

**PRODUCERS COMPANIES REGISTERED UNDER PART IXA OF
THE COMPANIES ACT TO BE TREATED AT PAR WITH
COOPERATIVES TO SEEK INCOME DEDUCTION UNDER SECTION
80P OF INCOME TAX ACT**

Collectivization of producers, especially small and marginal farmers, into producer organizations has emerged as one of the most effective pathways to enhance their productivity and realize higher returns for their produce. Different forms to organize producers prevailing in the farming community are cooperatives, PACS, Self Help Groups (SHG), Common Interest Groups (CIGs), Farmers' Club, etc. The Department of Agriculture, Cooperation and Farmers Welfare, in 2013, introduced a National Policy for Farmer Producer Organization and identified Producer Company as the most appropriate institutional form under which to mobilize farmers and build their capacity to improve access to investments, technology, inputs, markets and to address the many challenges faced by farming community. Producer Company is a special case of producer organization registered under the Section IXA of the Companies Act 1956, reference section 465(1) of the Companies Act, 2013. The Department observed that the Producer Companies combine the institutional strengths of Cooperative principles with the flexibility, autonomy and transparency of company and a cooperative society. It combines all the virtues of a cooperative enterprise coupled with the vibrancy and efficiency of a company.

Section 80P of the Indian Income Tax provides for deduction in respect of income of co-operative societies engaged in businesses specified under sub-section (2) of section 80P mainly dealing with providing benefits to its members. This deduction is not available for the FPOs registered under the Companies Act placing them at a disadvantage vis-a vis the co-operative societies undertaking the same activities for its members. During the Workshops and training sessions of FPOs at NIAM, the matter came up for discussion and it was requested that the issue be examined by the Institute and be taken up with the Ministry of Finance for seeking parity with co-operative societies, in deduction of income from specified businesses for FPOs.

Section 581 A(K)(j) of Companies Act defines primary produce as follows:

“Produce of farmers arising from agriculture (including husbandry, horticulture, floriculture, viticulture, and forestry, forest produce, re-vegetation, be raising in farmer

produce) or from in any other primary activity or service which promotes the interest of the farmers or consumers.”

Thus the producer companies registered under Part IX A of the Companies Act are required by law to carry on the same business activities that are listed in section 80P(2).

The provisions of section 581B of the Companies Act require the producer companies to function on the same principles as co-operative societies, for instance- principle of mutuality, principle of voluntary and open membership, democratic control by its members, economic participation by its members, autonomy and independence to be exercised by its members, and providing training, education and information to its members.

Section 581C(5) of the Companies Act clearly mandates that the producer company shall not, under any circumstance, become or be deemed to become a public limited company under the Act.

This clearly reiterates the fact that the organizational structure of the producer companies registered under Part IX A of the Companies Act is envisaged to be along the lines of the co-operative societies. It is therefore not surprising that Section 581J of the Companies Act gives an option to inter-state cooperative societies to become producer companies. In fact, Section 581M allows the benefit of all fiscal and other concessions, privileges, and exemptions granted to the inter-state cooperative societies in connection with their businesses under any law from the date of their incorporation under the Companies Act as producer companies. This was further clarified by Circular No. L-12011/1/2012-I & P dated 23.03.2012 issued by the Department of Agriculture and Cooperation, Ministry of Agriculture, Government of India, as follows:

“As you are aware, a ‘producer company’ is a business enterprise registered under the provisions of Part IX A of the Companies Act, and established on the principle of mutual assistance (listed in Section 581G(2) of the said Act), which are similar to “Cooperative Principle”.In view of the above, the States/UTs may consider to extend the concessions/benefits to Producer Companies formed by farmers at par with cooperative Societies. “

It is interesting to note that in spite of the provisions under section 581M in the Companies Act and the Clarification issued by the Ministry of Agriculture and Farmers Welfare the FPOs have

not been able to avail the benefits of deduction of income under the Income Tax Act available to the cooperative societies.

To deny the concessions under section 80P of the Income Tax Act to the producer companies other than the inter-state co-operatives who have opted for incorporation under section 581J of the Companies Act amounts to differential treatment to similar concerns which is a legal anomaly that is sought to be rectified.

This anomaly is adversely affecting the incorporation of the FPOs under the Companies Act since they do not remain at par with the co-operative societies. This handicap gives a set back to the efforts of collectivization of small farmers into financially viable producer organizations. The requisite amendment in section 80P of the Income Tax Act will give a huge impetus to financial inclusion of small and marginal farmers.