

PROPERTY INVESTMENT – LAQC v FAMILY TRUST

Traditionally, one of the preferred entities for purchase by property investors has been the trust, particularly a family trust. However, in recent times the Loss Attributing Qualifying Company, or "LAQC" has become a popular entity through which to purchase.

An LAQC is a limited liability company, which is registered with the Inland Revenue Department to allow losses to be claimed by shareholders.

To qualify with the IRD certain criteria need to be met including:

- Having no more than 5 shareholders or be a flat owning company;
- Each shareholder must be a natural person, a trustee of a trust (of which all cash dividend income other than bonus issues is distributed as beneficiary income) or a qualifying company;
- The directors and majority of the shareholders with legal capacity must elect that the company become a qualifying company; and
- The shareholders must also elect to be personally liable for a share of the income tax liability of the company equal to the shareholder's interest in the company.

The central benefit of the LAQC for the property investor is tax related. A tax loss made by an LAQC can be attributed to the shareholders' personal taxable income, thereby enabling shareholders to gain deductions on their personal taxable income.

Of course, rather than purchase a property through an LAQC an investor can purchase the property in their own name and claim losses directly against their other income.

However, as depreciation also needs to be provided for each year, and on sale by the individual investor to their family trust at a later date (once the investment is running at a profit) recovered depreciation issues arise with possibly undesirable results. The transfer of shares in an LAQC from the individual investor to their family trust does not impact on depreciation claimed by the LAQC.

A family trust can accumulate losses which can be used to offset future profits in the trust but the losses can not be used by beneficiaries of the trust to offset tax on their own personal income.