



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>(1) What are the corporate (or partnership) requirements to enter the respective tax regimes?</p>	<p>For a company to be a QC:</p> <p>(a) There must be 5 or fewer shareholders (relatives within the <u>first degree of relationship</u> are treated as 1 shareholder).</p> <p>(b) The company must be tax resident in NZ.</p> <p>(c) The company must have no income interest in a CFC, and <u>no interest</u> (see the Note below) in a FIF in which the company’s income interest is $\geq 10\%$.</p> <p>(d) The company’s foreign non-dividend income cannot be more than \$10,000, after deducting the lesser of:</p> <p>(i) Income from financial arrangements; or</p> <p>(ii) 10% of the company’s gross income.</p> <p>(e) It can be a flat-owning company. A flat-owning company means a company:</p> <p>(i) Whose constitution provides that every registered shareholder is entitled to the use of a specific residential property in NZ owned by the company; and</p> <p>(ii) Whose only significant assets are: residential properties available for use by specific shareholders, and funds reserved for meeting the company’s costs.</p> <p>[ss. HA 6, HA 8B, HA 9 & CD 31(2)]</p> <p>Note: The word “attributing” has been removed, effective from 1 July 2009: Section 73 of the <i>Taxation (International Investment and Remedial Matters) Act 2012</i>. This means non-attributing FIF interests of more than 10% are also excluded investments.</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> <p>(a) A partnership for tax purposes means:</p> <p>(i) Any two or more persons who have the relationship described in section 4(1) of the Partnership Act 1908.</p> <p>(ii) A joint venture if the joint venture owners all choose to be treated as a partnership for tax purposes.</p> <p>(iii) Co-owners of property if the co-owners all choose to be treated as a partnership for tax purposes.</p> <p>(b) A limited partnership for tax purposes:</p> <p>(i) Means a <u>limited partnership</u> registered under the Limited Partnerships Act 2008 (“LPA”) (see (2));</p> <p>(ii) Includes an <u>overseas limited partnership</u> as defined in section 4 of the LPA (see (2));</p> <p>(iii) Excludes:</p> <p>a. A <u>listed limited partnership</u> (a limited partnership that is listed on a recognised exchange); and</p> <p>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).</p> <p>[s. YA 1 definitions]</p>	<p>For a company to be a look-through company under section YA 1:</p> <p>(a) It must be a body corporate or other entity that has a legal existence separate from that of its members.</p> <p>(b) It must be tax resident in NZ.</p> <p>(c) There must be 5 or fewer look-through counted owners (<u>counting owners who are relatives as 1 person</u> – see below).</p> <p>(d) All the owners must have only look-through interests (see (4) on page 8)</p> <p>(e) It must not be a flat-owning company (as defined in s. CD 31(2) – see the QC column on the left – under an amendment to the s. YA 1 definition of <u>flat-owning company</u> in s. 154(14) of the <i>Annual Rates Tax Act</i> applying from 1/4/2011.)</p> <p>A relative under section YA 1 is a person who is connected with another person:</p> <p>(i) By being within the 2nd degree of blood relationship;</p> <p>(ii) By marriage, civil union, de facto r/ship;</p> <p>(iii) By being the spouse of a person who is within the 2nd degree of blood r/ship;</p> <p>(iv) By being an adopted child or the adopted child of another person within the 1st degree of blood r/ship to the person;</p> <p>(v) [By being a trustee of a trust under which a relative has benefited or is eligible to benefit – <u>excluded for LTCs from the 1st income year starting on or after 3 November 2012</u> under an amendment in s. 154(34), (35) & (45) of the <i>Taxation (Annual Rates Tax Act)</i></p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p>(2) What are a “limited partnership” and an “overseas limited partnership”?</p>	<p>N/A</p>	<p><u>A limited partnership registered under the Limited Partnerships Act 2008 [LPA] has the following characteristics and requirements:</u></p> <ul style="list-style-type: none"> (a) It is a separate legal person. [s. 11 LPA] (b) It must have at least one general partner and one limited partner. [s. 8 LPA] (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] (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. [ss. 19, 20 and 24 LPA] <p>[Activities not part of management are in the Schedule to the LPA]</p> <p><u>An overseas limited partnership under the LPA means a partnership formed or incorporated outside New Zealand with:</u></p> <ul style="list-style-type: none"> (a) 1 or more general partners who are liable for all of the debts and liabilities of the partnership; and (b) 1 or more limited partners who have only limited liability for the debts and liabilities of the partnership. <p>[s. 4 LPA: “overseas limited partnership”]</p> <p>Under the <i>Companies and Limited Partnerships Amendment Bill</i> a limited partnership will have to have a general partner who is: a natural person or a partner in a NZ partnership living in NZ or a NZ company within 6 months after enactment.</p>	<p>N/A</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p>(3) What are the shareholder (or partner) requirements to qualify for the respective tax regimes?</p>	<p>A shareholder in a QC can only be:</p> <ul style="list-style-type: none"> (a) A natural person; or (b) A trustee, 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: instead the larger of the following is counted: <ul style="list-style-type: none"> (i) the group who signed the election as shareholder; or (ii) 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; or (c) Another QC: this QC is not counted, but its shareholders are counted in the 5 shareholders count. <p>[s. HA 7]</p>	<p>At present, any person (including a company or a trustee) may be a partner in a partnership or a limited partnership.</p> <p>[Limited Partnerships Act 2008 s. 18]</p> <p>New rules in the <i>Companies and Limited Partnerships Amendment Bill</i> reported from the Commerce Committee on 1 December 2012 will require a general partner to be <u>qualified</u> under proposed new sections 19A or 19B:</p> <ul style="list-style-type: none"> (a) A natural person, who is not disqualified due to being under 18 or an undischarged bankrupt etc., is qualified to be appointed as a general partner. (b) A partnership governed by the Partnership Act 1908, with at least 1 partner who is not disqualified due to being under 18 or an undischarged bankrupt etc., is qualified to be appointed as a general partner. <p>[Proposed new sections 19A & 19B LPA]</p> <p>A company registered under the Companies Act 1993 may be a general partner, and new rules in the same Bill will ensure requirements similar to those above are met by directors of NZ registered companies.</p> <p>The new requirements will not affect limited partners in a limited partnership: any person may be a limited partner of a limited partnership.</p> <p>[Proposed new section 18(1A) LPA]</p>	<p>A look-through counted owner must be:</p> <ul style="list-style-type: none"> (a) A natural person with a look-through interest (see (4) on page 8); or (b) A natural person beneficiary of a trust with a look-through interest, who has derived beneficiary income from that look-through interest in the current, or in the preceding three years; or (c) A trustee with a look through-interest, if not all LTC income has been distributed to beneficiaries in the current or preceding three years; or (d) A natural person shareholder in a corporate beneficiary of a trust with a look-through interest, if the corporate beneficiary has derived beneficiary income from the look-through interest in the current or preceding three years. <p>[s. YA 1: “look-through counted owner”]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
(4) What additional requirements are imposed by the anti-streaming rules?	N/A	<p>Each partner must be allocated their partnership share (see (5) on page 9) 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. <u>there can be no streaming</u>).</p> <p>[s. HG 2(2)]</p>	<p>All the owners must have only look-through interests, meaning:</p> <p>(a) <u>Rights carried by every share in the company must be identical</u> in relation to:</p> <ul style="list-style-type: none"> (i) Voting on distributions, the constitution, varying the capital, and appointing or electing directors; and (ii) Distribution of profits or assets or reduction of share capital, whether on a liquidation or not. <p>And</p> <p>(b) The shareholders must be natural persons or corporate trustees (although an LTC’s shares can be held through another LTC).</p> <p>[s. YA 1: “look-through interest”]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p>(5) What is a shareholder’s (or partner’s) liability for income tax on the company’s (or partnership’s) income?</p>	<p>All persons who make elections as shareholders are jointly and severally personally liable based on their effective interest (see below) in the company:</p> <ul style="list-style-type: none"> (i) For their share of the QC’s income tax liability for the income year; and (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. <p>[s. HA 8]</p> <p>Effective interest for a person and a QC at a particular time or for an income year, means:</p> <ul style="list-style-type: none"> (a) If there is no market value circumstance 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. (b) If there is a market value circumstance at the time or at any time during the income year, the average of: <ul style="list-style-type: none"> (i) The person’s voting interest in the QC at the time or for the income year; and (ii) The person’s market value interest in the QC at the time or for the income year <p>[s. HA 43]</p> <p>A market value circumstance can arise when an option is granted on non-arm’s length terms, as well as in other ways.</p> <p>Market value interest 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"> (a) Individually carrying on the partnership’s business; and (b) Individually holding the partnership’s property; and (c) Individually a party to any arrangement to which the partnership is a party; and (d) Individually doing a thing and being entitled to a thing the partnership does, in proportion to their individual partnership shares (see below), and their tax liability is determined individually. <p>[s. HG 2(1)]</p> <p>Partnership share 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 effective look-through interests, and their tax liability is determined individually. [s. HB 1(4)]</p> <p>Effective look-through interest means for an owner (treating the LTC as a company):</p> <ul style="list-style-type: none"> (a) <u>If there is no market value circumstance</u> (see the QCs column) for the LTC: <ul style="list-style-type: none"> (i) The owner’s average daily look-through interest for the income year; or (ii) The owner’s effective look through interest at a particular time of look-through, if individual effective look-through interests change during the year and the LTC’s income \geq \$3m <i>and</i>: <ul style="list-style-type: none"> a. All the LTC’s owners choose this; or b. The Commissioner has notified the LTC that this method must be used. (b) <u>If there is a market value circumstance</u> (see the QCs column) for the LTC: <ul style="list-style-type: none"> (i) If paragraph (a)(ii) does not apply, the average for the income year of: the owner’s average daily look-through interest and the owner’s average daily market value interest. (ii) If the requirements of paragraph (a)(ii) are met, the average for the particular time of look-through of: the owner’s average daily look-through interest and the owner’s average daily MV interest. <p>[s. HB 1(5) & see also QCs column on left]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p>(6) What else is a shareholder (or a partner) liable for?</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 ordinary partnership 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 limited partnership:</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 ss. 26 and 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)
(7) What are the company's (or partnership's) tax obligations?	<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 (5) on page 9) 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) <u>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.</u></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 <u>GST grouping rules (from 1 April 2011)</u> under an amendment to section 55(1)(a)(iii) of the GST Act proposed in s. 223(1) of the <i>Taxation (Annual Rates, Returns Filing and Remedial Matters) Act 2012</i>.</p> <p><u>Inland Revenue Acts 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 – new section HB 1(6) inserted by s. 78 of the <i>Taxation (Annual Rates, Returns Filing and Remedial Matters) Act 2012</i> effective from 1 April 2011.</u></p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p>(8) What are the election rules for a concessional transition from existing QCs?</p>	<p>If the transition concessions apply, there is no tax cost when a QC or LAQC becomes a partnership, LTC or sole trader.</p> <p>The concessions apply to the 1st or 2nd income years beginning on or after 1 April 2011,</p> <p>The transition election must be filed within 6 months of the start of the chosen transition year.</p> <p>[ss. HZ 4B, HB 13(3)(c), CB 32C(2) & HZ 4D]</p> <p><u>Canterbury earthquake relief</u>: Extension of time for a period of 6 months (up to 31 March 2012) from the date by which the election or notification was required to be made under sections HB 13(3)(c), HZ 4B or HZ 4D for QCs where any person is unable to comply with the time limits for any of the following:</p> <p>(a) Electing to transition into the LTC rules.</p> <p>(b) Notifying IR about transitioning into a partnership or sole tradership.</p> <p>The reasons for the inability to comply with the time limit as a result of the Canterbury earthquake must be provided in writing when the election or notification is submitted. IR may also require additional information.</p> <p>[Class of case extension of time under Clause 5 of the Canterbury Earthquake (Inland Revenue Acts) Order 2011] http://www.ird.govt.nz/earthquake/cq-grants-subsidies/#11</p>	<p>If a QC transitions to a partnership, under the <u>QCP transitional process</u>, there is no transition income. The process is as follows:</p> <p>(a) A QC must elect to become a partnership, or a limited partnership, in the 1st or 2nd income year beginning on or after 1 April 2011.</p> <p>(b) The election must be filed within 6 months of the start of the chosen transition year. (But see the <u>class of case extension of time</u> in the QC column).</p> <p>(c) All the QCs shareholders (excluding anyone who dies in the transitional year) must continue as partners, and a company may be added as a general partner of a limited partnership.</p> <p>(d) All assets, liabilities, rights and obligations of the QC are moved to the partnership, excluding those that are inappropriate for a partnership.</p> <p>(e) Each partner must 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 can calculate the <u>partners basis</u> for allowed deductions, (see (19) on pages 19-22), <i>for the transitional and later income years</i>:</p> <p>(i) As the market value or accounting book value <i>of the QC shares</i> at year-end before transitioning; or</p> <p>(ii) As if the QC had always been a limited partnership.</p> <p>[s. HZ 4B & s. 111(1) & (2) of the Annual Rates Tax Act]</p>	<p>If a QC transitions to an LTC under the concessional transition rules, there will be no transition income if the following requirements are met:</p> <p>(a) A QC must elect to become an LTC in the 1st or 2nd income year beginning on or after 1 April 2011.</p> <p>(b) The election must 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 class of case extension of time in the QC column on the left).</p> <p>(d) Any elections and valuation methods previously adopted by a transitioning QC carry over to the LTC.</p> <p>[ss. HB 13(3)(c), HB 13(5) & CB 32C(2)]</p> <p>An LTC owner can calculate the <u>owners basis</u> for allowed deductions (see (19) on pages 19-22), <i>for the transitional and later income years</i>:</p> <p>(i) As the market value or accounting book value <i>of the QC shares</i> at year-end before transitioning; or</p> <p>(ii) As if the QC had always been an LTC.</p> <p>[s. HZ 4C & s. 112(1) & (2) of the Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p>(9) Who can elect into the regime in normal circumstances?</p>	<p>(a) Only a company that is filing a tax return for its 1st income year, that began <i>before</i> the 1st income year that starts on or after 1 April 2011, can elect to become a QC.</p> <p>(b) The election must be made within the time by which the tax return for that 1st year is due to be filed under s.37 of the Tax Administration Act 1994.</p> <p>(c) Otherwise, a QC must already have been a QC at the end of the income year before the 1st income year that starts on or after 1 April 2011 <u>and must not have amalgamated, on or after 2 November 2012, the date on which the <i>Taxation (Annual Rates, Returns Filing and Remedial Matters) Act 2012</i> received the Royal assent, with another company that is not a qualifying company.</u></p> <p>[ss. HA 5(1B) & HA 7B]</p> <p>[The underlined words are an amendment to s. HA 7B contained in s. 75 of the <i>Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012</i>]</p>	<p>No election is required.</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> <p>(Refer to (1) on page 5 and (2) on page 6)</p>	<p>A company that meets the requirements of a “look-through company” can elect to become an LTC.</p> <p>(Refer to (1) on page 5)</p> <p>Any loss balance the company had before becoming an LTC is cancelled.</p> <p>[s. HB 3]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p>(10) What are the usual election / registration requirements?</p>	<p>Except for a concession for a company that is filing a return for its 1st income year that started on or before 31 March 2011 (see further below) a company had to elect to be a QC before the start of the grandparenting income year - the income year before the 1st income year that starts on or after 1 April 2011:</p> <p>(a) 2010-11 is the grandparenting income year for companies with a standard balance date (31 March), or a late balance date (balance dates from 1 April to 30 September): the election to be a QC had to have been made before the beginning of the 2010-11 income year.</p> <p>(b) 2011-12 is the grandparenting income year for companies with early balance dates (balance dates from 1 October to 30 March): the election to be a QC had to be filed before the beginning of their 2011-12 income year.</p> <p>For a company filing its 1st NZ tax return, for its 1st income year that started on or before 31 March 2011 (i.e. the 2011 or 2012 income year), the <u>election notice</u> to be a QC must be filed by the time the company's tax return for that year is due to be filed, and must:</p> <p>(a) Nominate its 1st income year as the year the election is to take effect.</p> <p>(b) Be signed by all directors and shareholders.</p> <p>[ss. HA 5(1), (1B) & (5)]</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><u>An application to register a limited partnership under the Limited Partnerships Act 2008:</u></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>(e) The limited partnership's name must include the words "limited partnership" or "LP" or "L.P." at the end. [s. 32 LPA].</p> <p>Note: 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. [s. 104 LPA]</p> <p>Note: activities that do not constitute carrying on business in NZ are set out in section 105 of the LPA.</p>	<p>(10) The election notice to be an LTC (Form IR862 http://www.ird.govt.nz/forms-guides/number/forms-800-899/ir862-form-ltc-election.html):</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>[ss. HB 1 & HB 13(1)]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
(11) By when must the election notice be filed?	<p>The election to be a QC, by a company that is filing its 1st NZ tax return for its 1st income year (being the income year before the 1st income year that starts on or after 1 April 2011 - i.e. the 2011 income year, or for an early balance date company, the 2012 income year) must be filed by the time the (new) company's tax return for is due to be filed.</p> <p>[s. HA 5(1B)]</p>	<p>There is no election required unless the transitional concessions apply.</p> <p>(Refer to (8) on page 12).</p>	<p>For a company to become an LTC the election notice must be received by the Commissioner:</p> <p>(a) Before the income year specified in the election notice.</p> <p>(b) In the case of a new company: 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 transitioning QC within 6 months of the start of the transitional year (refer to (8) on page 12).</p> <p>[s. HB 13]</p>
(12) Which IR form is used?	<p>IR436 http://www.ird.govt.nz/forms-guides/number/forms-400-499/ir436-form-qualifying-laqc.html.</p>	<p>IR891 http://www.ird.govt.nz/forms-guides/number/forms-800-899/ir891-qual-company-transition.html. (Transition Electn.)</p>	<p>IR862 http://www.ird.govt.nz/forms-guides/number/forms-800-899/ir862-form-ltc-election.html</p>
(13) Can losses be attributed to shareholders or partners?	<p>(a) The LAQC regime has been repealed from income years commencing on or after 1 April 2011.</p> <p>(b) There can be no loss attribution from the 2012 income year (for early balance date LAQCs from the 2013 income year).</p> <p>(c) Existing LAQCs can attribute losses to shareholders for the 2011 income year.</p> <p>(d) LAQCs automatically become 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 is 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 (19) on p. 19-22).</p> <p>[s. HG 11]</p>	<p>A person with an effective look-through interest in LTC can have an attributed LTC loss for a year, which can be set off against the person's non-LTC income for the year, only if:</p> <p>(a) The LTC deductions attributed to the person for the year exceed the person's attributed LTC income for the year; <u>and</u></p> <p>(b) 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 (19) on pages 19-22).</p> <p>[s. HB 11]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
(14) How is the income of the company or partnership taxed?	<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>[ss. CB 35, CW 55B, CX 62 & 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>[ss. CB 32B & 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. 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 “<u>owners basis</u>” in the LTC, at the end of the year, is less than attributed income from the LTC (refer to (19) on pages 19-22).</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
(15) What are the tax rates that apply?	<p>The tax rate is 0.28 from 1 April 2011, applying to 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) For a partner who is a natural person: the rates are as set out in the LTC column on the right.</p> <p>(b) For a partner who is a trustee: the rate for the 2011-12 income year is 0.33 (the same as earlier years).</p> <p>(c) For a partner that is a company: see the QCs column on the left.</p>	<p>An individual LTC owner is taxed at the following rates:</p> <p>(a) For an LTC owner who is a natural person: the rates applying for the 2011-12 and later income years are:</p> <p>\$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:</p> <p>\$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) For an LTC owner who is a trustee: the rate for the 2011-12 income year is 0.33 (the same as earlier years).</p>
(16) What is the tax treatment of dividends received from a NZ company?	<p>Dividends derived by a QC are taxable unless the foreign dividend exemption in section CW 9 applies.</p> <p>Dividends derived by a QC from a wholly-owned group company are taxable unless the foreign dividend exemption in section CW 9 applies.</p> <p>[s. CW 14]</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 (5) on page 9).</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 <u>effective look-through interests</u>. (See (5) on page 9).</p> <p>[s. HB 1]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
(17) What is the tax treatment of foreign dividends received?	<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><u>Dividends from a non-attributing FIF interest of 10% or more are prohibited from 1/7/09: Section 73 of the Taxation (International Investment and Remedial Matters) Act 2012 (see (1) on page 5).</u></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>
(18) What is the general rule applying to tax deductions?	<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)
(19) What are the restrictions on tax deductions attributed to an LTC owner (or a partner)?	N/A	<p>The <u>attributed partnership deductions</u>, for a year, that can be deducted:</p> <p>(a) By a <u>limited partner</u> (other than an exiting partner – see (37) on page 34); or</p> <p>(b) By 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><u>Cannot exceed the limited “partners basis” at the end of the year</u>, measured as:</p> <ol style="list-style-type: none"> 1) [Investments] - [Distributions] Plus 2) [Income] - [Deductions] Less 3) [Disallowed amounts] <p>Note: 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) & HG 11(10)]</p> <p>For the purposes of the definitions: Partner’s associate: 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 (1) on page (5); or</p> <p>(b) A company in the same wholly owned group as the partner.</p> <p>[s. HG 11(12) as amended by s. 85(5) of the <i>Annual Rates Tax Act</i>.</p>	<p>The <u>attributed LTC deductions</u>, for a year, that can be deducted by an LTC owner in that year:</p> <p><u>Cannot exceed the “owner’s basis” at the end of the year</u>, measured as:</p> <ol style="list-style-type: none"> 1) [Investments] - [Distributions] Plus 2) [Income] - [Deductions] Less 3) [Disallowed amounts] <p>Note: 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) & HB 11(10)]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p>(19) What are the restrictions on tax deductions attributed to an LTC owner (or a partner)? (cont.)</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 (8) on page 12.</p>	<p>Investments are:</p> <ol style="list-style-type: none"> 1) The market value of <u>capital contributions</u> by the limited partner at the time the contribution is made or agreed to be made; <u>plus</u> 2) The amount paid by the limited partner for the assignment of capital contributions to them; <u>plus</u> 3) The <u>secured amounts</u>. <p>“Capital contribution” includes a capital contribution under the LPA <i>and a loan or a credit balance in a current account from 1/4/08 [s. 85(3) of the Annual Rates Tax Act.]</i></p> <p>“Secured amounts” from 1 April 2012 means the lesser of:</p> <ol style="list-style-type: none"> (a) The limited partnership’s debt for which the partner and <u>associates</u> (treated as a single guarantor) is a guarantor, divided by the <u>total number of guarantors</u> for the secured debt. (Partner’s associate defined in the previous page 19 and see the LTC column on the right.) (b) The market value of recourse property (i.e. property the guarantee expressly provides the creditor has recourse to) that the partner (plus <u>associates</u>) has an interest in, net of actual, future or contingent higher ranking calls, divided by the <u>total number of guarantors</u> with an interest in the recourse property. <p>[s. HG 11(5) and definitions of <i>secured amounts, guarantor</i> and <i>recourse property</i> in s. HG 11(12) as amended by s. 85(4) & (6) of the <i>Annual Rates Tax Act</i>]</p>	<p>Investments are:</p> <ol style="list-style-type: none"> 1) The market value of the person’s shares in the LTC at the time the person purchases or subscribes for them; <u>plus</u> 2) 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> 3) The secured amounts (if not already treated as an amount the LTC is debtor for by the person <u>or another person</u>). <p>“Secured amounts” from 1 April 2011 means the lesser of:</p> <ol style="list-style-type: none"> (a) The LTC’s debt for which the <u>owner and associates</u> (treated a single guarantor) is a guarantor, divided by the <u>total number of guarantors</u> for the debt. Note: <ol style="list-style-type: none"> (i) ‘Owner’s associate’ will not include a trustee of a trust under which a relative is eligible to benefit; but (ii) ‘Owner’s associate’ includes a trustee who is associated with the owner. (b) The market value of recourse property (i.e. property the guarantee expressly provides the creditor has recourse to) that the owner (plus associates) has an interest in, net of actual, future or contingent higher ranking calls, divided by the <u>total number of guarantors</u> with an interest in the recourse property. <p>(Transition investment – see (8) on p. 12)</p> <p>[s. HB 11(5) and definitions of <i>secured amounts, guarantor</i> and <i>recourse property</i> in s. HB 11(12) as amended by s. 80(1) & (4) of the <i>Annual Rates Tax Act</i>]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
(19) What are the restrictions on tax deductions attributed to an LTC owner (or a partner)? (cont.)	N/A	<p>Distributions 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>Distributions 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 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>
(19) What are the restrictions on tax deductions attributed to an LTC owner (or a partner)? (cont.)	N/A	<p>Income from 1 April 2008 is:</p> <p>(a) Income the limited partner has from the partnership in the current and previous income years;</p> <p>(b) If the limited partner has a share of dividends, from a FIF, that are not included in income under s. CD 36(1):</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. [As amended by s. 85(1) & (2) of the <i>Annual Rates Tax Act</i>]</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 (excluding double-counting of income already included in “Investments” or “Income”).</p> <p>[s. HG 11(7) & new s. HG 11(7B) & (7C)]</p>	<p>Income from 1 April 2011 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, that are not included in income under s. CD 36(1):</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. [As amended by s. 80(2) & (3) of the <i>Annual Rates Tax Act</i>]</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 (excluding double-counting of income already included in “Investments” or “Income”).</p> <p>[s. HB 11(7) & new HB 11(7B) & (7C)]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
(19) What are the restrictions on tax deductions attributed to an LTC owner (or a partner)? (cont.)	N/A	<p><u>Deductions</u> are:</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 (excluding double-counting of deductions already included in “Distributions” or “Deductions”).</p> <p>[s. HG 11(8)]</p>	<p><u>Deductions</u> are:</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 (excluding double-counting of deductions already included in “Distributions” or “Deductions”).</p> <p>[s. HB 11(8)]</p>
(19) What are the restrictions on tax deductions attributed to an LTC owner (or a partner)? (cont.)	N/A	<p><u>Disallowed amount</u> is:</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</u> is:</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)
(20) Are there any restrictions on interest deductions by the company (or partnership)?	<p>(a) The interest deduction permitted for companies under section DB 7, which supplements the general permission, does not apply to QCs.</p> <p>However:</p> <p>(b) A QC is allowed a deduction for interest incurred, under the general rule.</p> <p>[ss. DB 6(1), DA 1 & DA 2]</p> <p>(c) This rule overrides the capital limitation, but the general permission, and the other general limitations apply.</p> <p>[ss. DB 6(4)]</p> <p>(d) 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) A partnership is allowed a deduction for interest incurred, under the general rule.</p> <p>[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>[ss. DB 6(4), DA 1 & DA 2]</p>	<p>(a) An LTC is allowed a deduction for interest incurred, under the general rule. In <i>Questions We've Been Asked</i> QB 11/03 the Commissioner has stated that it is the use of borrowed funds by an LTC, attributed under s. HB 1(4)(d) (as a thing an LTC does or is entitled to being attributed to the LTC owner) to the owner (<i>in their capacity as owner</i>) that is relevant to the issue of interest deductibility, not the use by the owner.</p> <p>[ss. DB 6(1) & DA 1]</p> <p>(b) This rule overrides the capital limitation, but the general permission, and the other general limitations apply. [s. DB 6((4)]</p> <p>(c) The interest deduction permitted for companies under section DB 7, which supplements the general permission, does not apply to LTCs due to the transparency rule. [s. HB 1]</p> <p>(d) In <i>QB 12/08 & QB 12/09</i> the Commissioner has stated that:</p> <p>(i) Interest on funds borrowed to repay a shareholder's current account:</p> <ol style="list-style-type: none"> Is deductible to the extent the borrowing replaces past years' profits or contributed capital; Is not deductible to the extent the funds replace current year income. <p>(ii) Interest on funds borrowed to make a payment to a shareholder out of an asset revaluation will not be deductible.</p> <p>[Refer to the separate PDF attachment on LTC interest deductibility]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
(21) What about a shareholder's (or a partner's) interest deductions relating to the investment in the company (or partnership)?	<p>(a) A shareholder in a QC is allowed a deduction for interest incurred on money borrowed to acquire the shares in the QC. [s. DB 6(1)]</p> <p>(b) This rule overrides the capital limitation, but the general permission, and the other general limitations apply. [ss. DB 6(4), DA 1 & DA 2]</p> <p>(c) For the purpose of determining the deductibility of interest, exempt dividends are treated as if they were not exempt. [s. DB 9(2) – overrides the exempt income limitation]</p> <p>(d) 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. 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. [ss. DB 9(1) & (4) & CD 39]</p>	<p>(a) 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. [s. DB 6(1)]</p> <p>(b) This rule overrides the capital limitation, but the general permission, and the other general limitations apply. [ss. DB 6(4), DA 1 & DA 2]</p> <p>(c) 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. [s. HG 11]</p> <p>(d) 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: (i) However, the cost of making the property available will be non-deductible to the partnership. (ii) The same applies to private use of partnership property by a working partner, as it is not subject to FBT (see (30) on page 32). [ss. DA 1 & DA 2]</p>	<p>(a) An LTC owner is allowed a deduction for interest incurred on money borrowed to acquire the shares in the LTC. The use of the 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. [ss. DB 6(1) & HB 1(1)]</p> <p>(b) This rule overrides the capital limitation, but the general permission, and the other general limitations apply. [ss. DB 6(4), DA 1 & DA 2]</p> <p>(c) An LTC owner's interest deduction is not limited to the owner's basis, which applies to limit tax deductions attributed from the LTC. [ss. HB 1(1) & HB 11]</p> <p>(d) There is no reduction of interest deductions for any private use of company property by an LTC owner. However, the cost of making the property available will be non-deductible to the LTC. Amendments to tax definitions of <u>employee</u> and <u>employer</u> in s. 154(9) & (10) of the <i>Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012</i> mean that private use of company property by a working owner will not be subject to FBT (see (30) on page 32). [ss. HB (1)(1), DA 1 & DA 2]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p>(22) What happens if a QC has tax losses at the time of transitioning into an LTC, partnership or sole tradership?</p>	<p>Under the transition concessions, a QC ceases to exist, for tax purposes, from the beginning of the transitional year.</p> <p>[s. HA 33B]</p>	<p>When a QC becomes a partnership under the QCP transitional process (see (8) on page 12):</p> <p>(a) There is no transitional income.</p> <p>(b) The partnership is treated as existing, in place of the QC, from the beginning of the transitional year.</p> <p>[s. HZ 4B]</p> <p>(c) The QC loss balance at the end of the year preceding the transitional year is extinguished.</p> <p>[s. DV 21(2)]</p> <p>(d) Each partner is 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>[ss. DV 21(3) – (6)]</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 can 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]</p>	<p>When a QC becomes an LTC under the transition concession (see (8)):</p> <p>(a) There is no transitional income if the transition takes place in one of the two transitional years. [s. CB 32C(2)]</p> <p>(b) All QC elections under section HA 5 are revoked with effect from the beginning of the transitional year in which the QC becomes an LTC. [s. HA 33B(1) & (2)]</p> <p>(c) If a loss is 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. CFC and FIF losses are ring fenced for the purposes of applying this rule.</p> <p>[s. DV 23(2) & DV 23(5)]</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>[s. DV 23]</p> <p>(e) A QC’s loss balance before becoming an LTC is extinguished. Similarly, non-QC’s loss balance that arose before becoming an LTC is cancelled.</p> <p>[s. HB 3]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p>(23) What if the transition from a QC occurs after the end of the concessional transition period?</p>	<p>N/A</p>	<p>(a) There is no specified method by which the QC can transition into a partnership, or a limited partnership, after the end of the period during which the QCP transitional process can be undertaken.</p> <p>(b) A transition would involve winding up the QC and transferring the assets and liabilities to a partnership or limited partnership.</p>	<p>(a) If the QC transition concession does not apply (or the transitioning company is not a QC) <u>each LTC owner has income in proportion to the persons effective look-through interest</u>, in the first LTC year, <u>from deemed dividends</u> (including available ICs) <u>upon a notional liquidation of the QC</u> (or company), at the end of the previous year, to the extent those dividends:</p> <ul style="list-style-type: none"> (i) Cannot be fully imputed; or (ii) Arose from assessable income the company would have as a result of the notional liquidation. <p>[s. CB 32C]</p> <p>(b) If the company was previously an LTC that lost LTC status, the deemed dividends on re-entry are reduced by dividends which would be excluded income under section CX 63.</p> <p>[ss. CB 32C(11) & CX 63]</p> <p>(c) A net loss cannot be carried forward into an LTC.</p> <p>[s. HB 3]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p>(24) What if the entry into the tax regime occurs via an amalgamation?</p>	<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>If the amalgamated company is a QC and one or more of the amalgamating companies was not a QC at the time of amalgamation, the concessional “resident’s restricted amalgamation” rules will not apply.</p> <p>Such an amalgamation (i.e. an amalgamation that is <i>not</i> a resident’s restricted amalgamation) is prohibited: an amendment to section HA 7B contained in s. 75 of the <i>Taxation (Annual Rates, Returns Filing, and Remedial Matters) Act 2012</i> states that a QC must not have amalgamated with another company that is not a qualifying company on or after 2 November 2012 the date on which the Annual Rates Tax received the Royal assent.</p>	<p>N/A</p>	<p>(a) When an LTC is the continuing company after amalgamation with a non-LTC each person with an effective look through interest is taxed, in the year of the amalgamation, on deemed dividends (including available ICs), upon a notional liquidation of the amalgamating company, to the extent those dividends:</p> <ul style="list-style-type: none"> (i) Cannot be fully imputed; or (ii) Arose from assessable income the company would have as a result of the notional liquidation. <p>[s. CB 32C]</p> <p>(b) 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>
<p>(25) Can a tax loss be grouped with another group company?</p>	<p>A QC with a net profit can only receive a loss offset from another group company if it’s a QC. [s. HA 22 & s. IC 5]</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). [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. [s. HB 1]</p> <p>A person with an effective look-through interest in more than one LTC, and a sufficient owner’s basis in an LTC with a net loss, can offset that net loss against net income from another LTC (see also (19) on pages 19-22).</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p>(26) What are the rules for carrying forward a tax loss?</p>	<p>(a) 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>[s. IA 5]</p> <p>(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>[ss. HA 24(5) – (5C) before their repeal]</p>	<p>(a) 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>(b) 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 (19) on pages 19-22).</p> <p>(c) 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>[ss. HG 11 & 12]</p> <p>(d) If a limited partner, subject to restricted deductions, becomes a general partner, the restrictions no longer apply.</p> <p>[s. HG 12]</p>	<p>(a) An LTC owner with an effective look-through interest in an LTC is allowed to carry forward any excess attributed LTC deductions that could not be deducted, because of insufficient owner’s basis (“restricted deductions”).</p> <p>(b) An LTC owner can set off the restricted deductions against income from the LTC in a later year only if:</p> <ul style="list-style-type: none"> (i) LTC status is retained by the LTC; and (ii) The LTC owner continues to have an effective look-through interest in the LTC; and (iii) The LTC owner has a sufficient owner’s basis, in the later year, to use the restricted deductions (see (19) on pages 19-22). <p>(c) 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>(d) If the LTC ceases to exist, any remaining restricted deductions are extinguished.</p> <p>[ss. HB 11 & HB 12]</p> <p>(e) 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]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
(27) Can payments to a working owner or partner be deducted?	<p>(a) A payment to a shareholder–employee of a QC is deductible whether or not PAYE tax is deducted.</p> <p>(b) Under the PAYE rules, a payment to a shareholder-employee need not be a PAYE income payment that is subject to PAYE tax deductions. [s. RD 3(2) to (4)]</p> <p>(c) Note: An amendment in s. 154(11) of the Annual Rates Tax Act changes the definition of “Employment income” in s. YA 1 so that it “includes salary or wages or other income to which section RD 3(2) to (4) (PAYE income payments) applies”. The amendment applies from 1 April 2008.</p> <p>This will ensure that the income of a shareholder-employee who has elected that employment income is not subject to the PAYE rules, remains treated as employment income for the purpose of the non-PAYE provisions including:</p> <p>(i) s. DA 2(4): employment income deduction limitation.</p> <p>(ii) s. EA 4(3): extension of deferred employment income payment period for shareholder-employees.</p> <p>(iii) s. EI 9: matching rule for employment income of shareholder-employees.</p>	<p>(a) 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. [s. DC 4(1)] <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. [s. DC 4(2)] <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). [s. DC 4(3)]</p> <p>(b) The contract for service must:</p> <p>(i) Specify terms and conditions of service.</p> <p>(ii) Specify the amount payable.</p> <p>(iii) Be signed by all partners.</p> <p>(iv) Be in writing. [s. DC 4(5)]</p> <p>(c) Payments deemed excessive: The provisions of s. GB 23 apply in relation to a payments deemed excessive. [s. DC 4(4)]</p> <p>(d) PAYE tax deductions: A payment to a working partner under section DC 4 is included in their salary or wages, and PAYE tax deductions must be made. [s. RD 5(3) & RD 3(1)(a)(i)]</p>	<p>(a) 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>. [s. DC 3B(1)] 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. 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. [s. YA 1 defn. of “working owner”]</p> <p>(b) Amount of deduction: The deduction is limited to the payment authorised by the contract of employment, and any additional bonus (whether or not authorised). [s. DC 3B(2)]</p> <p>(c) The contract of employment must:</p> <p>(i) Specify terms and conditions of service.</p> <p>(ii) Specify the amount payable.</p> <p>(iii) Be signed by all parties.</p> <p>(iv) Be in writing. [s. DC 3B(3)]</p> <p>(d) PAYE tax deductions: A payment to a working partner under section DC 3B is included in their salary or wages, and PAYE tax deductions must be made. [s. RD 5(3B) & RD 3(1)(a)(i)] Note: Precedence of s. GB 23 not specified.</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
(28) When does income have to be attributed to a working owner or partner?	<p>Under ss. GB 27 – 29 income must be attributed to a “working person” (WP) if:</p> <ul style="list-style-type: none"> (a) The <u>WP is associated with the QC</u> (i.e. the WP and associates together hold at least 25% of the QC – s. YB 3); and (b) At least 80% of the QC’s income from personal services for the year is <u>from a single buyer</u> (including persons associated with the buyer); and (c) At least 80% of the QC’s income from personal services comes <u>from services personally performed by the WP</u>; and (d) The <u>WP’s net income</u> and taxable value of fringe benefits > \$70,000; and (e) The QC’s services business <u>does not require use of depreciable property that</u>: <ul style="list-style-type: none"> (i) Cost more than \$75,000 and private use is 20% or less; or (ii) Cost more than 25% of the QC’s income from services and private use is 20% or less. <p>The WP is attributed with the least of:</p> <ul style="list-style-type: none"> (a) QC’s net income from personal services; (b) QC’s net income; (c) QC’s net income reduced by any loss carried forward relating to personal services. <p><u>QC’s net income calculation</u>:</p> <ul style="list-style-type: none"> (a) QC can deduct the WP’s employment income and taxable value of fringe benefits. (b) QCs can deduct a dividend to the WP in the year or 6 months after year-end. <p>More than 1 WP: attribution must reflect the value of services performed.</p>	<p>The same attribution rules in sections GB 27 – 29 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> <ul style="list-style-type: none"> (a) Rule of association: A WP and a partnership are associated, if: <ul style="list-style-type: none"> (i) The WP is a partner; or (ii) The WP is a limited partner who, together with associated persons, holds an interest of at least 25% in the partnership. <p>[s. YB 12]</p> (b) The WP is attributed with the least of: <ul style="list-style-type: none"> (i) The partnership’s net income from personal services. (ii) The partnership’s net income. <p>[s. GB 29(1)(a) & (b)]</p> (c) The partnership can deduct: <ul style="list-style-type: none"> (i) Employment income paid to the WP. (ii) The WP’s share of partnership profits. (iii) Market value of administrative services. <p>[ss. GB 29(3)(a), GB 29(4)(b) & GB 29(5)]</p> <p>More than 1 WP: If there is more than 1 WP, attribution must reflect the value of services performed.</p>	<p>The same attribution rules in sections GB 27 – 29 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> <ul style="list-style-type: none"> (a) Rule of association: A WP and an LTC are associated, if: <ul style="list-style-type: none"> (i) The WP is an owner of the LTC owner, and also either a director, or an employee of the LTC; or (ii) The WP, and associated persons together have an effective look-through interest of at least 25% in the LTC. <p>[s. YB 13]</p> (b) The WP is attributed with the least of: <ul style="list-style-type: none"> (i) The LTC’s net income from personal services. (ii) The LTC’s net income. <p>[s. GB 29(1)(a) & (b)]</p> (c) The LTC can deduct: employment income paid to the WP; fringe benefits are not subject to FBT and will not be tax deductible under amendments in s. 154(9) & (10) of the <i>Annual Rates Tax Act</i> (see (30) on page 32 for more on this). <p>[s. GB 29(3)]</p> <p>More than 1 WP: If there is more than 1 WP, attribution must reflect the value of services performed.</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p>(29) What are the anti-avoidance rules that apply to payments to relatives of shareholders and partners?</p>	<p>(a) If a QC provides remuneration for services to a person who is:</p> <ul style="list-style-type: none"> (i) A shareholder or director of the company; or (ii) A relative of a shareholder or director of the company; and <p>The Commissioner considers that the amount provided is excessive, <u>the excess is treated as a dividend</u> paid by the QC and derived by the service provider. [s. GB 25]</p> <p>(b) If the amount is treated as a dividend paid by the QC, it is not covered by section HA 15, so does not have to be imputed; however, the dividend would be nondeductible to the QC. [s. HA 15]</p> <p>(c) This rule does not apply if:</p> <ul style="list-style-type: none"> (i) The service provider is an adult employed substantially full-time in the business of the QC; and (ii) The service provider participates in the management or administration of the QC; and (iii) The amount provided to the service provider was not influenced by their relationship with a shareholder or director; and (iv) The service provider is a New Zealand resident. <p>[s. GB 25]</p>	<p><u>The Commissioner can ignore amounts paid to a relative of a partner and re-allocate profits or losses</u> (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"> (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"> (i) The Commissioner considers that the income payable to the relative is excessive; and (ii) The employment contract is not a genuine contract of employment as described in section GB 24; or (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"> (i) The Commissioner considers that partner 2's share of the partnership profit or loss is excessive; and (ii) The partnership is not "genuine" as described in section GB 24. <p>[s. GB 23]</p> <p><u>If a partner enters into an arrangement involving a consideration that is not market value</u>, 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. [s. GB 50]</p>	<p><u>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:</u></p> <ul style="list-style-type: none"> (a) Where an LTC employs a relative of an LTC owner, or a relative of a director or shareholder of a company that is an LTC owner, and <ul style="list-style-type: none"> (i) The Commissioner considers that the income payable to the relative is excessive; and (ii) The employment contract is not a genuine contract of employment as described in section GB 24. <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. [s. GB 23(2) & (4)]</p> (b) 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. [s. GB 25B]

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
(30) How are payments in kind to owners or partners treated?	<p>(a) A benefit provided to an employee under the FBT rules is a fringe benefit.</p> <p>[s. CX 2]</p> <p>(b) <u>The provision of a benefit in kind to a shareholder–employee is treated as a fringe benefit, unless:</u></p> <p>(i) It is an unclassified benefit; and</p> <p>(ii) It would be a dividend if paid to a shareholder; and</p> <p>(iii) The company chooses to treat it as a dividend.</p> <p>[s. CX 17]</p> <p>(c) <u>A QC could choose to pay FBT on fringe benefits provided to a shareholder–employee on an income year basis,</u> under the close company option. In that case, the FBT rate which applies from 1 April 2011, is:</p> <p>(i) 49.25% of the benefit’s taxable value; or</p> <p>(ii) A rate based on the total pay of each employee under sections RD 50 and 53.</p> <p>[s. RD 60]</p>	<p><u>A provision of a benefit in kind to a working partner is not a fringe benefit:</u></p> <p>(a) The working partner is excluded from being an “employee” for the purposes of the FBT rules.</p> <p>(b) 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>[s. YA 1: definition of “employee” paragraph (c)(i) & s. RD 5(3)]</p> <p>(c) 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> <p>(i) The employer is a partnership or a limited partnership; and</p> <p>(ii) The person associated with the employee is a partner in the partnership or limited partnership.</p> <p>[Section GB 32(2B) inserted by s. 74 of the <i>Annual Rates Tax Act</i>. The amendment will apply from 2 November 2012, the date of assent.]</p>	<p>An LTC is treated as a company for FBT purposes (i.e. the “look-through” transparency rule does not apply).</p> <p>(a) An owner who is a “working owner” is included within the definition of “employee”.</p> <p>(b) 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>[Amendments to the definitions in section YA 1 of “employee” and “employer, applying from 1 April 2011 in s. 154(9) & (10) of the <i>Annual Rates Tax Act</i>]</p> <p>(c) 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>(d) 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> <p>(iii) The employer is an LTC; and</p> <p>(iv) The person associated with the employee is an owner of the LTC.</p> <p>[Section GB 32(2B) inserted by s. 74 of the <i>Annual Rates Tax Act</i> – see column on the left]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p>(31) How are distributions and dividends paid treated for tax purposes?</p>	<p>(a) Exempt dividends:</p> <p>(i) A dividend paid by a QC to a NZ resident is exempt income, to the extent it is not fully imputed. [ss. CW 15 & HA 14]</p> <p>(ii) Exempt dividends received by a NZ resident trustee remain exempt when distributed as beneficiary income to a NZ resident beneficiary. [s. HA 16]</p> <p>(iii) A dividend paid to a NZ resident is not resident passive income. [s. HA 14(4)]</p> <p>(b) Rules for attaching ICs:</p> <p>(i) A dividend is taxable income to the extent that it is fully imputed.</p> <p>(ii) A cash dividend, or a taxable bonus issue must be fully imputed or have ICs attached to the extent they are available. ICs are retrospectively attached to dividends at the end of the year based on the available balance of ICs in the QC's ICA. [s. HA 15]</p> <p>(c) Non-cash dividends: When a non-cash dividend is paid to a NZ resident 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> <p>(i) It is exempt income. [s. HA 14]</p> <p>(ii) The cost is non-deductible. [s. DA 1]</p> <p>(iii) The shareholder can request that the dividend statement includes non-cash dividends. [s. HA 19(5)]</p> <p>(d) Interest paid on a stapled debt security: is not a dividend. [s. FA 2B(6)]</p>	<p>(a) 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 (19) on pages 19-22).</p> <p>Exception: 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 (38) & (39) on pages 38 & 39.) [s. HG 5]</p> <p>(b) 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 (19) on pages 19-22.) [ss. DA 1, DA 2 & s. 38 LPA]</p> <p>(c) Limited partnership distribution rules:</p> <p>(i) A distribution from a limited partnership must be authorised in writing by the general partner.</p> <p>(ii) A limited partnership cannot make a distribution unless it meets the solvency test:</p> <p>a. It must be able to pay its debts as they become due in the normal course of business; and</p> <p>b. The value of its assets must be greater than its liabilities, including contingent liabilities.</p> <p>[Limited Partnerships Act 2008 ss. 40 - 42]</p>	<p>(a) Distributions from, and payments by, an LTC to an owner are ignored for tax purposes, except for the purpose of calculating the "owner's basis" (see (19) on pages 19-22).</p> <p>(b) Distributions that reduce an owner's basis are:</p> <p>(i) All distributions to the owner from the LTC.</p> <p>(ii) Loans from the LTC to the owner.</p> <p>(iii) Other payments that are not payments to a working owner. [s. HB 11]</p> <p>A non-pro rata capital reduction should be regarded as a distribution under this definition.</p> <p>(c) Private use of an LTC's asset(s): Private use of an LTC's assets by an LTC owner will reduce the owner's basis, and the LTC will be denied a deduction for any private use element under the general rules for deductions. (See (19) on pages 19-22.) [ss. DA 1 & DA 2]</p> <p>(d) Company law requirements: The standard company law rules apply to distributions (dividends) from an LTC.</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p>(32) How are capital reductions or reductions in partners' contributions treated for tax purposes?</p>	<p>The standard rules on capital reductions apply, modified by the treatment of QC dividends.</p>	<p>(a) <u>A pro rata reduction in a partner's contribution:</u> has no tax consequences, except that it will reduce a limited partner's basis. 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. [s. HG 11 & s. 38 LPA]</p> <p>(b) <u>A non-pro rata reduction in a partner's capital contribution:</u> 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>(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 disposal safe harbour rules do not apply. (See (38) & (39) on pages 38 & 39.) [s. HG 5]</p> <p>(c) <u>Partner's interest deductions:</u> 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>(a) Anything received by an LTC owner from a capital reduction, is ignored for tax purposes. [s. HB 4(5)]</p> <p>However,</p> <p>(b) <u>A pro rata capital reduction</u> would be treated as a distribution, which would affect the owners' basis of LTC owners. [s. HB 11]</p> <p>(c) <u>In the case of a non-pro rata capital reduction</u> 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. [s. HB 4(4)] <u>The disposal payment will be taxable under general rules, if:</u></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. HB 5(1) will not be less than zero); and</p> <p>(ii) The disposal safe harbour rules do not apply (See (38) & (39) on pages 38 & 39.) [s. HB 5]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
(33) Is there a requirement to maintain an ICA?	<p>(a) A QC is required to maintain an ICA and complete company and shareholder dividend statements. [s. HA 19]</p> <p>(b) If a QC is part of an imputation group, all companies in the imputation group must be QCs. [s. FN 4(3)]</p> <p>(c) Tax refunds due to a QC are not limited by the credit balance in the QC's ICA. [s. RM 32]</p> <p>(d) There are no imputation consequences of any attribution of income under section GB 29. [s. OB 16]</p>	A partnership cannot maintain an ICA.	An LTC is not taxed as an entity, and cannot maintain an ICA.
(34) Are there shareholder continuity requirements to carry forward ICs?	<p>There are no shareholder continuity requirements in order for a QC to carry forward ICs. [s. OA 8(3B)]</p>	N/A	N/A
(35) What are the transitional rules for attaching ICs following the tax rate change?	<p>As part of the transitional arrangements relating to the attachment of ICs, a QC can continue to impute dividends based on a tax rate of 0.30 from the beginning of the 2011/2012 income year to 31 March 2013.</p> <p>Note: In this case, the extent to which dividends are fully imputed is determined based on a tax rate of 0.30.</p> <p>[ss. OZ 8 & OZ 14]</p>	N/A	N/A

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p>(36) What are the tax consequences if QC or LTC status ends or a partnership is dissolved?</p>	<p>(a) QC status ends from the beginning of a year in which a QC no longer meets the requirements to be a QC. [s. HA 11]</p> <p>(b) The dividend rules in s. HA15 apply up to the day before the status ends. [s. HA 18(2)]</p> <p>(c) Any remaining ICA or FDP credit balance, after all dividends have been imputed to the maximum extent possible, is extinguished by a corresponding debit, on the last day before QC status ends. [s. HA 18(3) & (4)]</p> <p>(d) If the transition concessions apply, the last day before QC status ends will be the last day of the year preceding the transitional year. [s. HA 33B]</p> <p>(e) If the QC is not transitioning to a partnership or LTC, unimputed dividends cease to be exempt, and become resident passive income, from the day that QC status ends. [s. HA 18]</p>	<p><u>If a partnership is finally dissolved:</u></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. [s. HG 4(2)]</p> <p>(b) The deemed disposal payment will be taxable under general rules if: (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.HG5(1) will not be less than zero); and (ii) The specific disposal safe harbour rules do not apply. (See (38) & (39) on pages 38 & 39.) [s. HG 5]</p> <p>(c) <u>Anything actually received by a partner</u> in relation to the dissolution of the partnership is ignored. [s. HG 4(3)]</p>	<p>(a) <u>When an LTC ceases to exist:</u></p> <p>(i) Anything received by an owner is ignored. [s. HB 4(5)]</p> <p>(ii) There is a deemed disposal of an owner’s interest at market value. [s. HB 4(3)]</p> <p>(b) If the LTC ceases to be an LTC:</p> <p>(i) 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. [s. HB 4(6)]</p> <p>(ii) The disposal payment rules will apply: See (38) & (39) on pages 38 & 39.</p> <p>(iii) 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. [s. HB 4(6)]</p> <p>(iv) Exemption for dividends paid after exit: Revenue reserves (i.e. dividends on a notional liquidation) at the time a company ceases to be an LTC, which are later paid as dividends, are excluded income. For this purpose, the ex-LTC’s ASC is adjusted for capital returns while it was an LTC. [ss. CX 63 & CD 43(1)]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
(37) Is an exit payment taxable to an exiting partner or owner?	N/A	<p>(a) 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 (36) on page 36 and (38) & (39) on pages 38 & 39.)</p> <p>[s. HG 5]</p> <p>(b) <u>If a partner derives income from a disposal payment:</u> 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 11]</p>	<p>(a) 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 (36) on page 36 and (38) & (39) on pages 38 & 39.)</p> <p>[s. HB 5]</p> <p>(b) <u>If an LTC owner derives income from a disposal payment:</u> the loss limitation rule does not apply, and deductions are not limited to the owner’s basis, to the extent they do not exceed the net income from the disposal payment.</p> <p>[s. HB 11]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p>(38) What are the safe harbour disposal rules applying to a partner or owner?</p>	<p>N/A</p>	<p>(a) <u>For low value disposals, of a part, or all, of an exiting partner’s interest, to an entering partner, that are within the specified disposal safe harbour limits (see (39) on page 39):</u></p> <ul style="list-style-type: none"> (i) The disposal payment is excluded income of the exiting partner. (ii) The entering partner is denied a deduction for the disposal payment. (iii) The entering partner is treated as always having owned the acquired partnership interest, for the purpose of the entering partner’s tax returns covering the period from acquisition onwards. (iv) The exiting partner is denied deductions allowed to the entering partner as a result of applying this rule. <p>[s. HG 5]</p> <p><i>[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. - s. HG 3]</i></p> <p>(b) <u>Disposals of specified livestock:</u> A special rule applies, in circumstances described in section HG 10: if the entering partner and the partnership so choose, the cost base can be determined under s. EC 26B. [s. HG 10]</p> <p>If the safe harbour limits do not apply, the entire disposal payment could be subject to tax.</p>	<p>(a) <u>For low value disposals, of a part, or all, of an exiting owner’s interest, to an entering owner, that are within the specified disposal safe harbour limits (see (39) on page 39):</u></p> <ul style="list-style-type: none"> (i) The disposal payment is excluded income of the exiting owner. (ii) The entering owner is denied a deduction for the disposal payment. (iii) 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. (iv) The exiting owner is denied deductions allowed to the entering owner as a result of applying this rule. <p>[s. HB 5]</p> <p>(b) <u>Disposals of specified livestock:</u> A special rule applies, in circumstances described in section 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. [s. HB 10]</p> <p>If the safe harbour limits do not apply, the entire disposal payment could be subject to tax.</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p>(39) What are the safe harbour disposal limits applying to a partner or owner?</p>	<p>N/A</p>	<p>(a) General disposal safe harbour limit: 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, <u>must be less than \$50,000.</u> <u>Gross tax book value</u> is calculated as: revenue account property, depreciable property and financial arrangements at their tax values, and other assets at market values. <u>Liabilities</u> are measured under GAAP. [s. HG 5]</p> <p>(b) Specific disposal safe harbor limits:</p> <p>(i) A disposal of trading stock (excluding livestock) if the partnership’s turnover in the year of disposal is not more than \$3 million. [s. HG 6]</p> <p>(ii) A disposal of depreciable property (other than depreciable intangible property), which cost no more than \$200,000. [s. HG 7]</p> <p>(iii) A 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. [s. HG 8]</p> <p>(iv) A disposal of a short-term agreement for sale and purchase. [s. HG 9]</p> <p>If the safe harbour limits do not apply, the entire disposal payment could be taxable.</p>	<p>(a) General disposal safe harbour limit: 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, <u>must be less than \$50,000.</u> <u>Gross tax book value</u> is calculated as: revenue account property, depreciable property and financial arrangements at their tax values, and other assets at market values. <u>Liabilities</u> are measured under GAAP. [s. HB 5]</p> <p>(b) Specific disposal safe harbor limits:</p> <p>(i) A disposal of trading stock (excluding livestock) if the LTC’s turnover in the year of disposal is not more than \$3 million. [s. HB 6]</p> <p>(ii) A disposal of depreciable property (other than depreciable intangible property), which cost no more than \$200,000. [s. HB 7]</p> <p>(iii) A disposal of financial arrangements (including interest-free NZ\$ loans), which are necessary for the LTC’s business, provided the <u>LTC does not derive income from a business of holding financial arrangements.</u> [s. HB 8 as amended by s.79 of the <i>Annual Rates Tax Act</i> applying from 1 April 2011]</p> <p>(iv) A disposal of a short-term agreement for sale and purchase. [s. HB 9]</p> <p>If the safe harbour limits do not apply, the entire disposal payment could be taxable.</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
(40) What are the tax return filing obligations?	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 (7) on page 11]	(a) An LTC must file a return showing: (i) The income of the LTC; (ii) The income for each owner; and (iii) The deductions for each owner. (b) Each owner must file a separate return that includes the income and deductions from the LTC. [See (7) on page 11]
(41) Are there any agency rules that apply to tax liabilities?	N/A	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 agency provisions that apply in relation to an LTC and an owner.

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
(42) Are there any special rules that apply to tax disputes?	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>(a) The LTC is treated as if it is an entity that is assessed for tax, based on its tax return. <u>Only an LTC may propose adjustments in a NOPA and complete the disputes process</u> in relation to a tax position taken in an LTC return.</p> <p>[ss. 89D(1), 89DA(1)(a) & (4): Tax Administration Act 1994 (“TAA”)]</p> <p>(b) 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. [s. 89C(ka): TAA]</p> <p>(c) A taxpayer may respond to a NOPA issued directly to the taxpayer by the Commissioner. [s. 89DA(1)(b): TAA]</p> <p>(d) An owner can challenge an assessment relating to LTC income once the disputes process has been completed with the LTC. [s. 138B: TAA]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
(43) Are there any special rules that apply to tax penalties?	<p>(a) A QC is subject to tax penalties and interest in the same way as an ordinary company.</p> <p>(b) 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>[ss. 141F, 147 & 148: TAA]</p>	<p>(a) 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. [s. 94B(2) & (3): TAA]</p> <p>(b) 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. [s. 141B(8)(a)(i): TAA]</p> <p>(c) The tax rate that is used for this purpose is the company tax rate applying at the time. [s. 141B(8)(b): TAA]</p>	<p>(a) LTC owners are not specifically mentioned, but they could be a “group of persons” for the purposes of s. 94B of the TAA, in which case, a shortfall penalty would be imposed on each owner in proportion to their look-through interests. [s. 94B(2) & (3): TAA]</p> <p>(b) When applying the unacceptable tax position shortfall penalty, an LTC’s tax return is treated as if it is a return by each owner. [s. 141B(8)(a)(ib): TAA]</p> <p>(c) The tax rate that is used for this purpose is the company tax rate applying at the time. [s. 141B(8)(b): TAA]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p>(44) Are there any other specific rules that apply?</p>	<p>If the attribution rule in section GB 27 applies, a QC is able to transfer overpaid provisional tax to the working person if the requirements of section RC 34 are met.</p> <p>[s. RC 34]</p>	<p><u>Other specific rules that apply to a partnership:</u></p> <p>(a) 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 section YD 4. A <i>NZ partnership</i> means a partnership that:</p> <p>(i) Is a limited partnership registered under the Limited Partnerships Act 2008; or</p> <p>(ii) Has 50% or more of its partners' interest in capital, by value, held by NZ residents; or</p> <p>(iii) Has its centre of management in NZ ignoring section HG 2.</p> <p>[s. YD 4(17B) & YA 1: "New Zealand partnership"]</p> <p>(b) Excepted financial arrangement: An interest in a partnership is an excepted financial arrangement. [s. EW 5(11)]</p> <p>(c) FIF income interests: Individual partners are treated as holding FIF income interests held by the partnership. [s. EX 30(8)]</p> <p>(d) Company for GST: A limited partnership is treated as a company for GST purposes. [s. 2 defn of "company": GST Act]</p>	<p><u>There are some other specific provisions applying to LTC's:</u></p> <p>(a) Excepted financial arrangement: A look-through interest is an excepted financial arrangement. [s. EW 5(11B)]</p> <p>(b) 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). [s. FC 1(2)]</p> <p>(c) 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. [s. FB 10B]</p> <p>(d) 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. [s. EC 12(5)]</p>

	Qualifying Company (QC)	Partnership/Limited Partnership	Look-through Company (LTC)
<p>(45) What are the transition rules that apply to special partnerships?</p>	<p>N/A</p>	<p>(a) <u>When a special partnership which existed on 1 April 2008 becomes a limited partnership:</u></p> <ul style="list-style-type: none"> (i) The partners simply continue as the same partners of the limited partnership. (ii) When calculating the partner’s basis for allowed deductions, the partners can: <ul style="list-style-type: none"> a. Value the initial investment, either at market value, or at accounting book value, when the calculation first has to be done; or b. Calculate the partner’s basis as if the special partnership had always been a limited partnership. <p>[s. HZ 3]</p> <p>(b) <u>When subpart HG applies to a partner in an Overseas Limited Partnership which existed before 1 April 2008:</u></p> <ul style="list-style-type: none"> (i) When initially calculating the partners basis, the partner can: <ul style="list-style-type: none"> a. Value the initial investment, either at market value, or at accounting book value, when the calculation first has to be done; or b. Calculate the partner’s basis as if the Overseas Limited Partnership had always been a limited partnership subject to subpart HG. (ii) The initial partner’s basis cannot be less than zero. <p>[s. HZ 4]</p>	<p>N/A</p>