Consequences Of HNIs Converting Investment Holding Entities Into LLPs

High net worth individuals looking to convert their investment holding entities into limited liability partnership firms to avoid reserve bank of India scrutiny may run into tax trouble RBI has started categorizing some investment companies into NBFCs even if they have not borrowed or lend a single penny following the DEWAN housing finance corporation and I L & FS debacles two years ago as deemed NBFCs they will be regulated by RBI Wealthy individuals are converting their holding company To avoid being bracketed as deemed NBFCs.

While converting to LLP structure some conditions have to be followed if operational income is more than 51% of the gross income and the remaining income from financial assets is from investment activity or a financial assets are 50% or less than its total assets netted off by intangible assets and then such entities won't be considered deemed NBFCs tax experts said search conversions would not attract tax Certain conditions were met however recent ruling by the ITAT and AAR ruling interpreted these conditions differently.

Ambiguity over this could mean companies converting to LLPs may attract tax to avoid tax such companies must keep there share holdings assets and liability unchanged However condition such as holding period and depreciation in the old company may lead to additional taxes in either case such conversion and structuring are set to attract the taxman's attention there are certain conditions which is which is fulfilled can make conversion of a company to LLP non-taxable.

The conditions to have an asset base of less than 5Cr and turnover of less than 60 Lacs in the preceding three years makes it very difficult to avail this exemption we have a Bombay high court ruling in another context which had held that such transfers are not regarded as transfers itself but there have been few recent ITAT and AAR rulings which have ruled otherwise and made conversion taxable if exemption conditions are not met according to RBI any company can be considered an NBFC even if it is not a lender if it holds 90% of its assets in the form of equity share and it's such size exceeding 100Cr.

Most high net worth individuals use investment vehicles to manage their equity holdings including those in their own holding companies. The fear is that if the RBI were to to regulate these investment companies it would invite additional scrutiny.