

PRADIP K MODI

pkm@pkmodi.com

Dt :29.01.2015

LIMITED LIABILITY PARTNERSHIP – A WAY FORWARD

DISCUSSION POINTS :

- Format of Business
- Agreement between partners for carrying out Business with Profit Object :Mutual Agency between partners and LLP.
- Hybrid Format : Company + Partnership = LLP
- The LLP Structure is available in Countries like USA, Australia, Singapore and Gulf Countries.

LLP FORMATION :

1. Minimum 2 Partners . At least 2 Designated Partners (Individual) and out them One must be Resident .
2. PAN Number of Designated Partner
3. Designated Partner must be Resident of India.
4. DIN (Director / Partner) Identification Number).
5. Name Approval.
6. LLP Agreement filing and other Compliances.
7. Name, Object and Register Office of LLP.
8. The initial Contribution of the LLP by Partners.
9. Methodology of Valuation of Non Monetary Contribution.
- 10.The Net Profits or Losses sharing ratios.
- 11.Detail of Designated Partners.

12. Interest payable on capital loan prescribed u/s.40(b) of the Income tax Act, 1961.
13. Remuneration payable to the working partners or as prescribed u/s.40(b) of the Income tax Act, 1961.
14. Mode of Operation of Bank Accounts.
15. Maintenance of Books of Accounts.
16. Appointment of Arbitrator
17. Rights and Duties of Partners
18. Indemnity clause.
19. Goodwill clause.
20. Procedure for change in name
21. Procedure to appoint Auditor
22. Admission of New Partner.
23. Meeting
24. Cessation of Existing Partners.
25. Winding up of LLP
26. Amendments of LLP
27. Extent of Liability of LLP
28. Liability of Partners in LLP
29. Ancillary or other business carried over by LLP

ADVANTAGES :

1. Liability : Limited Vs Unlimited (wrongful act)
2. Perpetuality : Succession Vs Dissolution.
3. Trust worthiness : Deed Vs Registration with Govt. Authority
4. Cost Benefit : Not Substantial Difference.
5. Entity : Separate /Distinct Entity

CHALLENGES :

1. Filing of Annual Return with ROC – Delay attracts huge penalty.
2. The Annual Return will be available for Public Inspection.
3. Power of ROC to call for inspection and information.
4. No Security Interest in its assets subsisting or in force at the time of application.

Taxation of LLP (w.e.f. A.Y : 2011-12)

1. LLP to be taxed in line on the similar lines as partnership under Indian Partnership Act, 1932
2. Terms and condition u/s 184 to be complied with for filing duly signed / certified partnership Instrument, change in partnership.
3. Joint and Several liability of partners for tax payable by LLP
4. Partners of LLP will be liable to pay tax, penalty or other sum under income tax Act with unlimited amount.
5. There should be well drafted LLP Agreement for payment of interest and remuneration to designated partners to comply with requirements of section 40(b) of I.T.Act.
6. Designated partner may be helpful in establishing business policy, implementation, carrying transaction, conducting day to day operation or other jobs, not necessary full time.
7. While arriving book profit adjustment u/s 40(b), 43B and 40(i)(ia) should be made.
8. 40A(2) will not come in the way of 40(b) profit determination.
9. Carry forward business loss will not be deducted for book profit working, Carry forward Depreciation loss will be adjusted.
10. Carry forward and set off of loss will be adjusted to the extent death / retirement of partner's profit sharing ration. However on admission of new partner no such effect is given u/s 78.
11. From A.Y. 2013-14 , LLP is subject to Alternate Minimum Tax @ 19.055% to 20.9605%.
12. Consequent to re computation of assessable income of LLP, except than failure u/s. 144, corresponding tax natural mechanism under proviso to section 28(v) will trigger.

13. Payment received by a partner in realization of his share upon his retirement from firm is not chargeable of tax.

OTHERS :

1. Dividend Distribution Tax not Applicable.
2. Taxation of LLP at par with partnership
3. Capital contributions u/s. 45(3)
4. Share of Profit is exempted income 10(2A)
5. Admission / Retirement of Partners like under partnership firm.
6. Merger / Demerger / Restructuring of LLP permissible.
7. Dissolution of LLP without involvement Liquidator or court.
8. Carry forward of loss under conversion from company to LLP possible with fresh life of 8 more years.
9. Conversion of LLP into company permissible u/s 366 of Co. Act 2013.
10. No Wealth Tax Provision applicable.
11. Inter Related parties loan/ advances permissible without attracting Deemed Dividend provision u/s 2(22)(e)

• Tax rate :

(A Y 2014-15) UptoRs. 1 Cr	$30\% + 2\% + 1\% = 30.90\%$	LLP
	$30\% + 2\% + 1\% = 30.90\%$	Company
Taxable Income (A Y 2014-15) more than 1 Cr	$30\% + 10\% + 2\% + 1\% = 33.99\%$	LLP
	$30\% + 5\% + 2\% + 1\% = 32.45\%$	Company

CONVERSION OF PRIVATE / UNLISTED COMPANY INTO LLP

LIMITATIONS / CHALLENGES

1. Revaluation Assets at the time of Admission / Retirement of Partners is unclear.
2. Revaluation of Assets at the time of Conversion of Company to LLP is unclear.
3. Foreign Direct Investment is subject to prior approval from Reserve Bank of India.
4. Alternative Minimum Tax @ 18.5%
5. Not Possible for Infrastructure Projects which are claiming deductions u/s 80IA(4).
6. LLP Act 2008 is silent for qualification of minor as partner.
7. Merger of LLP into company not permissible.
8. Limited Liability Partnership is not eligible for presumptive taxation.
9. Foreign Debt (ECB) is subject to RBI permission.
10. Unfit for NGO and NBFC

POSSIBLE VIEWS :

- I. Slump Sale
- II. No Transfer
- III. Deemed Dividend : Ref Section 46 and 2(22)©

Other Important issues.

1. Carry forward of MAT Credit 115 JAAA(7)
2. Carry forward of Excise / Service Tax.
3. Allowability of expenditure u/s. 43B and 40(i)(ia) – Virbhadra Rao (SC)-155 ITR 152
4. Allowability of Bad Debts
5. Accounting treatment in Books of LLP
 - a) When there is a transaction above Book Value.
 - b) When there is a different class of shares / preference share.
6. Under Service Tax : LLP = Partnership firm and therefore no partial reverse charge.
7. Under Vat/ Sales Tax : LLP is treated as a corporate

- **Conversion of Company into LLP - I.T. Provisions u/s. 47(xiiib) read with section 56 or 57 of LLP Act 2008.**

(a) all the assets and liabilities of the company immediately before the conversion become the assets and liabilities of the limited liability partnership;

(b) all the shareholders of the company immediately before the conversion become the partners of the limited liability partnership and their capital contribution and profit sharing ratio in the limited liability partnership are in the same proportion as their shareholding in the company on the date of conversion;

(c) the shareholders of the company do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of share in profit and capital contribution in the limited liability partnership;

(d) the aggregate of the profit sharing ratio of the shareholders of the company in the limited liability partnership shall not be less than fifty per cent. at any time during the period of five years from the date of conversion;

(e) the total sales, turnover or gross receipts in business of the company in any of the three previous years preceding the previous year in which the conversion takes place does not exceed sixty lakh rupees; and

(f) no amount is paid, either directly or indirectly, to any partner out of balance of accumulated profit standing in the accounts of the company on the date of conversion for a period of three years from the date of conversion.

- In case of Branch of Conditions :

- I. U/s. 47A(4)

where any of the conditions laid down in the proviso to clause (xiiiib) of section 47 are not complied with, the amount of profits or gains arising from the transfer of such capital asset or intangible assets or share or shares not charged under section 45 by virtue of conditions laid down in the said proviso shall be deemed to be the profits and gains chargeable to tax of the successor limited liability partnership or the shareholder of the predecessor company, as the case may be, for the previous year in which the requirements of the said proviso are not complied with.]

- II. U/s. 72A(6A)

[(6A) Where there has been reorganization of business whereby a private company or unlisted public company is succeeded by a limited liability partnership fulfilling the conditions laid down in the proviso to clause (xiiiib) of section 47, then, notwithstanding anything contained in any other provision of this Act, the accumulated loss and the unabsorbed depreciation of the predecessor company, shall be deemed to be the loss or allowance for depreciation of the successor limited liability partnership for the purpose of the previous year in which business reorganization was effected and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly :

Provided that if any of the conditions laid down in the proviso to clause (xiiiib) of section 47 are not complied with, the set off of loss or allowance of depreciation made in any previous year in the hands of the successor limited liability partnership, shall be deemed to be the income of the limited liability partnership chargeable to tax in the year in which such conditions are not complied with.]