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#### Key Highlights:

- LLP's will be treated as Partnership Firms for the purpose of Income Tax w.e.f assessment year 2010-11
- No surcharge will be levied on income tax.
- Profit will be taxed in the hands of the LLP and not in the hands of the partners.
- Minimum Alternate Tax and Dividend Distribution Tax will not be applicable for LLP.
- Remuneration to partners will be taxed as "Income from Business & Profession".
- No capital gain on conversion of partnership firms into LLP.
- Designated Partners will be liable to sign and file the Income Tax return.
- LLP shall not be eligible for presumptive taxation.
- Capital Gain on conversion of Company into LLP will be exempt from tax, if prescribed conditions are complied with.
- On conversion, the successor LLP, will be allowed to carry forward and set off of accumulated loss and unabsorbed depreciation allowance
- On conversion, the successor LLP will be allowed to amortize the expenditure incurred under voluntary retirement scheme. On conversion the successor LLP will not be allowed to take the credit of MAT paid by the predecessor company.

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Taxation aspect of Limited Liability Partnership    Applicability of AMT on LLP    Taxation aspect on Conversion to LLP

The Budget 2009-10 has introduced the provisions regarding taxation aspect of the newly introduced form of business Limited Liability Partnerships. As per the Budget 2009-10, LLP will be treated as Partnership firms for the purpose of Income Tax and will be taxed like a partnership firm.

#### Change in Definition of Firm, Partner & Partnership

The Budget 2009-10 has amended the definition of Firm and Partners in the following manner:

- Firms shall have the meaning assigned to it in the India Partnership Act 1932 and shall include a limited liability Partnership as defined in the Limited Liability Partnership Act 2008.
- Partner shall have the meaning assigned to it in the Indian Partnership Act 1932 and shall include:
  - Any person, being a minor, has been admitted to the benefits of partnership; and
  - A partner of a limited liability partnership as defined in the Limited Liability Partnership Act 2008.
- Partnership shall have the meaning assigned to it in the India Partnership Act 1932 and shall include a limited liability partnership defined in the Limited Liability Partnership Act 2008.

#### Tax rate:

- 30% flat tax rate + 3% education cess
- No Minimum Alternate Tax & Dividend Distribution Tax

#### Eligibility (section 184):

In order for Limited Liability Partnership to be assessed as firm as Income Tax Act, it has to satisfy the following criteria

- The LLP is evidenced by an instrument i.e. there is a written LLP Agreement.
- The individual shares of the partners are very clearly specified in the deed.
- A certified copy of LLP Agreement must accompany the return of income of the LLP of the previous year in which the partnership was formed.
- If during a previous year, a change takes place in the constitution of the LLP or in the profit sharing ratio of the partners, a certified copy of the revised LLP Agreement shall be submitted along with the return of income of the previous year's question.
- There should not be any failure on the part of the LLP while attending to notices given by the Income Tax Officer for completion of assessment of the LLP.

#### LLP can claim the following deductions:-

- Interest paid to partners, provided such interest is authorised by the LLP Agreement.
- Any salary, bonus, commission, or remuneration (by whatever name called) to a partner will be allowed as a deduction if it is paid to a working partner who is an individual.
- The remuneration paid to such working partner must be authorised by the LLP Agreement and the amount of remuneration must not exceed the given limits

**When section 184 is not complied with, the consequence is that no deduction towards interest and remuneration is allowed. This is the mandate of the section 185.**

#### Steps for Computation of taxable income of a LLP:-

- Find out the firm's income under the different heads of income, ignoring the prescribed exemptions. The heads of income are:-
  - Income from House Property

- Profits and Gains of Business or Profession
- Capital Gains
- Income from other sources including interest on securities, winnings from lotteries, races, puzzles, etc. ('Salary' income head is included)
- The payment of remuneration and interest to partners is deductible if conditions of section 184 and section 40(b) of the Income Tax Act are satisfied. Any salary, bonus, commission or remuneration which is due to or received by partners is allowed as a deduction from income of the partnership firm and the same is taxable in the hands of partners.
- Make adjustments on account of brought forward losses/ disallowances of interests, salary, etc paid by firm to its partners. The total income so obtained is the "gross total income".
- From the "gross total income", make the prescribed deductions and the balancing amount is the "net income" of the firm.

#### Assessment of Partners of LLP

##### • Exemption of partner's share income from LLP :

Section 10(2A) exempts the share income from the LLP in the hands of the partner. The share of a partner in the total income of a LLP is separately assessed as such shall, be an amount which bears to the total income of the LLP the same proportion as the amount of share in the profits of the LLP in accordance with the LLP Agreement bears to such profits.

The share of the partner in the income of the LLP is not included in computing his total income i.e. his share in the total income of the LLP shall be exempt from tax.

- If conditions of Section 184 and 40(b) of the Act are satisfied, then any interest, salary, bonus, commission or remuneration paid/payable to the LLP to the partners is taxable in the hands of partners (to the extent these are allowed as deduction in the hands of the LLP).
- The points to be noted are :-
  - Remuneration to partner not to be treated as salary income : Explanation 2 to section 15  
This Explanation provides that the salary, bonus or commission received by a partner from his LLP will not be treated as salary. This Explanation implies that the provision of tax deduction at source for salary (section 192) will not be attracted to the remuneration received by the partner from the LLP.
  - Treatment of remuneration and interest to a partner as business income : Clause (v) of section 28  
Section 28(v) provides that interest and remuneration received by a partner from his LLP shall be chargeable to income-tax as profits and gains of business. The proviso clarifies that where the remuneration, interest, etc., is in excess of the ceiling fixed under the new section 40(b) and is disallowed in part for that reason then the income under the head referred to in section 28(v) shall be adjusted to the extent of the amount not so allowed to be deducted.

Any expenditure incurred in order to earn such income can be claimed as a deduction from such income. For example, if a partner borrows money to make his capital contribution to the LLP and he is paid interest on his capital contribution, the amount of such interest will be taxed under the head "Profits and gains of business or profession", but the interest paid by him on the borrowed money will have to be allowed as a deduction. If the whole or a part of salary/interest is not allowed as deduction in the hands of the LLP, then the whole or that part of salary/ interest is not taxable in the hands of the partners. In other words, in the hands of partners the entire remuneration/ interest (excluding the amount disallowed under section 40(b) and/or section 184 of the Act) is chargeable to tax.

##### • Ceiling as to remuneration payable to working partners and interest to partners : Section 40(b)

Section 40(b) is a disallowance provision and disallows remuneration, interest, etc., received by the partners from the firm provided same exceeds the ceiling prescribed in the same provision. It also specifies as to how the matter of deductibility of interest & remuneration is to be dealt with where a partner is a partner in representative capacity.

The Explanation 3 defines the term "book profit" which is relevant for computing the upper ceiling of remuneration payable to all the working partners put together. The Explanation 4 defines "working partners" who alone are made entitled to remuneration if the deductibility of related amount in the hands of the LLP is not to be barred by section 40(b).

#### Limits of Remuneration to Partners:

The Income Tax Act prescribes the ceiling limit upto which any payment of salary, bonus, commission or remuneration will be allowed deduction for income of LLP, the limits of remuneration are outlined below:

On First Rs 3,00,000 of book profit or in case of loss	Rs 1,50,000 or at the rate of 90% of the book-profit, whichever is more
On the balance of book profit	at the rate of 60%

#### Signing of Income tax Return:

The designated partner shall be responsible for signing the income tax return of LLP, where for unavoidable reasons, such designated partner is not able to sign the same or where there is no designated partner, any partner will sign the return.

#### LLP not covered under Presumptive Taxation

Under the Income Tax, if an eligible assessee is carrying on any eligible business, then for the purpose of calculation of his taxable income a sum equal to 8% of the turnover or gross receipts of the assessee in the previous year on account of such business or as the case may be, a sum higher than the aforesaid sum, claimed to have been earned by the eligible assessee, shall be deemed to be the profits & gains of such business chargeable to tax under the head "Profits and gains of business or profession". Tax payable on such income called as presumptive tax.

An eligible assessee who claims that his profits and gains from the eligible business are lower than the profits and gains calculated aforesaid and whose total income exceeds the maximum amount which is not chargeable to income-tax, shall be required to keep & maintain such books of account and other documents as required under sub-section (2) of section 44AA and get them audited and furnish a report of such audit as required under section 44AB of Income Tax Act.

Explanation.—

a) "eligible assessee" means,—

(i) an individual, Hindu undivided family or a partnership firm, who is a resident, but not a limited liability partnership firm as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008; and

(ii) who has not claimed deduction under any of the sections 10A, 10AA, 10B, 10BA or deduction under any provisions of Chapter VIA under the heading "C.—Deductions in respect of certain incomes" in the relevant assessment year;

b) "eligible business" means,—

(i) any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE; and

(ii) whose total turnover or gross receipts in the previous year does not exceed an amount of Sixty Lakhs rupees.'

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