

Corporatisation of Non- Corporate Entities

WIRC

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Coverage

- Factors for Selection of Entity
- Advantages & Disadvantages of Corporate Entity
- Process of Corporatization
- Conversion Options
 - Chapter XXI Conversion under Companies Act, 2013 (Similar to Part IX)
 - Conversion u/s. 47(xiii) / 47(xiv) of Income-tax Act, 1961
 - Other modes
- Other Benefits
- Buy Back Implications – S. 115QA read with rule 40BB
- Comparison between Chapter XXI and S. 47(xiii) / 47(xiv)

Entity Selection - Factors

1. Factors:
 - Size of business
 - Scalability and Growth
 - Fund raising requirements
 - Liability – Limited vs. Unlimited
 - Listing of Securities
 - Valuation perception
 - Lifecycle of business
 - Leveraging Human Capital
 - Separation of Ownership and Management
 - Exit Opportunities
2. Migration of entity like partnership firm / proprietary concern to corporate entity becomes necessary based on one or more of the above factors

Advantages of Corporate Entities

- Better Recognition
- Perpetual existence
- Limited Liability
- Fund Raising - Participation of large number of investors
- Ability to unlock value – Listing of shares / Fund Raising
- Enhanced Borrowing Capacity
- Scale and Size
- ESOP's – Attracting, Retaining and Motivating Talent
- Mergers and Acquisitions – Inorganic Growth
- Corporate Governance – Board Members
- Separating Ownership from Management
- Ability in transferring stake – fully or partly
- Move towards Professionalism

Disadvantages of Corporate Entities

- Greater compliance requirements under Companies Act, 2013 and related costs
- Limitations for taking loans and deposits
- Limitations on advancing loans
- Double taxation on dividend distribution
- Minimum Alternative Tax (MAT) on book profits
- Greater public scrutiny and transparency
- Not easy to wind up

Process of Corporatisation

- Understanding the objects and reasons of corporatization
- Review of asset mix
- Review and analysis of available methods of conversion
- Evaluation of business implications
- Evaluation of Direct, Indirect tax implications
- Stamp duty on conversion
- Other licenses / registrations – continuance
- Valuation / Revaluation of Assets
 - Tangible Assets
 - Intangible Assets
- Time and cost implications
- Final Implementation

Conversion Options

1

Chapter XXI of Companies Act, 2013 (Similar to Part IX of Companies Act, 1956)

2

Conversion u/s. 47(xiii) / s. 47(xiv) of Income-tax Act, 1961

3

Other methods

Conversion under
Chapter XXI of
Companies Act,
2013

Chapter XXI (Part I) Conversion

- Chapter XXI - s. 366 to s. 374 of Companies Act, 2013
- Features:
 - Special window created for registering a non corporate entity into a company
 - Chapter XXI provides detailed framework - implications of registration
 - Statutory vesting of assets and liabilities
 - Existing precedents may apply - No registered instrument of transfer required - Hence no stamp duty
 - Rama Sundari Ray V. Syamendra Lal Ray - ILR (1947) 2 Cal 1
 - Vali Pattabhirama Rao V. Sri Ramanuja Gining and Factory P. Ltd. - 60 Company Cases 568 (AP-DB)

Chapter XXI Conversion – Key Sections

- S. 366 (erstwhile s. 565 – Part IX) – Companies capable of being registered
 - Word 'company' defined (not defined in erstwhile section)
 - Includes firm, LLP, co-operative society or other business entity formed under any law
 - Entity should be registered under any act of Parliament / any law or duly constituted under law
 - Entity should have at least 7 members - amendment proposed by the Companies (Amendment) Bill, 2017 passed by Lok Sabha – at least 2 members in case of conversion to private company
 - Could be registered as a
 - Company limited by shares or
 - Company limited by guarantee or
 - Unlimited company
 - To register as Company limited by shares - Entity should have permanent share capital divided into fixed amount
 - Consent required of majority members of entity present at General Meeting
- S. 367 (erstwhile s. 574) – Certificate of registration of existing companies
 - The company shall be incorporated after Registrar certifies the registration, and in case of limited company certifies that it is limited

Chapter XXI Conversion – Key Sections

Effect of registration:

- S. 368 (erstwhile s. 575) – Vesting of property on registration
 - The movable / immovable property of the predecessor entity – shall pass to and vest in the incorporated company
- S. 369 (erstwhile s. 576) – Saving of existing liabilities
 - Rights / liabilities of any debt / obligation / contract entered by the predecessor entity – Not affected due to registration as company
- S. 370 (erstwhile s. 577) – Continuation of pending legal proceedings
 - Suits / legal proceedings taken by / against the predecessor entity before registration – shall continue
- S. 371 (erstwhile s. 578) – Effect of Registration under this part
 - Table F of Schedule I may not apply (unless otherwise selected)
 - Every contributory (member) of company – liable for debts contracted by predecessor entity

Chapter XXI Conversion – Key Sections

Effect of registration (Contd..)

- S. 374 (**new section**) – Obligations of Companies registering under this part
 - To register as company – Consent/no objection of secured creditors required
 - Notice of predecessor entity – Advertisement about registration under Part I of Chapter XXI to be published in newspaper in Form No. URC. 2 - seeking objections, if any
 - Members / partners of predecessor entity to file affidavit –
 - Stating that necessary documents for dissolution of predecessor entity shall be submitted to the authority with which it was registered
 - Amendment proposed by the Companies (Amendment) Bill, 2017 passed by Lok Sabha – LLP deemed to be dissolved
 - Other Conditions prescribed under Rule 5 of the Companies (Authorised to Register) Rules, 2014
 - On obtaining registration – Firm to intimate RoF within 15 days along with papers for its dissolution as firm
 - Declaration from LLP that it has filed all documents as required under LLP Act shall be attached
 - A statement of pending proceedings by/against LLP/firm shall be attached
- Procedure – the Companies (Authorised to Register) Rules, 2014 – Refer Annexure

Chapter XXI Conversion – Direct Tax Implications

In the hands of Transferor entity:

- No transfer u/s. 2(47)
 - statutory vesting
 - Texspin Engg. And Mfg. Works - 263 ITR 345 (Bombay HC)
 - Umicore Finance Luxemborg - [2016] 76 taxmann.com 32 (Bombay HC)
 - Cadd Centre - [2016] 65 taxmann.com 291 (Madras)
 - duality of transferor and transferee missing
- No implication u/s. 45(4) – Distribution of capital assets on dissolution / otherwise
 - Statutory vesting is different from distribution
 - Statutory vesting not consequential or incidental to transfer
 - Texspin Engg. And Mfg. Works - 263 ITR 345 (Bom)
 - United Fish Nets (2015) - 228 TAXMAN 0302 (AP)
 - Krishna Electrical Industries - 4 SOT 143 (Del)
- 6th proviso to s. 32(1) - Depreciation to firm and company, both in year of conversion – based on number of days of assets used by each

In the hands of partners / members of firm:

- Cost of shares allotted in the company in the hands of partners –
 - on the basis of capital balances in firm prior to conversion (ignoring revaluation of assets)
- Period of holding of shares - from date of issue of shares

Chapter XXI Conversion – Direct Tax Implications

In the hands of Transferee entity:

- 6th proviso to s. 32(1) - In year of conversion – pro rata depreciation on number of days of asset use
- Company entitled to benefits and incentives available to firm
 - CBDT Circular: F. No. 15/5/63 – IT (AI) dated 13.12.1963
 - S.80-IA, s. 80-IB, s. 10AA etc. – Incentive qua undertaking and not qua assessee
 - Chetak Enterprises (P) Ltd - 325 ITR 405 (Rajasthan HC)
 - Tech Book Electronic Services (P) Ltd - 100 ITD 125 (Del)
 - Kumaran Systems (P) Ltd. - 106 TTJ 484 (Chennai)
- No carry forward of business losses and unabsorbed depreciation
 - S. 78(2) – *‘Where any person carrying on any business or profession has been succeeded in such capacity by another person otherwise than by inheritance, nothing in this Chapter shall entitle any person other than the person incurring the loss to have it carried forward and set off against his income.’*
 - Part IX Conversion not Inheritance u/s. 78(2)
 - Amin Machinery (P) Ltd - 114 ITD 413 (Ahd.)
 - Solution - structure Chapter XXI conversion as conversion compliant u/s. 47(xiii)
 - Inbuilt mechanism - S. 72A(6) – discussed later

Chapter XXI Conversion – Direct Tax Implications

In the hands of Transferee entity (continued):

- S. 43B – benefit of deduction if predecessor entity's liability paid by Company
- Similar disallowances u/s. 40(a)(ia), 40(a)(i) – Company should get deduction
- Deduction of bad debts in respect of sales made by predecessor entity - Possible
 - Veerbhadra Rao - 155 ITR 152 (SC)
- AMT paid by predecessor entity u/s. 115JC – whether credit available to company
 - Difference in language of S. 115JD vs. S. 115JAA (7)
- Valuation of stock in trade – whether ALA Firm applies [1991] 189 ITR 285 (SC)
 - Refer also – Sakthi Trading Co - [2001] 250 ITR 871 (SC)
 - Hansa Footwear [2012] 25 taxmann.com 114 (Andhra Pradesh HC)
- Implications u/s. 56(viib)
 - Applies where consideration received exceeds fair value of shares
 - Should not apply as business value represented by value of shares issued on conversion
- Benefit of section 115BA – reduced corporate tax rate of 25% - can be availed if conditions fulfilled – discussed later
- Buy back of Shares - Section 115QA r.w.r 40BB – discussed later

Chapter XXI Conversion – Direct Tax Implications

Procedural Requirements

- New PAN / New TAN
- Separate returns -
 - a. till date of conversion, and
 - b. after date of conversion

Indirect Tax Implications

- Should generally be tax neutral
- Will require new registrations
- To be evaluated from subject experts

Other Implications

- Continuation of specific business registrations under various provisions- to be evaluated
- Stamp duty – already discussed
- Fema Implications – largely neutral

Chapter XXI Conversion

Pros:

- A statutory vesting of assets and liabilities – hence no stamp duty – old decisions
 - No capital gains, since no transfer of asset
 - Continuity of business assured
 - Track record of predecessor partnership firm eligible for IPO & other business purpose
 - Regulation 26 of SEBI ICDR
-
- No direct taxation shelter - unlike s. 47(xiii) or s. 47(xiv) of I T Act
 - On subsequent sale of shares – capital gains based on original cost of acquisition
 - If revaluation carried out, surplus to be written off / amortized in books – no step up for tax purposes
 - Capitalization by revaluation of assets – may require disclosure in Fixed assets schedule as per AS
 - All old liabilities shall be carried forward in new company

Conversion u/s
47(xiii) or 47(xiv) of
IT Act

Conversion u/s 47(xiii) or 47(xiv)

Features:

- Permitted by Income-tax Act, 1961
- Special incentive for the succession (conversion) of partnership firm or proprietary concern into corporate entities
 - Partnership Firm will include an LLP
- Transfer of a capital asset or intangible assets to a company would be treated as tax exempt subject to conditions
- Object and intention behind introduction of s. 47(xiii) / 47(xiv)
 - CBDT Circular No. 772 dated 23.12.1998
 - Business reorganizations have specific tax implications including levy of capital gains
 - Similarly, carry forward of accumulated losses and unabsorbed depreciation not available to successor business entity
 - In case of amalgamation, capital gains is not levied, accumulated business losses and unabsorbed depreciation is available subject to certain conditions
 - The expert group has recognized the need to encourage business re-organization when they are in consonance with economic development and not merely devices to secure tax advantage

Conditions for exemption u/s. 47(xiii) / 47(xiv)

Conditions for exemption u/s. 47(xiii):

Condition 1

- **All** the **Assets** and **Liabilities of the business** are transferred to the Company
 - Individual assets or liabilities cannot be excluded
 - Only those assets and liabilities which relate to business – no need to transfer other / personal / non business assets
 - Formal and legal transfer may not be necessary – Dominion and control over assets and assumption of liability required
 - Podar Cement (P) Ltd - 226 ITR 625 (SC)
 - Mysore Minerals Ltd - 239 ITR 775 (SC)

Conditions for exemption u/s. 47(xiii) / 47(xiv)

Condition 2

- All partners of the firm become shareholders in the Company in proportion to their capital balances
 - Condition applicable to partners immediately prior to succession
 - Minor can be allotted shares in company – although minor not partner under Partnership Act, under Income-tax Act minor can be a partner
 - Shares can be allotted in name of minor – Circular No. 8/18(41)/63-PR dated 31.03.1964
 - Equity and preference shares, both can be allotted
 - Both fixed and current capital of partners to be considered – Loan given by partners??
 - Difficulty in case of negative capital balances of partners
 - To ensure proportion of capital balances do not result in fractional ownership of shares in company
 - Whether partners can be shareholders in the company prior to succession
 - ‘Become shareholders’ does not mean shareholders for first time
 - If all partners become shareholders in reasonable time from date of succession – condition fulfilled
 - Sanjay Singh - [2012] 19 taxmann.com 88 (Delhi)

Conditions for exemption u/s. 47(xiii) / 47(xiv)

Condition 3

- Consideration solely in form of shares of Company
 - Refers to consideration arising from transfer of business of the company
 - Payment for remuneration, rent, etc. – not regarded as benefit flowing due to succession
 - Receipt of higher value of shares because of re-valuation of assets at time of succession - Not violation of condition
 - Joe Marcelinho Mathias - [2013] 34 taxmann.com 129 (Panaji - Trib.)
 - Nayan L. Mepani - [2012] 18 taxmann.com 59 (Mumbai Trib)

Conditions for exemption u/s. 47(xiii) / 47(xiv)

Condition 4

- The aggregate shareholding of partners is not less than 50% of the total voting power for 5 years from the date of succession
 - Condition to be fulfilled when shares are allotted in lieu of conversion
 - Requirement to be fulfilled on aggregate basis
 - Reference to voting power and not shareholding of company
 - Partners who require to fulfill condition – Partners immediately before succession
 - Condition of 50% not restricted to shares issued on account of succession –
 - Intention that s. 47(xiii) & s. 47(xiv) not used to transfer ownership
 - 50% of condition to be fulfilled for 5 consecutive years
 - Even if breach for 1 day – condition violated
 - 5 year period to be considered from the date of succession
 - Transfer of shares amongst partners such that 50% condition fulfilled –allowed
 - Intention that post conversion no change of economic control
 - Merger of company with another company – violation - withdrawal of exemption u/s. 47A
 - Merger of another company with present company ok – 50% voting power condition to be complied with

Conditions for exemption u/s. 47(xiii) / 47(xiv)

- **Conditions for exemption u/s. 47(xiv)** - Similar to s. 47(xiii)
 - All assets and liabilities of sole proprietorship firm to be transferred to company
 - Sole proprietor should only receive consideration in form of shares
 - Shareholding of sole proprietors in company is not less than 50% of total voting power for 5 years from the date of succession
- **Effect of Violation of conditions – S. 47A(3)**
 - Transfer of business not charged to tax u/s. 45 shall be taxed as income in the hands of successor company – In year in which conditions not fulfilled
 - S. 47A(3) applicable only when exemption available u/s. 47(xiii) / 47(xiv)
 - If conditions u/s. 47(xiii) / 47(xiv) not fulfilled – S. 47A(3) shall not trigger – capital gains taxable in the hands of firm
 - Divergent view – Prakash Electric Company – 118 TTJ 539 (Bang ITAT)

Conversion u/s. 47(xiii) or 47(xiv)

- Succession is qua business – Business and profession are distinct
 - Conversion of profession – Difficulty in claiming benefit of s. 47(xiii) & 47(xiv)
- Succession is of business and not of firm –
 - Where firm has two distinct and independent business – possible to claim conversion u/s. 47(xiii) / s. 47(xiv) in respect of 1 business
 - Exemption can be claimed when no unity of control / management and no unity of funds
- Succession u/s. 47(xiii) / s. 47(xiv) is covered for s. 49(1)(iii)(e)
- Sale of business as going concern – where continuity and identity is maintained – would answer to definition of ‘succession’
 - K. H. Chambers - 55 ITR 674 (SC)
- The succeeding company need not be a new company

Conversion u/s. 47(xiii) or 47(xiv)

- Transfer by way of itemized sale – Exemption still available for capital assets or intangible assets
 - Transfer of stock in trade not covered
 - Other implications
- When exemption u/s. 47(xiii) / s. 47(xiv) eligible
 - S. 45(4) will not trigger
 - S.50 will not apply - s. 50 is only to modify computation of s. 48 and s. 49
 - S. 50B, s. 50C and s. 50CA also not to apply
- Cost of shares in hands of partners allotted in pursuance of s. 47(xiii) and s. 47(xiv)
 - At agreed price / amount at which shares issued
 - If shares allotted without specifying price – discuss
- Period of holding of shares - from date on which shares allotted
- Buy back of Shares - Section 115QA r.w.r 40BB – discussed later

Conversion u/s. 47(xiii) or 47(xiv)

- Depreciation to Successor Company
 - Depreciation available on costs paid
 - Kalooram Govindram - 57 ITR 335 (SC)
 - Suyash Laboratories - [2016] 65 taxmann.com 217 (Mumbai - Trib.)
 - Govindoss Purushothamdoss - 124 ITR 319 (Mad)
 - Raj Narain Agarwala - 75 ITR 1 (Del)
 - S. 43(1) – No limitation on actual cost imposed on succession u/s. 47(xiii) / 47(xiv) – unlike amalgamation, demerger, transfer between holding company and subsidiary company etc.
 - Explanation 3 to S. 43(1)
 - SAAR
 - Modular Infotech P. Limited - (2010) 40 DTR 172 (Pune Trib)
 - Chitra Publicity Co (P) Ltd - (2010) 4 ITR 0738 (Ahem Trib)
 - GAAR implications – revaluation of assets carried out with main purpose to obtain tax benefit by claiming higher depreciation

Conversion u/s. 47(xiii) or 47(xiv)

- 6th proviso to s. 32(1) – depreciation in case of succession u/s. 47(xiii) / 47(xiv) on pro rata basis as if succession not taken place
 - Restricted only to 1st year of succession
 - Whether applies to assets not forming part of block of assets of predecessor
 - How to be applied
- Cost of other non depreciable assets – cost to previous owner – Firm – s.49(1)(iii)(e) – retrospective amendment w.e.f. 1.4.1999
- AMT paid by Firm u/s. 115JC, whether credit would be available to Company
 - Difference in language of S. 115JD vs. S. 115JAA (7) ??
 - Debatable
- Benefit of section 115BA – reduced corporate tax rate of 25% - can be availed by transferee if conditions fulfilled – discussed later

Conversion u/s. 47(xiii) or 47(xiv)

- No transfer u/s. 2(47) – No capital gains if the conditions mentioned fulfilled
 - If entire business transferred as slump sale u/s. 2(42C) – business will be capital asset
 - Max India Limited - 319 ITR 68 (P&H)
 - Mahalasa Gases & Chemical (P) Ltd - 84 TTJ 992 (Bang ITAT)
 - Premiere Automobiles - 182 CTR 202 (Bom)
- Possibility to claim tax depreciation on higher (fair) value at which assets transferred - Huge cash flow savings
 - Tangible assets as per fair value
 - Intangible assets if identifiable as per AS-26 and S. 32(1)(ii)
 - GAAR implications – if main purpose of revaluation of assets to obtain tax benefit by way claim of higher depreciation or increased cost of acquisition of shares – revaluation may be ignored – also applicable to transfer prior to April 2017 but benefits obtained on/after 1.4.2017

Conversion u/s. 47(xiii) or 47(xiv)

Pros (Cont..)

- Transfer of accumulated losses, unabsorbed depreciation and unabsorbed scientific expenditure u/s. 35(1)(iv) of firm
 - Lapsed losses of firm cannot be carry forward
 - Possible to argue fresh lease of life
- Higher capitalization of assets – Better net worth – good for Balance Sheet
 - Needs to be backed by valuation report, etc.

Cons:

- Stamp duty applicable on conversion
 - Immovable properties - at applicable rate
 - Movable Properties (including intangible)
 - Some savings possible
- Need to amortize Intangible assets in books - Impact on Profit
- Restrictions on aggregate shareholding of the partners can limit dilutive capacity
- GAAR provisions may apply

Carry forward and set off of AMT credit by Company

Whether unutilized AMT credit of erstwhile firm can be utilized by new Company – debatable:

Propositions:

- Section 115JAA(7) – conversion of private company to LLP under LLP Act – credit of MAT shall not be available to successor LLP
- Section 115JD - no such express provision which forbids carry forward and set off of predecessor firm's AMT credit by successor company
- S. 368 - on registration - all property, movable and immovable (including actionable claims) belonging to / vested in firm shall pass to and vest in company
- On registration which was earlier called 'the firm' in now called 'a company'
- Conversion under section 47(xiii) and 47(iv) – all assets and liabilities of the business to be transferred including AMT credit
- Decision on transfer of MAT credit under Amalgamation/Demerger may help:
 - SKOL Breweries Ltd vs. ACIT - ITA No. 2313/Mum/07
 - ACIT vs. Caplin Point Laboratories - ITA No. 667/Mds/2013
 - Adani Gas Limited vs. ACIT - [2016] 46 CCH 0049 (Ahd Tribunal)

Other Methods

Other Methods

New Company - New business

- Start business in Company
- Over period of time discontinue business in the Firm
- Itemized transfer of some important assets / liabilities
 - No statutory protection
 - Implications under respective acts to be evaluated
 - Simple and easy to implement
 - Significant limitations
 - Dependent on specific facts

Transferable Transfer of business

- Incorporate new company
- Transfer business to Company – taxable
 - Need not be at Fair Value
 - Slump Sale vs. Itemised Sale
 - S. 50C implications
 - Not covered u/s 56(2)(x)

Other Benefits

Section 115BA – Reduced Corporate

Tax Rate of 25%

- New section – 115BA – inserted vide Finance Act, 2016 – with effect from A.Y. 2017-18
- Benefit u/s 115BA available subject to provisions of section 111A and 112, if following conditions fulfilled-
 - Domestic Company
 - Company set up and registered after 29th February, 2016
 - Such company engaged solely in manufacturing goods and related research and distribution
 - No benefit of specified deductions/exemptions
 - S. 32(1)(iia), 32AC, 33AB, 33ABA, 35 (some sub sections), 35AC, 35AD, 35CCC, 35CCD, Chapter VI-A – Part C
 - Benefit of deductions u/s 35(1)(i), 35(1)(iv), 80JAA can be claimed
 - Losses attributable to specified deductions - lapse - not allowed to be carried forward and set off
 - Reduced rate of depreciation – applicable from A.Y. 2017-18
 - Option to be exercised on or before due date of filing first return of income
 - Option is irrevocable

Section 115BA – Reduced Corporate Tax Rate of 25%

Applicability of section 115BA in case of conversion/succession of non corporate entities into company

- Explanatory Memorandum refers to “newly set-up companies’
- No requirement of new manufacturing units or that “business” of the new company should also initiated after 31st March, 2016
- No condition on split/reconstruction of business
- Possible to claim lower tax rate

Section 115QA read
with rule 40BB

Section 115QA – Read with Rule 40BB

- New section – 115QA – inserted vide Finance Act, 2013 – further amended by Finance Act, 2016
- As per section 115QA, any amount of distributed income by the company on buy-back of unlisted shares – charged to tax in hands of company
- Distributed income = consideration paid by the Company on buy-back less amount received by the Company for issue of such shares
- Amount received by the Company - Rule 40BB - inserted by the Income-tax (Twenty Eighth Amendment) Rules, 2016, w.r.e.f. 1-6-2016
- Sub-rule 9 of Rule 40BB - Shares issued or allotted by a company on **succession** or **conversion** of firm or sole proprietary concern by company
- Succession of firm/sole proprietary concern v. Succession of business of firm/sole proprietary concern – Chapter XXI Conversion – directly covered
- Conversion u/s 47(xiii) and 47(iv) - where only business of firm/sole proprietary concern is succeeded and not firm/sole proprietary concern - applicability of rule 40BB ??

Section 115QA – Read with Rule 40BB

Determination of amount received by company

$$\text{Amount received} = \frac{A-B}{C}$$

A = Book value of the assets in the balance-sheet of firm / sole proprietary concern less

- i. TDS or TCS or Advance Tax as reduced by income tax refund
- ii. any amount shown in the balance-sheet as asset including the unamortized amount of deferred expenditure which does not represent the value of any asset

“Any change in the value of the assets consequent to their revaluation shall be ignored”

B = Book value of liabilities shown in the balance-sheet less

- i. capital, by whatever name called, of the proprietor or partners of the firm
- ii. reserves and surpluses, by whatever name called, including balance in profit and loss account
- iii. any amount representing provision for taxation, other than amount of TDS or TCS or advance tax as reduced by income tax refund to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto
- iv. provisions made for meeting unascertained liabilities
- v. contingent liabilities

C = Number of shares issued on conversion/succession

Comparison –
Conversion under
Chapter XXI and u/s.
47(xiii) / 47(xiv)

Comparison – Chapter XXI vs. u/s. 47(xiii) / (xiv)

In hands of Transferor

Sr. No.	Implications	Chp. XXI Conversion	S. 47(xiii) / 47(xiv)
1	Capital Gains in hands of transferor - Transfer u/s. 2(47)	No	Exemption
2	Tax implications u/s. 45(4)	No	No
3	Depreciation allowance- 6th proviso to s. 32(1) - on number of days of assets used	Yes	Yes
4	Exemption of capital gains on succession of profession	Yes	No
5	Exemption of capital gains for 1 business where firm has 2 or more business	No	Yes

In hands of Partners/Members

Sr. No.	Implications	Chp. XXI Conversion	S. 47(xiii) / 47(xiv)
1	Stepped up Cost of shares	No	Yes

Comparison – Chapter XXI vs. u/s. 47(xiii) / (xiv)

In hands of Transferee

Sr. No.	Implications	Chp. XXI Conversion	S. 47(xiii) / 47(xiv)
1	Depreciation - 6th proviso to s. 32(1) - on number of days of assets used	Available	Available
2	Step up in cost u/s. 43(1) / 43(6)	No	Possible
3	Explanation 3 to S. 43(1)	NA	Can apply
4	Benefit u/s. 80-IA, s. 80-IB, s. 10AA available	Yes	Yes
5	Carry forward of business loss and unabsorbed	No- S. 78(2)	Yes - S.72A(6)
6	Tax u/s. 47A on violation of conditions	NA	Yes
7	Succeeding company to be new company	Yes	No
8	Benefit of S. 43B, s.40(a)(i), s.40(a)(ia), etc. when liability paid and deduction of bad debts	Yes	Yes
9	AMT credit	Yes	Debatable
10	Valuation of Stock in trade at Market value	No	No
11	Incidence of Stamp Duty	No	Yes
12	Benefit of lower corporate tax rate of 25% if conditions fulfilled	Available	Available (if succeeding Co. is new Co.)

Annexure

Chapter XXI Conversion – Rules

Procedure – the Companies (Authorised to Register) Rules, 2014 – as amended by Companies (Authorised to Register) Amendment Rules, 2016

- Covers – Company - Limited by Shares / Guarantee / Unlimited
- Limited by Shares - Rule 3(2)(a) – Form No. URC 1 – Submit the following details
 - List showing names, address and occupation of members and no. of shares held
 - List showing names, address, DIN, interest in other firms or body corporate of first directors of company along with consent to act as directors
 - Affidavit from first director that he is not disqualified to be a director
 - List containing names and address of partners of LLP/firm
 - Copy of deed of partnership, bye-laws or other instrument regulating predecessor entity and certificate of registration issued by RoF – principal deed as well all subsequent deeds

Chapter XXI Conversion – Rules

Procedure (Cont...)

- Statement specifying following:
 - Nominal share capital and its division
 - No. of shares taken up by each member and amount paid up in share
 - Name of Company – addition of word ‘Limited’ / ‘Private Limited’
 - Written consent / NOC from all secured creditors
 - Written consent from majority members present at GM – agreeing for registration
 - An undertaking – proposed directors shall comply with requirements of Indian Stamp Act as applicable
 - A statement of assets & liabilities of LLP/firm certified by practicing CA – not earlier than 30 days of filing of Form No. URC -1
 - A copy of latest ITR of LLP/firm
 - An undertaking from all members/partners – on registration under this Chapter necessary documents shall be submitted to RoF for its dissolution as firm



Questions

THANK YOU



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