

# VASAI BRANCH OF WIRC NEWSLETTER

November 2020



www.vasai-icai.org



## CHAIRMAN'S COMMUNICATION

Dear Esteemed Members

On 5th November, Vasai Branch has successfully completed 15 years of journey. Thanks for your support & cooperation.

We pay tribute and homage to Dr. B. R. Ambedkar, the Architect of Indian Constitution on 6th December Mahaparinirvan Diwas.

### Increase in the no. of Structured CPE hours being granted in online mode

Taking cognizance of the COVID-19 pandemic situation worldwide when public gathering is still restricted/not advisable, it has been decided by Competent Authority to allow grant of 20 Structured CPE hours through online mode **till 31st**

December, 2020.

Accordingly, following may be noted for information:

"Requirement of completion of 20 hours Structured CPE hours which is mandatory to be completed by Members below 60 years holding COP, in each calendar year, **can now be fulfilled** through online mode (either through Digital Learning Hub or through Virtual CPE meetings including mandatory CPE hours on "Code of ethics" and "Standard on auditing") **till 31st December, 2020.**" To clarify, if a member has earned more than 20 Structured CPE hours through Digital learning Hub and/or VCMs till 31st December, 2020, for compliance purpose, only 20 Structured CPE hours will be credited."

### Waiver of Condonation/Late fee

I further wish to inform that considering the hardship faced by the students, article assistants, members and firms due to COVID-19 pandemic, ICAI have further extended the waiving-off of the condonation fee for late filing of various application forms relating to students, articulated assistants, members and firms till December 31, 2020.

### Submission of Half Yearly Accounts with WIRC & ICAI

Happy to share that we have got our half yearly audited accounts approved and submitted with WIRC & ICAI

Year end is a wonderful time to update our dream journey map. December is the last month of the calendar year and is that time of the year we sit down to take stock of our tangible and intangible achievements. It is that time of the year when we reflect on our journey of the past months, the time of the year when we review our fulfilled and unfulfilled dreams. Any unaccomplished dream should be the driving force to move ahead with greater vigour and enthusiasm. Some let-downs will always be there in life and those should only keep us motivated and stirred up. In the long run, it is our positivity, our achievements and our happy memories that constitute the essence of our lives. We should capitalise on the challenges and emerge successful. We need to build more positive emotional pathways and use the learning experiences gained in things accomplished and that are in the process of culmination. We should have a meaningful life and have faith in our abilities. Remember the words of great Indian artist, poet, nobel laureate and creator of our National Anthem, Rabindranath Tagore - "Faith is the bird that feels the light and sings when the dawn is still dark."

Before I conclude, I wish to inform that last date for payment of Membership /COP fee for the year 2020-21 has been extended up to 30th November, 2020

"Winter is the time for comfort, for good food and warmth, for the touch of a friendly hand and for a talk beside the fire: it is the time for home." – **Edith Sitwell**

*Ankit*

**CA. Ankit Rathi**  
Chairman  
Vasai Branch of WIRC of ICAI

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## CONTENTS

Chairman's Communication .....	1
RTI – The Power Weapon – An Analysis.....	2
Tax Implications for an Indian Resident investing in Stocks listed in the United States of America (USA) .....	4
Multilateral Instruments – A Paradigm Shift in Tax Treaties .....	5
Series on Valuation Methods.....	9
New TCS Provisions on Sale of Goods under Section 206C(1H) ....	11
Value Maximization with Direct Listing (From Dissemination Board To Main Board).....	13



## RTI – The Power Weapon – An Analysis



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**Abbreviations:** Right To Information (RTI), Information Commissioner (IC), Public Information Officer (PIO), Public Authority (PA), Central Information Commission (CIC).

Do you know if the Government is working for you or against you? Do you want to know the whole truth? Do you wish to exercise your power weapon and bring to justice the termites of the society? . . . . . If yes then this write-up is for you!

According to the preamble of the Right To Information Act, 2005; It is, “An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.”<sup>1</sup>

### What is this right all about?

RTI Act, 2005 mandates, timely response to citizen’s requests for government information. The basic object of the RTI Act is to empower the citizens, promote transparency and accountability in the working of the government, contain corruption, and make our democracy work for the people in real sense. It goes without saying that an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed.<sup>2</sup>

### Where to use?

#### 1. Inclusions:

All government agencies, whether they are under a state government or the Centre, come under the purview of the Act. For example, Municipal Corporations, PSUs (Public Sector Units), Government departments, Government owned Companies, Government Universities, Government Schools, Works Departments, including ICAI etc. The list is quite an exhaustive one.

This RTI information is available because it is the taxpayers’ money that is being spent here. Few ministries and departments make online RTI replies available to the public. You can see them on the respective websites.

#### 2. Exclusions:

Twenty-six organisations are exempted from the Act. But all these entities are related to the country’s defence and intelligence, such as RAW, BSF, CRPF, CISF, Intelligence Bureau, National Security Guard etc.

**However, RTI law says that “any information which cannot be denied to a Member of Parliament or state legislature cannot be denied to any citizen.”<sup>3</sup>**

#### How to use?

You can follow the guidelines for filing an RTI application either online<sup>4</sup> or offline<sup>5</sup> as per your convenience as given on the official website [rtionline.gov.in](http://rtionline.gov.in).

#### Loop holes and recommendations:

A research study conducted by the NGOs Satark Nagrik Sangathan (SNS) and Centre for Equity Studies, on the orders of the CIC, along with studies conducted by other institutions has revealed serious shortcomings in the working of the RTI Act, 2005.

1. The SNS study, which analysed 549 orders of the CIC from January to March 2018, found that 7% of the orders contained deficiencies in terms of **not recording critical facts** such as information sought by the appellant. Also, in several cases where **information was denied**, the orders were not adequately reasoned and, therefore, fell under the category of non-speaking orders. Also more than 60% of the denials of information by the CIC were in violation of the Act. According to an RTI ratings report by the Canada-based Centre for Law and Democracy, India remains one of the top-ranked nations but there are several problems with its access regime, the report said, it flagged blanket exemptions under Section 8 of the RTI Act. “The current exemptions are wide and have to be clarified and sharpened,” said M. Sridhar Acharyulu, professor of law at Bennett University, Noida, and a former information commissioner. “Section 24 of the RTI Act allows (the) government to increase the list of exemptions by an executive order... to strengthen the RTI Act, this should be only allowed through the legislature,” he added. Moreover, since 2005, the list of exempted government organizations has increased from 18 to 26. Thus there is an urgent need of reformation in the section 8 or the exemption list of the Act.
2. The SNS study recorded that **time taken for disposal** by the CIC ranged from 36 days of a case being filed to 862 days. A major reason is the non-filing of vacancies in the CIC; due to this the pendency of cases will become acute. To solve the issue pointed out by this study, government should take steps

1. <https://rti.gov.in/rti-act.pdf>  
 2. <https://rti.gov.in/#:~:text=The%20basic%20object%20of%20the,to%20keep%20necessary%20vigil%20on>  
 3. <https://onlinerti.com/about-rti>  
 4. <https://rtionline.gov.in/guidelines.php?appeal>  
 5. <https://www.businessinsider.in/india/article/how-to-file-rti-application-step-by-step/articleshow/72054100.cms#:~:text=RTI%20filing%20offline&text=Address%20the%20application%20to%20the,period%20the%20plea%20falls%20in.>



to reduce the pending appeals and fill the vacant positions at the CIC, so as to assure faster disposal of the applications. In June 2019, about 31,000 appeals were pending; over 9,000 of those pending for over a year and 4 out of 10 positions of Information Commissioners are vacant. According to Anjali Bhardwaj, co-convenor of the National Campaign for People's Right to Information: "Since 2014, not a single appointment has been made in the CIC till the courts intervened." Several information commissions in the states were either non-functional or working at a reduced capacity, found a March 2018 report by the SNS.

3. The law envisages a fixed time limit for the disposal of cases by the PIOs, while the SNS study recorded **violations** of the Act by the PIOs in this regard were **not penalized**. It estimated that, a loss of ₹203 crore was caused annually by the ICs not imposing penalties as required under the law. Taking the study into consideration it is important that the ICs must resolve to start applying the penalty provision of the Act more rigorously. In the cases where PIOs or PAs refuse to comply, the ICs must initiate appropriate legal proceedings.<sup>6</sup>
4. The SNS study recorded a disturbing finding of **gender imbalance and rural-urban divide** in the access to information under the Act. While 91% of the appeals were filed by men, only 9% by women<sup>7</sup> and 75% of the applicants were from urban areas while 25% from rural areas. This is particularly important when close to 48% of the population is female and 69% of the population lives in rural areas as per the 2011 Census. In such a scenario measures like publicity by government is crucial, as not more than 35% are aware of the act in rural areas and about 40% in urban areas<sup>8</sup>; protection of whistle-blowers is of utmost importance as, in March 2018, Nanji Sondarva was allegedly murdered for seeking details of a newly constructed road in his village through RTI. According to an RTI activists set up by the Commonwealth Human Rights Initiative, 84 RTI activists have been murdered since 2005 while 7 activists have committed suicide; more than 350 have either faced assault or harassment. "The central government has not yet enforced the Whistle Blowers Protection Act enacted by Parliament in 2014." the statement added.
5. The people who drafted the RTI Act were very pragmatic in including **Section 4** in the Act. The idea was that proactive disclosure of the most important information by government machinery would reduce the need for citizens to separately seek information. Most studies confirm that more than 50% of the applications filed under the RTI act ask for information

that should have been disclosed proactively under Section 4. It is rightly emphasized by a sub-committee of Information Commissioners that, strict implementation of section 4 is going to be a crucial piece in the success of the RTI act.

6. It is very important to focus on the CIC's order of 2013; the CIC had declared 6 national **political parties as public authorities** under the Act and ordered them to make voluntary disclosures. The order followed an appeal by RTI activist Subhash Chandra Agarwal and the Association for Democratic Reforms after they failed to get details regarding financial donations received by political parties. The order stated that, political parties affect the lives of citizens, and are continuously engaged in performing public duty and thus it would be odd to argue that transparency is good for all state organs but not for political parties, which, in reality, control all the vital organs of the state.
7. To maintain the true spirit of the RTI Act, 2005 the **CIC** should be given the position of a **constitutional body**, as rightly explained by Wajahat Habibullah, a former IAS officer and the first chief information commissioner, The reason is simple: Article 19 (1) (a) of the Constitution guarantees freedom of speech and expression to citizens, but without the RTI, one cannot express oneself. The Supreme Court has also interpreted RTI as a fundamental right—in 1975 and 1982, said Habibullah.<sup>9</sup>

#### Some important case-law:

1. In the case Jiju Lukose vs State Of Kerala<sup>10</sup>, it was held that, Particulars of FIR need not be disclosed to the citizens till investigation is complete.
2. In the case Pio, Housing And Urban Development Corporation Ltd. vs Vishwas Bhamburkar on 11 January, 2018<sup>11</sup>, it was held that, RTI Information cannot be denied for Lack of Aadhaar Card.
3. In the case The Registrar, Supreme Court Of India vs R S Misra on 21 November, 2017<sup>12</sup>, it was held that, No RTI Query Can Lie With Regard to Judicial Decisions.
4. In the case Girish Ramchandra Deshpande vs Cen. Information Commr. & Ors on 3 October, 2012<sup>13</sup>, it was held that, IT Returns is "Personal Information", not under the Purview of RTI Act.
5. In the case Mrharinder Dhingra vs Ministry Of Law & Justice on 17 March, 2016<sup>14</sup>, it was held that, Bar Councils Liable to Provide Information under RTI Act<sup>15</sup>.

6. <https://www.moneylife.in/article/information-commissioners-fight-shy-of-penalising-errant-pios-which-is-gross-injustice-to-citizens-rti-study/58454.html>

7. <https://frontline.thehindu.com/dispatches/article25239258.ece>

8. <https://factly.in/10-years-of-rti-act-what-ails-the-implementation/>

9. <https://www.livemint.com/news/india/five-ways-to-save-the-spirit-of-rti-1564419713844.html>

10. <https://indiankanoon.org/doc/66774080/>

11. <https://indiankanoon.org/doc/99434539/>

12. <https://indiankanoon.org/doc/20341280/>

13. <https://indiankanoon.org/doc/160205361/>

14. <https://indiankanoon.org/doc/64049570/>

15. <https://www.vakilno1.com/legal-news/important-judgments-on-rti-in-india.html>



- 6. In the case *Shahzad Singh vs Department Of Posts* on 17 January, 2018<sup>16</sup>, it was held that, Information can't be denied on the Ground that File is missing.
- 7. In the case *Adesh Kumar vs Union Of India & Ors.* on 16 December, 2014<sup>17</sup>, it was held that, RTI can't be Denied on the Ground that Information sought is Irrelevant.

**Conclusion:**

The transparency law of India has earned 128 points in the Global RTI Rating. With that score it is on the sixth position of the ranking, it proves that it is a country with a good legislative framework in relation to transparency and access to information.<sup>18</sup>

The below given table gives the bifurcation of points:

Section	Points	Max score
Right of access	4	6
Scope	25	30
Requesting procedures	25	30
Exceptions & refusal	26	30
Appeals	29	30
Sanctions & protections	5	8
Promotional measures	13	16
	$\Sigma = 127$	$\Sigma = 150$

<sup>19</sup>

A record 12.3 lakh RTI applications were filed in 2017-18 with 96 per cent of them being responded to by government offices, making it the best performing year since the law was enacted in 2005 says the data from the latest CIC annual report, shared by the Ministry of Personnel, Public Grievances and Pensions.

The 4% rejection rate is the lowest since 2005 when the RTI Act was enacted by Parliament. The public authorities used exemptions provided under section 8, section 9, section 11 and section 24 of the RTI Act to reject plea for information.

The year proved successful to the efforts of the CIC that all public authorities file their annual returns with it which is mandatory under the RTI Act. On this front, 100 per cent compliance was witnessed during 2017-18 which is a first since enactment of the transparency law, the data showed.<sup>20</sup>

Looking at the positive trend that the above provided data shows it is clear that, as every coin has two sides so is the case with the RTI Act, 2005; reformation and modification regarding some of the above mentioned aspects will pave a way for the RTI Act, 2005 to become an example of excellence and **A Power Weapon** in the hands of the citizens not only on paper but in the practicality as well.

16. <https://indiankanoon.org/doc/186837217/>  
 17. <https://indiankanoon.org/doc/139536578/>  
 18. <https://countryeconomy.com/government/global-right-information-rating/india>  
 19. <https://www.rti-rating.org/country-data/India/>  
 20. <https://indianexpress.com/article/india/highest-rti-applications-filed-2017-18-lowest-rejections-since-2005-cic-data/>



**Tax Implications for an Indian Resident investing in Stocks listed in the United States of America (USA)**



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**Introduction:**

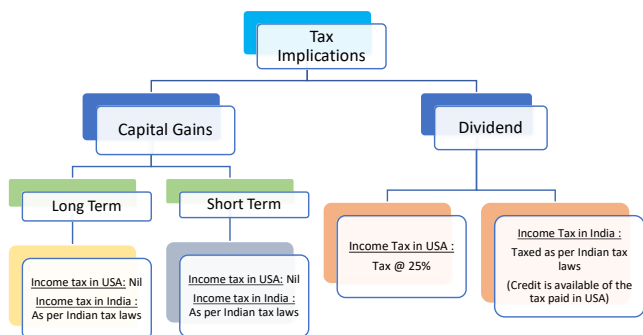
A lot of Indian retail investors are now investing in USA listed stocks like Amazon, Facebook, Netflix, Apple, Google and Microsoft. Due to the advent of online trading platforms it has become very easy to invest in foreign stocks. US \$442 million were remitted by individuals under Liberal Remittance Scheme (LRS) in the year 2017-18 to invest in Foreign Equity and Debt. Currently, RBI allows remittances up to USD 2,50,000 per individual in a single financial year under the LRS.

However, when an Indian investor thinks about buying international stocks, he should first understand the tax implications of the returns that he may earn on these investments. Understanding the tax implications is necessary to ensure that the net returns are worth the effort and the risk.

Income from international stocks can be classified as:

- 1) Capital gains
- 2) Dividend

The tax implications on Capital Gains is different from the tax implications on dividend income. A careful reading of USA taxation laws, Indian Income Tax, 1961 and the Double Taxation Avoidance Agreement (DTAA) between India and USA is required to obtain a full understanding of the tax treatment. If the assessee is an Indian resident who is a Non-resident Alien in the USA (for tax purposes), the below flowchart can be used a ready reckoner for understanding the taxation on income from US-listed stocks.



### Capital Gains:

On sale of a stock listed in an USA-based stock exchange, the capital gains earned, whether short term or long term, shall not be taxable in the USA. However, the same capital gains will form part of the assessee's taxable income in India. Thus, if the assessee buys shares worth \$800 and sells them at \$1000, the capital gains of \$200 will not be taxed in the USA but the same will be taxed in India.

For the purpose of Income Tax, these shares are considered as unlisted shares as these are not listed on Indian Stock Exchanges. As per proviso to section 2(42A) of the Income Tax Act, 1961 period of holding of 24 months or more will be classified as long term. Holding period of less than 24 months will be considered as short-term.

The long-term capital gains will be taxed at the rate of 20% plus applicable surcharge and cess. Indexation benefit is available.

The short-term capital gains will be taxed as per the slab rates applicable to the assessee.

The above treatment of capital gains is in line with Article 13 of the DTAA.

### Dividend:

The dividend earned is taxable in both the countries i.e. India as well as the USA. The standard rate of tax applicable to a non-resident alien in the USA is flat 30%. However, as per article 10 of the DTAA, a flat rate of 25% is applicable to Indian investors. The same dividend is also taxed in India as per the Income Tax laws applicable in India. To avoid double taxation, the DTAA allows the assessee to claim tax credit of the tax paid in the USA against the tax payable in India.

To understand it better let's take an example. Say, the assessee has earned dividend of \$100 on the USA listed stock. He/she has to pay \$25 ( $\$100 * 25\%$ ) as tax in the USA. If he/she falls under the 30% tax slab in India, tax payable on dividend earned in the USA will be \$30 ( $\$100 * 30\%$ ). However, he/she can avail the credit of the tax paid in the USA. Hence, net tax to be paid in India will be \$5 ( $\$30 - \$25$ ). [Cess and surcharge (if applicable) too will be charged but have been ignored for the purpose of this illustration]

The amount needs to be converted in INR before calculation. As per section 115 on the Income Tax Act, the rate of exchange for the calculation of the value in rupees of any income accruing or arising or deemed to accrue or arise to the assessee in foreign currency or received or deemed to be received by him or on his behalf in foreign currency shall be the telegraphic transfer buying rate of such currency as on the specified date.

### Conclusion:

Investing in foreign stocks is very appealing to young investors. Holding shares of global tech giants like Google and Facebook in the portfolio sounds very glamorous. However, at the end of the day what matters is return on Investment. While buying foreign stocks it is equally important to consider macro factors like currency movement, geo-political relations between the two countries and relevant laws and regulations. Hope this article helps you in making smart and well-thought investing decisions. Happy Investing!



## Multilateral Instruments – A Paradigm Shift in Tax Treaties



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### Overview

The Multilateral Instrument (MLI) is a unique instrument developed by the Organization for Economic Cooperation and Development (OECD) to prevent BEPS. The MLI is outcome of BEPS Action 15 and is designed to swiftly implement

the tax treaty related measures arising from the G20/OECD project, without the need to renegotiate double tax treaties.

### Applying the MLI to a tax treaty

The way that the MLI impacts a particular double tax treaty depend upon the respective MLI positions of the two countries – so the

impact of the MLI will differ from treaty to treaty. An MLI can only take effect if ratified by both partners to the tax treaty. Once ratified, the adopted articles come into force and become applicable to the tax treaty (Covered Tax Agreement 'CTA') from a predetermined date.

India has notified 93 bilateral treaties to be covered by the MLI. The MLI has taken effect for 25 of these treaties from 1 April 2020. The CBDT periodically publishes the "Synthesized Text" of Indian tax treaties as and when they are prepared.

Some of the key Indian tax treaties which MLI have entered into force w.e.f. 1 April 2020:

Australia, Finland, France, Ireland, Japan, Netherlands, Singapore, United Kingdom.

Mauritius is not yet a signatory or a party to the MLI. Interestingly United States of America is also not a signatory to the MLI.



**Broad Architecture of the MLI**

Broadly, the MLI is structured under four categories: hybrid mismatches (Article 3 to 5), treaty abuse (Article 6 to 11), avoidance of PE status (Article 12 to 15) and dispute resolution (Article 16 to 26).

The Explanatory Statement to the MLI amplifies the understanding of MLI Articles.

OECD website covers a list of signatories of the MLI, information on the Articles of the MLI that these signatories have chosen to opt, and an MLI matching database (Link<sup>1</sup>).

**Brief synopsis of key MLI provisions and India’s position on the same<sup>2</sup>**

MLI Article	India’s Position	Possible effect on India’s CTAs
Article 3: Transparent Entities	Not adopted	No effect
Article 4: Dual resident entities	Adopted	Can amend to the extent treaty partner has not reserved partly or entirely
Article 5: Application of methods for elimination of double taxation	Adopted	Can amend only if the treaty partner has opted for Option C
Article 6: Purpose of a CTA	Adopted preamble in Article 6(1) Not opted for language in Article 6(3)	Preamble as per MLI will be part of all CTAs Article 6(3) will not apply to any CTA
Article 7: Prevention of Treaty	Adopted Principal Purpose Test (PPT) Opted for Simplified LOB	PPT rule to apply to all CTAs Simplified LOB applies only if the treaty partner has also opted for it
Article 8: Dividend Transfer Transaction	Adopted	Can amend to the extent treaty partner has not reserved partly or entirely
Article 9: Capital gains from alienation of shares or interests of entities deriving there values principally from immovable properties	Adopted the rule in Article 9(1) Opted for the provision in Article 9(4) that includes share / interest in a partnership or trust	Can amend based on Article 9(1) to the extent treaty partner has not reserved partly or entirely Article 9(4) will apply only if the treaty partner has also opted for the same
Article 10: Anti abuse rule for PE in third country	Adopted	Can amend to the extent treaty partner has not reserved partly or entirely
Article 11: Application of tax agreement to restrict a party’s right to tax its own resident	Adopted	Can amend to the extent treaty partner has not reserved partly or entirely
Article 12: Artificial avoidance of PE status through Commissionaire arrangement and similar strategies	Adopted	Can amend to the extent treaty partner has not reserved partly or entirely
Article 13: Article avoidance of PE status through the specific activity exemptions	Adopted	Can amend to the extent treaty partner has not reserved partly or entirely
Article 14: Splitting up of contracts	Adopted	Can amend to the extent treaty partner has not reserved partly or entirely

1. [OECD.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-beeps.htm](https://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-beeps.htm)  
 2. Source – OECD Website



### Major changes to Indian Tax Treaties through MLI

- Modification to the Preamble – Prevent ‘Treaty abuse’ and ‘Treaty Shopping’.
- Expansion of scope of Permanent Establishment (PE)
  - Independent Agent scope expanded (i.e. where agent provides services to closely related entities), Dependent Agent PE rule
  - PE exclusion for certain activities to now be restricted only if such activities have a Preparatory or Auxiliary character
  - Anti-fragmentation rule to prevent avoidance of PE through artificial disintegration of cohesive activities
  - Anti-splitting of contracts rule to prevent artificial splitting of contracts between related parties to manipulate time period threshold for PE creation
  - MLI addresses the avoidance of PE through Commissionaire Arrangements & similar arrangements
- Lower tax rate on dividends available only if shareholding is maintained for past 365 days, not just on dividend payment date.
- Capital gains from transfer of security whose principal value was derived from immovable property in a country would be taxable not just if such value is derived at the time of transfer but at any time in past 365 days from date of transfer.
- Principal Purpose Test (minimum standard)

### Some Practical Issues

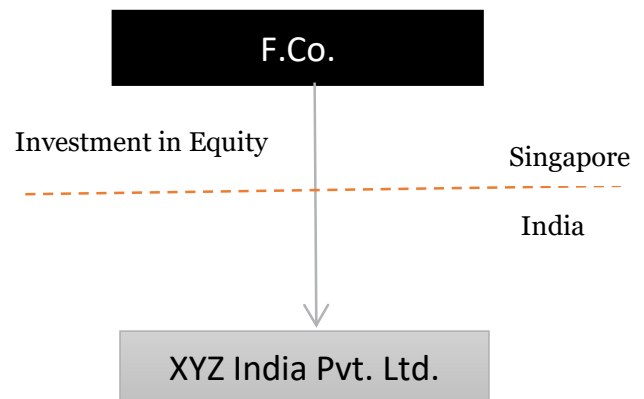
#### Principal Purpose Test

- Under the PPT test, a treaty benefit in respect of an item of income may be denied if it is reasonable to conclude, having regard to the facts and circumstances that obtaining that benefit was “one of the principal purposes” of the arrangement or transaction, where that arrangement or transaction resulted directly or indirectly in that treaty benefit.
- However, the PPT will not be triggered if the granting of that treaty benefit in the circumstances is in accordance with the ‘object and purpose’ of the relevant tax treaty.

#### Case Study

- Investors are based outside of Singapore.
- Investment F.Co. was established in Singapore in 2013 to make investments into XYZ India Pvt Ltd.

- Investment in equity shares of XYZ India were made in April 2014
- Investment F.Co. now in November 2020 proposes to sell investment held in XYZ India and claim capital gains exemption under India Singapore Tax Treaty.
- LOB clause satisfied.
- Whether department can apply PPT?



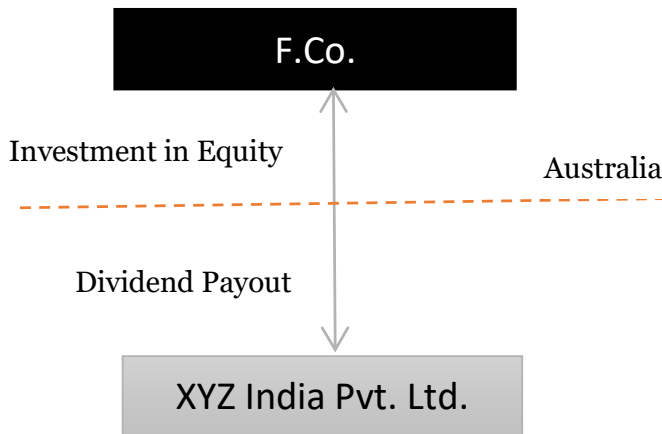
- The principal purpose of investment by F.Co. was to obtain the tax benefit provided under India Singapore Tax Treaty in the form of capital gain exemptions. The tax department may apply PPT on sell of investment by F.Co.
- Even dividend payout on such investments received post April 2020 could attract PPT. A detailed evaluation need to be carried out.

#### Dividend Distribution

- Article 8 of MLI introduces additional criteria of “365 days” minimum holding period for the shareholder to avail concessional tax rate under the CTA.
- UK, UAE, Japan, Singapore, Netherlands opted not to apply the said criteria of 365 days.

#### Case Study

- A.Co. (Australian Company) holds 99% shareholding in I.Co. and is contemplating to distribute dividend on 1 October 2020
- A.Co. acquired 45% stake of I.Co. from S.Co. (Canadian Company) on 1 May 2020 pursuant to inter-corporate reorganization.
- What are major MLI implications?



- Period of holding of shares held by B.Co. to be included to check the criteria of “365 days” holding period for shares acquired by A.Co. pursuant to corporate reorganization.
- Also, applicability of PPT to be checked for the entire arrangement of investment and reorganization) along with underlying supporting documents to substantiate the arrangement.

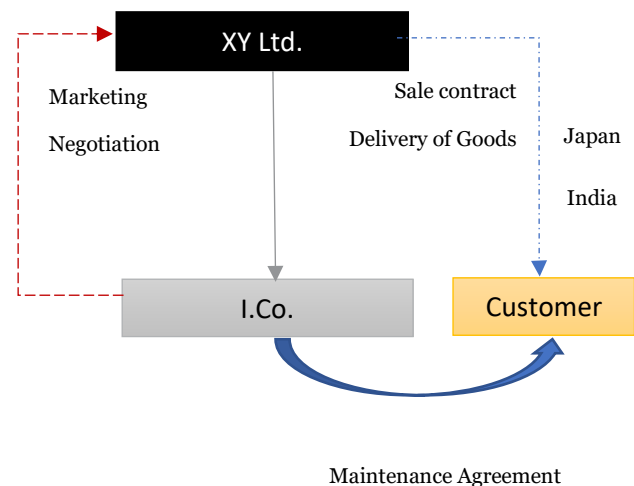
**Permanent Establishment – Marketing Support Services (MSS Model)**

- Article 12 widens definition of agency PE given in the tax treaty to include cases where a person habitually concludes contracts or plays a principal role in conclusion of contracts that are routinely concluded without material modification by enterprise.
- Threshold to constitute independent agent also lowered to exclude a case where the agent acts exclusively or almost exclusively for one or more enterprises to which the agent is closely related.
- Singapore, Australia, UAE, Netherlands, UK – opted not to apply. Japan opted to apply

**Case Study**

- XY Ltd. is a manufacturer of electronic gadget based out of Japan.
- I.Co. is a subsidiary of XY Ltd.
- I.Co. has entered into a service agreement with XY Ltd. for carrying out the following functions in India:
  - Marketing support services
  - Negotiation with Indian customers

- Sale contracts are entered directly between XY Ltd. and customers in India;
- I.Co. also provides after sale services to customers of XY Ltd. under and independent maintenance contract;
- Whether I.Co. constitutes a business connection or PE of XY Ltd. in India



- In the instant case, I.Co. is not concluding the contract but it is playing key role in conclusion of contract (negotiation of contract) and such contracts are routinely concluded by XY Ltd. without material modification. The said arrangement can lead to potential agency PE exposure for XY Ltd. in India under the new era of MLI.
- It is imperative for XY Ltd. to maintain adequate documentation to substantiate that the I.Co. does not act as an agent or does not play key role in conclusion of contract. It is important to demonstrate that the active involvement of overseas entities in conclusion of sale contract or as an alternative F.Co. should relook into the business model and switch to buy-sell business model to mitigate exposure of PE. The Indian entity should be remunerated on an arm’s length basis considering the FAR analysis.

**Conclusion**

Various tax-related factors have an impact on decisions on inbound and outbound investments, structuring of transactions, financing and other cross-border transactions. Due to the changes made in Indian tax treaties because of the MLI, businesses will need to evaluate the consequences to their fact patterns, consider re-arranging these and apply appropriate safeguards in transactions.







## Series on Valuation Methods



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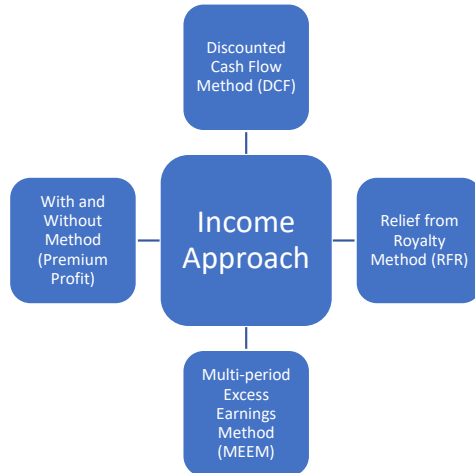
### Income Approach

Definition of Income approach as per the ICAI Valuation Standard-101 is

“It is a valuation approach that converts maintainable or future amounts (e.g., cash flows or income and expenses) to a single current (i.e. discounted or capitalised) amount. The fair value measurement is determined on the basis of the value indicated by current market expectations about those future amounts.”

Valuation Methods which are commonly used under Income Approach are:

In the last article we have discussed about the DCF Method, in this article we will discuss about Relief from Royalty (RFR) Method used under Income Approach. This method is predominantly used for the valuation of intangible assets such as software, patent, trademark, brand etc.



### Relief from Royalty (RFR) Method

The premise of the Relief from Royalty Method is that without ownership of the subject intangible asset, the user of that intangible asset would have to rent it in return for the rights to use it. Thus, by acquiring the intangible asset, the user is relieved from these payments.

The after-tax present value of these theoretical outflows is deemed representative of the present value of income attributable to the asset (income approach), which is an indication of the asset's value. The net revenue expected to be generated by the intangible asset (among other contributory assets) during its expected remaining life are multiplied by the appropriate royalty rate.

This rate is either derived from a benchmark established on the basis of comparable arm's length royalty or licensed agreement, or derived from internal license agreements between entities (though agreements between related parties have to be carefully analysed, since they are not necessarily representative of a marketplace royalty rate).

The protection/marketing/sustainable costs might have to be deducted from the streams, depending whether the licensor or licensee bear these costs.

More generally, royalties from the marketplace are likely to represent payments for partial rights (right to sell, right to use, right to transfer, exclusive rights, sharing of the economic benefits between licensor and licensee), so that they have to get thoroughly analysed where possible (relevant data may not be available).

### Key steps in deriving a value using the RFR method:

- Use of the projected income statement pertaining to residual useful life of the intangible asset to be valued
  - Analyses of the projected income statement and its underlying assumptions to assess the reasonableness
  - reduce the costs associated with maintaining licencing arrangements for the intangible asset from the resultant royalty savings. Select the appropriate royalty rate based on market-based royalty rates for similar intangible assets, an appropriate royalty rate which can be based on royalty rates of similar transactions or can be determined using the profit-split method. Royalty rate should consider the features of the intangible asset to be valued relevant to the profit attributable to the intangible asset to be valued or the observed transactions to determine the royalty rate. Other factors that should be considered to determine the royalty rate are the significance of the intangible asset to be valued to its owner and the expected economic life of the intangible asset with any risks relating to obsolescence.
- The sources for obtaining these royalty rates can be databases such as RoyaltySource, RoyaltyStat, Markables, etc. or one can even use the SEC Filings if available
- selected royalty rate is then applied to the cash flows so determined
  - apply the appropriate tax rate to arrive at an after-tax royalty savings
  - calculate the present value of the royalty savings using an appropriate discount rate; and
  - as these intangibles usually capitalised and amortised over residual life of the asset, calculate the Tax amortisation benefit (TAB); if any and should be added to the overall value of the intangible asset.



**Illustration for Calculation of Technology Fair Value using Relief from Royalty Method**

**Assumptions**

Useful Life for Valuation Purposes	10.00
Tax Rate	25.17%
Discounting Rate	17.00%
Pre-Tax Royalty Rate	7.50%
Depreciation Rate – WDV	25.00%

**Calculation of Fair Value**

INR Lakhs

Particulars Year	FY 2021 1	FY 2022 2	FY 2023 3	FY 2024 4	FY 2025 5	FY 2026 6	FY 2027 7	FY 2028 8	FY 2029 9	FY 2030 10
<b>Net Sales</b>	<b>725.00</b>	<b>884.50</b>	<b>1,043.71</b>	<b>1,200.27</b>	<b>1,344.30</b>	<b>1,451.84</b>	<b>1,524.43</b>	<b>1,600.66</b>	<b>1,680.69</b>	<b>1,764.72</b>
Royalty Rate	7.50%	7.50%	7.50%	7.50%	7.50%	7.50%	7.50%	7.50%	7.50%	7.50%
<b>Royalty Savings</b>	<b>54.38</b>	<b>66.34</b>	<b>78.28</b>	<b>90.02</b>	<b>100.82</b>	<b>108.89</b>	<b>114.33</b>	<b>120.05</b>	<b>126.05</b>	<b>132.35</b>
Corporate Tax	-13.69	-16.70	-19.70	-22.66	-25.37	-27.40	-28.78	-30.21	-31.72	-33.31
<b>Net Royalty Savings</b>	<b>40.69</b>	<b>49.64</b>	<b>58.58</b>	<b>67.36</b>	<b>75.45</b>	<b>81.48</b>	<b>85.56</b>	<b>89.84</b>	<b>94.33</b>	<b>99.04</b>
Discount Rate	17.00%	17.00%	17.00%	17.00%	17.00%	17.00%	17.00%	17.00%	17.00%	17.00%
Present Value Factor	0.8547	0.7305	0.6244	0.5337	0.4561	0.3898	0.3332	0.2848	0.2434	0.2080
Present Value of Net Royalty Savings	34.78	36.26	36.57	35.95	34.41	31.77	28.51	25.58	22.96	20.60
<b>Sum of Present Value of Net Royalty Savings</b>	<b>307.40</b>									
<b>Tax Amortization Benefit Factor</b>	<b>1.17</b>									
<b>Fair Value 'Technology'</b>	<b>360.82</b>									

**Tax Amortisation Benefit (TAB)**

INR Lakhs

Particulars Year	FY 2021 1	FY 2022 2	FY 2023 3	FY 2024 4	FY 2025 5	FY 2026 6	FY 2027 7	FY 2028 8	FY 2029 9	FY 2030 10
Depreciation per Year	25.00%	18.75%	14.06%	10.55%	7.91%	5.93%	4.45%	3.34%	2.50%	1.88%
Corporate Tax Rate	25.17%	25.17%	25.17%	25.17%	25.17%	25.17%	25.17%	25.17%	25.17%	25.17%
Tax Savings from Depreciation	6.29%	4.72%	3.54%	2.65%	1.99%	1.49%	1.12%	0.84%	0.63%	0.47%
Discount Rate	17.00%	17.00%	17.00%	17.00%	17.00%	17.00%	17.00%	17.00%	17.00%	17.00%
Present Value Factor	0.8547	0.7305	0.6244	0.5337	0.4561	0.3898	0.3332	0.2848	0.2434	0.2080
Present Value of Tax Savings from Depreciation	5.38%	3.45%	2.21%	1.42%	0.91%	0.58%	0.37%	0.24%	0.15%	0.10%
<b>Sum of PV Tax Savings from Depreciation</b>	<b>14.81%</b>									
<b>Tax Amortization Benefit</b>	<b>17.38%</b>									





## New TCS Provisions on Sale of Goods under Section 206C(1H)



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The provisions of sub-section (1H) of section 206C have been made **effective from 1st October 2020 and state that:**

- A **Seller** of Goods is liable to collect TCS from **Buyer** on Sale of **any goods**;

- Turnover of seller is more than ₹ 10 Crores in preceding financial year;

- TCS to be collected if the **Value/Aggregate Value** received for Goods from a buyer is more than ₹ **50 Lakhs in a financial year**;

- TCS to be collected on [**Total Sale Value received – ₹ 50 Lakhs**];
- Rate of TCS is **0.1%**, if PAN of buyer is available [**1% if PAN not Available**].

**The new provisions** of TCS have come into force with effect from 1 October 2020 and according to it if your turnover is more than 10 crores in the previous financial year i.e. the year ended 31 March 2020, then this year you will have to collect and deposit TCS on your receipts from sale of goods from such buyers from whom you received more than ₹ 50 Lakhs as sale consideration during the current Financial year. The TCS is payable on the amount of receipt which is greater than 50 Lakhs and received after 1st. Oct. 2020. The rate of TCS is 0.1% and Presently due to corona Pandemic 25% discount has been given in this tax rate till 31 March 2021 and its effective rate is 0.075%.

S. No.	Question	Answer
1.	Who is Liable??	Tax is required to be collected by a person carrying on business whose total sales, gross receipts or turnover exceeds ₹ 10 crores in the financial year immediately preceding the financial year of sale.
2.	Whether sales consideration includes GST component?	No adjustment on account of sale return or discount or indirect taxes including GST is required to be made for collection of tax under sub section (1H) of section 206C of the Act since the collection is made with reference to receipt of amount of sale consideration.” Thus, the intent is to have the TCS on sales consideration collected including GST
3.	From whom tax shall be collected?	Tax is required to collected from a buyer if following conditions are satisfied: a) There is Sale of Goods b) Seller receives amount of consideration for sale of goods exceeding ₹ 50 lakhs during any previous year.
4.	Timing of Collection of TCS?	Tax should be collected at the time of receipt of amount from the buyer if the value of sale consideration received in a previous year exceeds ₹ 50 lakhs  Ex: Amount received during FY 20-21 is ₹ 1 crore although ₹ 55 lakhs were received prior to 30.09.2020. Now although ₹ 45 lakhs are received post 01.10.2020 but still TCS liability would be on ₹ 45 Lakhs
5.	What is the Definition of Goods?	Sale of Goods Act, 1930 is a specific statute which deals with the ‘sale of goods’ whereas the CGST Act, 2017 deals with tax on ‘supply of goods’. Thus, the definition of term ‘goods’ can be referred to from the Sale of Goods Act, 1930 for the purpose of Section 206C(1H).
6.	Whether Transactions in securities through RSE is liable to TCS	The CBDT has clarified that provisions of this section shall not be applicable in relation to transactions in securities (and commodities) which are traded through recognised stock exchanges
7.	TCS on Motor vehicle?	There is a specific provision in Section 206C(1F) for the collection of tax on the sale of a motor vehicle. Under this provision, the tax shall be collected from every buyer who pays any amount as consideration for the purchase of motor vehicle of value exceeding ₹ 10 lakhs  Vide Circular No. 22/2016, dated 8-6-2016, the CBDT has clarified that the provisions of Section 206C(1F) will not apply on sale of motor vehicles by manufacturers to dealers/distributors.
8.	TCS on Transaction in electricity?	Electricity is a GOOD as per Judicial Precedents. CBDT has clarified that TCS is required to be collected where electricity is purchased directly from electricity generation companies and not through power exchanges.



S. No.	Question	Answer
9.	TCS on sale of Software	The Supreme Court in its landmark decision of <i>Tata Consultancy Services v. State of A.P [2004] 141 Taxman 132 (SC)</i> held that Canned software (off the shelf computer software) are 'goods' and as such assessable to sales tax.  If the sale of software has been treated as a sale of goods then the seller shall be liable to collect TCS subject to the fulfilment of other conditions of this provision.
10.	TCS on sale of Jewellery?	Yes, if other conditions are also fulfilled
11.	TCS on resale of Goods?	Business connection has to be seen i.e. if person re-selling falls within definition of sellers, then he will be liable to collect.
12.	Additional out of pocket expense to be included?	If they form part of the sales invoice then TCS would be collected as it forms part of sales consideration. If separate invoice is issued then not liable.
13.	Rate of TCS?	The tax shall be collected by the seller of goods at the rate of 0.1% of the sale consideration exceeding ₹ 50 lakhs if the buyer has furnished his PAN or Aadhaar, otherwise, the tax shall be collected at the rate of 1%.  TCS for the specified receipts have been reduced by 25% for the period from 14-05-2020 to 31-03-2021 vide The Taxation and Other Laws (Relaxation and Amendment of certain provisions) Act, 2020. Hence, the rate of TCS on sale of goods shall be 0.075% till 31-03-2021
14.	TCS on inter branch transfers?	The condition of sale is not fulfilled in the context of branch transfer. Therefore, the provisions of this section shall not apply in the case of branch transfers.
15.	If buyer has multiple units?	If different units of buyer are under the same PAN or Aadhaar number, the amount received from all such units shall be aggregated to compute the limit of ₹ 50 Lakhs.

This section was introduced by way of Finance Act 2020 and was initially to be made effective from 01-04-2020 i.e. from the beginning of the financial year 2020-21. Now, since, it is being made effective from 01-10-2020 i.e. middle of the FY 2020-21, the pertinent question that arises is whether the consideration received for sales effected up to 30-09-2020 shall be considered while determining the threshold of ₹ 50 Lakh.

Now, CBDT has clarified that since the threshold of ₹ 50 Lakh is with respect to the financial year, calculation of receipt of sale consideration for triggering TCS under sub-section (1 H) of section 206C shall be computed from 1st April 2020. Hence, if a person being seller has already received ₹ 50 Lakh or more up to 30th September 2020 from a buyer, the TCS under sub-section (1H) of section 206C shall apply on all receipt of sale consideration during the previous year, on or after 1st October 2020, from such buyer.

CBDT has further issued a Press Note on 30-09-2020 to provide that TCS shall be applicable only on the amount received on or after 01-10-2020.

**Illustration 1: Sales made to a buyer is less than ₹ 50 Lacs up to 30-09-2020**

1.	Sales up to 30-09-2020	₹ 35 Lacs
2.	Amount received up to 30-09-2020	₹ 25 Lacs
3.	Invoices raised from 01-10-2020	₹ 30 Lacs

As TCS shall be applicable beyond receipts of ₹ 50 Lacs. Therefore, on the initial receipt of ₹ 25 Lacs after 01-10-2020, TCS shall not be applicable. Consequently, TCS shall be applicable as and when ₹ 15 Lacs [₹ 35 Lacs + ₹ 30 Lacs – ₹ 50 Lacs] shall be received.

**Illustration 2: Sales made to a buyer is more than ₹ 50 Lacs up to 30-09-2020:**

1.	Sales up to 30-09-2020	₹ 65 Lacs
2.	Amount received up to 30-09-2020	₹ 30 Lacs
3.	Invoices raised from 01-10-2020	₹ 20 Lacs

As TCS shall be applicable beyond receipts of ₹ 50 Lacs. Therefore, on the initial receipt of ₹ 20 Lacs after 01-10-2020, TCS shall not be applicable. Consequently, TCS shall be applicable as and when ₹ 35 Lacs [₹ 65 Lacs + ₹ 20 Lacs – ₹ 50 Lacs] shall be received.

**Illustration 3: Amount received from a buyer is more than ₹ 50 Lakh up to 30-09-2020:**

1.	Sales up to 30-09-2020	₹ 65 Lacs
2.	Amount received up to 30-09-2020	₹ 55 Lacs
3.	Invoices raised from 01-10-2020	₹ 20 Lacs

As TCS u/s 206C(1H) shall be effective from 01-10-2020, therefore TCS cannot be charged on collections made prior to 01-10-2020. Therefore, in this case, TCS shall be charged on the receipt of amount on or after 01-10-2020 i.e. on ₹ 30 Lacs [₹ 65 Lacs + ₹ 20 Lacs – ₹ 55 Lacs].



### Other- FAQs

1. Does This Also Apply to the Supply of Services?-TCS shall be collected on sale of goods only.
2. Whether TCS shall be collected on export of goods?-No, TCS shall not be collected on export sales being made outside India.
3. How and when to charge TCS from buyer? -can be collected by charging through invoice or The TCS can be collected by charging through debit note
4. What are the compliance obligations cast upon business entities due to sec 206C(1H):
  - TAN number – Seller needs to have Tax Deduction and Collection Account Number (“TAN”). No need to obtain a new number if the seller entity has already obtained TAN for tax deduction at sources (TDS).
  - Collecting the tax – Tax to be collected at the time of receipt of sale consideration.
  - Deposit with Government- The tax collected during the month need to be deposited within seven days of next month. Please note that there is no exception or extended time for the deposit of tax collected in the month of March. (Challan no 281)
  - Filing of statement (Form no. 27EQ)- A quarterly statement of all the tax collected at source during the quarter needs to be submitted within 15 days from the close of quarter as mentioned in Table-1.
  - Issuance of certificate (Form no 27D)– Certificate for tax collection need to be issued to the buyer by seller. Due dates mentioned below:

Quarter Ending on	Due date of submission of return	Due date for issuance of certificate of tax collected
30th June	15th July	30th July
30th September	15th October	30th Oct
31st December	15th January	30th Jan
31st March	15th May	30th May



## Value Maximization with Direct Listing (From Dissemination Board To Main Board)



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Since independence, the Government of India has consistently taken various measures for overall development of capital markets and in order to boost confidence of local investors, the concept of regional stock exchanges was introduced in the 20th century. Accordingly, regional stock exchanges were set up across different states and it was also made mandatory for all companies to also get listed at the regional stock exchanges in their own state. In order to avail tax as well as other benefits, once upon a time over 2 dozen stock exchanges were successfully operating across India. Nearly two decades ago, nationwide stock exchanges embraced advanced systems and modern technologies while expanding their

terminals across the country due to which regional stock exchanges practically lost their relevance.

Most of the regional stock exchanges failed to meet the expectations of investors and in turn, their business was severely affected. Thereafter, SEBI introduced tough norms for all stock exchanges viz. minimum capital structure, shareholding pattern, own clearing house, restrictions on brokers holding stake, etc by issuing a circular in 2012 while highlighting importance of “Risk Mitigation” mechanism. As a result, almost all regional stock exchanges were either closed down or exited few years ago except Calcutta Stock



Exchange (CSE). Currently, there are 3 recognised nationwide stock exchanges ~ National Stock Exchange (NSE), Bombay Stock Exchange (BSE) and Metropolitan Stock Exchange of India (MSEI). All companies which were exclusively listed on closed regional stock exchanges (ELCs) have been transferred to dissemination boards of either NSE or BSE as per the directions of SEBI.

With the closure of stock exchanges, ELCs also ceased to continue as a listed entity with a risk of great loss for all the stakeholders including public shareholders. Therefore, SEBI has allowed Direct Listing mechanism for such companies whereby they may directly get themselves listed on any nationwide stock exchange of their choice after meeting eligibility criteria. BSE is the oldest stock exchange of India with legacy of 145 years and it has largest number of listed companies as compared to any other stock exchanges in India. Even for Direct Listing, BSE has so far been the most preferred choice among ELCs and its eligibility criteria is as below:

1. Paid-up capital, net worth and profitability of ELC
  - a. Issued paid-up capital should be ₹ 10 crores
  - b. Net worth should be ₹ 10 crores after adjusting for losses, if any
  - c. Cumulative net profit before tax for last 3 years should be ₹ 1 crore
  - d. Distributable profits as defined u/s 2(35) of the Companies Act, 2013 are needed
2. Shareholding Pattern
  - a. ELCs must have at least 500 public shareholders
  - b. Minimum 25% public shareholding as per Regulation 38 of LODR is essential
  - c. Promoters' shareholding can not change when ELC is on dissemination board
  - d. Fresh issue of shares is allowed only while complying with SEBI Circular No. SEBI/HO/MRD/DSA/CIR/P/2016/110 dated 10-0-2016
3. Demat Connectivity
  - a. Shareholders need to be provided demat connectivity through both depositories
  - b. At least 50% of public shareholding and 100% of promoters' shareholding need to be compulsorily in dematerialised form
4. Compliance Status
  - a. ELC needs to furnish compliance status with LODR under Regulations 6, 7, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 31, 33, 34, 38, 40, 42 and 46 besides share capital audit report and secretarial audit report
  - b. If any disciplinary action had been initiated by SEBI against ELC, its promoters or directors then the period

of debarment should have been elapsed at the time of making application

- c. No proceedings are pending against ELC under the provisions of Insolvency & Bankruptcy Code, 2016 and further, no winding up proceedings had been initiated under any other laws
5. Lock-in of Shares
  - a. Entire share capital issued by ELC under preferential allotment mechanism will be subject to lock-in for a period of 1 year
  - b. Shares held by the promoters will be subject to lock-in for a period upto 3 years from the date of listing
6. Other Requirements
  - a. Full time Company Secretary needs to be appointed on the payroll
  - b. ELC need to submit its corporate profile based on the prescribed format as certified by the Managing Director / Company Secretary
  - c. A website containing all relevant operational and financial information as required under LODR need to be maintained
  - d. Submission of "Nil" Investors Complaints Report from SCORES is necessary
  - e. Site visit will be conducted at the Registered Office of ELC and it can not be shifted after applying for Direct Listing

BSE is charging an amount of ₹ 50,000 from ELCs towards scrutiny fees while accepting application and if it is in order then an amount of ₹ 10,00,000 is collected towards the processing fees. If any ELC was earlier delisted by BSE in the past then an additional amount of ₹ 5,00,000 would be charged towards admission fees. NSE and MSEI also have their own norms for Direct Listing on similar lines with differential fees structure.

ELC needs to be very diligent while applying to stock exchange and attach all necessary documents properly because if its application is rejected then it will have to wait for minimum 6 months after the date of rejection. If application is rejected for the second time then that ELC would not be eligible to apply again.

#### Role of Chartered Accountants

Capital markets have emerged as the preferred mode of raising capital in the corporate sector and even Government companies have started regularly accessing it over last few years through IPOs. In order to ensure quality, SEBI has introduced tough norms for IPO and it is difficult for many small companies to meet this eligibility criteria. However, SEBI has allowed companies listed on regional stock exchange as well as dissemination boards to get listed on nationwide stock exchanges at highly concessional norms and unlock value for all stakeholders. These ELCs are spread across India but each of them are regularly taking services



of CAs and hence, CAs are best placed to spread awareness about benefits of listing on nationwide stock exchanges among ELCs.

Moreover, while applying for Direct Listing, ELCs need to furnish various documents / undertakings and further, they need proper guidance throughout the entire process. As per BSE's requirements, following certifications are needed from Practising Chartered Accountant or Practising Company Secretary to confirm whether:

- a. Entire issued capital consisting of given number of shares of ELC was listed on the given regional stock exchange stock Exchange since its date of listing?
- b. ELC has undergone any changes in its shareholding pattern which suggests change of control of ELC at the time of listing on nationwide stock exchanges? Any change in shareholding, due to increase of capital as is prescribed in SEBI circular SEBI/HO/MRD/DSA/CIR/P/2016/110 dated October 10, 2016.
- c. ELC or its promoters or promoter group entities or the directors are / have been debarred or disciplinary action taken by SEBI or a recognized stock exchange? If yes, then the name of the person / entity along with the period of debarment.
- d. ELC is identified as "Vanishing company" by the Ministry of Corporate Affairs?
- e. Allotments of equity shares made during the preceding two year from the date of de-recognition of the RSE had been made in compliance with the applicable rules and regulations including the provisions of SEBI (ICDR) Regulations, 2009 and the amendments, thereof?
- f. Allotments or changes in the shareholding, if any were in compliance with the provisions of SEBI Takeover Code, 2011

markets, there has been an increasing trend of investors tapping capital market avenues as compared to traditional options like bank deposits, government saving schemes, insurance policies, etc. Indian capital markets are valued above USD 2 Trillion and also feature among top 10 capital markets in terms of value globally. Some investors route their investments through mutual funds which in turn invest in listed companies and so, good listed companies with sound business model are always in demand even if they are making losses temporarily or have smaller size. Already hundreds of ELCs have got themselves successfully migrated to nationwide stock exchanges using Direct Listing window and also created value for their shareholders.

Around 2000 companies are currently available on the dissemination boards of BSE and NSE and barring the companies which are already under liquidation / liquidated, others are technically eligible for apply for Direct Listing on satisfaction of eligibility criteria. Further, there are large number of companies which are actively listed on a regional stock exchange like CSE and many of them would also be eligible for getting listed on the nationwide exchanges after complying with above norms. Companies on dissemination board are not considered to be listed companies legally and further, hardly any trading is happening on CSE due to which such companies may have hardly any option left for value creation. So, it may be recommended for ELCs from dissemination board to tap this once in a lifetime opportunity and get listed on nationwide stock exchanges to access wider pool of investors besides increasing flexibility. Even companies which had been delisted by BSE in the past are also allowed to use this facility and get themselves listed on BSE again. Given the simplified procedure with relaxed norms, ELCs need to act quickly to migrate to the nationwide stock exchange before norms are changed; or else they may miss this golden opportunity forever.

*"Opportunities are like sunrises. If you wait too long, you miss them." – William Arthur Ward*

### Final Opportunity For Value Creation

SEBI is globally regarded as one of the finest regulators and with the series of initiatives taken by it for development of capital



Editor: CA. Ankit Rathi Published by Vasai Branch of Western India Regional Council of The Institute of Chartered Accountants of India at Finesse Graphics and Prints Pvt. Ltd., 309, Parvati Ind. Est., Sun Mill Compound, Lower Parel, Mumbai 400 013. Tel. : 4036 4600

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