Private equity investment: LLP or limited company?

Large Corporate OMB

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Private equity investment in professional services firms requires careful structuring to balance tax risks, commercial flexibility and the eventual exit strategy.

Key Points

What is the issue?
Private equity investment in professional services firms operating through an LLP requires different structuring from a conventional share acquisition. The parties must decide whether to retain the LLP, incorporate the business before investment or adopt a hybrid structure.

What does it mean to me?
The chosen structure affects the taxation of the original members and investors,

future profits and the eventual exit. Corporate members and valuable intangible assets can also create unexpected ‘dry’ tax liabilities on reorganisations or disposal.

What can I take away?
Incorporation provides a more familiar investment platform but can bring significant tax costs and practical consequences. These must be weighed against the continuing complexity and tax risks of retaining the LLP structure.

While we see a range of third parties investing in accountancy, legal and other professional services practices, private equity businesses are leading the charge. These transactions often bring investment in technology, acquisition funding and support for succession. However, they also pose a key structural question that doesn’t usually arise when acquiring a company or group: what should happen to the LLP?

An LLP is a body corporate for legal purposes but is generally treated as a partnership for UK direct tax purposes if it carries on a business with a view to profit, so its members are taxed on their shares of profits and gains rather than the LLP itself paying corporation tax. For chargeable gains, the members of a trading LLP are treated as members of a partnership under the Taxation of Chargeable Gains Act (TCGA) 1992 s 59A, with each member taxed on their share of the gains.

This distinction matters. A private equity investor will generally expect to invest in shares, use acquisition debt at corporate level, introduce management equity and ultimately realise its investment through a share sale. None of these fits naturally with a traditional professional services LLP.

Broadly, there are two choices: retain the LLP and design a corporate structure around it, or transfer the practice to a company before the investor buys in.

Retaining the LLP

The principal attraction of retaining the LLP is continuity and flexibility. The firm may be able to preserve existing client engagements, regulatory arrangements, partnership culture and profit-sharing mechanisms. It may also avoid moving employees, property, licences and contracts into a new operating entity.

As a transparent entity for direct tax purposes, LLP members are taxed on their allocated profits, whether or not they are distributed. Corporate members are generally subject to corporation tax on their allocated shares, calculated under the Corporation Tax Act (CTA) 2009 ss 1259 and 1273. This makes individual members' immediate effective tax rates higher than those applying to a company, where corporation tax is paid initially and shareholders are only taxed when value is extracted.

That transparency may suit continuing members, but it can complicate private equity investment. An investor typically invests through a corporate member of the LLP (often via a stack of companies). The LLP agreement must then translate concepts such as preferred returns, leverage and management equity into allocations of profit, capital and voting rights. Vendor reinvestment and 'sweet' equity also need consideration; for example, should these be structured through the LLP, the parent company of the investor stack, or both?

Member status and profit allocation

Those allocations cannot be considered exclusively as commercial matters. The mixed member partnership rules in the Income Tax (Trading and Other Income) Act (ITTOIA) 2005 ss 850C to 850E can reallocate profits attributed to a corporate member where an individual member has the power to enjoy them and the profits allocated to the corporate member are excessive by reference to capital or services provided.

The salaried member rules must also be considered where continuing individuals remain LLP members but their economic and governance arrangements become more employment-like. Under these rules, an LLP member is treated as an employee if three statutory conditions are met. Broadly, these concern whether remuneration is largely fixed rather than linked to the LLP's profits (Condition A), whether the member lacks significant influence over the LLP (Condition B), and whether their capital contribution is less than 25% of their disguised salary (Condition C).

If all three conditions are met, the individual is taxed as an employee for income tax and NIC purposes, rather than as a self-employed LLP member.

Following the Supreme Court decision in *HMRC v BlueCrest Capital Management (UK) LLP* [2026] UKSC 18, and given that a PE investor will often take a material

interest, such as control or significant influence over the business, we are seeing increased reliance on ensuring that Condition C is not met. Condition C should be monitored on an ongoing basis, particularly where earnings are volatile or include a performance-related element. For further background on the salaried member rules and the earlier stages of the *BlueCrest* litigation, see ‘BlueCrest Capital: salaried member rules for LLPs’ (Tax Adviser, April 2025).

Financing and exit

The corporate LLP member is generally treated as holding its share of the LLP’s assets, including shares in subsidiary companies.

Depending on the economic rights attaching to the corporate member’s interest in those underlying shares, a corporation tax group may therefore be established, for example for loss relief purposes. However, the corporate structure and allocation of those economic rights may result in the corporate member and its parent companies forming a separate corporation tax group from the LLP subsidiary sub-group.

This can limit the ability to offset acquisition financing costs or other losses across the structure and may require the investor to place debt or service functions in carefully selected entities. Transfer pricing, corporate interest restriction and unallowable purpose considerations add further layers of complexity.

Planning for a future exit is another difficulty. The investor is likely to prefer to sell shares in a corporate member or its parent companies rather than an interest in the LLP. However, a buyer will need to understand what that company owns and whether it controls the relevant economic rights under the LLP agreement. Alternatively, the LLP may sell its business and assets. An asset sale can create tax charges for LLP members and require the transfer of contracts, employees, property and regulatory permissions.

Intangible asset risks

There is also a particular risk where the LLP has corporate members and holds valuable goodwill or other intangible assets under the intangible fixed asset (IFA) regime in CTA 2009 Part 8. The IFA regime does not always treat an LLP as transparent in the same way as the chargeable gains regime under TCGA 1992, where the intra-group transfer provisions are more widely drawn for companies in a

chargeable gains group.

CTA 2009 s 845 applies market value to certain transfers of IFAs between a company and a related party. Sections 848 and 775 can give priority to tax-neutral treatment for qualifying intra-group transfers. However, s 764 expressly excludes an LLP from the definitions of ‘company’, ‘group’ and ‘subsidiary’ for these purposes. A movement of goodwill between an LLP and a connected company can therefore produce a market value taxable credit without group relief. This can be relevant to transfers of trades and assets into or out of the LLP, as well as sales of an interest in the LLP at member level.

The *Tax Adviser* article, ‘An intangible problem’, published in November 2021, illustrates this by considering an LLP with a corporate member transferring internally generated goodwill to a subsidiary. Although a comparable chargeable asset might transfer on a no gain/no loss basis under TCGA 1992 s 171, the IFA company group provisions may not accommodate the LLP. CTA 2009 ss 738 and 845 can then require market value treatment and create a ‘dry’ tax charge.

Retaining the LLP therefore avoids an immediate business migration and may retain the self-employment status members are used to, but does not eliminate risk. It may merely defer a charge until refinancing, integration, group simplification or an exit. Assuming the group increases in value over time, and without careful structuring from the outset, retaining the LLP may simply defer an inevitable and increasing cash tax exposure on the market value of IFAs, such as goodwill, whether or not recognised on its balance sheet.

Incorporating before investment

The alternative is to transfer the LLP’s business to a limited company, usually in return for shares. The investor can then subscribe for or acquire shares in a conventional holding company structure.

This well-trodden route has clear commercial advantages. The investor benefits from familiar shareholder rights and can use conventional loan notes, preference shares, ratchets and management incentive arrangements. A corporate group may also provide a clearer platform for acquisitions, financing and exit. A future buyer can acquire shares rather than the underlying practice assets, although regulatory

restrictions may still require operating activities to be separated or ringfenced.

Incorporation relief

The tax analysis begins with the transfer of the LLP's business and assets. For individual members, TCGA 1992 s 162 (incorporation relief) may defer gains where a business is transferred as a going concern with all its assets (other than cash if desired) to a company wholly or partly in exchange for shares. The gains are effectively rolled into the base cost of the shares received. However, since 6 April 2026, incorporation relief is not automatic and must be claimed with specified supporting information. Several other aspects also require considerable care:

1. The whole business must transfer: Selecting individual assets or leaving material parts of the business in the LLP puts incorporation relief at risk. Cash may be retained but property, work in progress, subsidiary interests and investments must either be transferred or dealt with before incorporation.

2. Consideration matters: Full deferral generally depends on the consideration being shares. Cash, loan notes or a credit to a director's loan account can leave part of the gain immediately chargeable. This may conflict with the members' desire to receive cash before completion or with the investor's preferred debt and equity structure.

3. Income items need separate treatment: TCGA 1992 s 162 does not relieve income tax charges arising on trading stock, work in progress or other income items. Transfer values and the application of specific succession or election provisions must be considered separately. It is also necessary to ensure the appropriate recognition of pre-transaction profits and understand the distinction between, and impact of, 'locked box' and cessation or completion accounts.

4. The identity of members matters: Incorporation relief is available to a person other than a company. Where the LLP has one or more corporate members, including personal or family holding companies, the interaction between partnership transparency, the capital gains rules and CTA 2009 Part 8 must be analysed separately for each member and asset. A single treatment should not be assumed for all.

Goodwill and BADR

Goodwill is likely to represent a substantial part of the firm’s value. The transfer may crystallise gains for individual members, although TCGA 1992 s 162 may defer them if conditions are met. However, the acquiring company may not obtain corporation tax deductions for amortisation. CTA 2009 ss 879A to 879P restrict relief for goodwill and certain associated assets, including customer information and relationships, and unregistered trademarks. The members may therefore recognise a disposal at market value, subject to available deferral reliefs, while the company receives restricted or no relief for the goodwill recognised in the accounts.

Business Asset Disposal Relief (BADR) for the LLP members should not be assumed. A disposal of a business by an individual member can qualify where the relevant conditions have been met for two years. A later disposal of shares in the newly incorporated structure is subject to different conditions, including employment or office-holder status, trading status and the relevant minimum shareholding and economic interest requirements (ordinarily 5%). From 6 April 2026, qualifying gains are taxed at 18%, subject to a £1 million lifetime limit. Incorporation before private equity investment may therefore affect whether LLP members qualify on a later share disposal.

Other taxes and timing

Other taxes and practical matters can be equally important. A transfer of land or property can give rise to stamp duty land tax (SDLT), and the partnership provisions in the Finance Act 2003 Sch 15, as well as general SDLT anti-avoidance provisions, require detailed analysis. Schedule 15 contains a statutory formula rather than a general exemption and can create a charge by reference to a proportion of market value. Relief is available for transfers of property into a newly formed LLP, but not for the opposite movement from an LLP to a company.

A VAT-free transfer of a going concern may be available if the assets transferred are capable of operating as a separate business and the transferee uses them to carry on the same kind of business. Employment taxes, capital allowances, leases, client contracts and regulatory consents must also be addressed.

Timing is therefore critical. Incorporating immediately before a sale may reduce the period available to establish the structure, obtain clearances and resolve valuation issues. It may also mean that the members do not satisfy the two-year conditions for BADR on the new shares. Incorporation should therefore be considered when private

equity investment becomes a realistic strategic option, rather than after heads of terms have been signed.

Is incorporation always preferable?

A company is usually easier for a private equity investor to understand, fund and sell. Yet that does not mean incorporation will always produce the better result.

Retaining the LLP may be sensible where regulatory or contractual barriers make a full business transfer impractical or where the continuing members place significant value on the partnership culture, flexibility in rewarding members, the ability to bring people into equity and the associated tax benefits. A hybrid structure may allow the LLP to retain regulated or protected activities while a corporate group carries on other services.

However, hybrid structures demand continuing tax discipline. Profit allocations, financing, transfer pricing, remuneration and movements of intangible assets all require monitoring. The tax cost should therefore be considered over the whole private equity lifecycle, including the future exit, rather than only at entry.

Incorporation may give a cleaner long-term platform, but it can trigger tax, deny expected goodwill deductions and require extensive legal implementation. The availability of TCGA 1992 s 162 relief helps, but it is neither universal nor comprehensive.

Finally, regulatory matters should not be overlooked. Obtaining regulatory approval before a transaction completes can take time, while regulatory requirements may also impose structural limitations. For example, ICAEW requires firms carrying out statutory audit services to be controlled by individuals responsible for the provision of audit services. Pre-sale restructuring may therefore be necessary to ensure that regulatory requirements are met throughout the transaction.

Conclusion

The choice is not simply between an LLP and a company; it is about where complexity should sit. Retaining the LLP can limit immediate disruption but may create continuing friction around investor returns, debt, incentives, restructuring options and exit. Incorporation can simplify the investment structure but brings tax

and implementation risks forward.

The correct answer for an LLP depends on the composition of its membership, the history and value of its goodwill, the intended deal consideration, whether a buy-and-build strategy is envisaged and the implications for further acquisitions, property ownership, regulatory requirements and the likely exit route. Those issues should be modelled together, as a tax-efficient entry structure may prove expensive in the long term if it obstructs integration or creates a charge when the investor exits.