Starting a New Business?

Get the wisdom to select the right platform

Partnership or LLP or Limited Company

- Startups are often under a dilemma to choose a cost-effective optimal legal structure between a Partnership entity, LLP & a Limited Company. They all come with their own pros & cons and would require an assessment with a 360° outlook to make the right choice. We have highlighted the key facts in this insight series from following multiple angles.

   A. Organizational Perspective

   B. Taxation Perspective

   C. Legal / Compliance Perspective

A. ORGANIZATIONAL PERSPECTIVE

The table below highlights considerations you should keep in mind from an organizational perspective in each of the available legal structure options:

Options Available	Partnership Firm	LLP	Private Company
Act Applicable	Partnership Act, 1932	Limited Liability Act, 2008	Companies Act, 2013
Registration	Voluntary	Mandatory	Mandatory
Liability	Unlimited	Limited	Limited
Members	2 to 100	Minimum 2	2 to 200
Concerned Registrar	Registrar of Firms (ROF)	Registrar of Companies (ROC)	Registrar of Companies (ROC)

B. TAXATION PERSPECTIVE

The table below highlights considerations you should keep in mind for choosing a tax-efficient structure between the various options:

Particu-lars	Partner-ship / LLP	Old Companies		New Domestic Companies	
Applica-bility	-	Company (note 1)	Company (note 2)	New company u/s 115BAB	New company u/s 115BAA
Business	-	Manu-facturing	Others	Manu-facturing	Others
Deduction* & unabsorbed Depre-ciation	Available	Available	Available	Not Available	Not Available
MAT	-	Applicable	Applicable	Not Applicable	Not Applicable
Basic Tax	30%	25%	30%	15%	22%
Total Tax	34.94%**	-	-	-	-
Total Tax Rates					
Total Income>1 Cr.	N/A	26.00%	31.20%	***17.16%***	***25.17%***
Total Income between 1 Cr and 10 Cr.	N/A	27.82%	33.38%	***17.16%***	***25.17%***
Total Income >10 Cr.	N/A	29.12%	34.94%	***17.16%***	***25.17%***

Highly beneficial rate (17.16%) to Start-ups in manufacturing

Note 1 : If turnover of P.Y. 2017 -18 of any company ≤ Rs..400 crores.

Note 2 : If turnover of P.Y. 2017 -18 of any company > Rs. 400 crores.

* Certain deductions are not available to new domestic company which are discussed below.

** If income is more than 1 Crore.

Start-up Insight

PRIVATE LIMITED COMPANY IS BENEFICIAL

❖ **<u>New domestic manufacturing company</u> should follow following conditions to get benefit of lower tax rates.**

1. **The company should be setup and registered on or after *01.10.2019.***
2. **It should commence manufacturing or production on or before *31.03.2023.***
3. **It should not be formed by Splitting up of business or Reconstruction.**
4. **It does not use any plant and machinery previously used for any purpose.**
5. **It does not use a building previously used as a hotel or a convention centre in respect of which deduction under section 80ID has been claimed and allowed.**

❖ **The benefit of reduced taxation is available to all types of manufacturing businesses <u>except</u> the following:**

- Computer Software
- Conversion of Marble blocks
- Books or cinematograph films
- Mining
- Bottling of Gas.

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❖ **To avail the Benefit of highly reduced tax rate for new start-ups, the option must be exercised within time which is given as under:**

New Manufacturing Company	Other Company
• At the time of furnishing the **first returns*** of income for any previous year.	• Before the **due date u/s 139(1)** for furnishing the return of Income.

Note: Option can not be subsequently withdrawn.

❖ **Following deductions and exemptions are not available to company opting for reduced tax benefit:**

1. Expenditure incurred on Agriculture extension project.
2. Investment linked tax deduction for specified business.
3. Expenditure made for scientific research.
4. Profits for tea, coffee and rubber manufacturing company.
5. Deposits made towards site restoration fund.
6. Profits and gains derived from Special economic Zones.
7. Expenditure on skill development project.
8. Additional depreciation / deduction on new plant and machinery.
9. Total income of companies should be computed without adjusting brought forward loss and unabsorbed depreciation.

C. LEGAL / COMPLIANCE PERSPECTIVE

Tabular comparison highlighting on-going compliances & maintenance requirements for a start-up:

Particulars	Partnership Firm	LLP	Private Limited Company
Approximate Time for Registration	10-15 Days	7-10 Days	5-7 Days
Cost of Formation / Incorporation	Negligible	Lower than Company	Relatively High
Name of Entity	Any name as per choice	Must be approved by the Ministry of Corporate Affairs.	Must be approved by the Ministry of Corporate Affairs.
Suffix	Not required	must contain "LLP" as suffix	must contain "Private Limited" as suffix*.
Annual Compliances/ Filing with concerned Department	No return is to be filed	1. Annual Statement of accounts and Solvency 2. Annual Return	1. Annual Audited Financial Statements 2. Annual Return
Audit	Only Tax Audit of the Accounts	Audit is required for all LLP(except for those having turnover <= Rs.40 Lacs or Rs.25 Lacs contribution.)	Audit is required for all companies.
FDI Restrictions	Very Restrictive	Freedom	Full freedom
Foreign Participation	Only NRIs/OCI can invest in Partnership concerns on non-repatriation basis	Foreign Nationals can be Partners in an LLP.	Foreign Nationals can be Members / Directors in a Company.