

## Partnerships

- s6(1): an association of person carrying on business as partner or in receipt of income jointly
- wider definition includes 'passive joint ownership'  
(if husband and wife have joint account, strictly say a partner)

### Advantage of partnership

- partnership is the only one who can pass losses to partners immediately.
- Preserve character of income and expenses

### Limited partnership

- Usually one general partner with limited partners (liability limited to contribution)
  - Limited liability
  - Separate management from owner
  - Interest transferable like shares in company
- Div 5A ITAA 1936 (since 1992)  
Taxed as company: s94A

### CGT issues

- (1) Capital gain/loss in relation to a partnership or its assets, made by the partners individually: s106-5(1) ITAA 1997  
eg. Each partner's gain or loss (%) is calculated by reference to the partnership agreement, or partnership law if there is no contract
- (2) Each partner has separate cost bases and reduced cost base for his interest in the assets
- (3) If partner leaves partnership  
Remaining partners deemed to acquire a share of departing partner's interest in partnership assets: s106-5(3) ITAA 1997  
Eg. If one partner contributes a pre-CGT asset to the partnership of 3, it is deemed that he dispose 2/3 of his interest in the asset. And his remaining 1/3 shares in the building remains a pre-CGT asset while other partner remain post- CGT
- (4) If new partner is admitted  
New partner deemed to acquire a share of partnership assets  
Existing partners deemed to dispose of part of their interest in each partnership assets:  
**s106-5(4)**  
A and B form a partnership, each contribute \$15,000 to its capital. The land then increases in value to \$300,000. C pays A and B \$50,000 each to acquire 1/3 share in the land. His cost base is 100,000.  
A and B each dispose 1/3 of their interest in the land. therefore, capital gain = 50,000 – 5,000 = 45000  
If the land is sold now, C would have no capital gain. A and B each have capital gain: 100000 – 10000 = 90000

### Issues on Interest

- Interest expense on partner's capital: **not deductible**, *Beville*
- Interest income on partner's advance: **not taxable**, *Beville*
- Interest expense on loans from partner: deductible, *Leonard*
- Interest on external borrowing by partnership to repay partners' contributions employed in the business: deductible: *Roberts, Smiths*
  - Refinancing takes the same character as the original borrowing
  - ATO position: TR 95/25
- Salaries to partners:
  - Not deductible: *Re Scott*
  - What happens if salary > partner's share of net income  
TR 2005/7:

### Steps

- calculate '**net income**' or 'partnership loss' at partnership level  
s90 ITAA 1936 (as if the partnership were a taxpayer)
- allocate NI or PL to partners according to **individual interest** of the partner in the amount: s92 ITAA1936
- partnership return, but not liable to pay tax: s91 ITAA1936

Example 1: Anna and Robert formed a partnership, they agreed to share profit and loss equally, Anna draw a salary of \$20000 for managing the business while the net profit after paying Anna salary was \$35000