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Startups - Direct Taxes and other Compliances

by

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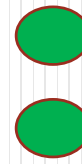
Definition - Start-ups



NOTIFICATION NO. GSR 501(E) [F.NO.5(91)/2015-BE-I], DATED 23-5-2017

- The **GOI aims & Objective** at **fostering entrepreneurship & promoting innovation**, become a **nation of job creators**.
- **An entity shall be considered as a Startup'**:
- If it is incorporated/ registered as **Private Limited Company/ Registered Partnership Firm/ Limited Liability Partnership** (entity).
- From the date of incorporation/ registration:
 - Up to **seven years**
 - **Biotechnology** sector, **up to ten years**; and
- If its turnover for any of the financial years since incorporation/registration has **not exceeded** Rupees 25 crores; and
- If it is working towards **innovation, development** or **improvement of products** or **processes** or **services**, or if it is a scalable business model with a **high potential** of **employment generation** or **wealth creation**.

Definition – Startups



- **Provided** that any such entity formed **by splitting** up or **reconstruction** of a business **already in existence** shall **not** be considered a 'Startup'.
- **Turnover** is as defined under the Companies Act, 2013.
- An entity shall **cease to be a Startup**, if its **turnover** for **any previous year** **exceeds** Rupees **25** crores.

Process of recognition

- **Online application** made over the mobile app/portal set up by the Department of Industrial Policy and Promotion (**DIPP**) along with the Certificate of Incorporation/Registration and other relevant details as may be sought.
- Have to submit a **write-up** about the **nature of business** highlighting **how is it working towards innovation, development or improvement of products or processes or services, or its scalability in terms of employment generation or wealth creation.**

Eligibility Conditions

An Inter-Ministerial Board (IMB) setup by Department of Industrial Policy & Promotion (DIPP) to validate the innovative nature of the business for granting tax related benefits:

- ❖ **Recommendation from an incubator** established in a post-graduate college in India or recognised by GOI.
- ❖ **Funded by an Incubation/ Angel/ PE Fund, Accelerator/ Angel Network** duly registered with the SEBI or by GOI.
- ❖ Must have been a **patent granted by the Indian Patent and Trademark office.**
- ❖ **Funded by the Government** as part of any specified scheme to promote innovation.
- ❖ Has a **project supported by an incubator funded by the Government** as part of any specified scheme to promote innovation.
- ❖ The startup holds a **certificate** from Inter-Ministerial Board (IMB).

Key Operational Challenges

- **Sustainability** - knowledge that business advisers; lack of information etc.,
- **Technology & Cyber Security**
- **Financial** – Capital; Working Capital; Cash Flow Management.
- **Regulatory** – Legal; Clearances/ Approvals; Income Tax & GST.
- **Cultural & Awareness** - Entrepreneurship is often about failing and learning from those failures and starting all over again. People need to start accepting failures and allow second chances.
- **What to do – Vision & Mission; Why to do – Risk evaluation & other benefits; How to do – Legal, approval, finance, technology, manpower etc.,**
- Existing **Strategy**
- **Social** – Mentorship/ Guidance; Consumer behavior & Location etc.,
- **Lack of early stage funding.**

General Incentives

- **Self-certification** for compliance of **various labour & environmental laws**. **No inspections** to be conducted for a period of **3 years**.
- **“Start-up India Hub”** to be **set up as a single point of contact** between all start-ups & the GOI.
- Mobile App & Portal in order to ensure **ease of registrations & compliances**.
- **Legal Support** & Fast-tracking **Patent** Examination at Lower costs - **up to 80% rebate**.
- Relaxed Norms of Public Procurement for start-ups.
- **Easy Exit** in cases of business failure - within 90 days under insolvency & Bankruptcy code 2016.
- Providing **funding support** through a Fund of Funds with a corpus of INR 10,000 crore by the Government.
- **Credit Guarantee Fund** for Start-ups.
- Organizing **Start-up Fests** for showcasing Innovation & providing a Collaboration Platform.
- Apply for **tenders** – **No Experience Certificate** required.
- <http://www.startupindia.gov.in/notification.php>

Key considerations in Choice of org. structure

Nature of Business

Cost and time involved in formation

Capital Base

Scale of Business

Regulatory Compliances

Intensity of Risk – Larger the business, larger the risk.

Control of Management & Sharing of Returns

Continuity

Taxability

Initial Entity Setup – Pros & Cons

SN.	Particulars	Partnership Firm	LLP Act	Pvt. Company	OPC
1	Statute – Governed by	"The Indian Partnership Act, 1932."	"The LLP Act, 2008".	"The Companies Act, 2013".	
2	Regulated by	The Registrar of Firms	Registrar of Companies (ROC)		
3	Created by	Contract	Law		
4	Registration Formalities	Not Mandatory (Optional)	Mandatory		
5	Incorporation Document (Main)	Partnership Deed	LLP Agreement	MOA & AOA	
6	Separate Legal Entity	No – All Partners are Collective referred as Firm	Yes – Separate from its partners\ designated partners.	Yes – Separate from its Member(s)\ Directors.	

Initial Entity Setup – Pros & Cons

SN.	Particulars	Partnership Firm	LLP Act	Pvt. Company	OPC
7	Perpetual Succession	NO	YES		
8	Change in Register officer	Easy with minimum documentation		Allowed with lot of formalities	
9	Liability	Unlimited	Limited to Capital Contribution/ Capital of the Company		
10	Admission of minor	Only for Profits	No		
11	Common Seal	Not Required	Yes required		
12	Suit against and by	No for – Unregistered Firm	Yes can sue and can be sued in its own name.		
13	Management	Working Partners (Min. 1 & Max. 20)	Designated Partners (Min. 2 Max. No Limit)	Board of Directors Min. 2 Max. 15	Board of Director(s) Min. 1 Max. 15

Initial Entity Setup – Pros & Cons

SN.	Particulars	Partnership Firm	LLP Act	Pvt. Company	OPC
14	Partners/Members	Minimum- 2; Maximum-20	Minimum - 2 Max. – No Limit	Minimum - 2 Maximum – 200	One
15	Maintenance of Accounts - Method of Accounting	Yes if exceed limit - Cash or Accrual		Yes - Accrual	
16	Statutory Audit Compulsory	No	T/o > Rs. 40L or Contribution > Rs. 25L	Yes	
17	Tax Audit under IT Act	If Turnover exceeds Rs. 1 Crores			
		Can avail U/s 44AD up to 2Cr of T/o	NA		
18	Filing of ROI	Mandatory irrespective of Income			
19	Rate of Income Tax @	30%	30%	If T/o is < 50Cr. - 25% other wise - 30%	

Initial Entity Setup – Pros & Cons

SN.	Particulars	Partnership Firm	LLP Act	Pvt. Company	OPC
20	Surcharge @ and EC @ 3%	12% - > 1 crore		7% - > 1Cr up to 10 Crore 12% - > 10 Crore	
21	Distribution of Profit/ DDT & its taxation	<ul style="list-style-type: none"> No tax on the distribution of profit. Profit is exempt in the hands of Partners. 		<ul style="list-style-type: none"> DDT Tax to be paid @ 18% Profit is exempt in the hands of shareholders. Received by resident individual/HUF>10Ltax@10% 	
22	Specific tax rate on dividend from foreign subsidiary	30% (plus surcharge, cess)		15% (plus surcharge, cess)	
23	Loans & advances by the entity to the Participants – Deemed Dividend U/s 2(22)(e)	Not Taxable*	Not Taxable. Except in the case of (Pvt.) Ltd., Company converted into LLP for the 1 st 3 years after conversion.	Taxable – subject to certain conditions	

Initial Entity Setup – Pros & Cons

SN.	Particulars	Partnership Firm*	LLP Act	Pvt. Company	OPC
24	Interest on Capital contribution by Participants	Allowable as deduction – subject to limits *If income offered U/s 44AD – No Claim		Not Allowed as deduction	
25	Management Remuneration	Allowable as deduction – subject to limits Up to Rs. 3 L Book Profit @ 90% or Rs. 1.5 whichever is higher ➤ 3L of Book Profit @ 60% *If income offered U/s 44AD – No Claim		Allowed as deduction – No Limit specified	
26	CSR Provisions	Not Applicable		Applicable if exceeds specified threshold limits	
27	MAT/ AMT	AMT @ 18.5% U/s 115JC		MAT @ 18.5% U/s 115JB	

Initial Entity Setup – Pros & Cons

SN.	Particulars	Partnership Firm	LLP Act	Pvt. Company	OPC
28	Filing of Annual Return & Financials	NA	<p>Annual Return: < 60 days from the end of the FY.</p> <p>Accounts & Solvency: < 30 days – from the end of 6M of the FY</p>	From the date of AGM: <ul style="list-style-type: none"> < 30 days – Financials < 60 days – Annual Return 	

Initial Entity Setup – Pros & Cons

SN.	Particulars	Partnership Firm	LLP Act	Pvt. Company	OPC
29	Foreign Direct investment [FDI] in the form of capital/ contribution/ equity.	<ul style="list-style-type: none"> NRI/PIO may invest in the firm without repatriation benefits, no permission from RBI is required. utilise \$1Million scheme without permission. In case the investment to be made by NRI/PIO/other than NR with repatriation benefits, then prior permission needs to be obtained from RBI. 	FDI in LLP is allowed in such sectors/activities, where 100% FDI is allowed under automatic route, without any FDI-linked performance related conditions.	<ul style="list-style-type: none"> FDI in a Private Company is allowed based on sector specific restrictions i.e., either percentage or based on Automatic or prior approval route. Further FDI in certain sectors have FDI-linked performance related conditions, which are to be complied. 	FDI is not allowed, as it is the requirement for a member of a OPC to be a Indian citizen and <u>resident in India</u> shall be eligible to incorporate a One Person Company i.e., shall be a member of the OPC.

Initial Entity Setup – Pros & Cons

SN.	Particulars	Pvt. Ltd.	OPC
30	Meetings of Partners/ Directors/ Shareholders	<p><u>First Board Meeting:</u> Within 30 days from the date of incorporation.</p> <p><u>Subsequent Board Meetings:</u> Minimum 4 meetings, every year, with a gap of not more than 120 days (4Months) between two consecutive meetings of the Board.</p> <p><u>Annual General Meeting:</u> 1st AGM: 9 months from the close of FY. Subsequent AGM: 6 months from the close of FY.</p>	<p><u>First Board Meeting:</u> Within 30 days from the date of incorporation.</p> <p><u>Subsequent Board Meetings:</u> a minimum 1 Board meeting in each half of a calendar year and the gap between the two meetings is not less than ninety days.</p> <p><u>AGM:</u> Not Compulsory.</p>

Initial Entity Setup – Pros & Cons

SN.	Particulars	Pvt. Ltd.	OPC
31	Quorum for Meetings	<p>In case of Board Meetings: 1/3rd of the total Directors, subject to a minimum of 2 Directors.</p> <p>In case of General Meetings: 2 Shareholders physically present</p>	<p>In case of Board Meetings: 1/3rd of the total directors, subject to a minimum of 2 Directors, if there is more than one Director.</p> <p>In case of one Director, then the sole director will be the quorum.</p>

Initial Entity Setup – Pros & Cons

Individual (Less than 60 years of age)/HUF/AOP/BOI/AJP)		Resident Individual (Age of 60 or more)		Resident Individual (Age of 80 or more)	
Income	Rates	Income	Rates	Income	Rates
Up to 2.5 lac	NIL	Up to Rs. 3Lac	NIL	Up to 5 Lac	NIL
Rs. 2,50,001 to Rs. 5,00,000	5% of Total Income - 2,50,000	Rs. 3,00,001 to Rs. 5,00,000	5% of (Total Income-3,00,000)	Rs.5,00,001 to Rs. 10,00,000	20% of (Total Income -5,00,000)
Rs. 5,00,001 to Rs. 10,00,000	Rs. 12,500 + 20% of (Total Income - Rs. 5,00,000)	Rs. 5,00,001 to Rs. 10,00,000	Rs10,000 +20% of (Total Income-5,00,000)	Above Rs. 10,00,000	1,00,000 + 30% of (Total Income - 5,00,000)
Above Rs. 10,00,000	Rs. 1,12,500+30% of (Total Income - Rs. 10,00,000)	Above Rs. 10,00,000	Rs 1,10,000+30% of (Total Income- Rs. 10,00,000)	Rebate U/s 87A has been reduced to Rs. 2,500/- . It is available if total income of resident individual does not exceed Rs.3,50,000	

Surcharge

- Surcharge:-
- In case of every **INDIVIDUAL or HUF** or AOP or BOI or AJP;
- Total Income **exceeding** Rs. 50,00,000/- **but** < Rs. 1 Crore - @10%.
- If Total Income **exceeds** Rs. 1 Crore - @15%.

Things to remember:

Books of Account:

**Vouchers
Bills
Records**

MIS: *Cash Flow Statements
Profit & Loss Account
Balance Sheet*

Human Resources – HR Policies:
*Minimum Wages;
EPF;ESI; Shops & Commercial
Establishments;
Bonus, Gratuity etc.,*

**FEMA; STPI & Import & Export
Code**



Audit:

**Statutory Audit
Internal Audit
Tax Audit**

Income Tax & GST

Corporate Laws & Rules

Other Compliances:

**Income Tax – Advance Tax, TDS
GST, Professional Tax etc.,
Filings**

Direct Tax incentives

- U/s 54EE has been introduced under the Finance Act, 2016 which provides for exemption of capital gain up to INR 50 lakhs arising out of transfer of long term capital asset invested in a fund notified by Central Government.
- Companies set-up after 1st March 2016 engaged in manufacturing will have an option to be taxed at a corporate tax rate of 25%, subject to certain terms and conditions U/s 115BA.
- U/s 54GB capital gains arising to an individual or HUF from the transfer of a long term residential property shall be exempt.
 - ❖ the consideration is utilised for subscription in equity shares before 139(1); and
 - ❖ utilises this amount for purchase of new asset (Plant & Machinery) including computers or computer software.
 - ❖ Investment in the company should equal to 50% of voting rights.

Direct Tax incentives

- U/s 115BBF: Income in the nature of “royalty” in respect of patents developed and registered in India will be subject to a tax rate of 10% - No expenses to claim.
- The start-ups have to pay MAT/ AMT at 18.5% along with the applicable surcharge and cess.
- CBDT Vide Notification No. 45/2016 notified that any amount received from a resident person U/s 2(31), by a eligible startup exceeding the face value for issue of shares are not covered by 56(2)(viib).

Direct Tax incentives U/s 80IAC

100% of the profits will be exempted from tax for 3 out of 7 years provided the following conditions are satisfied wef: AY: 2017-18:

- It is an eligible entity/startup – Apart from the conditions and process as discussed earlier and;
- "**eligible business**" - which involves innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property.
- It is **not** formed by the **transfer** of any **Plant & Machinery** previously used for any purpose (**Max. 20%** of total Machinery can be seconds').
- It has eligible business i.e., there is innovation.
- It is incorporated on or after 1.4.2016 but before 1.4.2019
- Annual turnover is < 25 crores for 5 years, from FY:2016-17 to 2020-21.

Direct Tax incentives

- Amendment of section 79 of the Act to provide that in the case of a company being an eligible start-up, loss shall be carried forward and set off against the income of the previous year, even if a change in shareholding has taken place in a previous year subject to all the shareholders of such company on the last day of the year or years in which the loss was incurred, continuing to hold shares on the last day of such previous year. The restriction of fifty one percent of shareholding of company to remain unchanged in order to carry forward and set-off the loss of earlier years has therefore been relaxed in the case of start-ups.
- The original promoters must be on board. But the condition of continuous holding of 51% of shares by founders has been relaxed by Budget 2017.
- **Note:** Losses incurred from the year of incorporation/registration.

- Tax Audit U/s 44AB of the Income Tax Act, 1961 having turnover in excess of Rs. 10 million is required to furnish Form 3CA/3CB - 3CD (Tax audit report) to the Income Tax Department.
- Having related party transactions is required to maintain specified documents and furnish Transfer pricing report in Form 3CEB as per section 92E of the Income Tax Act, 1961 to IT Department (3CEB & TP Documentation not required if the turnover is less than Rs. 1 Crore).
- As per section 139 of the Income Tax Act, 1961, it is required to file Income Tax return on or before the due date. As per the extant provisions of the Income Tax Act, 1961 the Income Tax return for the FY 2016-17 has to be filed on or before 30th September, 2017. In case of the applicability of the Transfer Pricing Regulations, the due date is on or before 30th November, 2017.
- Even for nil income or loss return the above provisions are applicable.

Tax Audit – 44AB

- Whose total turnover or gross receipts in the previous year exceed an amount of **one crore rupees**.
- Professionals referred in 44AA(1) – 44ADA, total gross receipts should not exceed Rs.50L - tax @ 50%.

Penalty for failure to get accounts Audited: (U/s 271B)

- If the assessee fails to get his accounts audited or furnish a report of such audit U/s 44AB, Penalty of
 - ½ of total Sales, turnover or gross receipts Or
 - Sum of Rs. 1,50,000 w.e.is lower (w.e.f.1-4-2011)

No penalty shall be imposed, if assessee proves that there was reasonable cause for such failure.

Income Computation Disclosure Standards

Applicability:

- All assesses (other than an individual and HUF not required to get accounts audited U/s. 44AB) following mercantile system of accounting.
- All partnership Firms and LLP following mercantile system;
 - irrespective of whether audit required u/s 44AB or not
 - having “Income from business or Profession” and “Income from Other Sources

Non- Applicability:

- To individual/HUF not carrying on business or profession.
- Person with only income from other sources following Cash system of accounting.
- Not applicable where books of accounts not maintained.
- Persons following cash system of accounting.
- Individual/HUF falling under presumptive tax not subject to audit u/s 44AB –***CBDT Circular No. 10 of 2017 dated 23rd March 2017.***
- Other heads of income - computation of capital gain, House Property, etc.,
- For Sections 68, 69, 69A and 69B, books of account are relevant.

Presumptive Taxation

Eligible Assessee

- Individual, HUF or Partnership Firm

Eligible Business

- Any business **except** the business of plying, hiring or leasing goods carriages referred to in section 44AE and
- whose total turnover or gross receipts in the previous year does not exceed an amount of **two crore rupees**.
- Professionals referred in 44AA(1) – 44ADA, total gross receipts should not exceed Rs.50L - tax @ 50%.

Non-applicability

- LLP & Company
- A person earning income in the nature of commission or brokerage, or
- A person carrying on any agency business.

Consequences of Section 44AD

Consequences if assessee opted Presumption Taxation:

- required to follow the same scheme for next 5 years.
- If assessee failed to do so, then presumptive taxation scheme will not be available for next 5 years.
- U/ s 44AD or 44ADA is liable to pay whole amount of advance tax on or before 15th March of the previous year, any amount paid before 31st March shall also be tread as advance tax paid during the FY.
- Failure to pay the advance tax attracts interest as per section 234B & 234C
- Expenditure in nature of salary/ remuneration, interest paid to partners shall no longer be allowed.

Advance Tax

Due Dates	Instalments Payable
On or before 15 th June	15% of Advance Tax.
On or before 15 th September	45% of Advance Tax as reduced by amount paid earlier
On or before 15 th December	75% of Advance Tax as reduced by amount paid earlier
On or before 15 th March	100% of Advance Tax as reduced by amount paid earlier

Interest Applicability on Late Payment of Advance Tax

If the assessee has failed to pay <i>or</i> Tax paid is < 90% of the assessed tax	Simple interest @ 1% every month or part of the month on Assessed tax - Advance tax paid +TDS if any)
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- ✓ Eligible Assessee's U/s 44AD & 44ADA advance tax is to be paid on or before 15th March.
 - ✓ The above provisions applicable to all the assessee's
 - ✓ Advance tax is payable if the tax liability is Rs. 10K or more
- ✓ Resident individuals who are over 60 years of age and do not have income chargeable under the head 'Profits and Gains of Business or Profession' are not required to pay advance tax.

Fee for Late Filing of Return

IT Return **not filed** within due date U/s 139(1) (31st July for Individuals & 30th September for Non-Individual Assessee's):

Upto 31st December – Rs.5,000/-

After 31st December – Rs.10,000/-

Note:- 1. If the **total income** of the person **does not exceed Rs. 5 Lakhs**, the fee payable under this section shall **not exceed** Rs. 1,000/-.

Note:- 2. Self-assessment tax to include the fees for delay in filing the return of income.

Note:- 3. **Revised return** can be filed **before the end of the relevant assessment year** or before the completion of assessment, whichever is earlier.

Note: Applicable from the AY: 2018-19.

Cash Receipts and Payments

Particulars	269SS	269T	269ST
Scope of the section	Receipt of deposits and specified sum	loans, Payments of loans or deposits specified sum	No person should receive in cash in or relation to: <ul style="list-style-type: none"> • in aggregate from a person in a day; • in respect of a single transaction ; or • in respect of transactions relating to one event or occasion from a person
Applicability of this section	Any Person taking or accepting	Any person paying	Any person receiving any amount
Monetary Limit	INR 20,000	INR 20,000	INR 2,00,000



Cash Receipts and Payments

Particulars	269SS	269T	269ST
Exception	<ul style="list-style-type: none"> Government; Any banking company, post office savings bank or co-operative bank; Any corporation established by a Central, State or Provincial Act; Any Government Company 11 as defined in section 617 of the Companies Act, 1956 (1 of the nature referred to in section 269SS; 1956); Such other institution, association or body or class persons or class of persons or receipts, of institutions, associations or bodies which the Central Government may, by Notification in the Official Gazette, specify in writing, notify in this behalf in the Official Gazette 		
Penalty U/s	100% on such receipt U/s 271D	100% on such payment U/s 271E	100% on such receipt U/s 271DA wef; 01-04-2017
Remarks	Amount should be paid/ received by account cheque/draft or electronically through bank account		



Examples of 269ST - Violation

In aggregate from a person in a day

- Mr. A transfers' immovable property worth Rs.5,00,000 to Mr. B and generates 5 different bills of Rs.1,00,000 each and accepts cash in a single day at different times;

a single transaction

- Mr. A transfers' immovable property worth Rs.5,00,000 to Mr. B and generates one single bill for Rs.5,00,000. He then receives cash Rs.1,75,000 on Day 1, Rs.1,75,000 on Day 2 and Rs.1,50,000 on Day 3 then;

One event or occasion

- Mr. A books a wedding party at a hotel and the hotel makes a bill of Rs.1,50,000 for Food and Rs.1,00,000 for Hall Charges and accepts cash Rs. 2,50,000 from Mr. A then;
- Even if they are 2 different types of expenses but for the same wedding.

269ST may become apply

Sale proceeds of Goods or Services; movable or immovable properties

Advance against sale of goods/provision of service

Hospitals, Educational Institutions etc.,

Advance taken or reimbursement of expenditure

Withdrawal of capital/ Profit in Firm
Introduction of capital by partner in Firm; issue of share capital

Recovery of Loan and interest

Gift in Cash and gift from a relative also covered.
Donations received by Trust

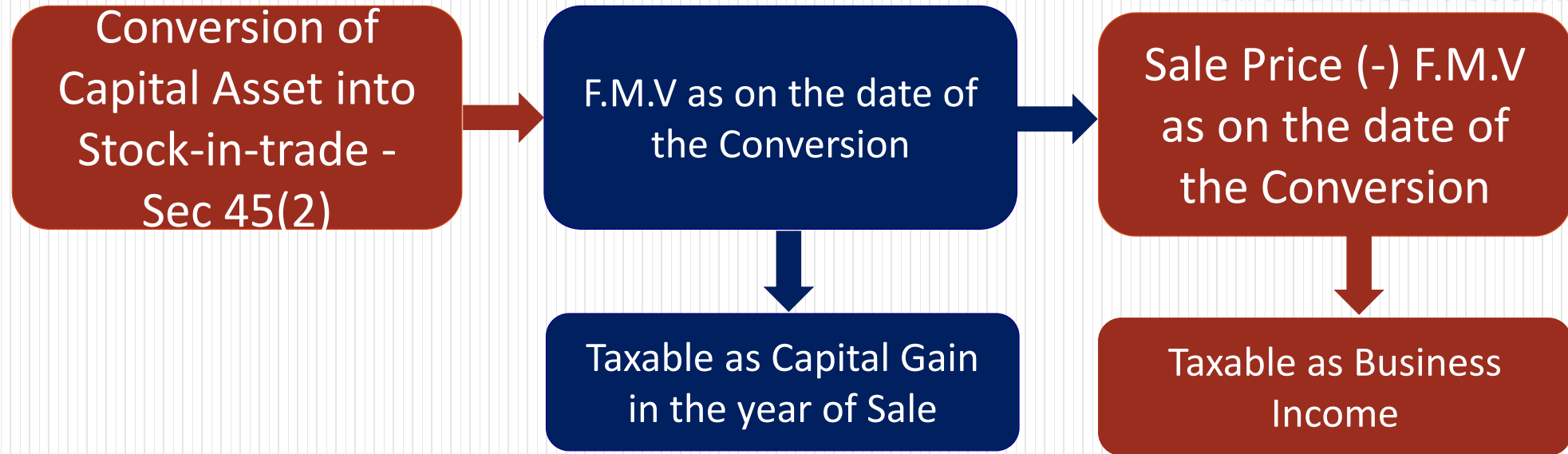
The parties Transactions of loan or deposit between agriculturists may be exempt U/s 269SS but other transactions between agriculturists are **not** exempt U/s 269ST.

Cash Payments

<p>Sec 32/43(1): Depreciation / Actual Cost</p>	<p>No depreciation on Capital Expenditure incurred in cash of more than Rs. 10,000/-</p>	<p>Payment should be made through Banking Channels only either by account cheque/draft or electronically through bank account</p>	<p>No claim of Depreciation Applicable Wef. 01.04.2017</p>
<p>Sec 40A (3) Reportable in clause 21 (d) of Form 3CD</p>	<p>No cash payment in relation to expenditure of more than Rs. 10,000/-</p>		<p>Dis allowance of expenditure Applicable wef. 01.04.2017</p>



Deemed Transfer



Deemed Transfer – Example

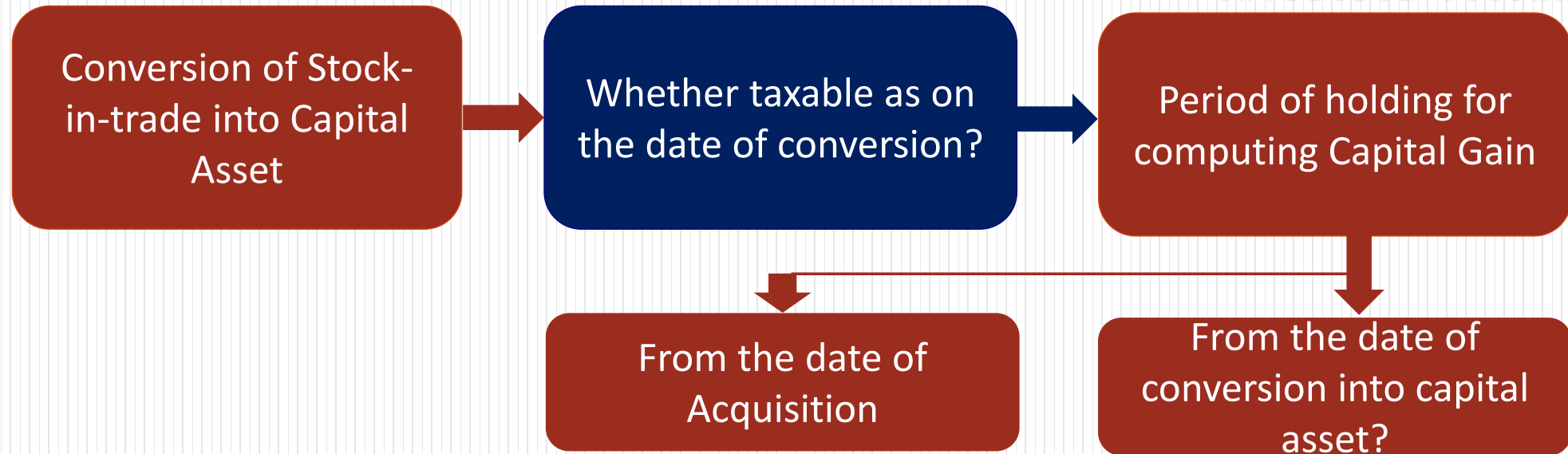
- X acquires land on 01.06.1981 (FY: 1981-82) for Rs.6,00, 000. He converts his land into stock in trade of his real estate dealing business on 18.02.2016 (FY: 2015-16) where FMV of land was Rs.70,00,000/-. Stock in trade was sold by him on 18.03.2017 (FY: 16-17) for Rs.90,00,000/-
- In this case he would be liable to **Capital gain** in FY: 2016-17 as follows:

Full Value of Consideration	70,00,000
Less : Indexed cost of acquisition (6,00,000*1081/100)	64,86,000
Long Term Capital Gain	5,14,000

- **Business Income** would arise in year of sale - FY: 2016-17:

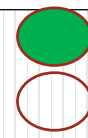
Sale proceeds of House Property	90,00,000
Less : Fair market value on date of transfer	70,00,000
Business Income	20,00,000

Deemed Transfer



Deemed Transfer

Particulars	Transfer of assets by way of <u>Capital Contribution</u>	Distribution of assets <u>on dissolution of Firm/AOP/BOI</u> or otherwise
Section	45(3)	45(4)
Transferor	Individual (<i>member</i>)	Firm/AOP/BOI
Transferee	Firm/AOP/BOI	Individual (<i>member</i>)
Full Value of Consideration	The value of capital asset as recorded in the Books of firm/AOP/BOI	Fair market value as on date of transfer
Year of Chargeability	In the year in which transfer took place	In the year in which transfer took place
Applicability of	56(2)(vii) ?????? & 50C	



Special Provision for Full value of Consideration :

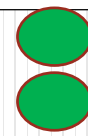
The very purpose of this section is that undisclosed income arising as Capital Gain should be taxed in the hands of the assessee.

The section states that :

- The asset is the Capital Asset (land or building or both)
- **Value is less than the value adopted by authority of a State Government**

for the purposes of section 48 the value shall be “The value so adopted or assessed by Stamp valuation Authority shall be the **Full value of the Consideration** received or accruing as a result of such transfer”.

Deemed Sale Consideration – Sec 50C



The new proviso inserted by Finance Act 2016 w.e.f 01.04.2017 is a rationale step by Income Tax Simplification Committee (Easwar Committee) which removed the hardship of assessee

“Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer”

This amendment says stamp duty valuation of property on the date of execution of the agreement to sell should be adopted instead of the valuation on the date of execution of the sale deed if the agreement date and registration dates are different

Reporting Requirements

Section 285BA read with rule 114E

- To keep a watch on high value, the Income-tax Law has framed the concept of “Statement of Financial Transaction or Reportable Account”
- Under this statement the following is to be reported :
 - Any Purchase/Sale of immovable property for an amount of Rs.30,00,000 or more **or**
 - Valued by the stamp valuation authority at Rs.30,00,000 or more
- Other Points :
 - Transaction is to be reported in Form 61A (under SFT- 012)
 - Reporting Person : Inspector General or Sub Registrar (appointed under Registration Act)

Tax Deducted at Source

Section	Nature of Payment	Rates		Criteria for Deduction
192	Salaries	As per rates in force		-
193	Interest on Securities	@ 10 %		Rs.10,000/-
194	Dividends	@ 10 %		Rs.2,500/-
194 A	Interest from Banks (i.e on other than securities)	@ 10 %		Banking –Rs.10,000/- Others –Rs.5,000/-
194B	Winning from lotteries or cross word puzzles	@ 30 %		Rs.10,000/-
194 BB	Winning form Horse races	@ 30 %		Rs.10,000/-
194 C	Payment to Contracts	@ 1 % Individual / HUF	@ 2 % for other assesses	Single payment – Rs.30,000/- Aggregate of payments – Rs.1,00,000/-
194 D	Insurance Commission	@ 5 %		Rs.15,000/-
194DA	Life Insurance Policy	@ 1 %		Rs.1,00,000/-

Tax Deducted at Source

Section	Nature of Payment	Rates	Criteria for Deduction
194 G	Commission /Lottery	@ 5 %	Rs. 15,000/-
194H	Commission /Brokerage	@ 5 %	Rs. 15,000/-
194I	Rent – Land & Building & Furniture and Fittings	@ 10 %	Rs. 1,80,000/-
	Rent – Plant & Machinery & Equipment	@ 2 %	
194 IA	Payment on transfer of immovable property	@ 1 %	Rs. 50,00,000/-
194 IB	Payment of rent by individuals or HUF	@ 5 %	Rs. 50,000/- per month
194J	Fees for professional or technical services	@ 10 % @ 2 % (call centre business)	Rs. 30,000/-
194LA	Payment of Compensation on acquisition of immovable property	@ 10 per cent	Rs. 2,50,000/-

Tax Deducted at Source

Particulars	Due Dates	Penalty
Deduction of TDS	<ul style="list-style-type: none"> At the time of accrual <i>or</i> At the time of payment of income to the payee 	interest @ 1% p.m
Payment of TDS	<ul style="list-style-type: none"> On or before 7th of next month Same day on which the amount is deducted <p><i>For govt assesses who do not make the payment with challan</i></p>	interest @ 1.5 % p.m
Filing of TDS returns :		
1 st April – 30 th June	31 st July	Rs. 200/- per day <i>But not exceed the TDS amount.</i>
1 st July – 30 th September	31 st October	
1 st October–30 th December	31 st January	
1 st January – 30 th March	31 st May	
Form 16A (TDS Certificate) is to be issued within 15 days from due date of furnishing TDS Statement.		
	<ul style="list-style-type: none"> Failure to file E-TDS statement > 1 year Furnishing incorrect details in the statement 	Rs. 10,000 – Rs.1,00,000

Tax Deducted at Source (7/7)

- Section 197 – Certificate for deduction at lower rate
 - If tax is deducted at source under section 192,193,194,194A, 194C, 194D,194G, 194H, 194I, 194J, 194LA & 195
 1. {
 - Assesse feels that no or lower rate of TDS should be there .
 2. {
 - Assessing Officer is satisfied with the same.
 - Assessing Officer shall give him certificate so as to non-deduction of tax on any of the income received by the recipient

Consequences for non payment of TDS

S. No.	U/s	Description
1	40(a)	Disallowance of expenses in computing taxable income of payer. Allowance in the year of deduction
2	201(1)	Recovery of tax not deducted / deposited or short deducted / deposited
3	201(1A)	Interest @ 1% / 1.5% per month or for part of the month
4	221	Penalty – not exceeding the amount of tax not paid
5	271C	Penalty – not exceeding the amount of tax not withheld
6	276B	Prosecution

- Appointment of Auditor.
- Statutory Audit by a qualified Chartered Accountant (CA).
 - Maintain minutes of all Board Meetings and General Meetings
- Maintain following registers:
 - Register of Members
 - Register of Directors
 - Register of Director's Shareholdings, if any
 - Register of Allotment money received
 - Register of Share Transfers
 - Register of Issue of Duplicate certificates

Labour Law – Compliances

SN.	Particulars	EPF	ESI	Bonus	Gratuity
1	Applicable establishment(s) to	Employing 20 or more employees in a day.	Employing 10 or more employees in a day.		
2	Wages/ Salaries	< Rs. 15,000	< Rs. 21,000		-
3	Employer Contribution	P.F. - 12% EDLI - 0.5 % Adm. Charges 0.65 %	4.75%	-	-
4	Employee Contribution	12%	1.75%	-	-
5	Minimum Amount	-	-	8.33% of Annual Wages/ Salaries	-
6	Maximum Amount	-	-	20% of Annual Wages/ Salaries	-

Compliances - Others

- **IEC:** Importer Exporter Code has to be obtained to import and/or export goods into/from India.
- Registration under **Shops and Establishment** legislations is a State specific requirement and has to be obtained for any business establishment.
- Registration under **Professional tax** legislation is a State specific requirement and has to be obtained for provision of specified professional services.
- Minimum Wages.
- Other Compliances.

ENTERPRISE

Manufacturing Enterprise

Ceiling on investment in Plant & Machinery

Rs. 25 lakhs

Rs. 5 Crores

Rs. 10 Crores

MICRO

SMALL

MEDIUM

Service Enterprise

Ceiling on investment in equipment

Rs. 10 lakhs

Rs. 2 Crores

Rs. 5 Crores

MSME Benefits

- One of the major benefits available to an MSME is the time limit provided under the Act within which the debtor of the MSME needs to make payment to the MSMEs.
- Also corporates are required to disclose in their balance sheets dues from MSMEs and whether such dues have remained unpaid for more than 45 days.
- If an MSME does not receive the amount due along with interest, he can refer the matter to Micro and Small Enterprises Facilitation Council;

MSME Benefits

Credit Guarantee Scheme:

The scheme covers collateral-free credit facility to new and existing MSMEs to provide credit facilities up to Rs.100 lakh without any collateral securities or third party guarantee for both long term as well as working Capital facility.

Skill Development Scheme:

The Ministry of MSME promotes the development of MSMEs in the country with the objective of creating self-employment opportunities and upgrading the relevant skills of existing and potential entrepreneurs. By conducting Work Shops, Exhibition Stalls, Skill Development Fairs etc.

Procurement preference:

- As per Public Procurement Policy for MSMEs Order, 2012 wef; 1-4-2012, every Central Ministry or Department or PSU shall procure minimum 20% of the goods & services from MSMEs.
- State Governments in their respective states provide some of the benefits:
 - Power tariff subsidies
 - Capital Investment subsidies
 - Specialized Industrial Estates

MSME Benefits

- Scheme for 'Providing financial assistance on International Cooperation.
- Marketing support under the Marketing Assistance scheme.
- financial assistance of up to 95% of airfare and space rent of entrepreneurs on the basis of size and type of the enterprise.
- ISO 9000/ISO 14001 Certification Reimbursement Scheme – up to 75% subject to maximum of Rs. 75K.
- Bill Discounting Schemes

MSME Benefits

MINISTRY OF AGRICULTURE:

- Marketing Research and Information Network
- 100% Grant by Government of India

At

ICRISAT – Hyderabad
Agribusiness and
Innovation Platform
15th September, 2017

Thank you!!!

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