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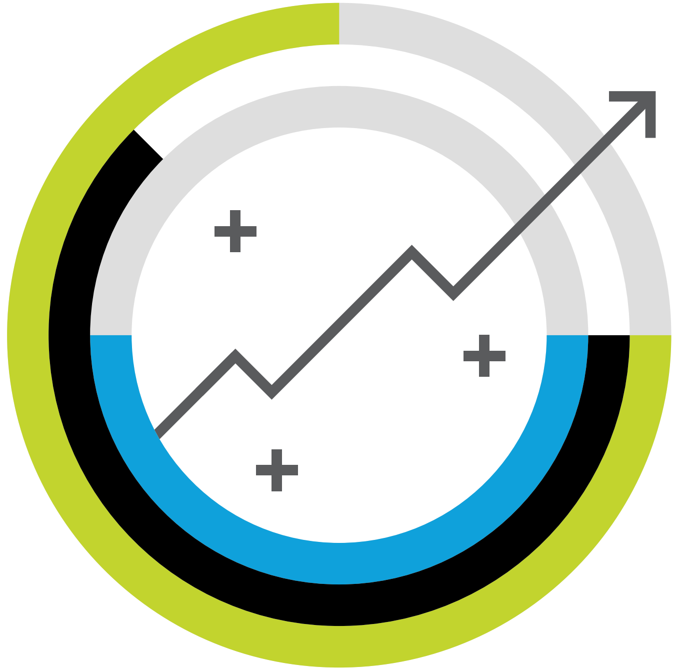

Time to move the needle

Limited Liability Partnerships

2016

Limited Liability Partnerships [“LLPs”]

The Limited Liability Partnership Act notified in 2009 allowed a new hybrid entity, having the features of both a body corporate as well as traditional partnership, to be incorporated for the purposes of undertaking business in India. One may explore the option of setting up LLPs in India as it offers ease of administration and tax advantages. Some of the key attributes of LLP are discussed below:

Key features

Under LLP Act, 2008

i. LLPs are treated as Body Corporate – administered by registrar of companies.
ii. Separate legal entity and perpetual succession.
iii. Partner is an agent of LLP but not of other partners.
iv. Minimum partners two. Body corporate can also be a partner.
v. Minimum designated partners - two individuals and one of them shall be resident in India. If all partners are body corporates, then nominee of such body corporate shall act as designated partner.

Under Foreign Exchange Management Act [“Exchange Control Regulations”]

i. Foreign Direct Investment (“FDI”) in LLP is permissible in sectors under 100% automatic route and not subject to FDI–linked performance conditions.
ii. Foreign capital contribution permitted only in cash.
iii. External commercial borrowings for LLPs is not permitted.
iv. LLP with foreign investment is permitted to make downstream investment in permissible activities.

New LLP vs conversion of company into LLP

i. An existing company may be converted into an LLP or its business may be transferred to a new LLP. Case-specific evaluation required for migration of existing business to a new LLP.

ii. Conversion

– Conditions under LLP Act, 2008
  – There shall not be any security interest subsisting or in force in the assets of LLP at the time of conversion.
  – All the erstwhile shareholders of Company shall become the partners of the LLP.
– Conditions under Income Tax Act, 1961 [“ITA”]
  – Conversion of companies to LLP exempt under the ITA, subject to certain conditions.

iii. Exchange Control Regulations

– Under FDI policy, conversion of private company into LLP should be under automatic route and no prior approval should be required for such conversion.
– However, in view of conflict with FEMA regulations, necessary clarification may be obtained from regulatory authorities.

iv. Profits earned by LLP should be freely repatriable.

TAX IMPLICATIONS

COMPANY

- Tax rate @ 30%*.
- Minimum alternate tax @ 18.5%*.
- Dividend Distribution Tax (“DDT”) @ 15% (to be grossed up)*.

SHAREHOLDERS

- Dividend is exempt in the hands of shareholders of the Company.
- However, additional tax @ 10% on dividend exceeding INR 1 mn for resident individuals, Hindu Undivided Family or firms.

PARTNERS

- Profits distributed is exempt from tax in the hands of partners.
- Transfer of interest in LLP is taxable in India. However, treaty benefits can be explored.

LLP

- LLP is treated as partnership.
- Tax rate @ 30%*.
- Alternate Minimum Tax @ 18.5%*, would be payable only if LLP is claiming special and investment linked deductions.
- No tax on distribution of profits [by way of DDT].
- Salary, commission, remuneration paid to partners are allowed as deduction subject to limits specified under section 40(b) of the ITA.

*applicable surcharge and education cess needs to be added.