Incorporation of a ‘Private Company’ and Legal Compliances – An Overview

PRESENTATION BY –

• YOGI SRIVASTAVA, COMPANY SECRETARY
• SWATI OMER, CHARTERED ACCOUNTANT
Meaning of Company

A company is an association of both natural and artificial persons and is incorporated under Companies Act 2013.
Features of a “Company”

- Separate Legal Entity
- Limited Liability of members
- Perpetual Succession
- Separate Property
- Transferability of Shares
- Capacity to Sue and Be Sued
- Contractual Rights—
- Separate Management
Meaning of Private Limited Company

As per Companies Act 2013, The Company is a ‘Private Company’ in which:

a) Public Issue is not allowed.
b) Minimum 2 and maximum 200 persons can become members.
c) Deposits can be taken from members only.
Incorporation of a Private Ltd Company

- Ministry of Corporate Affairs has now simplified the process of Incorporation of a Private Limited Company with the launch of E form Spice INC 32.

- Now a Private Limited Company can be incorporated in maximum of 4 days by filling E form Spice INC 32 with registrar of companies and paying the fees.
Steps involved to incorporate a Private Ltd Company

<table>
<thead>
<tr>
<th>Step No</th>
<th>Description</th>
<th>Authority</th>
<th>E Form/ Form to be filed</th>
<th>Fees (Rs.)</th>
<th>Disposal</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Apply Digital Signature</td>
<td>Certifying Authority</td>
<td>DSC Application from</td>
<td>750</td>
<td>1 day</td>
</tr>
<tr>
<td>2</td>
<td>Apply for Director Identification (DIN)</td>
<td>ROC</td>
<td>DIR-3</td>
<td>500</td>
<td>2 days</td>
</tr>
<tr>
<td>3</td>
<td>Propose at least 6 desired names of the company in preference order, names will be reserved for 60 days.</td>
<td>ROC</td>
<td>INC-1</td>
<td>1000</td>
<td>2 days</td>
</tr>
<tr>
<td>4</td>
<td>Incorporation</td>
<td>ROC</td>
<td>Spice INC 32</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(I) Incorporation of the company</td>
<td>ROC</td>
<td>Spice INC 33</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(II) E Memorandum of Association (Linked to INC 32)</td>
<td>ROC</td>
<td>Spice INC 34</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(iii) E Articles of Association (Linked to INC 32)</td>
<td>ROC</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Once the Spice form is uploaded, A link will be generated for applying PAN and TAN (Tax Deduction and Collection Account Number) of company</td>
<td>ROC</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Download PAN\TAN e forms, mention SRN no of SPICE INC 32 form and upload the form with in 2 days of uploading E form Spice INC 32</td>
<td>ROC</td>
<td>Form 49A and 49B</td>
<td>4610</td>
<td>4 days</td>
</tr>
</tbody>
</table>

DIR-3, INC-1, 32, 33, & 34 are required to be certified by a practicing CA\CS\CMA
COMPLIANCE
1. Minimum no of Directors – 2
2. Minimum no of Members – 2
3. Subscribers to Memorandum will be first directors
4. Appointment of first Auditors with in 30 days from Incorporation.
5. Statutory Audit of Accounts
6. Board Meetings
7. Annual General Meeting
8. Statutory Registers
Board Meetings

- **First meeting:** within 30 days from the date of Incorporation of company.

- **Subsequent meetings:** minimum Four Board Meetings (2 meetings in case of small company) shall be held in a calendar year. Gap between two consecutive meetings should not exceed 120 days.

- **Quorum:** Minimum 2 directors or 1/3rd of the total number of directors, whichever is greater.

- **Minutes of the meeting:** The discussions of the meeting need to be drafted and recorded in the form of “Minutes of the Meeting” and maintained at the Registered Office of the Company.

- **Participation:** Directors may participate in person or through Video Conferencing.
Annual General Meeting (AGM)

- **First AGM** – within 9 months from the date of the closing of the financial year. (i.e. by 31\textsuperscript{st} Dec)
- **Subsequent AGMs** – within 6 months from the date of the closing of its financial year. (i.e. by 30\textsuperscript{th} Sept)
- **Gap of two AGMs** – must not be more than 15 months.
- **Quorum** – 2 members personally present.
- **Agenda** approval of financial statements, declaration of dividends, appointment or re-appointment of auditors, appointment and remuneration of directors etc.
- **Place & Time** The AGM shall be held during business hours on a day which is not a public holiday at the registered office.
7. Statutory Registers to be maintained

i. Register of Members

ii. Register of Debenture Holders

iii. Register of Directors and Key Managerial Personnel and Their Shareholding

iv. Register of Renewed and Duplicate Share Certificate

v. Register of Shares/Other Securities Bought Back

vi. Register of Charges

vii. Register of Loans, Guarantee, Security And Acquisition Made By Company

viii. Register of Contracts with Related Party and Contracts and Bodies Etc. In Which Directors Are Interested

Statutory registers can be kept electronically also.
# Mandatory Fillings with Registrar of Companies

## Annual Filling

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Type of E Form</th>
<th>Description</th>
<th>Time lines from the date of AGM</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>MGT 7</td>
<td>Annual Return</td>
<td>60 days from the date of AGM</td>
</tr>
<tr>
<td>2.</td>
<td>AOC-4</td>
<td>Financial Statements</td>
<td>30 days from the date of AGM</td>
</tr>
</tbody>
</table>

## Periodical Returns

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Type of E Form</th>
<th>Description</th>
<th>Time lines from the date of event</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>MGT-14</td>
<td>Special Resolution</td>
<td>30 days</td>
</tr>
<tr>
<td>2.</td>
<td>ADT1</td>
<td>Appointment of Auditor</td>
<td>30 days</td>
</tr>
<tr>
<td>3.</td>
<td>DIR- 12</td>
<td>Appointment\Resignation of Director\MD\C.S.</td>
<td>30 days</td>
</tr>
<tr>
<td>4.</td>
<td>CHG-1</td>
<td>Creation of Charge</td>
<td>30 days</td>
</tr>
</tbody>
</table>
Compliances for a Private Company in context to Income Tax Act, 1961
PY:-2017-18
AY:- 2018-19
ADVANCE TAX (Sec 208)

- Liability only if advance tax payable in a FY is Rs Ten Thousand or more.
- Due dates for the payment of Advance Tax:

<table>
<thead>
<tr>
<th>Installments</th>
<th>Due Date</th>
<th>% of Income Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st</td>
<td>On or before 15th July</td>
<td>15%</td>
</tr>
<tr>
<td>IInd</td>
<td>On or before 15th Oct</td>
<td>45%</td>
</tr>
<tr>
<td>IIIrd</td>
<td>On or before 15th Jan</td>
<td>75%</td>
</tr>
<tr>
<td>IVth</td>
<td>On or before 15th Mar</td>
<td>100%</td>
</tr>
</tbody>
</table>
Default in case Advance Tax not deposited or less deposited

- Interest. U/s 234B : S.I. @ 1% p.m. or for a part of month if 90% of the tax is not paid before the end of the FY i.e. for default in payment of Advance Tax.

- Interest U/s 234C : S.I. @ 1% p.m. or for a part of month if 90% of the tax is not paid as per the schedule i.e. for deferment in installments of Advance Tax.
TAX AUDIT u/s 44AB

- In case of a Pvt. Co.,
- If Turnover exceeds Rs Two Crore in a FY
- Pvt. Co. is required to get its accounts audited u/s 44AB of IT Act, 1961.
- Tax Audit Report in Form No. 3CA & 3CD has to be submitted.
- On or before 30th Sep of the AY.
Filing of IT return of a Pvt. Co. is whether, whether the Company is in profit or loss.

To be filed in Return Form – ITR 6 electronically under Digital Signature.

Due date for filing of ITR – 30th Sep of the AY.
Consequences of Filing Return after due date i.e. Late Filing

- Liable to penal Interest u/s 234A @1% p.m or for a part of month.
- Penalty of Rs 5000 u/s 271F, if return filed after the end of the AY.
- Losses not allowed to be carried forward & allowed to be set off against any income.
**Income Tax Rates for a Co.**

**AY 2018-19**  **PY 2017-18**

Domestic Company:-

<table>
<thead>
<tr>
<th>INCOME TAX RATE</th>
<th>PARTICULARS</th>
<th>RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Having TO upto Rs 50 crore in a FY</td>
<td>25%</td>
</tr>
<tr>
<td></td>
<td>Having TO exceeding Rs 50 crore in a FY</td>
<td>30%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SURCHARGE</th>
<th>If Taxable Income :-</th>
<th>RATE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Exceeds Rs 1 Crore but below 10 Crore</td>
<td>7%</td>
</tr>
<tr>
<td></td>
<td>Exceeds Rs 10 Crore</td>
<td>12%</td>
</tr>
</tbody>
</table>

- Apart from above Education Cess & Secondary Education Cess @ 3% on IT & SC is also applicable.
MINIMUM ALTERNATE TAX
(MAT) u/s 115JB

- Provision applicable to all Companies.
- MAT payable @ 18.5% of the Book Profits of the Company enhanced by EC & SHEC.
- For calculation of Book Profit, certain exclusions, deductions & incentives have to be added or deleted from the net profits.
Provision of MAT

- According to Sec 115JB,
  - If the IT payable on the Total Income as per the provision of IT Act for any PY is less than 18.5% of the Book Profits of the Co.,
  - Then, such Book Profit will be deemed to be the Company Total Income.
  - & IT will be charged @ 18.5% of the book profit enhanced by the SC & EC & SHEC.
Carry Forward of Losses
(Sec 72)

- Can carry forward a business loss over 8 subsequent AY’s.
- Only if, the Return of Income has been filed within the time limit prescribed U/s 139(1).
- Can be setoff when profits are available provided the same business is continued for which the loss was originally computed.
Carry forward of Unabsorbed Depreciation

- Unabsorbed depreciation can also be carried forward.

- Can be set off against the business profit earned by the company in the subsequent years.
Priority of Set Off

In case, if the carry forward of losses and Unabsorbed depreciation, both have to be adjusted, then following is the priority for set off :-

1. Firstly, Current year Depreciation
2. Secondly, Brought forward Business loss.
3. Thirdly, Brought forward unabsorbed depreciation.
Thank You