Registrations to commence business

The 2nd part of this series analyses the various statutory registrations required, in particular for Sole Proprietorship and Partnership form of business.

Is it better to go single or two to tango ? Questions an entrepreneur needs to ask himself / herself :

- Can I do it alone or do I need more people ?
- Do I require partners for funds or competencies ?
- Am I comfortable working alone or in teams ?
- What is the nature of business I am getting into ?
- What is the market I am addressing ?
- Can I start alone and then explore other forms ?

These and many more need to be answered to decide whether to carry on business as a Sole Proprietor or as a Partnership firm. Whatever be the choice, the following statutory registrations under various enactments need to be taken for carrying on the business activity within the framework of law :

- **Shops & Establishments Act** - Registration under the State-specific Act (eg. Karnataka Shops & Establishments Act, 1961 & Rules) must be examined. The premises from which business is carried on needs to be registered with the authority giving details of number of employees on rolls, nature of business activity, proof of business address (like a telephone bill, lease agreement) etc. The certificate must be displayed at the place of business and renewed at regular intervals. The Act specifies the permissible working hours, overtime provisions, leave with wages etc. It is important to refer to this while preparing an Employment Contract, HR Handbook etc. Sometimes banks insist on this certificate along with PAN to open a bank account.

- **PAN** – this is the Permanent Account Number issued to an individual, firm, company, trust etc. by the Income Tax (IT) Department of India. Over the years all other business registration numbers are being tagged to this and payment and receipt transactions tracked by banks and the Government through this. In case of sole proprietor since the business and the owner are one and the same no separate PAN number need be taken upon commencement of business. Existing PAN of the individual would hold good for the business too. However in case of Partnership firm a different PAN number needs to be obtained and quoted wherever required. RBI has instructed all banks to insist on the PAN number before opening a bank account for its customers. Therefore this is the first registration to be acted upon for commencing a business activity.

- **TAN** – Tax Deduction & Collection Account Number is also issued by the IT department and is required to be taken by quoting the PAN number. It is required for withholding tax (TDS) from payments to vendors, service providers, building owner (on rent), sub-contractor, employees etc. Normally within 7 days from the month of deduction, tax needs to be remitted to the Government. IT Act and Rules must be referred to determine the applicability and threshold limits to Sole Proprietor and Partnership firm.

- **VAT and CST** – This is the Value Added Tax and Central Sales Tax payable on purchase and sale of certain goods as enlisted in the respective enactments (Value Added Tax Act and Central Sales Tax Act). Registration thereunder is required if the business entity (whether proprietor or partnership) is dealing in goods and the turnover crosses a certain threshold limit. General VAT rate across States is 4% to 12.5%, with product / goods wise variation depending on the schedule it falls under. CST is a Central legislation wherein 2% sales tax is applicable on inter-state sale and purchase of goods. In general these taxes on goods are collected by the seller from the buyer and remitted to the respective jurisdictional VAT officer by 20th of the following month. Like all other legislations monthly and annual returns are to be filed with provision for self-assessment and audit by the Department. Most State governments are moving towards electronic filing of returns and online tax payment mechanism.

However consensus for a common Goods and Services Tax (GST) is yet to emerge, which would eventually replace VAT, CST, Excise Duty, Customs & Service Tax, subject to a number of structural changes.

- **Professional Tax** – Commercial Taxes Department that generates VAT and CST also administers the **Tax On Professions, Trades, Callings and Employment** in most States. Depending on the profession or trade practiced, registration under this State enactment is required with monthly payment of Professional Tax. The registration requires annual renewal and filing of returns. Threshold varies from State to State. Respective enactments need to be referred to.

- **IEC code** – this is a PAN based code issued by the Office of the Director General of Foreign Trade (DGFT) which is required for import and export of goods and services. Irrespective of the form of business this code is applicable and to be quoted on all import and export documents (like Bill of Entry and Shipping Bill). It is a one time number that requires updation only if there is change in information eg. change in status of entity, partners, bank details, business activity, location etc. No annual renewal or filing of forms is envisaged.

- **Central Excise** - Manufacturing or producing the goods specified in either 1^{st} and 2^{nd} schedule of the Central Excise Tariff Act, 1985 or purchase or sale or storage of such goods will require registration under the said Act upon crossing the threshold limit of turnover. The rate of duty applicable to various excisable goods varies from "0" to 14 % of the cost of the goods manufactured. For proprietory concerns and partnership firms payment and filing of returns is on a quarterly basis vis a vis a company that needs to complete it on a monthly basis. Needless to say this enactment also requires maintenance of several records, registers and returns albeit in an electronic form. Central Excise duty is vatable i.e. output tax can be set off against the input tax subject to certain conditions.

- **Service Tax** – With a growing service sector, this tax was introduced @ 5% in 1994 until it shot up to 12%. Now it stands at 10.3% (inclusive of education cess) and is applicable on a host of services rendered by a proprietor, partnership firm or company subject to certain conditions. Registration is mandatory upon crossing the ceiling of Rs. 10 lacs turnover in a financial year. It calls for quarterly payment by proprietory concerns and partnership firms and filing of bi-annual returns. Export of services are exempt from service tax subject to certain conditions. So also import of services which attract service tax, subject to conditions. But with no separate legislation enacted and amendments being made year after year to the Finance Act of 1994, the list of services has grown to a staggering number and there are talks of now formulating a negative list so that all other services are taxed automatically. Though registration is online it is advisable to seek professional help in invoicing, charging and accounting to ensure correct rate of tax, timing of invoice, collection & remittance to the Government. Changes are quite frequent with respect to service category, time of levy, payment etc.

Above is an attempt to give an overview of the applicable statutory registrations and taxes that are normally applicable to businesses whether run as a sole proprietor or a partnership firm. It is not meant to be a legal treatise and is consciously scripted in non-legalese, simple language for the understanding of entrepreneurs. Nor is it a comprehensive list. Professionals – do not look for specifics. While it is welcome to be aware and guided by this article, it is advisable to seek specific legal advice and decide course of action.