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TAXATION OF SMALL BUSINESS IN INDIA

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Taxation of Small Business in India

1. What are the legal structures that one can use to run a small business in India?

Ans: Small businesses in India are usually run as either proprietorship concerns, partnership firms, or small companies. Proprietorship concerns are business run by individuals. Partnership firms are established under the Indian Partnership Act, 1932. Companies are incorporated under the Companies Act. A special kind of partnership, namely Limited Liability Partnership (LLP), can be incorporated through the Ministry of Corporate Affairs. Special tax provisions are available for small companies and small businesses.

2. Is any scheme for presumptive taxation available to small businesses?

Ans: An 'eligible assessee' with gross receipts of less than Rs. 2 Crs in a year can avail of the scheme of presumptive taxation in India. Under presumptive taxation, the eligible assessee does not have to maintain any books of accounts and has to declare 8% (or 6% if receipts are through electronic clearing system or bank draft) of its gross receipts as taxable income. This scheme's intention is to give relief to small businesses from bookkeeping and auditing requirements. This scheme can be availed only by resident individuals (i.e. proprietorship concerns), resident HUF, and partnership firms (but not LLPs).

For more types of presumptive taxation scheme available , please refer to TPI Brochure 'Presumptive Taxation' for residents and 'Special Tax Concessions available to Non Residents' for Non Residents.

3. What tax benefits are available to small companies?

Ans: The corporate tax rate for companies with turnover less than (or equal to) Rs. 250 Crores is 25%. The corporate tax rate is 30% for companies with turnover above Rs. 250 Crores.

4. Are the LLPs required to file Income Tax Returns?

Ans: As LLPs are a separate legal entity formed under the Limited Liability Partnership Act, 2008, they are required to file Income Tax Return every year by 31st July, if tax audit u/s 44AB of Income Tax Act 1961 is not required; by 30th September; if accounts are to be audited and by 30th November, if it has entered into International transactions and is required to file Form 3CEB.

5. Are LLPs required to get accounts audited?

Ans: If the turnover exceeds Rs 40 Lakhs or if the contribution exceeds Rs 25 Lakhs, accounts of LLPs are required to be audited.

6. Are the LLPs entering into international transactions, required to file Form 3CEB?

Ans: If an LLP has international transactions with Associated enterprises or has entered into Specified Domestic Transactions, Form 3CEB, certified by CA, is required to be filed.

7. Are the LLPs taxed as "firm"?

Ans: In terms of section 184 of the IT Act, LLP is assessed as "Partnership Firm" if LLP is evidenced by instruments and shares of partners are stated therein. If provision of sec 184 are not complied with, LLPs will not be eligible for deduction of partner salary and interest on capital.

8. In what form is an LLP required to file its Income Tax Return?

Ans: It is to be filed in Form ITR 5. It can be filed online using digital signature of the Designated Partner (DP).

9. Are the LLPs required to pay advance tax?

Ans. Yes, if the amount of tax payable is more than Rs. 10,000/-. The due dates are as follows:

ON OR BEFORE	UPTO
15th June	15%
15th September	45%
15th December	75%
15th March	100%

10 What is the Rate of tax on LLPs?

Ans: For AY 2019-20 flat rate of 30% is applicable on the total income plus Surcharge of 12% if income is greater than Rs 1 Cores. Health and Education cess is also applicable on the amount of income tax and surcharge. However, LLPs are subjected to Alternate Minimum Tax (AMT) of 18.5% of adjusted total income (Sec 115JC). In case of conversion of a private company or unlisted public company into a limited liability partnership under the Limited Liability Partnership Act, 2008, the provisions of section 115JAA shall not apply to the successor LLP.

11. Can the Tax be paid in physical mode?

Ans: It can be paid in physical mode. If accounts are required to be audited, payment is to be made through e-payment mode only [challan ITNS 280]

12. Are provisions of presumptive taxation applicable to LLPs?

Ans: No. Sec 44AD is not applicable to Resident LLPs.

13. What special provisions of IT Act are applicable to LLPs?

Ans: Subject to the conditions mentioned in Sec 80IAC, LLPs are allowed a deduction of 100% of profits and gains derived from "eligible business".

14. Is capital gains taxable on transaction of transfer of asset or shares to LLP?

Ans: Subject to conditions in Sec 47, any transfer of a capital asset or intangible asset by a private company or unlisted public company to an LLP or any transfer of shares held in the company by a shareholder as a result of conversion of the company into an LLP, will not be treated as a "transfer".

DIRECTORATE OF INCOME TAX
(Public Relations, Publications & Publicity)
6th Floor, Mayur Bhawan, New Delhi

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