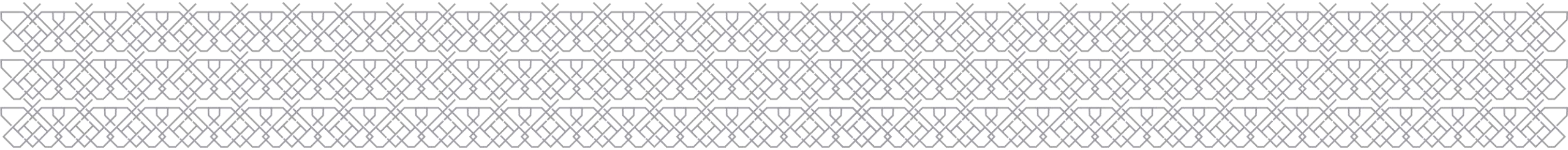
DIRECT TAX REFRESHER COURSE (WIRC ICAI)

CONVERSION OF FIRMS, COMPANIES, PROPRIETARY CONCERNS AND OTHER FORMS OF RESTRUCTURING

YOGESH A. THAR | JUNE 10, 2023

CONVERSION OF PARTNERSHIPS INTO COMPANY



AN OVERVIEW

- Two modes of changing over the business from partnership to a limited company:
  - Transfer of entire business undertaking from a firm to a company
  - Conversion of a firm into a Company under Chapter XXI of the Companies Act.
- Mode 1: Transfer from a firm to a company:
  - Existence of a firm and also of a company – two separate entities
  - Business transfer agreement between to two
  - Passing of consideration by the Company by issuance of shares to the erstwhile partners
  - Ordinarily – a taxable event: Q: Whether taxable in the hands of the firm; or in the hands of the partners; or both?
  - Specific exemption provided in the law – S. 47(xiii) – all conditions required to be fulfilled
  - Non compliance of any of the conditions in S. 47(xiii) attracts S. 47A(3) – capital gins not charged earlier will become chargeable in the year in which any of the condition is breached.

AN OVERVIEW (CONT'D)

- Mode 2: Conversion of a firm into a company under Part I - Chapter XXI of the Cos. Act, 2013:
  - S. 366 of the Cos. Act – partnership firm, LLP, cooperative society, society or other business entity formed under any other law can "register under this Act" as a company
  - Same entity – merely getting registered under the Companies Act. No existence of two separate entities.
  - Minimum two members – can register as a company. IF less than 7 members – cannot register as a public company.
  - S. 368 – Effect of registration:

    "All property, movable and immovable (including actionable claims), belonging to or vested in a company at the date of its registration in pursuance of this Part, shall, on such registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein"
  - Statutory vesting – not a "transfer" from one entity to the other
  - Exemption u/s. 47(xiii) not required. Conditions of S. 47(xiii) not required to be fulfilled.
  - Withdrawal of exemption in S. 47A – not applicable

MODE 1 – BUSINESS TRANSFER

- Conditions required to be satisfied u/s. 47(xiii):
  - Cl. (a): All assets and liabilities of the firm **relating to the business** become the assets and liabilities of the company
    - Q: What if a surplus land or building (not used in the business by the firm) is not transferred?
    - A: Section requires only all assets and liabilities relating to business being transferred. If not related to business – not necessary to transfer.
    - It should be “succession” of the firm by a company in the business. **K.H. Chambers 55 ITR 674 (SC)** held that “the tests of change of ownership, **integrity, identity and continuity of a business** have to be satisfied before it can be said that a person "succeeded" to the business of another”.
    - This could be a way in which one can, possibly, effect a demerger of a firm in a tax neutral manner.

MODE 1 – BUSINESS TRANSFER (CONT'D)

- Cl. (b): All partners become the shareholders in the same proportion in which their capital accounts stood in the books of the firm on the date of succession
  - Q: Would Capital Account include Current Account and Partners' Loan accounts?
  - A: S. 48 of the Indian Partnership Act, 1932 provides a waterfall mechanism for distribution of firm's assets. This section provides an indication that partners' capital is considered separately from partners' advances
  - Current Account is an extension of Capital Account – a creation of commercial and accounting necessity and not a legal concept.
  - Q. Can some partners be issued Equity Shares and some Preference Shares? Can some partners be issued equity shares with more voting rights and some with less?
  - A: Section requires all partners to become shareholders on proportionate basis. Type of shares to be issues is not mentioned.
  - S. 43 of the Companies Act provides two kinds of share capital; equity and preference. Within equity, there are two categories; (i) with voting rights; and (ii) with differential rights as to voting, dividend etc as per rules.
  - On first blush – answer seems to be "Yes".

MODE 1 – BUSINESS TRANSFER (CONT'D)

- Catch, however, is "in the same proportion".
- "In the same proportion" should be seen arithmetically or as per the Companies Act?
- Common parlance test – as people conversant with the relevant industry would understand it. For shares, proportionate would mean the way the Company Law provides
- Oranges and lemon can't be compared in the same proportion. Courts may read down the provisions to mean same kind of share capital. Disproportionate value or disproportionate voting rights cannot be regarded as "in the same proportion" qua shares. (e.g. SC in S. 80HHC cases – **Sudarshan Chemicals 245 ITR 769 (Bom) & Catapharma I. P. Ltd (292 ITR 641) (SC)**
- Also, Cl. (d) requires that the aggregate shareholding in the company of old partners should not be less than 50% of "total voting power" and it should continue for 5 years. The phrase "voting power" indicates the intention that the shares should be equity shares. Better not take any chances.
- Q. What if some partners' accounts are credited by revaluation of certain assets while it is a partnership firm? Issuing shares by the Company based on the ratio so determined will qualify the test of "in same proportion"?
- A: C**IT v. Mansukh Dyeing and Printing Mills 449 ITR 439 (SC**) – revaluation amount followed by withdrawal could be regarded as "transfer".

MODE 1 – BUSINESS TRANSFER (CONT'D)

- Cl. (c):The partners do not receive any consideration other than allotment of shares
  - Q: If part amount is treated as loan instead of issuing shares, will this clause apply?
  - A: Yes
  - Q: If one the shareholder director is given monthly remuneration after transfer to a company, will this clause get attracted?
  - A: No. It is a separate contract post transfer. It is not a consideration for transfer.
  - Q: Can this allotment of shares be at a premium? If yes, will it attract S. 56(2)(viib)?
  - A: Allotment can be at a premium. But the 11UA valuation norms should ideally be adhered to. If not, risk of 56(2)(viib) can't be ruled out.
  - Q: Would section 56(2)(x) apply in such allotments?
  - A: Arguably NO. Value of shares received is exactly equal to the value of the business transferred. Fairness is embedded in the requirement of the section that the share allotment should be on proportionate basis and no other consideration should be given. This is subject to Cl. (d) discussed below.

MODE 1 – BUSINESS TRANSFER (CONT'D)

- Cl. (d):Aggregate shareholding of the partners is not less than 50% of total voting power – and this should continue for 5 years.
  - Q: Would section 56(2)(x) apply in such allotments where there are other shareholders upto 49%?
  - A: Arguably YES. Value of shares received may not be exactly equal to the value of the business transferred. Hence fair valuation u/r. 11UA will have to be adhered to.

- What is the cost of acquisition of the shares?
  - S. 49(1)(iii)(e): Cost to previous owner – applies where the company sells any asset. No provision where the shareholder sells shares.
- What is the holding period of shares in the hands of the shareholders?
  - S. 2(42A)-Explanation 1, Clause (b) – to count the period of holding the capital asset by the previous owner in all cases of 49(1). Applies where company sells any asset. No provision where the shareholder sells the shares.
- Is indexation available? – Principle of harmonious construction.

MODE 1 – BUSINESS TRANSFER (CONT'D)

- Carry forward and set off of accumulated business loss and unabsorbed depreciation:
  - S. 72A(6): Where conditions laid down in S. 47(xiii) are satisfied – loss and depreciation of the firm shall be deemed to be the loss and depreciation of the successor company for the year of succession and all other provisions of the Act relating to C/f and S/o shall apply accordingly
  - Where 47(xiii) conditions are not satisfied, the losses would not travel. The losses would remain with the transferor entity.
  - Q: Whether the C/f is for the residual period or the loss gets a new lease of eight years?
  - A: Deeming provision – hence new lease of eight years

MODE 2 – CONVERSION UNDER PART 1 OF CHAPTER XXI

- Statutory vesting – not a “transfer” – hence no capital gains:
  - **CIT v. Texspin Engg. & Mfg. Works [2003] 263 ITR 345 (Bom);**
  - **CIT v. United Fish Nets [2015] 372 ITR 67 (AP);**
  - **CIT v. Rita Mechanical Works [2012] 344 ITR 544 (P&H);**
  - **CADD Centre v. ACIT [2016] 383 ITR 258 (Mad)**
  - **CIT v. Chetak Enterprises (P.) Ltd. [2020] 423 ITR 267 (SC) – 80IA** – agreement with the Government automatically gets vested with the company.

“It is manifest that all properties, movable and immovable (including actionable claims) belonging to or vested in a company at the date of its registration would vest in the company as incorporated under the Act. In other words, the property acquired by a promoter can be claimed by the company after its incorporation without any need for conveyance on account of statutory vesting. On such statutory vesting, all the properties of the firm, in law, vest in the company and the firm is succeeded by the company. The firm ceases to exist and assumes the status of a company after its registration as a company……..”

MODE 2 – CONVERSION UNDER PART 1 OF CHAPTER XXI
(CONT'D)

- In case of conversion under Part IX of Cos Act, 1956 (similar wordings in Part I Chapter XXI of 2013 Act), conditions u/s. 47(xiii) need not be complied with:
  - **CIT v. Umicore Finance Luxemborg [2016] 76 taxmann.com 32 (Bom)**
  - **ACIT v. Unity Care & Health Services [2006] 103 ITD 53 (Bang. ITAT)**
- What is the holding period of shares in the hands of the shareholders?
  - S. 49(1)(iii)(e) – which is applicable to 47(xiii) cases – is not applicable in cases of conversion
  - S. 49(1)(iii)(a) – "succession" and "devolution" – whether applies?
  - "Succession": **CIT v. K. H. Chambers 55 ITR 674 (SC)** has held that "the tests of change of ownership, integrity, identity and continuity of a business have to be satisfied before it can be said that a person "succeeded" to the business of another. Q: There is no change in ownership here. Can it be "succession"?

MODE 2 – CONVERSION UNDER PART 1 OF CHAPTER XXI
(CONT'D)

- **CIT v. S. Koder [1998] 233 ITR 620 (Kerala)**:

  Q: Whether the valuation of stock at market value was necessary on conversion of a partnership firm into a private limited company?

  The Court observed that both the lower appellate authorities, considering the factual position and the ratio of the decision of K. H. Chambers *(supra)*, have held that the firm was "succeeded" by the company. Such observations were accepted by the High Court.

- **CIT v. Texspin Engg. & Mfg. Works [2003] 263 ITR 345 (Bom)**:

  "In the present case, we are concerned with a Partnership Firm being treated as a company under the statutory provisions of Part IX of the Companies Act. In such cases, the Company succeeds the Firm."

- "Devolution": **CIT v. S. Krishnamurthy [1985] 152 ITR 669 (Mad).**

  "devolution" comprises not only disposition by a party's overt act, but also a transfer of ownership by the operation of law, the operation of law being dependent on the occurrence of a particular event or circumstance and not involving a full-fledged overt act of transfer or conveyance or disposition.

MODE 2 – CONVERSION UNDER PART 1 OF CHAPTER XXI
(CONT'D)

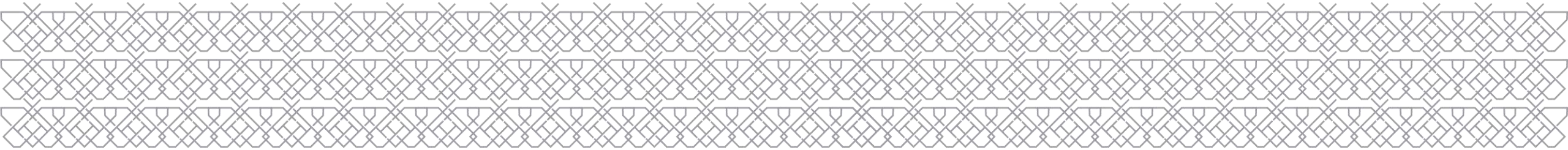
- Principle of Harmonious construction: If conversion is not a transfer, then, period of holding must be w.e.f. the date of entering into partnership and not date of issue of shares. For example:
  - **CIT v. Manjula J. Shah [2013] 355 ITR 474 (Bom**)
- Asset is the same – its character changes: (e.g. Cases on Agri Land converted to NA Land)
  - **Ranchhodbhai Patel v.CIT [1970] 81 ITR 446 (Guj)**
  - **Keshavji Karsondas v. CIT [1993] 73 Taxmann 51 (Bom)**

- What is the cost of acquisition of the shares?
  - Balance to the credit of the partner's capital account on the date of conversion is the aggregate of cost of acquisition and the cost of improvement
- Is indexation available?
  - Plausible view: Initial capital in the partnership firm = COA; and net increase from year to year = COI. Apply indexation accordingly.

MODE 2 – CONVERSION UNDER PART 1 OF CHAPTER XXI
(CONT'D)

- Carry forward and set-off of accumulated business loss and unabsorbed depreciation:
  - No change in the entity. Hence should continue to be available for the residual period.

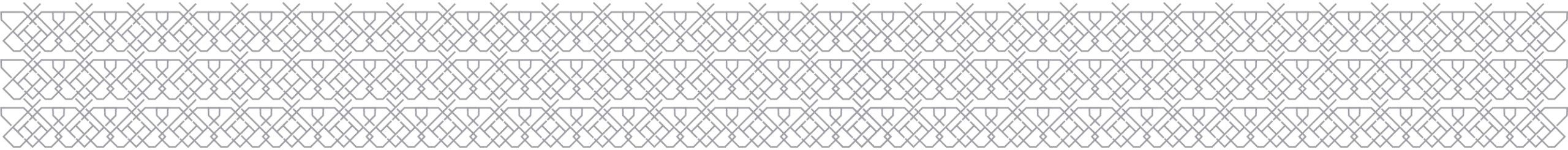
CONVERSION OF PROPRIETARY CONCERN INTO COMPANY



BUSINESS TRANSFER

- Chapter XXI option not available – sole proprietary concern not formed under any law.
- Conditions required to be satisfied u/s. 47(xiv):
  - Cl. (a): All assets and liabilities of the sole proprietary concern **relating to the business** become the assets and liabilities of the company
  - Cl. (b):Shareholding of the sole proprietor is not less than 50% of total voting power – and this should continue for 5 years.
  - Cl. (c):The sole proprietor does not receive any consideration other than allotment of shares
- What is the cost of acquisition of the shares?
  - S. 49(1)(iii)(e): Cost to previous owner – applies where the company sells any asset. No provision where the shareholder sells shares.
- What is the holding period of shares in the hands of the shareholders?
  - S. 2(42A)-Explanation 1, Clause (b) – to count the period of holding the capital asset by the previous owner in all cases of 49(1). Applies where company sells any asset. No provision where the shareholder sells the shares.
- Is indexation available? – Principle of harmonious construction.
- Carry forward and set-off of accumulated business loss and unabsorbed depreciation : S. 72A(6) equally applies.

CONVERSION OF COMPANY INTO LLP



AN OVERVIEW

- Conversion of a company into LLP under Chapter X of the LLP Act, 2008:
  - S. 56, 57 of the LLP Act – a private ltd company and an unlisted public company can convert into a LLP
  - S. 58 – Effect of registration:

    "…on and from the date of registration ,,, all ... Property vested in the company, all assets, interests, rights, Privileges, liabilities, obligations relating to the … company,,, shall be ***transferred to and shall vest in*** *the LLP…"*
  - Though this too is a 'Statutory vesting' – though there are no two entities – it is held to be a "transfer" for the purposes of capital gains:
    - ACIT v. Celerity Power LLP (ITA No. 3637/Mum/2015)
    - Domino Printing Sciences Plc. *In re*. (2021) 433 ITR 215 (AAR)
  - Exemption u/s. 47(xiiib) is available if all the conditions are satisfied ;
  - C/f and S/o of losses and depreciation is allowable u/s. 72A(6A) if the conditions in S. 47(xiiib) are satisfied

CONDITIONS IN S. 47(XIIIB)

- Cl (a): All assets and liabilities of the company become the assets and liabilities of the LLP
  - "relating to business" not mentioned. It visualizes transfer in entirety.
- Cl (b): All shareholders become the partners. Their capital contribution and their PSR, both, should be in the same proportion as their shareholding in the company on the date of conversion
  - Q: Shareholders include Equity as well as Preference shareholders?
  - A: Yes. Rights of the partners in the LLP may be defined in sync with the rights as Equity or as Preference shareholders. E.g. Partner's Capital Accounts – Pool A and Pool B. Preference dividend may be converted into fixed share of profit computed as a % of Pool B Capital.
- Cl (c):The shareholders do not receive any consideration other than share in profit and capital contribution in the LLP.
  - **ITO v. Brizeal Realtors & Developers LLP [2023] 146 taxmann.com 109 (Mumbai - Trib.)** – Goodwill created post conversion by LLP, credited to partners' accounts – held: Not a benefit as it is post conversion. Also commercial rationale for goodwill creation considered.

CONDITIONS IN S. 47(XIIIB)

- Cl (d): Aggregate of PSR of the shareholders in the LLP shall not be < 50% at any time during 5 years of conversion
  - Q: What is *inter se* PSR changes? A: Seems to be no bar
  - Q: What if some old shareholders retire or die? A: Proportionate ratio is required only on the date of conversion. Thereafter only aggregate should not go below 50%. So long as at least one old shareholder continues for 5 years and his PSR > 50%, the condition is met.
  - Q: What if the capital ratio changes – while the PSR remains same? A: This condition is only qua PSR. Capital contribution should be on proportionate basis only on the date of conversion. Not later.
- Cl. (e): Total sales, turnover or gross receipts in the business of the company in any of the 3 preceding PYs < Rs. 60 lakhs
  - Q: What if there are receipts taxable under other heads – dividend, interest, IFHP etc. which are > Rs. 60 lakhs?
  - A: The words “in the business” would exclude all other receipts. Except where the business is of investment or renting.

CONDITIONS IN S. 47(XIIIB)

- Cl (ea): Total value of the assets as appearing in the books of account of the company in any of the 3 preceding PYs < Rs. 5 crores.
  - Q: Value means: Book value or Fair Market Value? If book value, is it depreciated value or gross block? If depreciated value, is it Book WDV or IT WDV?

  A: Value “as appearing in the books of account of the company”. Hence Market Value is ruled out. Also, IT WDV is ruled out. Debate boils down to whether Gross Block or Net Block. Safe view: Gross block. Because, Depreciation is a mere provision and it appears separately in the books of account. Arguable: Since the depreciation is always obliterated from the gross block, following **Vijaya Bank’s principle (323 ITR 166 (SC)**), it should be the net block.
  - Q: If assets were revalued in the past? A: No qualification as specifically provided in S. 50B. Hence include it.
  - Q: “assets” means only fixed assets or all other assets? Can current assets be set off against current liabilities and only net current assets be considered?
  - A: “assets” means all assets. Current assets should be on stand alone basis and not after netting of against current liabilities.

CONDITIONS IN S. 47(XIIIB)

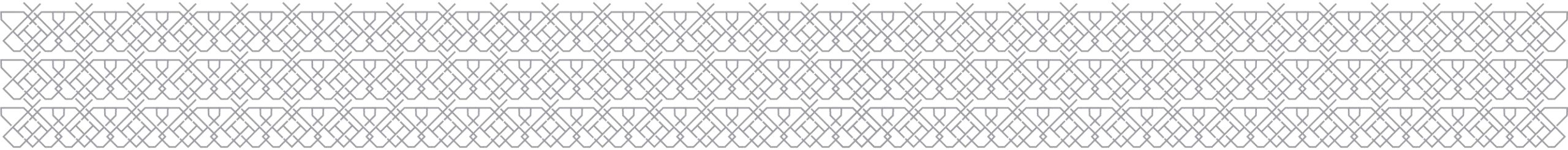
- Cl (f): No amount is paid to any partner out of accumulated profits standing in the books of the company on the date of conversion – for 3 years from the date of conversion
  - Q: Post conversion, can the partners withdraw balance in their capital account standing on the date of conversion?

    A: Seems to be no bar.
  - Q: If yes, what if bonus shares are allotted just before conversion?

    A: S. 2(22) talks of “accumulated profits, whether capitalized or not”. This section does not use that language. Hence capitalized profits no longer remain ‘accumulated profits’. Hence – possible. However, to examine GAAR
  - Q: Whether partners can withdraw out of the profits of the LLP earned post conversion?

    A: Yes.

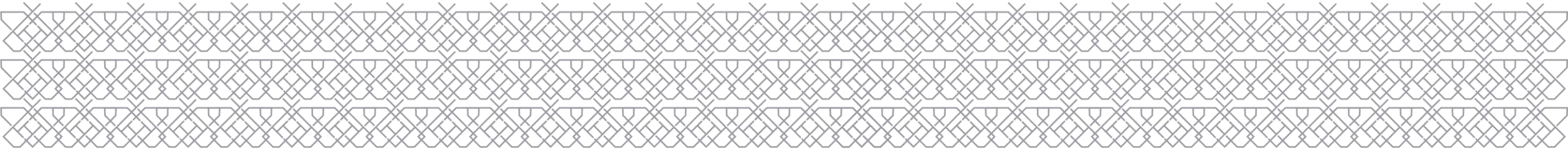
CONVERSION OF A FIRM INTO AN LLP



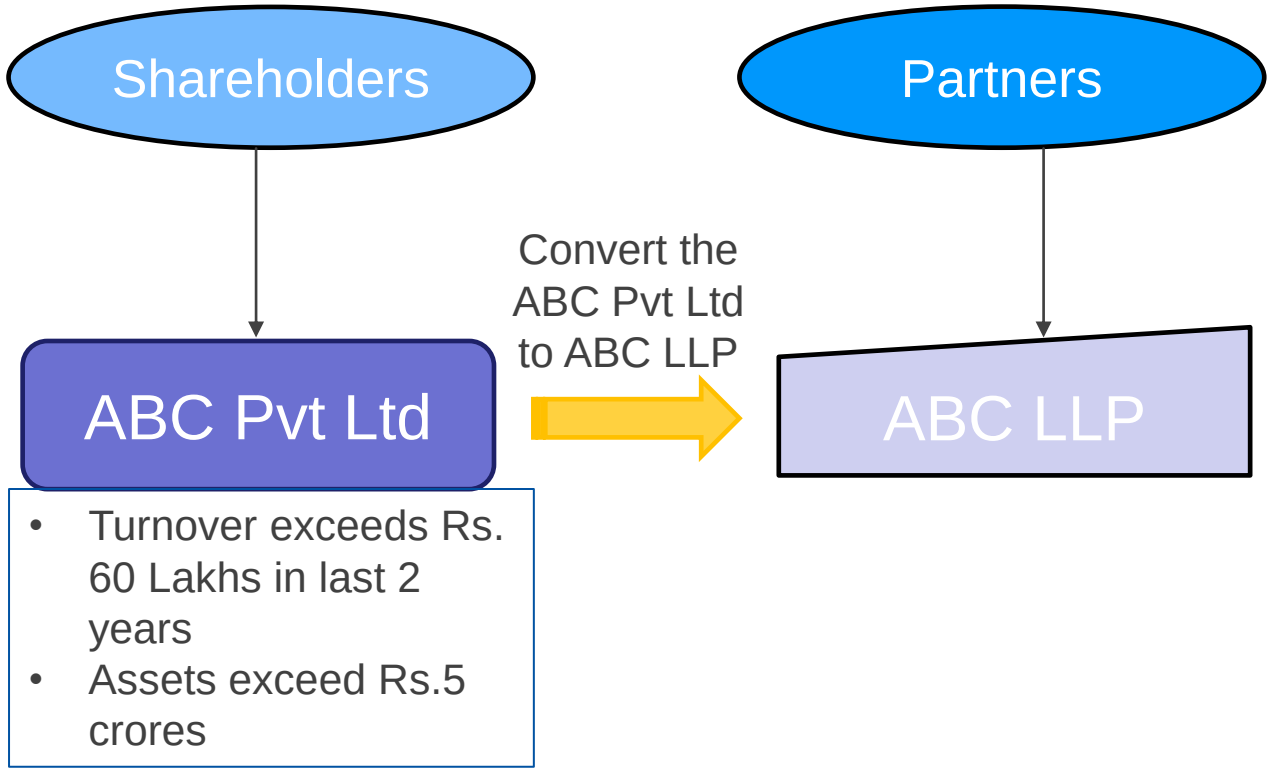
CBDT CIRCULAR NO 05 OF 2010

- **Para 5.6:** *As an LLP and a general partnership is being treated as equivalent (except for recovery purposes) in the Act, the conversion from a general partnership firm to an LLP will have no tax implications if the rights and obligations of the partners remain the same after conversion and if there is no transfer of any asset or liability after conversion. If there is a violation of these conditions, the provisions of section 45 shall apply.*
- This is explained while dealing with the introduction of the new provisions dealing with taxation of LLPs.
- Goes beyond the specific legal provisions – could a beneficial circular still be regarded as binding on the Department?
- The phrase “if there is no transfer of any asset or liability after conversion” is not easy to grasp. In the context the thrust seems to be on a genuine conversion and not where the conversion is meant for avoiding any tax.

CASE STUDIES



CASE STUDY 1 - NON-COMPLIANT CONVERSION OF COMPANY INTO LLP



Mechanics

- ABC Private Ltd is a domestic company engaged in the business of providing consultancy services;
- The shareholders of the Company are individual members of the same family.
- The turnover of the Company for the past 3 years exceeds Rs. 60 lakhs and the assets of the Company are more than 5 crores.
- It is being contemplated to convert the Company into a LLP during the current financial year.

? Would this be regarded as a tax compliant conversion as per section 45 r.w. section 47(xiiib) of the Act?

CASE STUDY 1 - NON-COMPLIANT CONVERSION OF COMPANY INTO LLP (CONT'D)

Tax implications in the hands of the Company

1) Transactions **not** regarded as a "**transfer"**
   - CIT vs. Texspin Engg. & Mfg. Works (129 Taxman 1) (Bom HC)
   - DCIT vs. R.L. Kalathia & Co [2016] (66 taxmann.com 249)(Guj HC)
   - Umicore Finance Luxemborg ((189 Taxman 250)(AAR) New Delhi) upheld by Hon'ble Bombay High Court in (244 Taxman 43)
   - ACIT vs. Celerity Power LLP [100 taxmann.com 129]

2) Transaction of conversion is regarded as a **"transfer"**
   - ACIT vs. Celerity Power LLP [100 taxmann.com 129]
   - Aum Chemicals vs. ACIT (26 SOT 50)

CASE STUDY 1 - NON-COMPLIANT CONVERSION OF COMPANY INTO LLP (CONT'D)

Tax implications in the hands of the Company

3) No Consideration:
- CIT vs. Texspin Engg. & Mfg. Works (129 Taxman 1) (Bom HC)

4) Consideration:
- ACIT vs. Celerity Power LLP [100 taxmann.com 129]
- Aum Chemicals vs. ACIT (26 SOT 50)

CASE STUDY 1 - NON-COMPLIANT CONVERSION OF COMPANY INTO LLP (CONT'D)

Tax implications in the hands of the Shareholders/ Partners

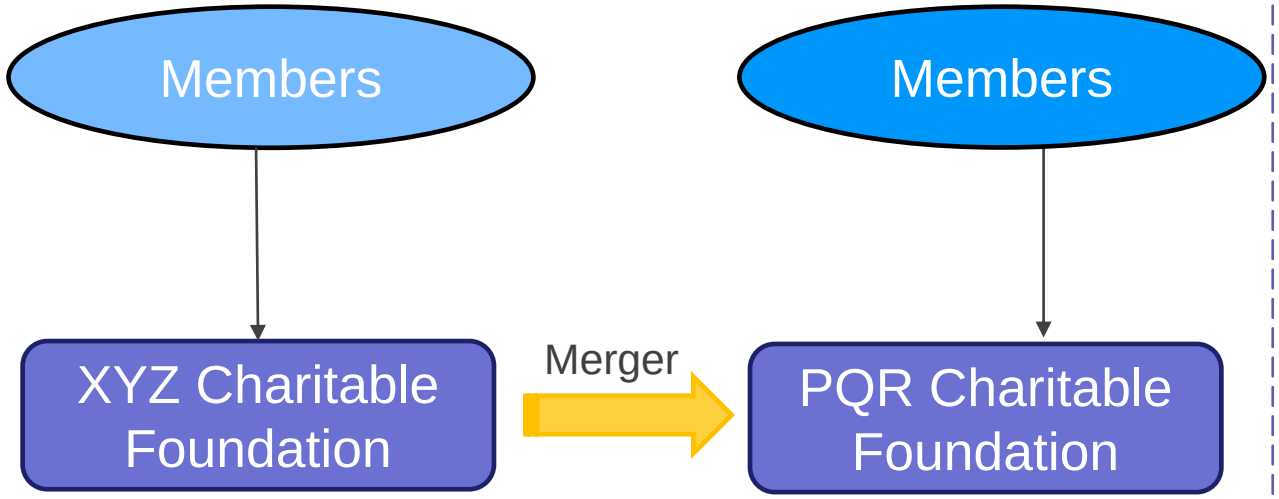
Implications of Section 45:

1) Transfer
   - CIT vs. Grace Collis (115 Taxmann 326) [2001] (SC)

2) No Consideration:
   - Sunil Siddharthbhai vs. CIT [1985] 23 Taxmann 12 (SC)
   - Aum Chemicals vs. ACIT (26 SOT 50)

Implications of Section 50D:
   - Sunil Siddharthbhai's case – nullified
   - Section 50CA to be applied to determine the fair value of the shares extinguished?

CASE STUDY 2 – MERGER OF SECTION 8 COMPANIES (GUARANTEE COMPANIES)



Whether on merger there would be no issue of shares, since the companies are guarantee companies, it would be regarded as a tax compliant merger u/s 2(1B) of the Act

Mechanics

- The PQR Group has two companies registered under section 8 of the Companies Act, 2013 ("Co's Act, 2013") (erstwhile Section 25 of the Companies Act, 1956).
- The main object of these companies was to undertake charitable activities and these section 8 companies have more or less same objectives.
- It may be pertinent to note that these section 8 Companies are "companies limited by guarantee" as defined under section 2(21) of the Co's Act, 2013.
- It is being contemplated to merge section 8 Companies for reducing number of entities. The merger of the section 8 companies would be through a composite scheme of arrangement under Section 232 to 234 of the Companies Act, 2013 filed with the NCLT.

CASE STUDY 2 – MERGER OF SECTION 8 COMPANIES (GUARANTEE COMPANIES) (CONT'D)

- The provisions for enabling the merger of section 8 Companies is contained is sub-section (10) of section 8 of the Co' Act, 2013. The relevant extract of the section reads as under:-

"Formation of Companies with Charitable Objects, etc.

(10) A company registered under this section shall amalgamate only with another company registered under this section and having similar objects.

- If the benefits conferred in respect of amalgamation are to be availed, the concerned amalgamation needs to be in accordance with section 2(1B) of the Act.

""amalgamation", in relation to companies, means the merger of one or more companies with another company or the merger of two or more companies to form one company (the company or companies which so merge being referred to as the amalgamating company or companies and the company with which they merge or which is formed as a result of the merger, as the amalgamated company) in such a manner that—

CASE STUDY 2 – MERGER OF SECTION 8 COMPANIES (GUARANTEE COMPANIES) (CONT'D)

(i) all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation;

(ii) all the liabilities of the amalgamating company or companies immediately before the amalgamation become the liabilities of the amalgamated company by virtue of the amalgamation

(iii) shareholders holding not less than three-fourths in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) become shareholders of the amalgamated company by virtue of the amalgamation,

otherwise than as a result of the acquisition of the property of one company by another company pursuant to the purchase of such property by the other company or as a result of the distribution of such property to the other company after the winding up of the first-mentioned company."

- Further, as regards the third condition, the amalgamating company is required to issue shares to the shareholders of the amalgamated company. Interestingly, the above provision is apparently silent on amalgamation of companies limited by guarantee. This aspect raises an interesting tax issue as to whether the tax neutral status conferred under the Act to amalgamations would also extend to companies limited by guarantee or not.

CASE STUDY 2 – MERGER OF SECTION 8 COMPANIES (GUARANTEE COMPANIES) (CONT'D)

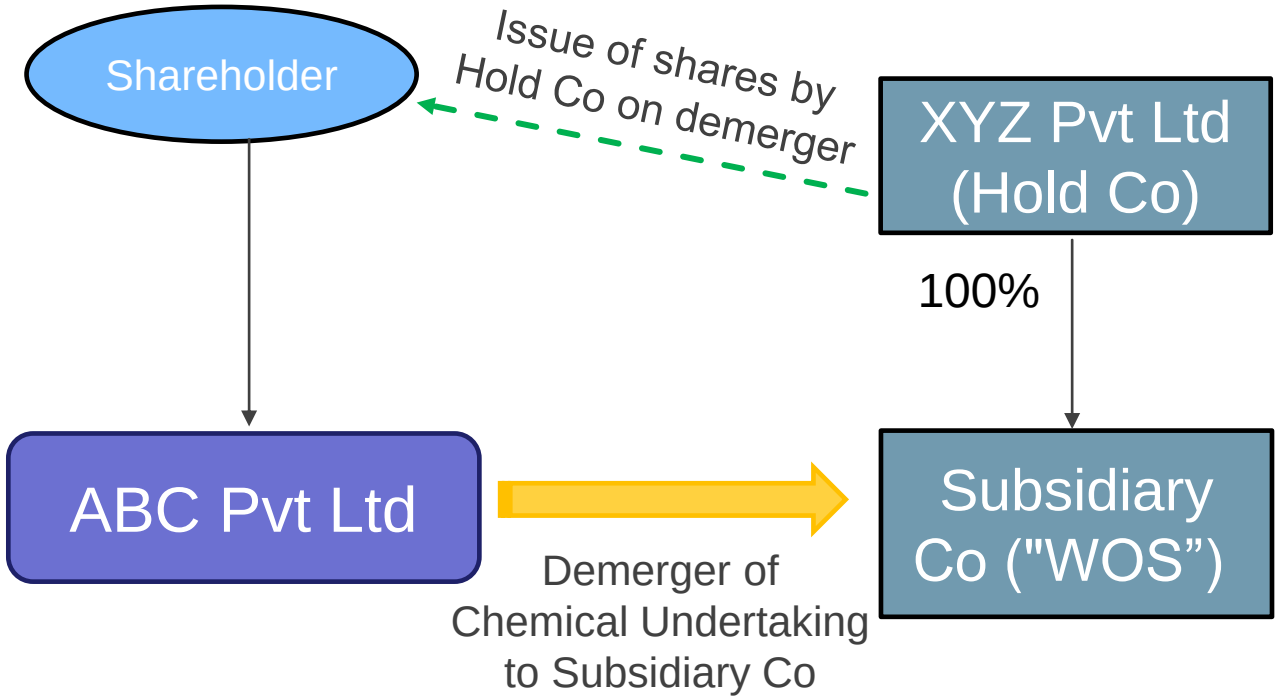
- Refer definition of company limited by guarantee section 2(21) of the Companies Act, 2013, which defines the term "company limited by guarantee" as under:-

  "(*21*) "company limited by guarantee" means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up;"

- Theory of impossibility of performance:
  - CIT v. London Hotels (68 ITR 62) (Bom) – on bad debts condition
  - Duetsche Bank (2006) 284 ITR 463 (Bom) – on section 44C condition

- Implications u/s 56(2)(x) of the Act

CASE STUDY 3 – DEMERGER AND ISSUE OF SHARES BY RESULTING COMPANY



Mechanics

- ABC Private Ltd is a domestic company engaged in the business of providing consultancy services;
- The shareholders of the Company are individual members of the same family.
- It is being contemplated to demerge chemical undertaking of ABC Pvt Ltd to Subsidiary Co of XYZ Pvt. Ltd. under a scheme of demerger u/s 232 and 233 of Co's Act. 2013. In consideration of the demerger, XYZ Pvt Ltd, (being the holding company) would issue shares to the shareholders of Demerged Company.

? Whether the Hold Co would be regarded as "Resulting Company" u/s 2(19AA) r.w. section 2(41A) of the Act.

CASE STUDY 3 – DEMERGER AND ISSUE OF SHARES BY RESULTING COMPANY (CONT'D)

- **U/d is demerged to Subsidiary and shares are issued by Hold Co**

2(41) "resulting company" means one or more companies (including a wholly owned subsidiary thereof) to which the undertaking of the demerged company is transferred in a demerger and, the resulting company in consideration of such transfer of undertaking, issues shares to the shareholders of the demerged company and includes any authority or body or local authority or public sector company or a company established, constituted or formed as a result of demerger;

Any Questions

THANK YOU!

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