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Benefits of conversion of an unlisted company (both Private and Public) into Limited Liability Partnership (LLP)

S. No.	Benefits	Unlisted Company		LLP
		Private Company	Public Company	
1.	No limits of max. member	Minimum – 2 Maximum – 50	Minimum – 7 Maximum – No Limit	Minimum – 2 Maximum – No Limit
2.	No Surcharge on I. Tax	Surcharge is applicable if profit exceeds Rs. 10 millions.	Surcharge is applicable if profit exceeds Rs. 10 millions.	No surcharge on I. Tax is applicable in case of LLP.
3.	Non Applicability of MAT	MAT is applicable @ 18% of Book Profit.	MAT is applicable @ 18% of Book Profit.	MAT is not applicable.
4.	No Statutory Meetings	Board Meetings and General Meetings are required to be conducted at appropriate time.	Board Meetings and General Meetings are required to be conducted at appropriate time.	No Meetings is required as per provisions of LLP Act.
5.	No Statutory Limits of Remuneration	Company can pay remuneration to its Directors subject to the provisions of Co. Act, 1956.	Company can pay remuneration to its Directors subject to the provisions of Co. Act, 1956.	LLP can pay remuneration to its partners as per terms of LLP Agreement.
6.	No maintenance of Statutory Registers.	Company is required to maintain statutory registers, minutes book etc.	Company is required to maintain statutory registers, minutes book etc.	LLP is not required to maintain these registers, minutes book etc.
7.	Less Cost of Formation	Minimum fees – Rs 6,000/- approx.	Minimum fees – Rs 19,000/- approx	Statutory Fees – Rs 500/- to 5,000/-
8.	Easy to Dissolve or Wind – up	Company is required to dissolve or wind up as per provisions of Companies Act, 1956. (i.e. very much critical)	Company is required to dissolve or wind up as per provisions of Companies Act, 1956. (i.e. very much critical)	Dissolution of LLP is comparatively very easy.
9.	No Statutory Audit required.	Company is required to get their accounts audited annually as per the provisions of the Companies Act, 1956. However Tax Audit will be applicable as per Section 44AB of Income Tax Act, 1961.	Company is required to get their accounts audited annually as per the provisions of the Companies Act, 1956. However Tax Audit will be applicable as per Section 44AB of Income Tax Act, 1961.	LLP is not required to get their accounts audited annually as per the provisions of the LLP Act, 2008. However Tax Audit will be applicable as per Section 44AB of Income Tax Act, 1961.

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Tax Implications under Income Tax Act, in case of conversion of an unlisted company (both Private and Public) into LLP (Amended by Finance Act, 2010)

1. **Exemption of Capital Gain in the hands of Company**

   Capital Gain on transfer of assets (capital and intangible) is exempt under Section 47(xiiib) of Income Tax Act, 1961, subject to following conditions.

   a. Conversion takes place in accordance with the provisions of Section 56 and 57 of LLP Act.
   b. All assets and liabilities of the company immediately before the conversion should become the assets and liabilities of LLP at the time of conversion.
   c. All the shareholders of the company immediately before the conversion should become the partners of the LLP and proportion of profit and capital contribution will be same as before the conversion
   d. No consideration would be paid by LLP to the company and Shareholders of the company do not receive any consideration other than by way of share in profit and capital contribution in the LLP.
   e. The aggregate of the profits sharing ratio of the shareholders of the predecessor company in the LLP shall not be less than 50% immediately after conversion and at the time during the period of five years from the date of conversion.
   f. **The total sales, turnover or gross receipts in business of the company in any of the three previous years preceding the year in which conversion takes place should not be more than Rs. 60 lakhs.**
   g. No amount is paid to any partner out of balance of accumulated profit standing in the accounts of the company on the date of conversion for a period of three years from the date of conversion.

2. **Exemption of Capital Gain in the hands of shareholders**

   Capital Gain on transfer of shares held by a shareholder in the company is exempt under Section of 47(xiiib) of Income Tax Act, 1961 provided above seven conditions are complied with.

3. **Carry forward of losses**

   Accumulated loss and depreciation of the company will become accumulated loss and depreciation of the LLP of the previous year in which conversion takes place. (Section 72A (6A) has been inserted).

4. **Cost of Assets in the hands of LLP**

   The actual cost of the block of assets in the case of the limited liability partnership shall be the written down value of the block of assets as in the case of the said company on the date of conversion of the company into the limited liability partnership. (Explanation 2C to clause (6) of Section 43 has been inserted).

5. **Cost of partnership in the hands of partners**

   Where the capital asset being rights of a partner became the property of the assessee on conversion as referred to in clause (xiiib) of section 47, the cost of acquisition of the asset shall be deemed to be the cost of acquisition to him of the share or shares in the company immediately before its conversion. (Section 49(2AAA) has been inserted).

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6. Depreciation

Depreciation will be allowed in the ratio of the number of days for which the assets were used by them. (Fifth proviso to Section 32(1) has been amended).

7. Mat credit

Any unutilised MAT credit in the hands of the company would not be available to the LLP. (Section 115JAA (7) has been inserted).

Tax Implications under Income Tax Act, if any of the above conditions are not complied with.

1. Capital Gain will be taxable in the hands of LLP

Capital Gain on transfer of assets (capital and intangible), as exempted under Section 47(xiiib), shall be deemed to be the capital gain, in the hands of successor limited liability partnership, of the previous year in which above conditions are not complied with. (Sub Section (4) to Section 47A has been inserted).

2. Capital Gain will be taxable in the hands of Shareholders

Capital Gain on transfer of shares hold by him, as exempted under Section 47(xiiib), shall be deemed to be the capital gain of the previous year in which above conditions are not complied with. (Sub Section (4) to Section 47A has been inserted).