or film distributor in the case of a film) funds the rest and agrees to be repaid solely out of the success of the product (that is, from theatre sales in the case of film).

"The investor ends up with a deduction for 100% of the costs despite only paying for 20% of them."

"The IRD has seized on these arrangements."

Limited liability partnerships are best suited to smaller businesses, those with up to 20 or 30 shareholders, Speakman says.

"Businesses with a greater spread of shareholders usually demand more substantive rules around the contract between the company and its shareholders.

"That is delivered by our companies legislation, which has been developed over the past century or more."