

As of 6 April 2014 partners who are not (in HMRCs view) "real" partners should now be on the payroll (and subject to RTI) and chargeable to income tax and NICs as if they are employees.

To recap, the new rules state that a member of a UK LLP (the rules do not apply to ordinary partnerships under the 1890 act nor to a limited partnership under the 1907 act) will now be taxed as an employee if (broadly):

- a. 80% of his salary is considered to be "disguised salary" which means it is either fixed, or it is variable but it is varied without reference to the profits of the LLP or it is not affected by the profits of the LLP; and
- b. he does not have significant influence over the affairs of the LLP, and
- c. his capital contribution to the LLP is less than 25% of his "disguised salary" for that year (special rules apply to determine this). It is possible that a member can provide an undertaking (within 3 months) to make such a contribution and this condition can then be re-assessed.

If all 3 conditions are met and therefore the individual has no real personal risk/exposure/ ability to influence then he will be treated as a Salaried Member and taxed as an ordinary employee (including in relation to his benefits and other taxable expenses). Of course he will only be taxed as an employee, he will not suddenly have conferred upon him all the employment rights that go with being an employee: The approach of HMRC causes an increasing divergence about.

If you consider that the member does not fall foul of the new rules, perhaps it is because (s)he meets ONE of:

1. He really does have a variable profit share with reference to the profits of the entire firm (not by reference to his individual appraisal/performance) and doing the maths, the amount of his variable, compared to any fixed, profit share is sufficient.
2. When examining the role of the individual, he really does have a significant influence over the entire business, he does not just approve accounts and have a vote in relation to management.
3. When looking at the maths, and the requirements of the legislation, the individual has made a real investment in the capital of the firm (capital only includes amounts that cannot be unilaterally withdrawn).

The rules will require an eye for detail and constant review year on year particularly in relation to a variable profit share, the performance of the LLP one year may mean what was meant to be significantly variable will actually fail the test.

Of course if the individual is retired or on gardening leave then he is not in employment so cannot possibly be have any element of disguised employment.

If you need help on how to apply these rules to ensure your business is not caught out then please speak with any member of the Squire Sanders tax team.

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