

PARTNERSHIPS

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ROAD MAP



What is a Partnership at Common Law ?

GST & Partnerships

RST & Partnerships

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What is a partnership ?

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Partnerships at Common Law

Why do I care ?

Tackling sophisticated transactions.
Understanding *why* tax applies
in the manner it does
Properly challenge
Admin Policy or Tax Audits
where appropriate

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Partnerships at Common Law

Provincial Legislation. Common Law Precepts.

Carrying on Business
With a View to Profit
In Common

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The Partnership Agreement

Written
Oral
Implied

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What legal implications follow ?



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The "Firm" as a Collection on Partners

- No Legal Personality
- Legal Implications
- Tax Implications



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The Partner as Agent

Section 6 of Partnerships Act

- Legal Implications
- Tax Implications



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Partnership Property

Sections 21 & 24

- Legal Implications
- Tax Implications



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OVERVIEW

Statutory Code or Common Law ?



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The Partnership as a "Person"

Subsection 123(1)

Intended Effect → Registration
Unintended Effects ?

The "Partnership Interest" as a Financial Instrument

No Definition
Ownership of Property ?

DEEMING RULE – 272.1(1)

I did something "as a member of a Partnership"

"The Partnership did it"
Endless implications

REIMBURSEMENTS – 272.1(2)

I bought something for the Partnership,
used my own money,
and got reimbursed.

Subsection 175(1)

Supply to Partnership

Partnership Takes ITC for
Reimbursed Portion

Partner Takes ITC or Rebate for
Unreimbursed Portion

REIMBURSEMENTS – 272.1(2)

I bought something for the Partnership,
used my own money,
but didn't get reimbursed.

Paragraphs 272.1(2)(a) (b) & (c)

No Supply to Partnership

Partnership Gets NO ITC

Partner Takes ITC or Rebate

SUPPLIES TO PARTNERSHIP – 272.1(3)

Not in the Ordinary Course

Deeming Rules Valuing Supply
Commercial Use: Consideration Paid

Exempt Use: FMV

SUPPLIES TO PARTNERS – 272.1(4)

Disposition of Property of the Partnership
to current prospective or departing partners

- Disposition
- Deemed FMV Supply
- Commentary

OTHER SPECIAL RULES

- 272.1(5) – Joint & Several Liability
- 272.1(6) – Deemed Existence Until Cancellation
- 272.1(7) – Continuation of Partnerships

Issues & Recent Changes

RECENT CHANGE

P-244 – FINAL POLICY ON 272.1(1)

Meaning of “as a Member of a Partnership”

- Terms of the Partnership Agreement
- Significant Changes from Draft Policy
- Nature of Action Taken by Partner

Partner’s Ordinary Course of Conduct

EXAMPLE



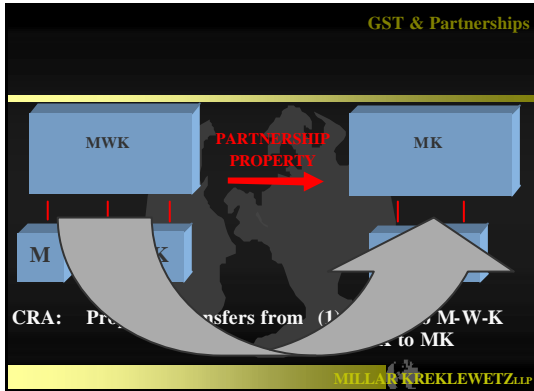
RECENT CHANGE

P-XXX – DRAFT POLICY ON 272.1(7)

Continuation of Partnership Rule

RULE:
If requirements met, then
NEW “continuation of and same person as” OLD

Question: Treatment of Property Being Transferred



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ISSUE

**MIS-IDENTIFICATION
&
OVER-DOCUMENTATION**

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OVERVIEW

Partnership as a “Non-Person”

- General Absence of Statutory Code Governed by **Seven Mile Dam** Analysis Implications

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RST & Partnerships

RECENT CHANGE

ONTARIO PARTNERSHIP REGULATIONS

“Eligible Property”

- Requires “Tax Paid Property”
- (Not Acquired for Resale)
- Contemplates Multiple Use of Exemptions (Not Acquired Exempt)

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RST & Partnerships

Rule on Creation of Partnership

- No RST if “Consideration Received” for TPP = “Partnership Interest”
- What is the “Partnership Interest”
- How should it be valued ?
- Remember: Can Take it Out Tax-Free Too

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Rule for Transfers After Creation

Treat certain amount as exempt,
 based on “% of Profits” of Partnership
 Applies on TPP Going IN and OUT
 (But not if taking out someone’s else’s TPP)
 Inherent Double Tax Still the Norm
 Why % of Profits ?

QUESTIONS

PARTNERSHIPS

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THANK YOU

ONTARIO PARTNERSHIPS ACT

POWER OF PARTNER TO BIND FIRM

6. Every partner is an agent of the firm and of the other partners for the purpose of the business of the partnership, and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he or she is a member, bind the firm and the other partners unless the partner so acting has in fact no authority to act for the firm in the particular matter and the person with whom the partner is dealing either knows that the partner has no authority, or does not know or believe him or her to be a partner. R.S.O. 1990, c. P.5, s. 6.

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ONTARIO PARTNERSHIPS ACT

RATIFICATION OF RIGHTS AND DUTIES OF PARTNERS

24. (1) All property and rights and interests in property originally brought into that partnership to the partnership shall be deemed, on either way, on account of the firm implied that the partnership is bound by the following rules: partnership business, are called in this Act, "partnership business," and all the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses, whether in capital or otherwise, sustained by the firm, but a partner shall not be liable to contribute towards losses arising from a liability for which the partner is not liable under subsection 10 (2).

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EXCISE TAX ACT

123.(1) Definitions — In section 121, this Part and Schedules V to X,

"person" means an individual, a partnership, a corporation, the estate of a deceased individual, a trust, or a body that is a society, union club, association, commission or other organization of any kind;

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EXCISE TAX ACT

272.1(1) Partnerships — For the purposes of this Part, anything done by a person as a member of a partnership is deemed to have been done by the partnership in the course of the partnership's activities and not to have been done by the person.

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