

Presentation on
Benefits of Converting a Private Limited Company or a Regular
Partnership Firm into a
“Limited Liability Partnership Firm”

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By

Mr. Anil Harish
Partner

D.M. Harish & Co. Advocates

305-309, “NEELKANTH”
98, Marine Drive,
Mumbai - 400 002.

E-mail: dmhco@dmharish.com

Tel: +91 (22) 43342000 and 22817272

EXAMPLE (1)

BALANCE SHEET XYZ PARTNERS

Liabilities

Capital -	Rs. 10,00,000
Reserves-	Rs. 1,00,00,000

	Rs. 1, 10,00,000

Assets

Bank Balance -Rs.1,10,00,000

Rs. 1, 10,00,000

Declare Dividend : Pay Dividend Distribution
Tax 15% (Basic Rate)

EXAMPLE (2)

BALANCE SHEET PQR PARTNERS

Liabilities

Capital -	Rs. 2,00,000

	Rs. 1, 10,00,000

Assets

Property Cost -	Rs.2,00,000

	Rs. 1, 10,00,000

If company sells property it will pay tax then transfer 10% to General Reserve. Then distribute dividend and pay DDT.

LIMITED LIABILITY PARTNERSHIP ACT 2008 –AN INTRODUCTION

- LLP Act, 2008 passed by Lok Sabha on 12th of December 2008 and the President gave assent to the Bill on 7th January 2009.
- LLP Rules, 2009 Notified on 1st April 2009.
- LLP Act, 2008 has:
 - 81 Sections
 - 4 Schedules
 - 29 Forms

NATURE OF LLP

- Section 3 of the Act states that an LLP is a Body Corporate formed and incorporated under this Act and is a legal entity separate from its partners.
- It shall have perpetual succession and a change in partners shall not affect the existing rights or liabilities of the LLP. It is also expressly provided that the provisions of the Indian Partnership Act, 1932 shall not apply to LLPs. (Section 3(2))

GENERAL PROVISIONS

- Name - Every LLP must use the words “Limited Liability Partnership” or the acronym “LLP” as the last words of its name. (Section 15)
- Partners - An individual or body corporate may be a partner in an LLP. (Section 5)
 - ✓ *Minimum two.*
 - ✓ *However, if the number comes down to one for up to six months, the LLP does not cease to exist.*

COMPANY → LLP

- Existing Private and Public Limited Companies (except Listed Company) can be converted into LLP and all the assets, liabilities and business of existing Company will vest in to LLP, the process of which is mentioned under Sections 56-58 along with Schedules II, III and IV of the LLP Act of 2008.

PARTNERS

- Minimum two individuals as partners who will be identified as **Designated Partners. (Section 7)**
- Individuals, Foreign nationals, Indian Companies, Foreign Companies, Foreign LLP and Foreign LLC can become partner. (Section 5) (However FEMA does not permit non-residents or foreign companies yet).
- In a case where corporate bodies are the only partners at least two corporate bodies will have to nominate two individuals as partners who will be identified as Designated Partners. (Section 7(1))
- Government will issue guidelines for Non-resident Foreign LLP and Foreign LLC to become partners in LLP. They will be governed by FEMA regulations.

OBLIGATIONS OF DESIGNATED PARTNER

- Every LLP shall have at least two individuals as Designated Partners. (Section 7(1))
- At least one of the Designated Partners should be resident, in India meaning he should be residing in India for 182 days or more in the immediately preceding one year. (Section 7(1))
- The Designated Partners are responsible for compliance with the provisions of the Limited Liability Partnership Act, 2008 and Limited Liability Partnership Rules, 2009. (Section 8(a))
- Every Designated Partner will have to obtain “Designated Partner’s Identification Number” (DPIN) and Digital Signature Certificate. (Section 7(6))

FORMATION OF LLP

- Deciding the partners and designated partners
- Obtaining DPIN
- Obtaining Digital Signature Certificate
- Registration on LLP portal
- Name Availability
- Filing of incorporation documents
- Obtaining Certificate of Incorporation
- Drafting of LLP Agreement

TAXATION OF LLP

- The Finance Bill (No.2), 2009 has amended the definition of firm to include LLP. The status of LLP is equal to the firm.
- The status of a partner of LLP is equal to the partner of a firm.
- The taxable income of LLP will be subjected to tax at the maximum marginal rate being 30%.
- Interest and Remuneration payable to partners, subject to provisions of Section 40(b) will be allowed as deduction while computing the taxable income of LLP.
- The distribution of income by LLP is not subjected to dividend distribution tax. LLP is not subjected to double taxation.
- In the hands of the partner the amount received from LLP as share of profit is exempt u/s 10(2A) of Income Tax Act, 1961.
- Interest and remuneration received by the partners of LLP will be subjected to tax under the head “Income from Business or Profession”.

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ADVOCATES

TAXATION OF LLP

- Alternate Minimum Tax (Sec.115JC to Sec.115JF): With effect from A.Y. 2011-12, LLPs are required to pay Alternate Minimum Tax (AMT) @ 18.5% on their Book Profit which is similar to MAT applicable for companies.
- LLPs are liable to pay MAT on its adjusted total income u/s 115 JC which is introduced from A.Y. 2012-13. Adjusted total income include total income as increased by the deduction claimed u/s VIA and Section 10AA.
- MAT is payable @ 18.5% on adjusted total income.
- LLP will be entitled to MAT credit u/s 115JD which can be carried forward up to to 10th Assessment year.
- In case of retirement or dissolution of LLP, provisions of S.45(4) of the Income Tax Act, 1961 may be applicable.
- One of the Designated Partner has to sign the return of income. If due to unavoidable circumstances, Designated Partner can not sign the return of income then any of the other partners may sign the return.

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TAXATION OF LLP

- Each partner of LLP is jointly and severally liable for tax due of LLP.
- Under Section 188A of Income-tax Act,1961, in case of a partnership firm, the partners are jointly and severally liable for tax payable by the firm. Section 167C of Income-tax Act,1961 will apply to the partners of LLP and if the partner of LLP proves that non recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the LLP then he will not be personally liable.

TAXATION OF LLP

- If a company has a capital assets and company is converted into LLP, there will be no tax on conversion if;
 - a) All assets and liabilities of company become of LLP.
 - b) All shareholder become partner and profit sharing ration should be equal to shareholding pattern.
 - c) Share holder do not receive any consideration or benefit directly or indirectly other than share in profit and capital contribution of LLP.
 - d) The shareholder shall hold in aggregate at least 50 % of LLP for 5 Years
 - e) Total Sales turnover of gross receipt in any of the three preceding years shall not be more than 60 Lakhs.
 - f) No amount is paid to any of the partners out of the balance of accumulated profit on the date of conversion and for three years thereafter.

NOTIFICATION

- Circular bearing number 01/2011, dated 6th April 2011, issued by CBDT clarifies that figure of Rs. 60 Lakhs mentioned under 47(xiii)(b) refers to the head “Profit and gains of the business or profession”

DISCLAIMER

The material contained herein is not exhaustive and contains certain generalizations.

THANK YOU