

A Global Perspective on Financial Reporting and Tax Treatment of Limited Liability Partnerships (LLPs)

An exclusive Research Paper produced by the
'Research & Publications Department' of ICMA Pakistan

Abstract: This paper provides a useful insight on the legal framework in different countries, where the concept of LLPs has been introduced, with special focus on relevant provisions in the LLP legislations of these jurisdictions as to how the books of accounts should be kept and maintained; what is the procedure for submission and reporting of financial statements and annual returns; and what is the tax treatment of LLPs. Eleven countries from eight different regions have been selected to have a global perspective on these aspects and to provide a reference to the government in framing LLP legislation in Pakistan.

Keywords: Limited Liability; general partnership; body corporate; pass-through entity; books of accounts, financial reporting; annual return; tax treatment; tax transparency;



With the coming into effect of legislation on Limited Liability Partnership (LLP), the professional accountants, especially management accountants should take the lead to form LLPs to avail the benefit of this emerging business vehicle.



Preamble

Limited Liability Partnerships (LLPs) provides an alternative business vehicle that complements the traditional forms of doing business such as sole proprietorships, partnerships and companies. In fact, it is a hybrid between a company and a partnership. Many countries have recognized the importance of LLPs by implementing a legal framework for regulation of LLPs in their jurisdictions. With the Securities and Exchange Commission of Pakistan (SECP) having initiated necessary process to introduce LLPs in Pakistan, Pakistan would very soon be joining those countries where LLPs are being operated legally. With the coming into effect of legislation on LLP, the professional accountants, especially management accountants should take the lead to form LLPs to avail the benefit of this emerging business vehicle.

In this research paper, we have attempted to study the international experience of LLP legal framework with special focus on two aspects viz. (1) book keeping and financial reporting and (2) tax treatment. The basic objective of this research is to provide an understanding and insight to relevant government organizations on these two important aspects of LLPs which could help

them frame relevant legislation (Act and regulations) on Limited Liability Partnerships in Pakistan.

We have selected eleven countries in eight different jurisdictions where legal framework for LLPs exist so as to have a global look on how book keeping and financial reporting is made and what is the tax treatment of LLPs by governments in these countries. The following table summarizes the jurisdictions selected:

Regions / Jurisdictions	Countries
South East Asia	Malaysia, Singapore
South Central Asia	India
Eastern Asia	Japan, China
Central Asia	Kazakhstan
Northern & Western Europe	UK, Germany
North America	USA
Eastern Africa	Kenya
Oceania	New Zealand

South East Asia

1) Malaysia

In Malaysia, the LLPs are registered, as a body corporate, under the 'Limited Liability Partnership Act (LLPA) 2012' issued by Companies Commission of Malaysia. Local partnerships are registered under Section 11 of LLPA 2012 whereas foreign LLPs are registered under Section 45 of the said Act. An LLP has legal status of a body corporate capable of suing and being sued in its own

name; holding assets and doing acts and things in its name as bodies corporate do.

A foreign LLP is not entitled to carry on business in Malaysia unless it is registered as a foreign LLP under this Act. As per Section 46 of LLP Act 2012, a foreign LLPs is required to appoint at all times at least one 'Compliance Officer' from amongst its partners or persons, qualified to act as Secretaries under the Companies Act, 1965, who is either a citizen or permanent resident of Malaysia or ordinarily resides in Malaysia. The particulars of Compliance Officer and his consent need to be filed with the Registrar, who is the CEO of Companies Commission of Malaysia.

An LLP in Malaysia can be formed for the purpose of carrying on a 'professional practice' e.g. Accountants, Advocates, Lawyers, Solicitors, Companies Secretaries etc. It is required that the partners consist of natural persons who are practicing the same professional practice; and have in force professional indemnity insurance cover for an amount of not less than the amount either approved by the Registrar or in case where the professional practice is governed by a governing body; approved by the Registrar after consultation with the said governing body.

Malaysian LLP – Book Keeping and Financial Reporting

For income tax purposes, an LLP is required to prepare and maintain all the accounting records viz. Balance Sheet, Profit and Loss account and explanatory notes to the accounts. In case, the said accounting records are not prepared as per standard accounting format, LLP is required to keep records of expenditure; current and fixed assets; list of debtors and creditors; capital contribution by each partner (% age) and explanatory notes to all these business transactions. The Compliance Officer, appointed from amongst the LLP partners is required to keep complete accounting records of the business of LLP and also to submit the Income Tax Return Form (ITRF) within specified period in compliance with Section 77A of Income Tax Act of Malaysia.

All the accounting records should give a true and fair view of the state of affairs of the LLPs and required to be kept and retained by LLPs for a period of 7 years. An LLP in Malaysia is also required to lodge an annual Declaration with the Registrar, stating whether it is able or unable to pay off its debts. Unless provided in agreement, there is no mandatory auditing requirement for LLPs and as such they are not required to prepare and submit the audited financial statements. Moreover, there is also no requirement for convening an AGM by the LLPs.

Tax Treatment

As far as imposition of tax is concerned, the income from LLP is taxed at the LLP level and all exemption order and income tax rules applicable to a 'person' is also applicable on an LLP. An LLP which has capital contribution not exceeding RM 2.5 million is allowed a deduction in respect of incorporation expenditure for the basis period for a year of assessment.

Through the Budget 2013, amendments have been made in the Income tax law to treat tax status of an LLP similar to that of a company under the Companies Act, 1965. Accordingly, LLP in Malaysia is subject to income tax rate of 25 percent, however it enjoys SME tax rate of 20 percent for first chargeable income upto RM 500,000, if the capital at the beginning of the year of assessment is not more than RM 2.5 million. Chargeable income in excess of RM 500,000 is subject to 25% tax rate, which is similar to SME tax rates applicable to a SME company.

The Partners are not liable to tax on their share of income from LLP (whether distributed or not). They will be taxed on remunerations, perquisites and benefits-in-kind received from the LLP. The remuneration received by a LLP partner is taxed as salary, based on the individual scale rates from 0% to 26% for chargeable income of more than RM 100,000. However, as mentioned before, profit paid or credited to LLP partners are tax exempted. This is similar to the single tier dividend paid by a company to its shareholders which is also tax exempted. This means that a partner could enjoy a tax saving of differential of 1% between 25% and 26% in case he receives profit from LLP. There is no withholding tax on profits paid, credited or distributed to partners.

2) Singapore

In Singapore, LLPs are registered under the 'Limited Liability Partnership Act, 2005' which is applicable from April 2005 and regulated by the Accounting and Corporate Regulatory Authority. Under the LLP Act, an LLP is defined as a 'body corporate' having legal personality separate from that of its partners with perpetual succession. The law relating to partnerships is not applicable to an LLP which can be formed with at least two members with no maximum limit of partners. Every partner is considered to be the agent of LLP under the Act. A Manager is required to be appointed by every LLP who should be a natural person and ordinarily resident in Singapore. His particulars and consent to act as Manager of LLP are required to be submitted to the Registrar.

Singapore LLP – Book Keeping and Financial Reporting

LLPs are required to keep such accounting and other records that present the fair and true picture of the transactions and financial position of LLP and enable the profit and loss account and balance sheet to be prepared from time to time. The financial records are required to be retained for a period of less than 5 years from the end of financial year in which the transactions mentioned therein are completed. These records are available for inspection by the partners as well as by the Registrar on his demand, failing which the LLP or its partners shall be considered guilty of offence, which could lead to fine of S\$ 10,000 or imprisonment for two year term.

LLPs in Singapore with revenue of less than S\$ 500,000 are not required to submit financial statements of LLP when filing their income tax returns. In the Income tax return, details about revenue, gross profit, allowable business expense and adjusted profit/ loss need to be declared. LLPs

with revenue of S\$ 500,000 or above are required to submit to the CIT, financial statements certified true and correct by the precedent partner. The Manager of LLP is required to submit to the Registrar an 'Annual Declaration' of Solvency or Insolvency within first 15 months from the date of registration of LLP. Subsequently, a declaration once in every calendar year must be submitted at intervals of not more than 15 months. Any change in particulars of LLP must be lodged with the Registrar within 14 days from the date of change.

Tax Treatment

For income tax purposes, an LLP is given tax transparency similar to that of a general partnership. As such, income of an LLP is not taxed at the LLP level, rather each partner is taxed separately on his share of income received from the LLP. In case of individual partner, his income share from LLP is taxed on the basis of his personal income tax rate, whereas in case of a corporate partner, his share of income from LLP is taxed based on the prevailing corporate tax rate.

If an LLP does not make any profit; in that case the share of 'Capital Allowances (CA), Industrial Building Allowances (IBA) and trade losses from the LLP may be deducted in each year of assessment, against the income of individual or corporate partner from other sources subject to relevant deduction restriction. Only his share of donation can be deducted without being subjected to this restriction. Similarly, a property owned by an LLP is considered as owned by the partners of the LLP. As such, the property is considered sold, partly or wholly, when there is any change in the composition of partners or their share of the ownership in the LLP.

For Singapore tax purposes, the tax treatment of foreign LLPs deriving income from Singapore will be the same as that of LLPs registered under the LLP Act. However, a local LLP with foreign members, which does not carry on a business in Singapore and derives no income on Singapore territory, is not liable to tax in Singapore.

South Central Asia

3) India

In India, LLPs are registered under the 'Limited Liability Partnership Act, 2008' which is applicable from 31st March 2009. The concept of LLP was introduced in Budget 2009-2010. Any individual or body corporate may be a partner in a LLP. A minimum of two members or corporates are required to form an LLP with no maximum limit of partners. Foreign individuals and companies can also be partners in LLP, which was not allowed under the general partnerships. The provisions of the Indian Partnership Act, 1932 is not applicable to an LLP.

The Indian government has recently allowed Foreign Direct Investment (FDI) in LLPs formed and registered under the LLP Act, 2008 subject to certain conditions. The eligible investors for FDI in LLP shall only be a person resident outside India or an entity incorporated outside India. A citizen or an entity of Pakistan and Bangladesh, however, cannot make FDI in an Indian LLP.

Indian LLP - Book Keeping and Financial Reporting

Every LLP is required to maintain books of accounts for about 8 years from the date on which they are made. LLP is also required to prepare and submit to the Registrar a 'Statement of Accounts and Solvency (SAS)' within 6 months from each financial year, duly signed by the designated partners of LLP. The books of accounts must disclose the financial position of LLP and all its business transactions. It should also contain details about income and expenditure; assets and liabilities; statements of cost of goods purchased, inventories, Work-in-progress, finished goods and cost of goods sold. As per LLP Rules 2009, the contribution of each partner is required to be disclosed in the LLP accounts along with nature of contribution and amount. Moreover, each partner's contribution in form of tangible or intangible and movable or immovable property or other benefits brought or contribution by way of an agreement or contract for services is required to be valued/certified by a practicing Chartered Accountant or a practicing Cost Accountant or by approved valuer from the panel maintained by the Central Government.

LLP accounts is subject to annual audit in case the contribution exceeds Indian Rs. 25 lacs and turnover exceeds Rs. 40 lacs. An Annual Return is to be filed with the 'Registrar of Companies' within 60 days of closure of financial year. Only a Chartered Accountant in practice can be appointed as an auditor of LLP and they may be appointed for each financial year of LLP. There is also a condition in the Indian LLP Act 2008, that in case an LLP has turnover upto five crore rupees or contribution upto Rs. 50 lacs, during the corresponding financial year, then the Annual Return submitted by LLP should accompany a 'Certificate' from a designated partner, other than the signatory to the Annual Return, stating that the Annual Return contains true and correct information. In all other cases, the Annual Return is to be accompanied by a certificate from the Company Secretary in practice stating that he has verified particulars from books and records.

Tax Treatment

In India, an LLP are a partially pass-through entities for tax purposes and treated just like a partnership firm and as such, tax on LLP and partnership firms are the same and charged on previous year's income. The partners of an LLP are required to pay tax on the amount paid to them. The salaries and expenses of LLP partners are allowed as deductions from income before taxation, subject to certain limits, but are taxed in the hand of partners. The profit remaining after tax is distributed to partners in proportion to their contributions or as per LLP agreement and is not taxed further. The tax calculation of an LLP is the same as a partnership firm so same procedure and rules is followed. All provisions of the Indian Income Tax Act that are applicable to a Partnership firm, shall also be applicable to an LLP except Section 44AD i.e. Presumptive Taxation. Only a partnership firm can claim the benefit of this Section 44AD and not an LLP.

There is a flat income tax rate of 30% on both LLPs and Partnership firms. An education Cess is added to this basic tax rate, after which the effective tax rate on LLP is 30.9%. There is no surcharge in case the total taxable income of an LLP does not exceed Indian Rs. one crore. However, surcharge @ 5% is applicable if the total taxable income of LLP exceeds Rs. one crore but does not exceed Rs. 10 crore (2% for foreign LLP). No Minimum Alternate tax or Dividend Distribution tax is applicable on income tax on LLP, similar to a partnership firm.

Eastern Asia

4) Japan

In Japan, LLPs are registered under the 'Limited Liability Partnership Act, 2005' which is applicable from August 2005. The liability of all the partners in an LLP is limited to their capital investment and each partner is required to be active and actually involved in the management and business affairs of LLP, with flexibility to take decisions about distribution of profits amongst themselves. This is to prevent inappropriate abuse of LLP for tax evasion. It is also mandatory that one of the partners (either individual or corporate) of LLP must be a resident in Japan or a Japanese company. Foreign individuals and incorporations outside Japan can be members of LLP. An LLP is required to get itself registered with a local Legal Affairs Bureau in Japan.

Japanese LLP – Book Keeping and Financial Reporting

Other than the LLP Act 2005 and ordinances promulgated by the Japanese Ministry of Economy, Trade and Industry; the accounting of LLPs in Japan is governed by generally accepted corporate accounting practices. The LLP partners are required to prepare and maintain accounting books which may, inter alia, cover details about amount of capital contribution made by each partner and other matters as provided by the Ministry.

It is compulsory under the law for the partner preparing the accounting books, to deliver a copy of same to each LLP partner. The partners are also responsible to prepare the 'balance sheet' of LLP soon after the formation of LLP and subsequently prepare the balance sheet, profit & loss statement and their detailed statement of LLP for relevant business year within two months from the end of each business year. These financial statements are to be prepared in the form of electromagnetic records. The partners of LLP are required to preserve accounting books of LLP and other material documents for 10 years from the closing of such accounting books.

Tax Treatment

In Japan, taxation on LLP is similar to that of a civil law partnership. LLP is treated as a 'pass-through entity' in which corporate tax is not levied at LLP level. Instead, the members or partners are subject to income tax with respect to allocated profits. The use of allocated losses are subject to restrictions i.e. an LLP member may deduct allocated net losses from other taxable income only so far as the aggregate

losses deducted are not more than the amount of his contribution in the LLP. Furthermore, revenues that a non-resident and a foreign corporation receive from the LLPs are currently subject to a 20 percent withholding tax.

5) China

In China, all partnership enterprises, including LLPs, are governed by the 'Partnership Enterprise Law' which is passed by the order of the President of People's Republic of China and effective from June 01, 2007. An LLP enterprise comprises of both 'common partners' and 'limited partners'. The common partners bear unlimited and joint liabilities for debts of LLP, whereas the limited partners bear the liabilities for its debts to the extent of their capital contribution. LLP enterprise in China can be formed with two or more partners and all of them enjoy equal rights to the execution of partnership affairs under the law. However, as agreed in LLP agreement, one or several partners may be authorized to execute the partnership affairs on behalf of LLP.

An LLP should include a minimum of two partners but not more than 50 partners, out of which at least one should be a general partner. The affairs of LLPs shall have to be managed by the 'general partners' whereas the 'limited partners' does not have the right to manage partnership affairs or represent the LLP in its relations with people outside the partnership (third person). The managing partners may demand that payment for managing the affairs of LLP and way of drawing such payment be stipulated in partnership agreement. A professional service institution, which provides its clients with paid services on the basis of professional knowledge and special skills, can set up a 'Special General Partnership Enterprise (e.g. accounting firms, law firms etc.)

Chinese LLP – Book Keeping and Financial Reporting

An LLP enterprise is required under the law to establish an enterprise financial and accounting system, including maintaining books of accounts.

Tax Treatment

As general partners of an LLP bear unlimited liability, therefore, a different income tax payment has been provided for LLP. An LLP in China is not required to pay income tax as a single entity, rather the partners pay their personal income tax on the profits earned from LLP in accordance with certain prescribed rules. For instance, an individual partner pays personal income tax on his share of income at the rate ranging between 5% to 35%. In case, an LLP has undistributed profits, the tax authorities may determine the share of income tax of individual partners on the basis of their contribution as provided in the partnership agreement or else on average ratio calculated.

The LLP is required to pay three kind of taxes and duty depending upon the nature of their business. For example, an LLP engaged in sales of goods, supply of processing, repair and replacement services and import of goods within China, is required to pay 'Value Added Tax' at the rate ranging between 13% to 17%. Similarly, if the LLP is engaged in

provision of services, transfer of intangible assets or sale of real estate within the territory of China, it shall have to pay 'Business tax' at the rate ranging between 2% to 20%. If an LLP is engaged in import and export business, it has to pay custom duty on the value of imported goods.

Central Asia

6) Kazakhstan

In Kazakhstan, LLPs are governed by the 'Limited Liability partnerships and Additional Liability Partnerships Act, 1998'. This Act has been last revised on 7th August 2007. An LLP is a corporate entity formed by one or more individuals or participants, whether foreign or local, vested with separate property, rights and liability. The LLP partners are not liable for their obligations and bear the losses incurred by LLP to the extent of their contributed share in LLP's charter capital or fund, except in certain cases. The Charter Capital of LLP is formed by means of pooling together the contributions of the founders (co-partners), either in cash or in kind. Under the Act, the minimum charter capital is 100 times the Monthly Calculation Index (MCI) i.e. around US\$ 1,072, while for small businesses, the minimum charter capital requirement is approx. US\$0.7 (KZT100).

An LLP is very much similar to a Joint Stock company with the only difference that an LLP does not issue shares. An LLP is also authorized under the law to establish branches and representative offices outside the territory of Kazakhstan. LLP is the most used form of making investment either through a subsidiary or a joint venture in Kazakhstan. However, all non-resident employees of an LLP need to obtain work permits from the government in Kazakhstan.

Kazakhstan LLP – Book Keeping and Financial Reporting

LLPs are required to prepare annual financial statements not later than three months following the past fiscal year, duly approved by the co-partners of LLP in a regular general meeting. As required under the LLP Act, an audit firm is required to be hired by the LLP to examine and certify the accuracy of its annual financial statements as well its current performance. The legislative acts may provide for mandatory audits of annual and other financial statements of all LLPs that carry out specific types of entrepreneurial activity as well as their public exposure.

Tax Treatment

For income tax purposes, LLPs are considered separate legal entities that are distinct from the partners. LLP is subject to state registration and taxation in its own right i.e. it is tax-transparent. As per Article 59 of the LLP Act, 1998, the LLP is required to contract an external audit firm for the purpose of examining and certifying the accuracy of its annual financial statements as well its current performance. Legislative acts may provide for mandatory audit of annual and other financial statements of all LLPs that carry specific types of entrepreneurial activity. Such LLPs are also required to publish to general public its financial statements for a relevant year.

Northern & Western Europe

7) United Kingdom

In UK, the LLPs are registered under the 'Limited Liability Partnerships Act (LLPA), 2000' which became applicable from the year 2001 in England and Wales and Scotland. The Limited Liability Partnership Act (Northern Ireland) is applicable from the year 2002. A UK LLP is a body corporate with legal personality separate from that of its members and having perpetual succession. It combines the organizational flexibility and tax status of a partnership with limited liability for its members. LLP in UK can be formed with minimum two members with no maximum limit of partners. The partnership law generally does not apply to LLP in UK.

UK LLP – Book Keeping and Financial Reporting

LLPs in UK are required to prepare audited accounts for each financial year either under UK GAAP or international accounting standards. If any LLP has subsidiaries then it must also prepare consolidated accounts. These audited accounts are required to be submitted to the Registrar of Companies within 9 months of the end of financial year and are publicly available. The small and medium sized LLPs which are dormant have to prepare 'abbreviated accounts' just like companies in UK. Certain dormant and small LLPs are also exempt from audit requirement.

Tax Treatment

For income tax purposes, LLPs in UK are generally treated as transparent and have no tax liability. They are generally outside the scope of income tax, Capital Gain Tax (CGT) and corporation tax. However, individual members of LLP are liable to pay income tax and CGT, like partners in an ordinary partnership firm, whereas the corporate partners of LLP are liable to corporation tax, which is around 21 percent. The distributed or retained income of individual partners of LLP are taxed in accordance with their contribution or entitlement to share profit. There is no tax charge on introducing a new member in LLP or on changing the profit shares between members.

With effect from 6th April 2014, new taxation rules for LLPs have been introduced in UK, according to which some LLP members who have been taxed as self-employed will now be taxed as employees of LLP. Both the affected LLPs and their members will have to pay national insurance as if the affected members were employed by the LLPs. This new tax changes have been made to ensure that LLP members who do not fit under the definition of a 'partner' do not benefit unfairly from the self-employed status to which LLP members are entitled under the law. As per new provisions, any member who meets all the following three conditions shall be regarded as an employee of the LLP:

Condition A where 80 percent or more of partners pay is 'disguised salary' and is either fixed or if variable, varies without reference to the amount of LLP's profits or losses; or is in practice unaffected by LLPs overall profits or losses.

Condition B where the partner has significant influence over the affairs of the LLP

Condition C where the partner's contribution to LLP is less than 25% of the disguised salary

8) Germany

In Germany, an LLP (GmbH & Co. KG) is a form of limited partnership (KG) in which the general partner (komplementar) is a limited liability company (GmbH) who is fully liable for the GmbH & Co. KG's debts and liabilities. The liability of limited partners (kommanditisten) is limited to their respective share of the partnership capital. Normally, such forms of hybrid partnership are mostly adopted in Germany by medium sized companies and family businesses.

The GmbH & Co. KG is formed as a result of conclusion of a partnership agreement between the general partner and the limited partners. The agreement is signed by the registered Managing Director of the GmbH and the limited partners. Typically, the shareholders of general partner (GmbH) are identical to the limited partners of the KG. The GmbH & Co. KG must register with the local trade office and its name be entered in the commercial register, through a joint application submitted by all the partners, duly certified by a notary.

German LLP – Book Keeping and Financial Reporting

Under the Commercial Code and the Federal Fiscal Procedures Act every business entity, including the GmbH & Co. KG has to maintain accounting records books, in accordance with the applicable accounting principles. The books of accounts have to be kept in such a manner as to enable an expert third party to obtain insights into the business transactions of the entity and its position within reasonable time. Records and business letters must be kept in Germany or abroad and retained for 6 years. EDP -based accounting systems are acceptable if they meet certain requirements. Doubleentry bookkeeping is the only legally accepted method. At the end of every financial year every entity has to prepare and inventory and financial statements.

Tax Treatment

For income tax purpose, a GmbH & Co. KG is basically treated like a general partnership. The income earned or loss incurred are passed-through to each partner who is individually responsible for reporting and paying tax on his or her share of income through personal income tax return. There is also a trade tax imposed on GmbH & Co. KG which is in range of 12% to 21 percent. There is tax on dividends or any withholding tax.

North America

9) USA

LLP emerged in early 1990s when only two States of USA allowed LLP in 1992. Texas was the first US State to enact a Statute establishing an LLP. Later, over forty States adopted LLP statutes by the time LLPs were added to the

'Uniform Partnership Act (UPA)' in 1996. Presently, every individual State has its own law governing the LLP formation which requires filing certificates with the county and state offices. Although specific rules vary from State to State, all the States have passed variations of the Revised Uniform Partnership Act.

In USA, LLPs is different from general partnerships or a limited partnership as all LLP partners are shielded from wrongful acts or negligence of other partners. The partners are supposed to take an active role in the business of LLP without exposing them to personal liability of other partners, except to the extent of their investment in the LLP. The liability of partners also varies from State to State. Some States in USA have combined the Limited Partnership (LP) with Limited Liability Partnership (LLP) to create 'Limited Liability Limited Partnerships (LLLLPs)'. Majority of the accounting firms as well as legal practitioners are operating as LLP in almost all the States of USA.

USA LLP – Book Keeping and Financial Reporting

An LLP can be a general or limited partnership and treated as same for tax purposes. All LLPs must be registered with the Secretary of the State or similar office by filing a written statement. In some States, there is a requirement for professional LLPs to maintain a minimum level of professional liability insurance or some equivalent. Some States also require that LLPs should file annual or bi-annual returns with the State in order to update about LLP business and its partners for renewal of registration. Some States also levy a special franchise tax on the LLPs.

Tax Treatment

Partnerships are considered 'flow-through' entities for United States Federal income tax purposes. As such, an LLP itself does not pay taxes on its income and instead the owners of the LLP pay tax on their distributive share of the LLPs taxable income, even if no funds are distributed by the partnership to the partners. The Federal tax Law permits the owners of LLP to agree how the income of LLP will be allocated amongst themselves. However, it binds the LLP that such allocation must reflect the economic reality of their business arrangement.

The income earned by LLP is pass through to its partners without being taxed at the entity level. However, an annual report shall have to be filed by the LLP to the Internal Revenue Service (IRS) duly mentioning about the income earned or loss incurred by each partner of LLP. The income received from LLP by the partner must be reported in his / her individual tax return as well.

Eastern Africa

10) Kenya

In Kenya, LLPs are governed under the 'Limited Liability Partnerships Act, 2011' which has come into effect from 16th March 2012. As per this Act, all LLP should be registered in Kenya with the Registrar of Companies. An LLP can be

formed with at least two partners and one manager, who may be a natural person having attained the age of 18 years and is a resident in Kenya. Once being registered under this Act, an LLP becomes a body corporate with perpetual succession with a legal personality separate from that of its partners. The individual partners of an LLP are not liable for the entity's debts and obligations, rather they are liable for their own wrongful acts or omissions. The LLP is also liable for any wrongful acts or omissions of its partners, to the same extent as that partner, where the partner engages in LLP's business or acting on its behalf.

It is required under the LLP Act that every LLP should lodge a 'declaration' with the Registrar verifying that the entity appears to be solvent or not solvent by that date. This declaration is to be lodged not later than 15 months after the registration of LLP and subsequently once in every calendar year at intervals of not more than 15 months.

Kenyan LLP - Book Keeping and Financial Reporting

An LLP is required to keep such accounting and other records that sufficiently explain the transactions and financial position of the LLP and enable a profit and loss account and a balance sheet to be prepared that gives a true and fair view of its state of affairs. The accounting records are required to be retained for not less than seven years after completion of the matters to which they relate. These records are available for inspection to partners as well as the Court of Law on demand, failing which LLP and its partners may be fined with imprisonment.

Tax Treatment

For income tax purposes, an LLP is considered equivalent to that of an ordinary partnership in Kenya. The partnership income is taxed in the hands of individual partner and not at the firm level. The partners are deemed self-employed and each partner of LLP shall have to report his/ her share of income on personal tax return. The individual partners will pay income tax on their profit share and are required to file copy of accounts as part of their annual tax filing obligations.

Oceania

11) New Zealand

In New Zealand, LLPs are governed by the 'Limited Partnerships Act, 2008' which came into force from 2nd May 2008. A limited partnership is a legal business entity and considered similar to Limited Liability Partnerships found in other jurisdictions. Under this Act, a partner is defined as a general partner and a limited partner. There should be at least one general partner and one limited partner with not maximum limit of partners. The limited partners are not involved in the general management of partnership and their liability is limited to their investment. The general partner, however, is involved in day-to-day management and has not limitation of liability.

New Zealand LLP - Book Keeping and Financial Reporting

The limited partnership firm are required to prepare accounts and financial statements in accordance with the generally accepted accounting practice and get them audited by a qualified auditor. The auditor is required to audit the financial statements in accordance with auditing and assurance standards. The copies of the financial statements along with the auditor's report are required to be furnished to each general partner and each limited partner. There is no requirement under the LLP Act 2008 to file the accounts with the Registrar. However, every limited partnership is required to file annual returns to the Registrar signed by a general partner or by a lawyer of a chartered accountant authorized for that purpose.

Tax Treatment

For income tax purposes, the limited partnerships are treated as fiscally transparent. It is not taxed as a separate legal and pass-through entity, under which any income from limited partnership flow through on a pre-tax basis and taxed according to partners profile. However, the losses incurred by partnership entity is passed through to the limited partners in proportion to their partnership holdings. The limited partners are treated as holding the assess of the limited partnership and personally derive the income and deductions.

References

- a) The Limited Liability Partnership Act, 2008 issued by the Ministry of Law and Justice of India on 9th January 2009
- b) Limited Liability Partnership (Amendment) Rules, 2012 issued by the Ministry of Corporate Affairs of India
- c) Limited Liability Partnership Act of Japan issued on May 6, 2005
- d) Limited Liability Partnerships Act, 2012 and Limited Liability Partnerships Regulations, 2012 of Malaysia
- e) Law of the Republic of Kazakhstan on Limited Liability Partnerships and Additional Liability Partnerships of April 22, 1998
- f) The Limited Liability Partnership Act, 2011 of Republic of Kenya
- g) Partnership Enterprise Law of the Republic of China (Amended in 2006)
- h) Doing Business in Germany – The Different Legal Entities and Tax Law Issues – by Hogan Lovells
- i) Doing Business in Japan – by Grant Thornton
- j) Doing Business in Kazakhstan – by SG Global Advice Law firm
- k) Corporate Income Tax subjects in the United Kingdom – by John Snape, School of Law, University of Warwick, UK
- l) Income Tax Treatment of Limited Liability Partnerships (Second Edition) – by: Inland Revenue Authority of Singapore
- m) Partnerships: A Review of two aspects of the Tax Rules – by: HM Revenue & Customs, UK
- n) New York Tax Status of Limited Liability Companies and Limited Liability Partnerships – by New York State Department of Taxation and Finance
- o) Websites of relevant Government Organizations regulating LLP Affairs in selected countries

Please send your comments on this research paper on emails: research@icmap.com.pk and shahid.anwar@icmap.com.pk