

Limited Liability Proprietorship



India has introduced the limited liability partnership in 2009 which has been a significant step for facilitating the growth of SME and nurture talent. Though this is a new concept in our country it has been in vogue abroad for quite sometime. Now another new mode called of business in the form of limited liability proprietorship has been introduced in France. Though this is not yet introduced in India, this can be viewed as a new avenue for conducting business and possible introduction in the country as we progress with the reforms. An attempt has been made in the article to examine the structure, regulatory and fiscal aspects governing such business.



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The advent of capitalism has increased the competition in the world, business and commerce have grown to manifest themselves into different forms, beginning with proprietorship, partnership firms, co operative societies, joint stock companies, etc. but these have not been able to cater to the ever growing requirement for newer avenues of conducting business. Of late two further avenues have come to the forefront for conducting business one of them has been Limited Liability Partnership (LLP), this has been a new concept in India and is about to pick up.

However, there is another avenue just opened in another part of the world which is the Limited Liability Proprietorship. Though this is not yet introduced in India, this can be viewed as a new avenue for conducting business and possible introduction in the country as we progress with the reforms.

Limited liability partnership has been in existence for a few decades now across the world, though it has been introduced in India only in 2009 after the parliament passed it and it was approved by the president. Now a new type of business is introduced in France

in the form of Limited Liability Proprietorship.

The French national assembly and the senate have recently approved a bill for a new type of concern known as “**d’entrepreneur individuel responsabilité limitée**” (EIRL) which can be translated for “entrepreneur individual liability limited” in simple language “Limited liability proprietorship”. This was published in the official journal on 16th June, 2010 (Law no 658-2101) and the act comes into force with effect from 1st January, 2011. This provides the much required new avenue for starting a new business by individuals with limited capital resources and risk taking ability. Till now anyone wanting to carry on a business alone and have limited liability needed to get incorporate a single member company “*entreprise unipersonnelle à responsabilité limitée* (EURL). The risk that the personal assets of the individual will be liable for the debts of the business in case of a failure/bankruptcy is totally eliminated and to this effect will give an initiative to start new business and augment the growth engine of the economy.

Any individual (a professional, businessman, trader, farmer, artisan etc) can set up an EIRL by incorporating it with a name with the registrar (this will be followed by EIRL for identification by the public). This new entity thus created can hold assets and incur liabilities in its own name. It can enter contracts and do business just like any other business concern. This mode is available for new businesses as well as for conversion of existing proprietorships. The individual can transfer his personal assets to the new entity and contribute capital which will be used in the business by the entity and belong only to the entity. Put it differently if a person is currently carrying on a business, he can convert it into an EIRL and transfer his own assets

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and liabilities to it on registration, from that point the business of the new entity will be different from the individual.

Creation

An application for registration of the entity has to be made with the registrar. The most important step in the formation is the declaration. An individual who desires to create an EIRL needs to prepare a declaration (**patrimoine d’ affectation**) on the property that can be considered as connected to the business and hence is at risk to creditors. This declaration as completed has to be filed with the concerned authority like a Chamber of commerce for people engaged in business, or a court/tribunal handling matters of commerce in case of professionals and others. This is a very important document involved in the creation of the new entity and can be filed either at the time of registration or subsequently.

The declaration contains the description of the property as to the quantity, value and other particulars it will also contain the obligations. Some assets need to be mandatorily included in the declaration as they are inextricably connected with the business like the stock of a trader, finished goods of manufacturer, receivables of a professional etc. While other assets may be included at the option of the entrepreneur like vehicle or furniture used for the business. In case of inclusion of immovable property in the declaration, it has to be registered at the local mortgage office similar to a registrar of properties in India. In case of an asset assigned to EIRL as per the declaration excluding money, if the value thereof exceeds €30,000 a report from an auditor needs to be filed. This will lend authenticity to the assets held by the concern and will form the basis for those dealing with it. It needs to be noted that the assets transferred to EIRL should only be those that would be used in the course of the business and ones which are unrelated to the specific business to be carried cannot be transferred as a part of the declaration.

Any asset that is included in the declaration will form part of the business and in case of a failure only these assets will be liable for attachment or liquidation for satisfying the claims of the creditors. All other assets of the proprietor which are not included in the declaration will automatically get protected. Similarly obligations in favour of the creditors will be enforceable on the entity if they are mentioned in the declaration. It is the duty of the entrepreneur as per the conditions set, that information must be given to the creditors. Any creditor may file his objection thereof within a prescribed time in which case his claim is either settled or provided with a guarantee

and a court will make a ruling in this behalf.

Accounting Requirements

EIRL needs to maintain accounting records in accordance to the nature of business it is in, eg: different accounting records are specified for trading activities, contractors, professionals, etc. and they are simplified as defined by a decree.

The business has to be transacted with an exclusive bank account, different than that of the entrepreneur. Annual accounts or accounts subject to simplified requirements where applicable are to be filed each year with the registrar and will be filed along with the declaration submitted. This will allow the creditors or other interested parties to monitor the operations of the entity.

Taxation

The EIRL can elect to be taxed under the corporate tax structure, *Impôt sur les sociétés* (IS) as per the French fiscal regime; the taxable income will be taxed at

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the concessional rate structure as below if the turnover of the entity is less than €7.63 million (excluding VAT).

15 per cent for taxable income upto €38,120.

Income above €38,120 will be taxed at the normal 33/3 per cent (which is the normal rate applicable to corporates in France).

This is a benefit available to the EIRL which was earlier available only to corporates, and unifies the tax structures for all SMEs, in essence provides the same benefits to all SMEs irrespective of their legal form. In case of disposal of assets and any capital gains there on will also be taxed under the corporate structure.

The entity may also elect to be taxed under the scheme of Micro BNC, for those with annual revenues of less than €32,000 (Excl VAT). In this case the taxable profit is taken at 66 per cent of the revenues. Subject to certain conditions there are different rates of taxes in this structure. An entity electing this mode is not required to maintain accounting records for tax purposes. It is sufficient if they keep the records of the revenue.

EIRL may pay salary to the proprietor as the two are distinct from each other. This salary will be a compensation for the work done by the person to EIRL, and will be a tax deductible expense in the hands of the entity. The salary so received will be taxed as income from salary for the entrepreneur.

Profits if any generated by the EIRL may be distributed to the entrepreneur, they are treated as dividends and will be subject to tax accordingly. The dividend income will be taxed as the income of the recipient (entrepreneur himself in this case, as he is the sole owner) as per the applicable provisions governing the taxation of dividends by giving an allowance of 40 per

Social security contributions are to be made by an EIRL depending on the tax structure chosen by it. Tax on income (*Impôt sur le revenu*) or Corporation tax (*impôt sur les sociétés*). France is different from other European nations, in a way that social security system is financed mostly from contributions levied on the earned income rather than from taxes. Also the payer of the social security will not get any specific benefits for the part of the social security contributions which represents the General social security contribution (*contribution sociale généralisée* (CSG)) and is like a tax. ”

cent of the amount so received, and rebate available for flat deduction at €1,530 or €3,050 (based on individual being taxed or a couple). The recipient may opt for a flat withholding tax at the rate of 18 per cent to avoid progressive taxation where he finds it to be beneficial.

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contributions can be upto 10 per cent including all components (CSG being the major component accounting for upto 75 per cent of the social security cost payable).

In case a the tax on income is opted social security contributions are to be calculated on total taxable profit of the entity, which is the case in case of normal entrepreneurs and hence there will be no difference in this respect. Although certain minimum contributions like insurance, retirement, death contributions are payable even in case of a loss. For those opting for the corporation tax the contributions are made on the earned income with certain adjustment made by including a part of the distributions in excess of a specified percentage of the value of assets used in the business.

Other Aspects

The act has provided certain provisions to safeguard the interests of the creditors of the EIRL, the tax authorities, and to prevent the abuse of the act. It provides that the sole proprietors will be liable with the totality of their assets in case, they have acted improperly and not observed the obligations and

The concept of EIRL discussed is new and we may wait to observe the kind of impact it creates in the economy or the implementation or operational hurdles it creates before considering introduction in India. More self employed people or professionals may run their business in this mode as it will limit their risk. This will require introduction of a new statute coupled with necessary changes in the tax structure and other related guidelines. ☺

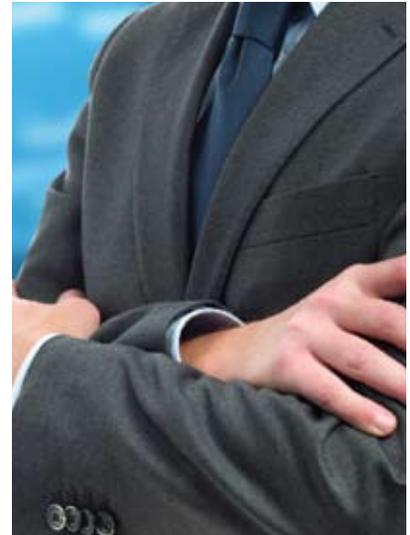
duties cast on them by the statute, like the structure of specified funds or maintenance of separate books of account and other provisions of the governing statute and a court decides the reality of these acts. This provision is similar to the piercing of corporate veil as is found in the companies act to check misuse.

All the business documentation and official communication of the entity shall carry the words EIRL, e.g. on the letter heads, quotes, invoices, receipts etc.

In case of death of the proprietor of the entity the creditors will still enjoy claims on the assets they had prior to the death, also in case of death where a heir/beneficiary comes into the business the same person is marked in the register in place of the original proprietor by the registrar who initially registered the EIRL. The above goes to the effect of making perpetual existence of the entity as long as someone is assigned by the proprietor the legal heir expresses interest to pursue the activity within the prescribed time drafted currently as three months. Provisions have also been made to govern the activities of minors as regards the establishment and operation of EIRL, transfer and recovery of assets.

Conclusion

In India we have embarked on a series of reforms in our fiscal and regulatory frameworks. Progress has been made by initiatives like DTC, Companies Bill, GST, IFRS, LLP, though the speed of these has not been as good as expected. Limited liability partnership (LLP) concept has been started in our country in 2009 after the act by the parliament in this regard; this has been a significant step to help the professionals and other entrepreneurs with limited resources to carry their business with limited risk. However a lot of potential may be unlocked if a new



mode of doing business by one person comes into existence with limited liability.

The government may consider something similar as has been discussed above to provide a fillip to the economic activity, as we want to be an economic power. The concept of EIRL discussed is new and we may wait to observe the kind of impact it creates in the economy or the implementation or operational hurdles it creates before considering introduction in India. More self employed people or professionals may run their business in this mode as it will limit their risk.

This will require introduction of a new statute coupled with necessary changes in the tax structure and other related guidelines. The government has to ensure a hassle free mechanism for creation of business entities devoid of red tape and bureaucracy. Simpler laws, tax incentives, easy credit from financial institutions, arbitration/dispute redressal mechanism and such other measures to ensure that faster economic growth is possible. This hopefully may result in the business moving from unorganised sector into organised and can also be looked at for expanding the tax base both direct and indirect. ■