

Taxation of Limited Liability Partnership (LLP)



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District Centre Janakpuri CPE Study Circle
23rd June 2018

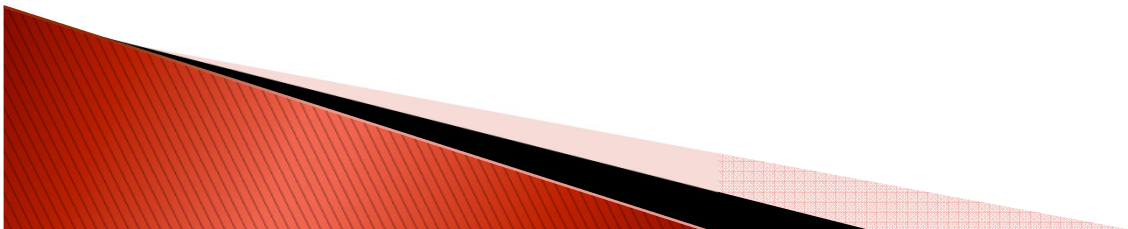


LIMITED LIABILITY PARTNERSHIP

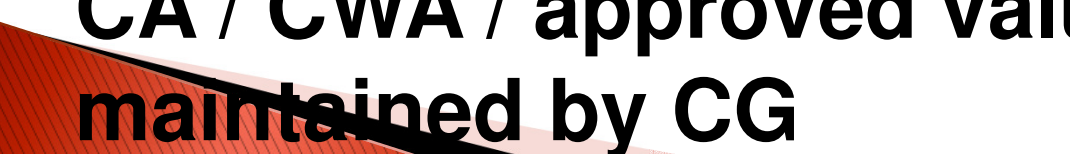
»» An Intro.

LLP Concept

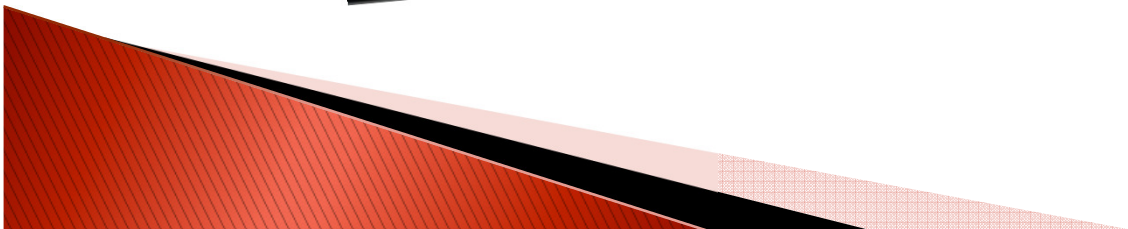
- ▶ **Incorporate / convert**
- ▶ **Partners**
 - **Individual**
 - **Body Corporate**
- ▶ **Designated Partners**
 - **Min - 2**
 - **Max – NA**
 - **DPIN / DIN**




Contribution

- ▶ **Tangible**
 - Moveable
 - Immovable
 - ▶ **Intangible**
 - ▶ **Other benefit including:**
 - Money
 - Promissory notes
 - Other agreements to contribute cash or property
 - Contracts for services performed or to be performed
 - ▶ **Contribution to be valued by practicing CA / CWA / approved valuer from panel maintained by CG**
- 

LLP Agreement

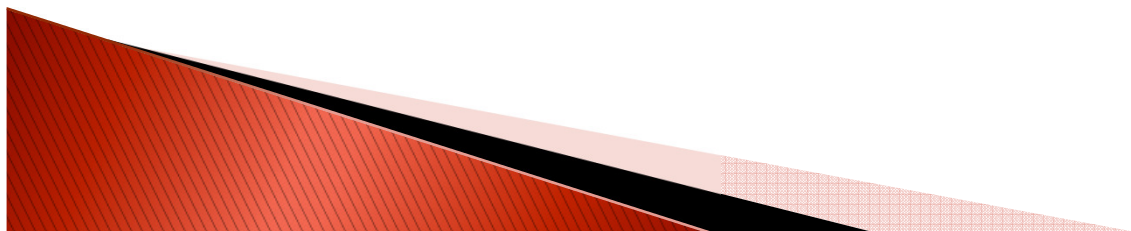


LLP Agreement

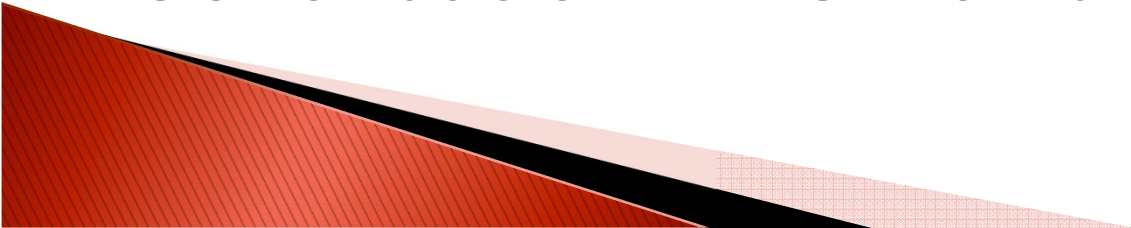
- ▶ **Heart and Soul of a LLP**
 - ▶ **Stamp Duty**
 - Initial
 - Amendment
 - ▶ **Form 3**
 - ▶ **Initial filing – 30 days from incorporation**
 - ▶ **Amendment – 30 days**
 - ▶ **Filing Fee**
- 

LLP Agreement – 1st Schedule

- ▶ **First Schedule applicable if matters not contained otherwise in the LLPA**
 - **New Partner**
 - **Vote**
 - **Similar business**
 - **Working – Remuneration**
 - **Minutes – 30 days – Regd Office**



Major Compliances

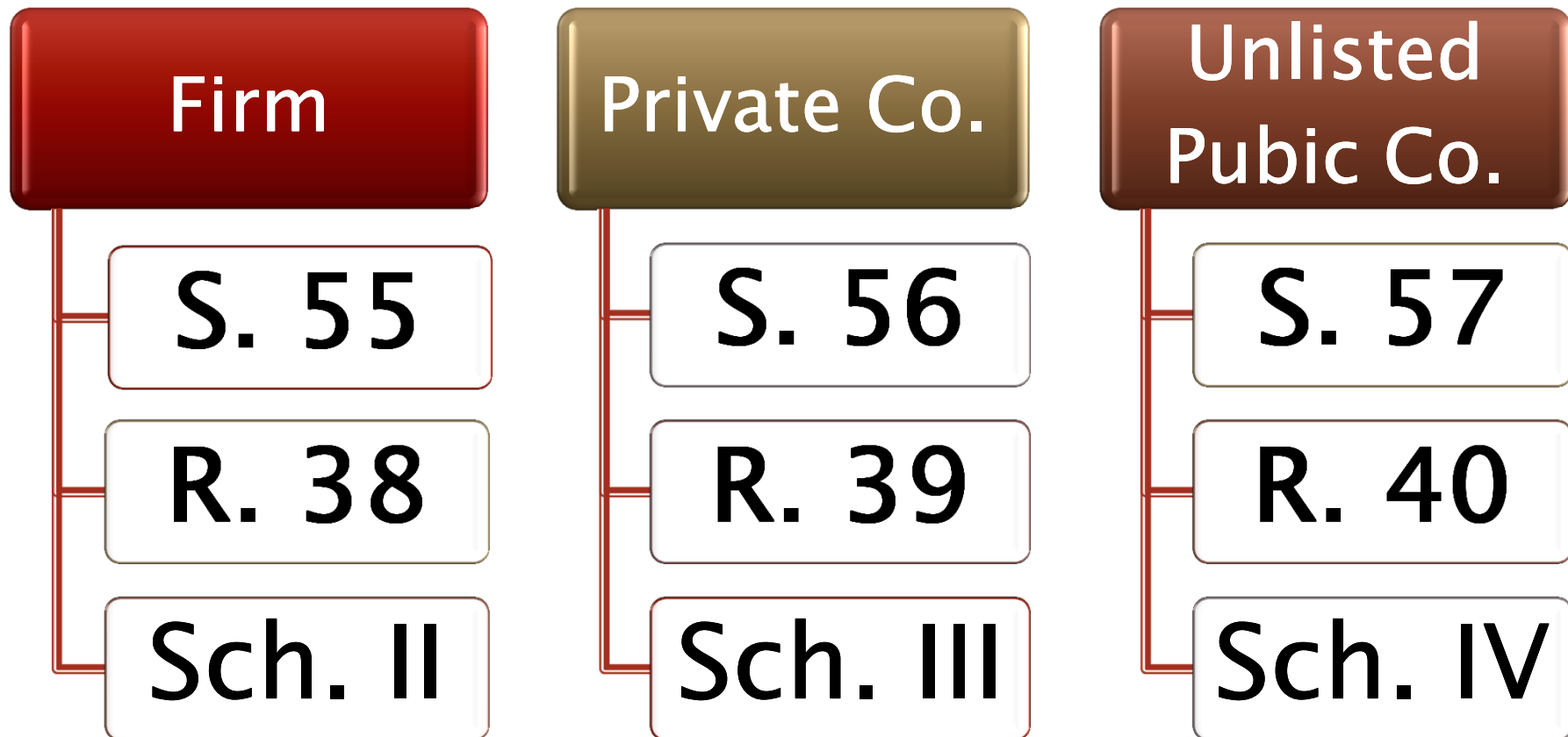
- ▶ **Annual Return in Form 11 till 30th May**
 - ▶ **Statement of Accounts & Solvency in Form 8 till 29th November**
 - ▶ **LLP Agreement on Incorporation / Conversion / Change in Form 3 within 30 days of change, etc**
 - ▶ **Delay in Filing additional fee Rs. 100/- per day**
 - ▶ **Audit if Turnover > Rs. 40 Lacs or Contribution > Rs. 25 Lacs**
- 



Conversion into LLP

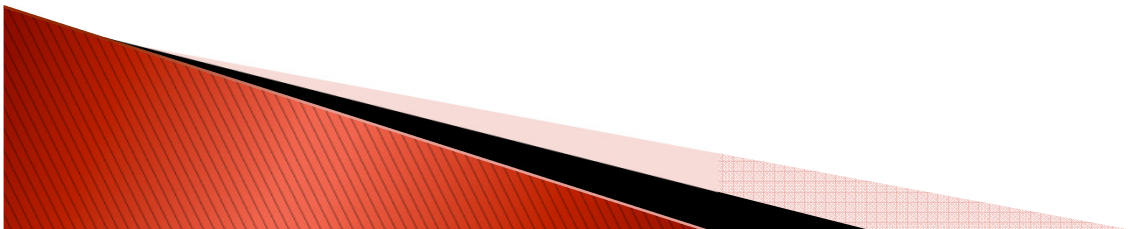
»» The Process

The Framework




Eligibility – Company to LLP

- ▶ **There is no security interest in its assets subsisting or in force at the time of application; and**
- ▶ **The partners of the limited liability partnership to which it converts comprise all the shareholders of the company and no one else.**

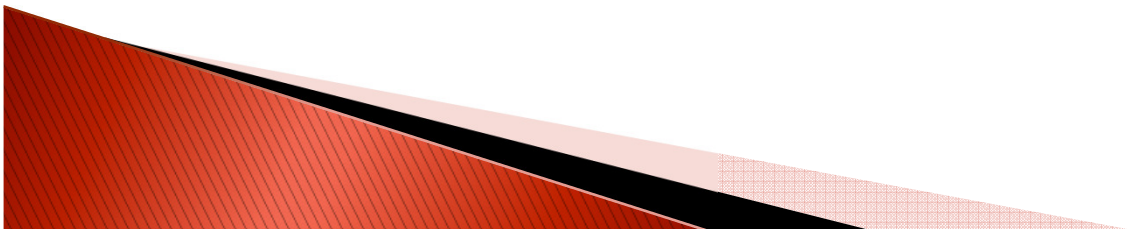


Requirements

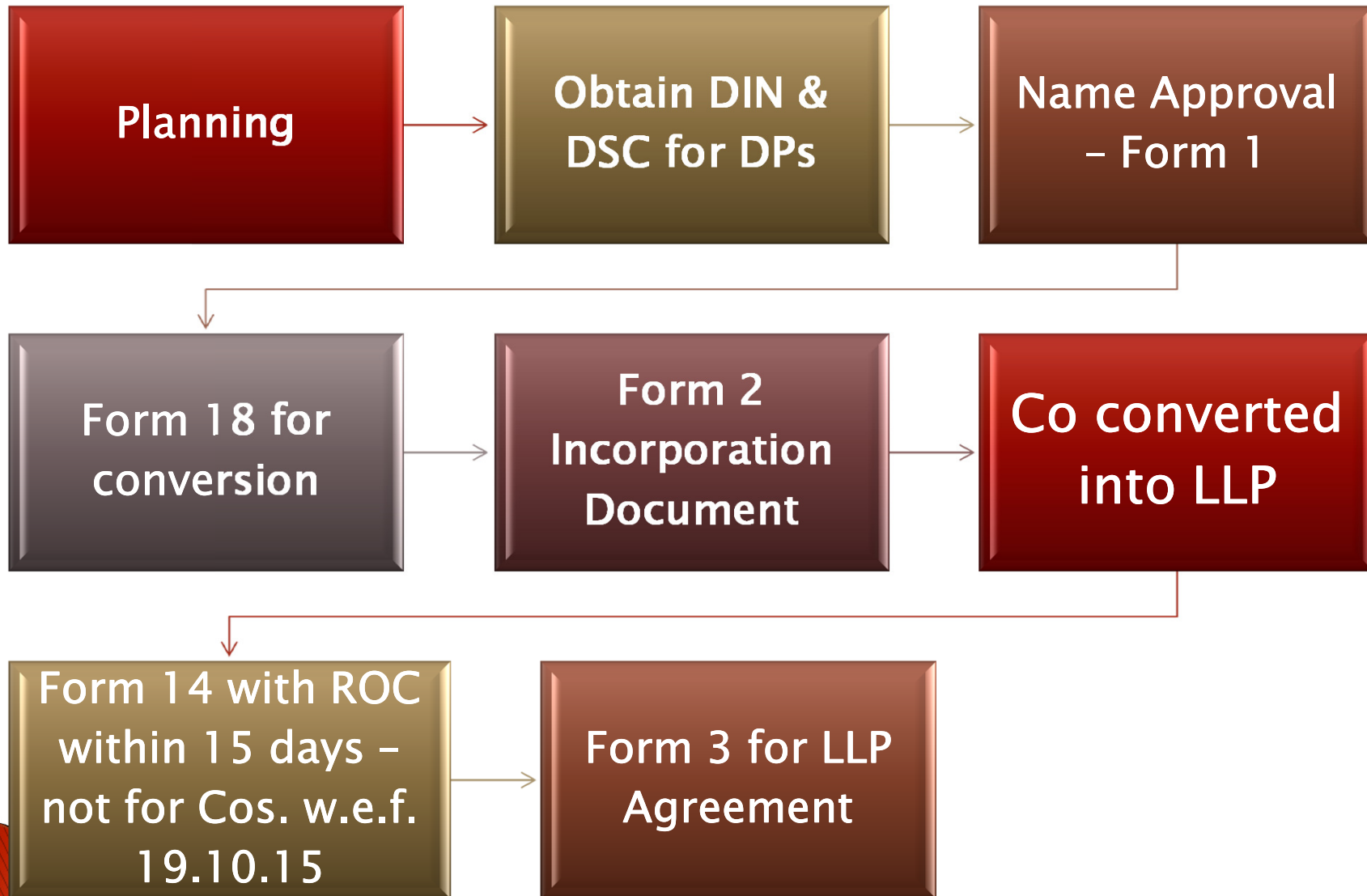
- ▶ **All shareholders to give consent**
 - ▶ **Upto date filing of documents, B/S and Annual Returns with ROC.**
 - ▶ **Upto date filing of Income Tax returns. Latest ITR copy to be filed**
 - ▶ **No prosecution initiated against or show cause notice for alleged offences under Companies Act**
- 

Requirements

- ▶ **Confirmation of all unsecured creditors**
- ▶ **Statement of Assets and Liabilities of the company duly certified as true and correct by the auditor.**
- ▶ **Approval from any other body/authority, if required**

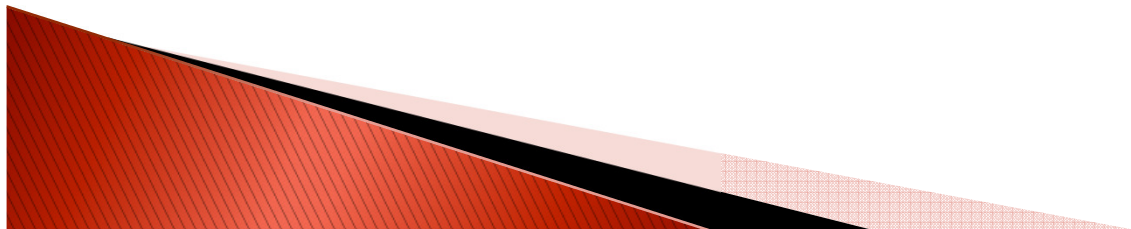
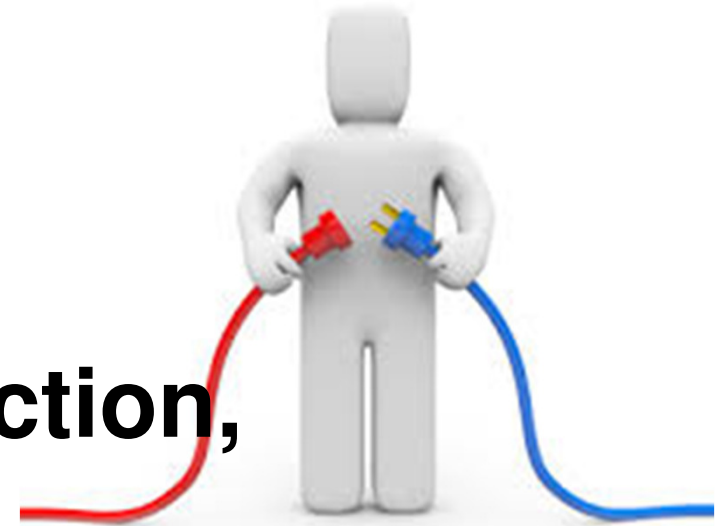


The Process – Companies to LLP



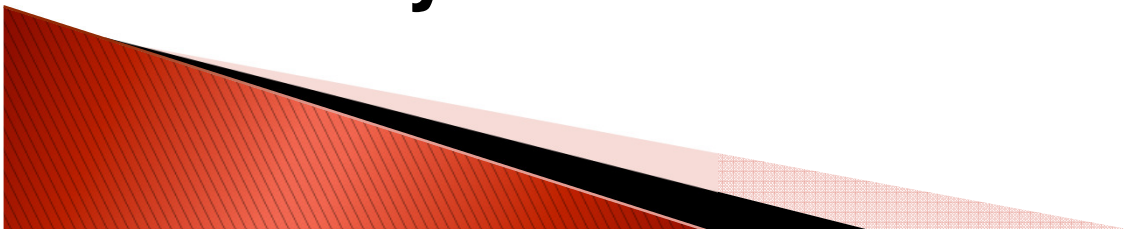
Continuance....

- ▶ **Property**
- ▶ **Pending proceedings**
- ▶ **Continuation of conviction, ruling, order, etc.**
- ▶ **Existing agreement, contracts**
- ▶ **Continuance of employment**




Post Conversion....

- ▶ **Notice of conversion to be made for 12 months from date of conversion in all official correspondence**
 - **It has been converted from company to LLP**
 - **Name and CIN of erstwhile Co.**
- ▶ **Notify authority wherever its property is registered of the conversion as soon as practicable**
- ▶ **Notify others**



Practical Implications

- ▶ **Balance Sheets of Company or LLP for a financial year?**
 - ▶ **IT Returns ?**
 - ▶ **Audit of Company?**
 - ▶ **AGM of Company?**
 - ▶ **Company's ROC compliance?**
 - ▶ **PAN / TAN**
 - ▶ **Bank Accounts**
 - ▶ **GST?**
 - ▶ **Assets – Car / MF / Immovable property?**
- 



Taxation

»» An Intro.

LLP Taxable as Firm

The Finance (No. 2) Act 2009 provided for taxation of LLP on same lines as that of Partnership firms

Firm

"firm" shall include a Limited Liability Partnership as defined in the LLP Act, 2008

Partner

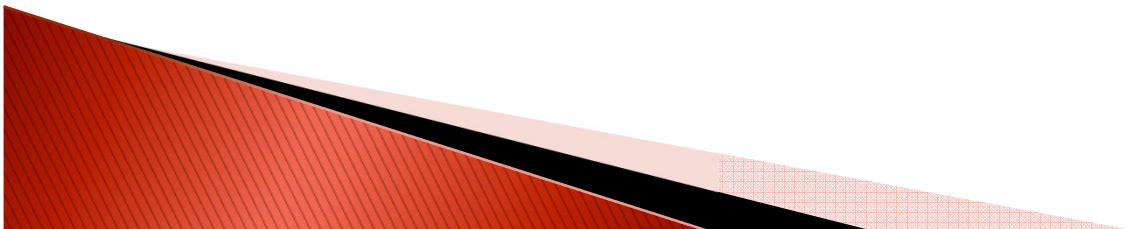
"partner" shall include,— a partner of a LLP as defined in the LLP Act, 2008;

Partnership Firm

“partnership” shall include a Limited Liability Partnership as defined in the LLP Act, 2008 [Sec 2(23)]

LLP vs. Firm

- ▶ ***Firm is a separate person under Income Tax Laws***
- ▶ ***Firm is not a legal person distinct from its partners***
 - ▶ ***Malabar Fishers co vs. CIT (1979) 120 ITR 49 (SC)***
- ▶ ***LLP is a legal person distinct from its partners (LLP Act, 2008)***



Basic Taxation Aspects

- ▶ **LLP assessable as Firm (184)**
- ▶ **Residential Status of LLP (6)**
- ▶ **Tax Rates of LLP**
- ▶ **Dividend Distribution Tax (DDT)**
- ▶ **Presumptive Taxation u/s 44AD**
- ▶ **Presumptive Taxation u/s 44ADA**
- ▶ **Presumptive Taxation u/s 44AE**
- ▶ **Verification of return by DP (in absence of DP by any partner) (140)**



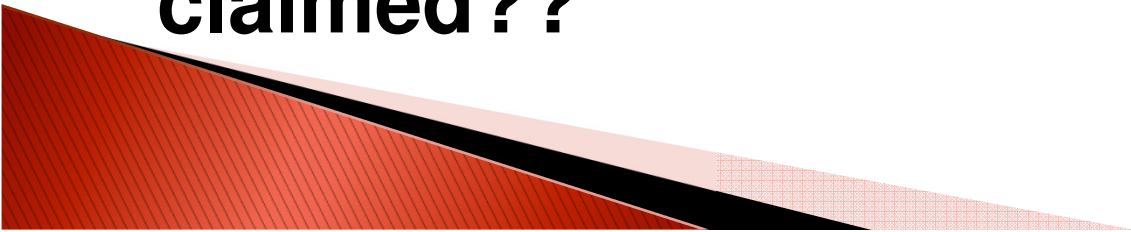
Alternative Minimum Tax (AMT)

- ▶ Where the regular income-tax payable is less than the AMT payable, the **adjusted total income** shall be deemed to be the total income for such previous year and it shall be liable to pay income-tax on such total income at the rate of 18.5%. (IFSC 9% w.e.f. AY 2019-20)
- ▶ $ATI = TI + \text{deduction U/C VIA} - C$ (other than 80P) + deduction u/s 10AA + 35AD
- ▶ AMT credit for 15 years.
- ▶ Form 29C – to be certified by CA

AMT vs. MAT

Relating to	MAT	AMT
Applicability	Companies	Other than Cos
Based On	Book Profit	Adjusted Total Income
Income Exempt u/s 10	Excluded except 10(38)	Excluded
LTCG on invest. u/s 54EC	MAT payable	AMT not payable
Indexation	Benefit not available	Benefit available
Depreciation effect	Applicable	Not Applicable
B/f or unabsorbed depreciation	Allowed whichever is less	Both allowed

Partner's Remuneration

- ▶ **It should not be disallowed u/s 37(1)**
 - ▶ **It should not be disallowed u/s 40(a)(i)**
 - ▶ **Should be paid to a working partner**
 - ▶ **It is related to period falling on or after the date of such LLP Agreement**
 - ▶ **Should comply with conditions u/s 184**
 - ▶ **It should be within limits of s. 40(b)(v)**
 - ▶ **Applicability of section 40A(2)(b)??**
 - ▶ **Deduction of remuneration even if not claimed??**
- 

Partner's Remuneration - 2

- ▶ Such remuneration is **authorised by** and is **in accordance with LLP Agreement**
 - ▶ Circular no. 739 dt. 25.3.96
 - ▶ Sood Brij & Associates vs. CIT [2011-ITRV-HC-DEL-247] - FC
 - ▶ Durga Das Devki Nandan vs. ITO [2011-ITRV-HC-HP-067] - AC
 - ▶ CIT vs. Asian Marketing [2012-ITRV-HC-RAJ-131] - F
 - ▶ Sood Bhandari & Co vs. CBDT (2012) 204 Taxman (P&H) - FC
 - ▶ CIT vs. Vaish Associates [2016-ITRV-HC-DEL-003] - F
- ▶ **What if HUF is partner through its Karta?**
 - ▶ P Gautam & co. vs. JCIT (2011) 14 Taxman.com 79 (Ahd) ITAT
- ▶ **Mutually decided by partners - Out of 4 working partners, salary payable to only 3 partners whereas bonus payable to all 4.**
 - ▶ ID. MOHD. NIZAMUDDIN vs. ACIT(2014) 39 CCH 0439 Jaipur Trib

Partner's Interest

- ▶ **It should not be disallowed u/s 37(1)**
- ▶ **It should not be disallowed u/s 36(1)(iii)**
- ▶ **It should not be disallowed u/s 40(a)(i)**
- ▶ **It should not be disallowed u/s 40(b) i.e.:**
 - **Such interest is authorised by and is in accordance with LLP Agreement**
 - **It is related to period falling on or after the date of such LLP Agreement**
 - **It should be within limits specified in s. 40b(iv) which is currently 12% p.a. simple interest.**
- ▶ **LLP should comply with conditions u/s**

Partner's Interest - ?

- ▶ ABC & Co. has 1 property from which it receives rent, which is taxable u/h House property.
- ▶ Partner's Capital is used to acquire the property.
- ▶ Interest mentioned in P/D @ 12% was paid.
- ▶ Is the interest allowed u/s 40b?
- ▶ Is it allowed u/s 24(b)?
 - ▶ *Mata Vaishno Estates vs. ITO* [2011-TIOL-647-ITAT-DEL]
- ▶ Interest on revaluation of assets cr. to Partner A/c
 - ▶ *ACIT vs. Sant Shoe Store* (2004) 88 ITD 524 (Chd)
 - ▶ *ITO vs. Amar Garage* (2004) 1 SOT 331 (Kol)
- ▶ Depreciation not charged in books, higher Interest on Partner's A/c
 - ▶ *Swaraj Enterprises vs. ITO* (2011) 132 ITD 488 (Visakha) – F
 - ▶ *Arini Nursing Home vs. ITO* (2008) 119 TTJ (Visakha) 415 - A

Partner's Interest - ?

- ▶ **XYZ & Co. has tax free incomes.**
- ▶ **It pays interest to its partners Rs. 2 Lacs.**
- ▶ **S. 40(b) complied with.**
- ▶ **AO makes disallowance of interest u/s 14A of interest Rs. 0.50 Lacs**
- ▶ **How much interest would be taxable in hands of the partners?**

▶ *Shankar Chemicals Works vs. DCIT (2011) 47 SOT 121 (Ahd)*



Other Issues

- ▶ **Book Profit – how to be determined?**
 - ▶ *Md. Serajuddin & Brothers vs. CIT* [2012-ITRV-HC-KOL-171]
 - ▶ Unabsorbed dep. – *Vikas Oil Mill vs. ITO* (2005) 95 TTJ (JP) 1126
- ▶ **Taxability of amounts received by partners of LLP**
- ▶ **Applicability of s. 14A on share of profit received**
 - ▶ *Vishnu Anant Mahanjan vs. ACIT* [2012-ITRV-ITAT-AHD-115]
 - ▶ *Hoshang D. Nanavati* [2011-ITRV-ITAT-MUM-082]
- ▶ **Partner gives loan to firm in cash. S. 269SS?**
 - ▶ *CIT vs. M/s Muthoot Financiers* [2015-ITRV-HC-DEL-109]
- ▶ **Liability of partners for tax dues of LLP (167C)**
- ▶ **Applicability of Accounting Standards**
- ▶ **Carry forward and set off of losses**

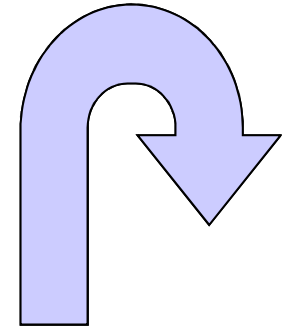


Conversions

»» An Intro.

CONVERSION - COMPANY


- ▶ **Sec 47(xiiib) – Conversion of a Private Ltd company or a unlisted Public Ltd Company into a LLP exempt from capital gains if:**



- a) All Asset & Liability of Co become the Asset & Liability of LLP;**
- b) The shareholders of the company become partners of the LLP in the same proportion as their shareholding in the company;**

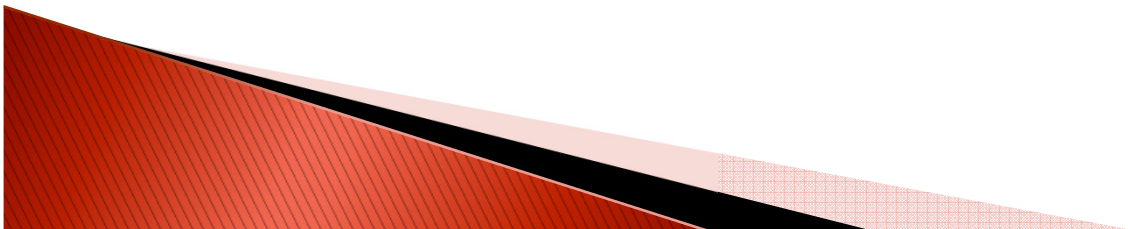


CONVERSION – COMPANY - 2

- c. No consideration other than share in profit and capital contribution in the LLP arises to partners;**
 - d. Erstwhile shareholders of company continue to be entitled to receive at least 50% of profits of the LLP for 5 years from date of conversion;**
 - e. Turnover do not exceed **Rs. 60 Lacs** in any of 3 preceding yrs;**
- 

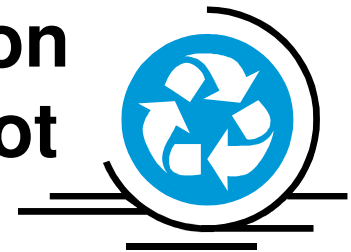
CONVERSION – COMPANY - 3

- f) No amount is paid, either directly or indirectly, to any partner out of the **accumulated profits** of the company for a period of 3 years from the date of conversion.
- g) Total assets as appearing in the books of accounts do not exceed **Rs. 5 Crores** in any of 3 preceding yrs; (Finance Act 2016)



CONVERSION – COMPANY -4

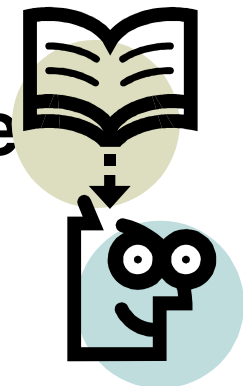
- ▶ ***Fifth Proviso to Sec 32(1)***
 - ▶ **Aggregate depreciation** allowable to the predecessor company and successor LLP shall not exceed, the depreciation allowable as if the conversion had not taken place.
- ▶ ***Explanation 13 to Sec 43 (1)***
 - ▶ The **actual cost of the block** of assets in the case of the successor LLP shall be the NIL in case the predecessor company has been allowed deduction for capital asset u/s **35AD**



CONVERSION – COMPANY -5

▶ *Explanation 2C to Sec 43 (6)*

- ▶ The **actual cost of the block of assets** in the case of the successor LLP shall be the WDV of the block of assets as in the case of the predecessor company on the date of conversion.



▶ *Sec 47A(4)*

- ▶ If the **conditions in section 47(xiiib) are not complied** with, benefit availed by the company shall be deemed to be the profit of the successor LLP in the previous year in which the requirements not complied.

CONVERSION – COMPANY - 6

▶ **Sec 49 (1)(iii)(e)**

- The **cost of acquisition of the capital asset for the successor LLP** shall be deemed to be the cost for which the predecessor company acquired it.



▶ **Sec 35DDA**

- In case of conversion, amortization of **expense on VRS** shall continue in the hands of the converted LLP as if there was no conversion.

CONVERSION – COMPANY - 7

▶ **Sec 72A(6A)**

- **Carry forward and set-off of business loss/unabsorbed depreciation** allowed to the successor LLP which fulfills the conditions u/s 47(xiiib) – fresh 8 years
- **Capital losses / HP loss?**



▶ **Sec 115JAA**

- The **tax credit u/s 115JAA** shall not be allowed to the successor LLP.



Comparison

Company vs. LLP

	Company	LLP
Legal Entity	Separate	Separate
Perpetual succession	Yes	Yes
No. of members	OPC – 1 Pvt–Mn2 Mx – 200 Pub–Mn7 Max NA	Min2 Max NA
Instrument Requirements	MA to be reg. at ROC, Fees for filing all doc.	LLPA to be reg. at ROC, Fees for filing all doc. – Filing fee Less than company.

Company vs. LLP

	Company	LLP
Capital Requirement	1 L for Pvt. & 5 L for Pub. Ltd. Cos- Now No Limit	Contribution as per LLPA
Directors Identity	All directors to obtain DIN	Only DP to obtain DIN
Names	Regulated	Regulated – other partnership names cannot be kept
Flexibility of business	Regulated by MA & AA	Regulated by LLPA
Compliance & Penalties	Very heavy in CA 2013	Less as compared to Companies

Company vs. LLP

	Company	LLP
Deposits	Regulated by section 73-76A	No regulation yet
Listing	Possible	Not possible
Audit	Mandatory	Only if turnover >40 L or contribution 25 L
Shareholders	No consent required for normal business operations	Partners consent required as specified in LLPA
Meetings	Regulated by Companies Act	Not mandatory – As per LLPA

Company vs. LLP

	Company	LLP
Suffix	'Limited' or 'Private Limited'	'Limited Liability Partnership' or 'LLP'
Common Seal	Compulsory . Now optional	Optional
Authority in conduct of business	Individual director or member do not have any authority	Every partner has authority, unless the LLPA provides otherwise
Financials	B/s, P/L to be filed with ROC	Statement of A/cs and Solvency to be filed

Company vs. LLP

	Company	LLP
Rate of Tax	(25%/30% + 3% cesses. Surcharge 7% if income 1 – 10 Cr. 12% > 10 Cr.	30% plus 3% cesses. Surcharge 12% if income >1 Cr.
MAT / AMT	MAT Applicable	AMT Applicable
DDT	20% appx. is payable u/s 115 O	Not applicable
Method of Accounting	Accrual only	Cash or Accrual
Remuneration & Interest	No Limits (Except for Rem. – Pub Cos)	Limits u/s 40b
NGOs	Section 8 Companies	Not allowed

Company vs. LLP

	Company	LLP
Financial Statements	Prescribed formats	Not prescribed
CSR	Applicable, if required	Not Applicable
Website compliances	Nearly 17	No compliance
Independent Directors	Required in specified cases	Not required
One Person Formations	OPC	Not Possible
Type of Entities	Various – Small, Dormant, Producer Holding, Subsidiary	Only One – LLP

Company vs. LLP

	Company	LLP
Loan to Directors / Partners	Not Possible – 185	No Restriction
ROC Filings	Heavy – delay – heavy penalties	Only 2 mandatory
Bringing in Money	Heavy formalities – PP, Right, etc – 23, 42, 62	No Restrictions
Making Investments	Compliances – 186	No Restriction
Related Party Transaction	Regulated – 188, 184(2)	No regulation – 40A(2)(b)
Auditor	Can audit only 20 companies, penalties	No restrictions

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The screenshot shows the homepage of ExpertsPanel.in. At the top, there is a dark navigation bar with the logo 'ExpertsPanel.in' on the left, a search bar with a magnifying glass icon, and several menu items: 'Questions', 'Unanswered', 'Categories', 'Experts', 'Ask a Question', and 'Tagged Question'. On the far right of the navigation bar is a profile picture of a man and the initials 'PR JA'. Below the navigation bar is a banner image showing hands working on a laptop and documents, with the text 'A Place to Share Knowledge' and 'For and by Professionals in Law, Tax, Accounts, Finance'. Below the banner is a secondary navigation bar with tabs for 'Recent Questions', 'Articles', 'Presentations', 'Videos', and 'Notifications'. The main content area is divided into three columns. The left column is titled 'All Categories' and lists various professional fields with their respective question counts: 'Audit & Assurance and Accounting Standards (51)', 'Bank / Insurance / Stock / Debtors Audit (39)', 'Corporate Matters/LLP (167)', 'Goods and Services Tax (GST) (719)', and 'Income Tax (624)'. The middle column is titled 'Recent Questions' and displays two questions. The first question is 'Q. buyback of shares' added 4 hours ago by Suresh Kumar Goyal, CA, with 0 answers and 6 views. The second question is 'Q. Buy back of shares' added 5 hours ago by Suresh Kumar Goyal, CA, with 1 answer by CA PRAMOD JAIN and 11 views. The right column has a header 'Have a written opinion?' and a box for 'Ask a question:' with a text input field and a 'Next' button. At the bottom right, it says 'Concept by CA Pramod Jain'.

Together ...we shall make it....

THANKS



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