



# LIMITED LIABILITY PARTNERSHIP [LLP]

By Dr. Haresh Shah

# exemption

- All the **shareholders** of the company immediately before conversion becomes partners with
- Capital contribution
- Profit sharing

**In the same proportion as their shareholding**

Equity or preference ??

Only paid up share capital as capital in the same proportion and balance reserves in any ratio?

till when ? Next day?? Warrant holders?

# exemption

- **Accumulated profits** paid *directly* or *indirectly* to any partner for 3 years

Accumulated profits ?

*How payment to be considered as paid out of accumulated profits*

*Original or new partners also??*

*Whether indirectly covers loan etc like 2(22)?*

*Whether it means no dissolution for 3 years of exempted LLPs ??*

*A person should be partner at the time of formation or payment or both ??*

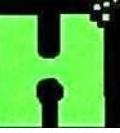
# exemption

- Sales/receipts < 60 lacs for 3 years

What if the company is just formed

What happened in the case of merger

Sales/receipts includes dividend/purchase –sale of shares /mutual funds



# exemption

Many hurdles ????? in getting exemption in  
conversion of company into LLP

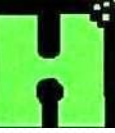
Way forward



# Company as a partner in LLP

## ***Contribution of investments at book value Sec 45(3)***

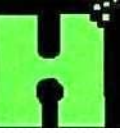
- *If contribution is of unlisted companies, it should be before 1<sup>st</sup> june,2010*
- *It saves future MAT and DDT on funds generated and long term capital gain earned on sale of such transfer portfolio*
- *it may save liability on dividend distribution , if any under Sec2(22) (c )*
- *Date of holding for investments for LLP starts from date of transfer. it means LLP needs to hold the same for one year to claim long term benefits*
- *Whether interest payment on capital account balance of company as partner is fatal to claim for LTC exemption???*



# Conversion whether liable

If considered as liquidation , Sec 46 applies

- Sec 46(1) specifies where the assets of a company are distributed to its shareholders on its liquidation; such distribution shall not be regarded as a transfer by the company for the purposes of section 45. So company is not liable to tax under Sec 45 on such distributions.
- if yes whether it amounts to distribution of assets to shareholders??Sec 46(2)

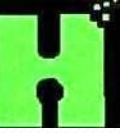


# Conversion whether liable

- **Vesting by operation of law hence neither Sec 45 nor Sec 46 applies so , there is no liability to tax to the company in any case whether exemption or not**

**Exemption is of no consequence**





# Conversion whether liable

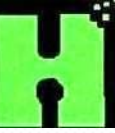
- **if Sec 45 applies ,there may be liability to tax to shareholders of a company on the ground of extinguishment of its rights in assets.**
- **Failure of computation mechanism as no consideration following to shareholders directly**

**No exemption provided in any case so whether it can be interpreted to mean that legislature in its wisdom feels that no liability arises to shareholders in any case**

# New LLP

- ✓ Form new LLP
- ✓ Make all new investment activities through LLP
- ✓ Make a company as one of partner if feasible

*The company which your client have at least slightest intention to convert into LLP*



# Conversion whether liable

Whether conversion amounts to liquidation?

*Not under The company's Act as no steps are taken under the company's act for winding up or liquidation .*

If not considered as liquidation , Sec 45 applies

**Whether reverse of Chapter IX**



# merger into shell company

## Step I

- Merge operating old company into other company

## Step II

- Convert company into LLP

# Private Limited into LLP



## Balance Sheet of A Private Limited

Liabilities	Amt(Rs)	Assets	Amt(Rs)
Share Capital	10	Investment In Shares	100
Reserves	90		
	100		100

\* Market value of Investments is INR 1000

### Whether exemption is available

1. If there is no income under business head ?
2. If the company is in existence for less than 3 years
3. If dividend +sale of shares > Rs 60 lacs in all 3 years
4. If dividend +sale of shares < Rs 60 lac in all 3 years

# Private Limited into LLP



## Balance Sheet of A Private Limited

Liabilities	Amt(Rs)	Assets	Amt(Rs)
Share Capital	10	Investment In Shares	100
Reserves	90		
	100		100

\* Market value of Investments is INR 1000

**What would be the levy of tax –**

**1. Is there no tax levied?**

**2. Is tax levied on accumulated reserves of INR 90 ?**

**3. Is tax levied on INR 990?**

# Private Limited into LLP



## Balance Sheet of B Private Limited

Liabilities	Amt(Rs)	Assets	Amt(Rs)
Share Capital	10	Investment In Shares	0
Reserves	0	Bank Balance	10
	10		10

\* Market value of Investments is INR Nil

**What would be the levy of tax in such scenario?**

# Private Limited into LLP



## Balance Sheet of AB Private Limited

Liabilities	Amt(Rs)	Assets	Amt(Rs)
Share Capital	10.1	Investment In Shares	100
Amalgamation Reserves/share premium	99.9	Bank Balance	10
	110		110

- \* Market value of Investments is INR 1000
- \* When A merges into B with assets accounted at book value
- \* Swap Ratio 1: 100



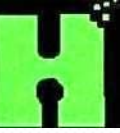
# Private Limited into LLP



## Balance Sheet of AB Private Limited

Liabilities	Amt(Rs)	Assets	Amt(Rs)
Share Capital	10.1	Investment In Shares	1000
Amalgamation Reserves	999.9	Bank Balance	10
	1010		1010

- \* Market value of Investments is INR 1000
- \* When A merges into B with assets accounted at market value
- \* Swap Ratio 1: 100



# merger

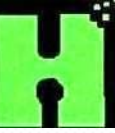
Under the scheme of merger, one of the terms of merger is to convert amalgamated company into LLP from the date of incorporation of the new company itself?



# merger

If through an appropriate agreement, is it possible to convert  
A private Ltd into a company from the beginning of the  
previous year (Appointed Date) to avoid Book Profit tax on  
Long Term Capital gain of the previous Year?

***If a resolution is passed in EOGM approving conversion for  
Co to LLP from say 01-04-2009 and resolution mention  
that agreement of conversion from Co to LLP needs to be  
executed among shareholders***



# arrangement under Sec 391

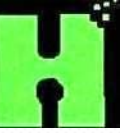
Under the scheme of arrangements with shareholders under Sec 391 of The companies Act, if the order is passed by the honourable high court that from The appointed Date all shareholders will become part of LLP from The Appointed Date as adjustments of their rights as permissible under The said Section ?

# Some food for thoughts....

- **LLP as tool to compensate employees** The company, as a policy may wants to compensate its employees for performance through forming LLP for them. All eligible employees are working partners of LLP with each having agreed share in the profit /loss of LLP. The company is also one of the partners with minimum share but brings whole of capital required at agreed rate of interest.
- **Company as subsidiary of LLP?(before 1<sup>st</sup> June 2010)**
- **Demerge one of the business of company into LLP**

**Company with negative net worth**

Private Limited into LLP



**A BIG THANK YOU**