

JIGTA

Vol. III | No. 2 | December 2021

Your Quarterly Companion on Tax & Allied Topics

Learning Today Leading Tomorrow...



ESTD. 1926
ज्ञानं परमं बलम्

**The Chamber of
Tax Consultants**

Mumbai | Delhi

www.ctconline.org



The Chamber of Tax Consultants



THE CHAMBER OF TAX CONSULTANTS

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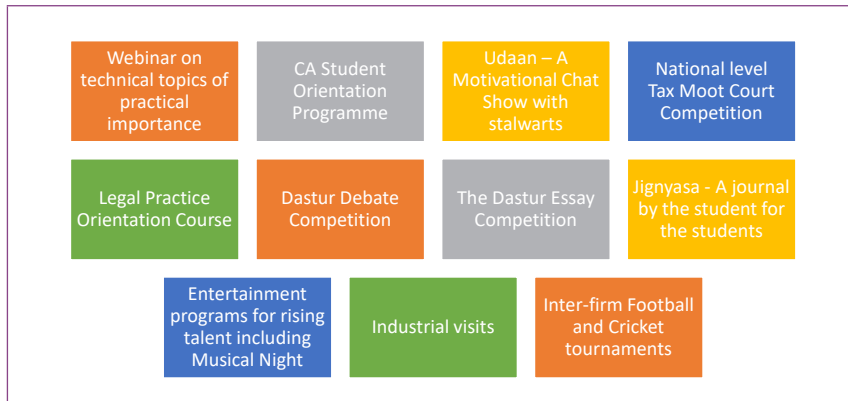
READER'S SUGGESTIONS AND VIEWS

We invite the suggestions and views from readers for improvement of **Jignyasa**.
Kindly send your suggestions to office@ctconline.org

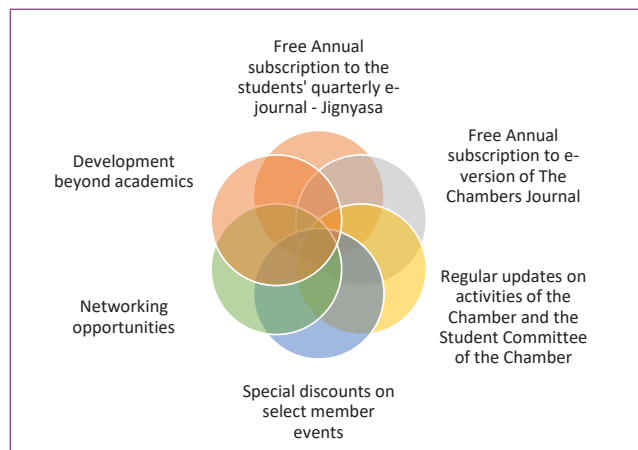


Become a Student Member of The Chamber of Tax Consultants

What are the initiatives/programs organised by the Chamber for Students?



What are the benefits of becoming a student member of the Chamber?



Who can become a Student Member?

Any person, who:

- ✓ has completed 18 years of age;
- ✓ is not otherwise eligible to be a member of the Chamber;
- ✓ is pursuing his/her education as a student and has enrolled as a student of Law, Chartered Accountancy, Cost and Management Accountancy, Company Secretary, Chartered Financial Analysts, Business Management or Management Accountancy or Masters in Commerce or such other course approved for this purpose by the Managing Council shall be eligible to be a Student Member.

What are the fees for becoming a Student Member?

The fees for becoming a student member is merely Rs. 590/- [Rs. 500/- + Rs. 90 (GST @ 18%)]

How can one enroll as a Student Member?

You may download the membership form using the below mentioned link

Link : <https://rb.gy/rw3xde>

You can also get in touch with the Chamber's office at:

Address : 3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai 400 020

Email : office@ctconline.org

For any queries, you can also get in touch with Mr. Hitesh Shah (Manager) at:

Mobile : 7977258507



POLICY FOR CONTRIBUTION OF ARTICLES FOR JIGNYASA

Who can contribute?

The Student Members of The Chamber of Tax Consultants shall be allowed to contribute articles to the students' e-journal "**Jignyasa**"

For which columns shall contributions be accepted?

Every issue of Jignyasa shall have the following four columns for contributions from students:

1. Information Technology
2. Current topics related to the profession
3. SOP on subjects that are related to upcoming due dates
4. A general topic that is relevant to the student members of the Chamber

What is the selection process of the article for publishing?

The selection of the articles to be published shall be based on the following parameters:

1. The topics should be relevant to the Students Members of the Chamber covering the various areas of practice.
2. The Article to be published should be original and must adhere to strict originality guidelines of the Chamber. A declaration to this effect should be submitted to the Chamber.
3. Subjects related to current topics or subjects which are related to the due dates falling in the next quarter shall be given preference.

What are the technical requirements for the article?

1. The article should contain an executive summary of around 100 words.
2. The list of references should be submitted at the end of the article.
3. A photograph of the author should be provided along with the article.
4. The article should be shared only in word format. No other format shall be accepted.



5. There is no specific restriction on the number of words for the article, but preference shall be given to a well written, the most technically correct, complete and concise article.

What is the review process?

The student is advised to approach a member of the Chamber to be his/her mentor for the article. If the interested student cannot find a mentor, the committee shall help him/her approach the members.

Each article shall then be forwarded to an expert for vetting and verification.

The article post vetting and verification shall be forwarded to the author with suggestive changes. Once approved by the author, the amended article shall be forwarded for publishing.

The articles received which are not published in the current issue of Jignyasa shall be parked in the Chamber's locker for the next issue.

Articles that are not found suitable for publication, communication to the Author of the article shall be made to that effect.



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Invitation to STUDENT MEMBERS to contribute articles for Jignyasa

The Student Committee of the Chamber invites the **Student Members** to contribute articles for the e-journal for Students – **Jignyasa**. The objective of the committee is to make a major section of the journal - for the students by the students. The students can contribute articles on latest updates in the tax and allied laws, Standard Operating Procedures that can be used for the upcoming due dates, current scenarios in various industries or any other topic. You can send through your article in word format on jou@ctconline.org along with your name, firm name/college name and a photograph. From among the articles received, the ones approved by the committee shall be published.



From the President



Dear Students,

It's a pleasure to again connect with you all through this issue of "Jignyasa" for the month of December, 2021. The issue has been delayed this time for the reason that the work season for all of us, be it professionals or students, has been getting extended due to various factors beyond control of all of us. These factors include the fear created by Omicron – the new variant of the pandemic and also by technical glitches, which has been to say the least, frustrating, on the portal of the Income-tax department.

While all of us have been occupied with the work pressure, the Chamber had a clear vision that this journal, which is for the students, should also continue to remain by the students. Accordingly, we waited for the articles to be written by the students. I firmly believe that when a person takes up the assignment of writing such educative articles or to make presentation on any professional subject, he is the biggest beneficiary. The author spends huge amount of time on structuring the article and also in listing various points which need to be elaborated in such articles. This brings in lot of education and also greater degree of confidence about the understanding of the provisions of the law. I am glad that all the authors have now come up with really educative articles after putting in painstaking efforts. While I congratulate them for such brilliant work in these young days, I also need to express my deepest gratitude to each of the authors for spending some part of their busy life for the cause of education. Our thanks are also due to all the mentors for shaping the articles in the correct manner so as to ensure that there are no errors / omissions.

I am sure that the last quarter would have been very thrilling experience for all of you. The work pressure is the not so exciting wrapper of the exciting hidden treasure of opportunities and knowledge which lies within. These are the times where one can apply the theoretical knowledge acquired in the academics to real practical use. If applied in the correct way, the result can be miracles. Only academic knowledge will never serve the purpose unless it is applied in real life situation. Such busy season provides all of us to sharpen our skills and enhance our understanding. I use the inclusive words like "us" and "our" since I feel that I am still a student and will love to remain so for the life time, albeit without the academic tests to be given.

The results of Chartered Accountancy examinations have been announced recently. Some of you might have qualified as Chartered Accountant. I am sure those who have qualified must be on the seventh sky at present celebrating the success, which comes up after extremely committed hard work, absolute dedication and lot many sacrifices made by you and your family on various fronts. You are all well within your rights to be proud of yourself. But at the same time, I suggest you to be also mindful of the fact that now the society looks at you with a different set of expectations. You need to stand up to the new role of a



professional and to ensure that you continue to bring more glory to the profession not only by your knowledge and intellect but also by your overall conduct as a great human being. I wish all the successful candidates all the very best for their glorious career ahead. The field is absolutely open for you all and you have the possibility of selecting the area of expertise which you love the most. At times, multiple choices bring multiple confusion so please be very patient while charting your journey ahead. Do educate yourself in a systematic manner before deciding the career that you want to take up eventually. The Chamber shall be pleased to welcome you as a regular member and will be glad to cater to the newer challenges you are likely to face as a professional. Your path of education can be well lit by the lamps which the Chamber is willing to oil on a continuous basis.

For those who could not succeed in the examinations, please understand that this is just a small, in fact insignificant phase of your overall life. Failing in the academic examinations does not prove anything more than that you had a bad phase where your efforts fall short for various factors, some of which are beyond your control. Do remember that unless you give up your willingness to work hard you are not a loser. Get ready to put up the brave face and come up with even stronger performance at the next attempt. I am sure that it's just a matter of time and therefore it will be inappropriate to read anything more into it.

The activities of the Chamber carry on steadfast manner. The Students Committee has successfully organised one of its flagship event namely the Dastur Debate Competition in virtual mode. I had attended some of the rounds of the competition and was amazed with the manner in which the participants put up their thoughts on the given subject in a very clear and resounding voice. Such competitions reaffirm our belief in the strength of the young generation, both in intellect and also in articulation. Heartiest Congratulations to all those who have participated in the competition with great zeal. We look forward to more and more such participation from all of you. If you have missed the chance to participate in the Debate Competition, here we are with another such opportunity. This time in the form of Essay Competition. The topics for the Dastur Essay Competition has been finalised and you must have received the communication about the same. The last date of enrolment is 31st March and last date to submit the Essays is 30th April, 2022. Do watch out for the announcement and try to participate in this. I am sure that the experience will be nothing but wonderful for the participants. You may also consider spreading the information to your friends and encourage them to participate. The competition is open to even non-member students. We are also about to finalise some of the sports activities and I am sure the students will be eager to participate in the same also.

On education front, the Chamber is organising a Study Course on Interpretation of Tax Statutes. This is a course which has been held at periodic intervals and has been a looked after event by the professionals who wants to carry on litigation and consultancy practice. Historically these program has been confined to the professionals only. However, this time the committee has thought it fit to open the same programme for students also. The students who wish to pursue the legal career ahead must try and join this course. Senior eminent professionals are lined up to address the course and the coverage will be absolutely exhaustive. This course will provide you an opportunity to be one step ahead of others when you ultimately join the profession. Don't miss this golden opportunity to be the future leader of the profession.



The present issue of the Journal covers variety of topics. The topics selected are with a futuristic outlook and the attempt is to dip-dive into the contemporary topics which are going to be the future need of the profession. It also covers some of the recent amendments to the legislature where a hard relook at the settled understanding of the law is now necessary due to the amendments. I am sure the articles will be an interesting read for all of us.

The world is at a very delicate situation at present. The disaster of the pandemic has left its blues. The marks it has left on our lives are certainly indelible and we will be remembering the years of 2020-2022 for the rest of our life. Before we come out of these unpleasant times, the war imposed on Ukraine leaves us disturbed and worried. Each party might have their own reasons rightfully or otherwise for the situation but one thing is for sure that no war has till date resolved the differences and has been able to achieve its objects fully. In a war both the parties ultimately turn loser in some way or the other. More than the parties to the war, the biggest loser is the humanity and civilisation. We all pray to Almighty to bless the mankind with greater sense of responsibility and hope that this era ends soon. The best thing about the time is that it floats. This too shall pass and the world will again be back to its glorious days. With that hope at the heart, let me pause here and wish you all a very happy reading of the journal and also wishing all the very best for your bright career ahead.

Stay Safe, Stay Motivated and Take Care

Yours sincerely,

CA Ketan Vajani

President



Chairman's Message



Dear Students,

It is indeed my pleasure to connect with you'll through 'Jignyasa' once again.

Past few months had us all worried with Omicron variant of Corona virus. Thankfully, with time passing, the number of cases has reduced significantly. Omicron variant did not be as dreadful in India as was anticipated to be, considering the impact it had created globally. We must really appreciate and thank the scientists for bringing out vaccines in such short span of time and keeping everyone safe in such pandemic times. I hope everyone (including eligible children) get themselves vaccinated and we return to normal times soon.

This pandemic has taught us a lot and one of the most important thing I learnt is that 'Life is uncertain and death is certain'. So, I have tried to put in my collected thoughts on 'How we can LIVE our LIFE' through principles to be followed:

1. LIVE LIFE NOW

We generally tend to be more concerned about our future and we do not enjoy and live our present times. What we miss out is that time once gone by, is gone forever. Most things in life can be done and enjoyed only at a certain age. Hence, there should be a balance between the time and efforts we spent in securing our future and living the present times. We must appreciate everything we have right now and be grateful for all our haves.

2. HEALTH IS WEALTH

Importance of good health could not have been better taught by the ongoing Covid-19 pandemic. We should spare time out from our routine for carrying out some kind of physical activity. Be it exercises, running / jogging, yoga, any sports activity, etc. One cannot live a successful life without good health.

3. TIMES ARE TEMPORARY, NOTHING IS PERMANENT

With the onset of the Covid-19 pandemic, we were all placed in never thought before, never seen before times. Present was very challenging, and future looked very fearful. However, with time passing by, precautions were shared, medical progress helped treat patients, discover vaccines and now the present is quite good and the future looks bright. We just needed the right temperament to pass these tough times. We need to remember, there is always light at end of dark road. We should always stay positive.

4. FAMILY AND FRIENDS ARE ALWAYS NEEDED

Family and Friends are the ones who will stick by you in times of crisis. So, we should always spend sufficient times in nurturing our relationship with them. Time spent with them will also give good mental health. These are the relationships



where nothing is expected in reciprocation for the love and care which one shares with one another.

5. HOBBY IS A MUST

It is said by a wise man that at one age one will retire. When he does, he would be suddenly left wandering for an activity which would help him spend time. A hobby developed over years, will help one during his old age. That hobbies will give them means to be occupied and be happy and enjoy their life. Spending time in hobbies also gives you a daily break from routine which enhances one's work productivity. So, in case we don't have one life long hobby yet, we should start searching for one.

6. PLEASURE IN GIVING

There is no bigger pleasure in this world then giving it back to the society. A wealthy may share his wealth, a professional may share knowledge; but everyone can share happiness in this world. There are lots of ways in which one can help others. With this, there will be more love and earth will be a much better place.

I hope these principles and many more are followed by everyone to LIVE their LIFE.

It is indeed my pleasure to connect with you'll through 'Jignyasa', an e-journal 'By the Students – For the Students', which provides opportunity to Students to express their views on topics or matters of interest in limelight, to offer suggestions on current problems, to discuss various rising-issues and technical developments, to influence readers and urge them to think, etc. By contributing articles for Jignyasa, Students immensely benefit by enhancing their writing skills, expressing their thoughts to the larger world, bringing recognition for selves with the e-journal being published on the Chambers web-site and also being circulated to all its members. Hence, I would request all Students to please reach out to me or the Chambers office with your intend to contribute an article for the forthcoming editions of Jignyasa on relevant topics in subjects like Direct tax, Indirect Tax, legal updates, efficient use of technology, etc.

I must also thank all the Students, Moderators and the Editors for the Article contributions for this edition of Jignyasa.

I would also like to congratulate all the newly qualified Chartered Accountants. The feeling of being a qualified CA after putting in hard work, dedication and sacrifices for an elongated period, is unparalleled. But you will agree that the journey of gaining education does not stop here. Remember, we all will be Students for our entire life. Your greed for knowledge should only increase with time. I will request you'll to join the Chamber as a regular member and take benefits of events being organized for professionals on various topics. For students who could not clear the exams, I wish them all the luck and offer once piece of advice i.e. this is not the end of road. You must gather yourself, be motivated, be in a positive frame of mind and put if your best efforts again. Your Dream will surely be achieved.

I hope to meet you'll in person when we are able to organize physical events.

Till then, Stay Safe – Stay Healthy.

CA Vitang Shah

Chairman

Student Committee



FORTHCOMING PROGRAMMES

Sr. No.	Date & Time	Topics	Speaker
1	21st March, 2022 to 25th March, 2022	Student Orientation Course	Eminent faculty
2	April, 2022	The Dastur Essay Competition, 2022	—
3	April, 2022	Industrial Visit	—
4	April, 2022	The 5th Chamber of Tax Consultants National Moot Court Competition, 2022	—



THE DASTUR ESSAY COMPETITION 2022 FOR STUDENTS OF LAW & ACCOUNTANCY

THE CHAMBER OF TAX CONSULTANTS

REGISTRATION CLOSING ON
31st March, 2022
SUBMISSION DEADLINE
30th April, 2022

The Dastur Essay Competition

The Chamber is one of the oldest professional organisations founded in 1926. The Chamber has been organising the Dastur Essay Competition since 2012 for Law Students and Articled Trainees pursuing CA, CS and ICWA Courses, where essays on current topics are invited and then the same are judged by senior professionals with prizes and certificates being awarded to meritorious essays.

We, at The Chamber believe that young students are the future leaders of our nation. They have the strength to bring ideas to life. Writing, a dying art today, is an important tool for encouraging the young fresh minds with novel ideas, to express themselves on topics of professional interest and get recognised by a professional forum, with around 4,000 members, through publication of the top three essays in 'The Chamber's Journal'.

Hence, by participating in the Eleventh Dastur Essay Competition of The Chamber, we request the budding professionals to be passionate about expressing themselves through their words and to take this opportunity to get the creative ideas flowing and allow the author within, to blossom.

Topics for the Eleventh Dastur Essay Competition are:

- Privatisation of Public Sector Undertakings – Opportunities and Challenges
- Need and remedies for reforming India's Judicial System
- Does Media need to be regulated? If yes, how should it be regulated?

Objectives

The objectives of the Competition are to cultivate good reading and writing communication skills coupled with encouraging "passion for writing" and "creativity", a quality which every human being possesses, which is possibly hidden and may be unknown to the individual himself.

The Dastur Essay Competition gives a platform to the young professionals to showcase their characteristics that illuminate the good students and potentially great writers. This Essay Competition invites students to explore a wide range of challenging and interesting questions beyond the confines of the college curriculum.

Cash Prizes Awarded



Student Committee

Chairman: Vitang Shah **Vice-Chairperson:** Niyati Mankad | Charmi G. Shah
Convenors: Charmi A. Shah | Priyanshi Chokshi **Advisor:** Ajay Singh

ENROLLMENT FORM



Related Party under Income Tax, GST, Companies Act, Accounting Standards & LODR



Vaishali Lund



Ridhika Chugh



CA Vishal Shah

Introduction

Imagine yourself as a retailer in the business of electronic devices. If your friend/relative visits your store, would you offer them products at the market price or would you provide it at a lower cost? We all know the answer to this, goods are sold to a friend/relative at a lower price than the prevailing market price. One major reason for such sales carried out at a lower price is merely out of love and affection. However, this is just the start of a commonly established practice that is used by entities for their tax planning. It is known as a **"Related Party Transaction"**. This practice is followed across all parts of the world. In reality, it is not as simple as it sounds. For shifting of profits, tax planning etc related party transactions have a major role to play. Let us dive into the vast concept of this commonly followed practice.

In layman's language, related party transaction can be defined as:

- A related-party transaction is an arrangement between two parties that have a pre - existing business relationship.
- Companies often seek business deals with parties with whom they are familiar or have a common interest. Although related-party transactions are themselves legal, they may create conflicts of interest or lead to other illegal situations. Public companies must disclose these transactions.

The most common types of related parties are directors, shareholder groups, holding and subsidiary companies, associates, joint ventures etc.

Types of related party transactions include sales/purchases, asset transfers, leases, lending arrangements, guarantees, allocations of common costs, etc.

Related party under the Income Tax Act, 1961

Under the Income Tax Act, 1961 ("the IT Act"), multiple provisions deal with the related party. Different provision has a different definition of relative. Relative is defined in section 2(41) to include husband, wife, brother or sister or any lineal ascendant or descendant of that individual.

In Section 40A(2) of the IT Act reference has been made to the term "Relative". This section empowers the assessing officer **to disallow** any expenditure incurred by the assessee for which payment is made or to be made to a related party that is excessive or unreasonable having regard to the Fair market value of goods, services or with regard to satisfying the needs of business or profession of the assessee or the benefit derived or accruing to him therefrom.

Further, in section 56 the IT Act, the term Relative has been explained (added as an explanation to the clause) to include even the following categories of persons over and above the definition of a relative in section 2(41):



1. In case of an individual -
 - (i) spouse of the individual;
 - (ii) brother or sister of the individual;
 - (iii) brother or sister of the spouse of the individual;
 - (iv) brother or sister of either of the parents of the individual;
 - (v) any lineal ascendant or descendant of the individual;
 - (vi) any lineal ascendant or descendant of the spouse of the individual;
 - (vii) spouse of the person referred to in clauses (ii) to (vi);
2. in case of a Hindu undivided family, any member thereof;

While Section 40A(2) the IT Act empowers the assessing officer to disallow expenditure incurred with a related party (if found excessive), section 56, notifies the transactions which would be outside the gambit of taxation if done with a related party.

Example/Situations

Professional fees paid to Spouse – If the assessing officer deems it to be excessive, then he may disallow u/s. 40A(2)

Gift received from Spouse (Irrespective of the amount) – As per section 56, a gift (in cash or kind) received from the spouse is not considered as a taxable income.

The term relative as defined under the Act can lead to a situation wherein a transaction may be tax-free one way, but the reverse transaction may be taxable. Let us consider an example:

- a. Mr. X receives a gift of ₹ 5,00,000/- from Father's Brother, Mr. Y: Under section 56, brother/sister of parents are listed under the term relative, hence gift received from such relative, would not be a taxable income for Mr. X.

- b. Mr. Y receives a gift of ₹ 5,00,000/- from his nephew (brother's son), Mr. X –Nephew is not listed under the definition of relative under section 56, hence the amount so received by Mr. Y, would be taxable as income from other sources as per section 56.

Who is a related party?

Following are the specified persons as per the Act

1. For an assessee who is :

- a. **An individual:** Any relative of the individual
- b. **Company, firm, association of person or Hindu undivided family:** Any director of the company, partner of the firm, or member of the association or family, or any relative of such director, partner or member.
- c. **Having a business or profession:** An individual or the relative of such individual having substantial interest in the said business or profession
- d. **Having a business or profession,** a Company, firm, association of person or Hindu undivided family has a substantial interest or any director, partner or member of such company, firm, association or family, or any relative of such director, partner or member or any other company carrying on business or profession in which the first-mentioned company has a substantial interest.

2. Any director, partner or member of a company, firm, association of persons or Hindu undivided family who has a substantial interest in the business or profession of the assessee or any director, partner or member of such company, firm, association or family or



any relative of such director, partner or member

3. A person in whose business or profession the following have a substantial interest

- An individual being the assessee
- The relative of the above-mentioned assessee
- An assessee being a company, firm, association of persons or Hindu undivided family, or any director of such company, partner of such firm or member of the association or family, or any relative of such director, partner or member

What is the meaning of Substantial interest?

- Beneficial ownership of shares in a company at any time during the previous year of not less than 20% of voting power; and
- Beneficially entitled to not less than 20% profits in any other concern

Disclosure required

- Payments made to Related parties are required to be disclosed under clause 23 of Form 3CD (Tax Audit Report)

Other provisions relating to related party

Under section 2(22)(e) any advance/ loan made by a company to the specified related person would be considered as income in the hand of such recipient.

Again any transfer of asset or gifting to the related parties i.e. spouse, minor child, daughter in law etc., income would be clubbed in the hands of the transferor.

Transaction between related parties where one of the parties is non-resident, transfer pricing regulation is applicable. As per the specified methods, the arms-length price

is determined. Transfer pricing provisions are also applicable for the transaction between domestic exemption claiming unit and domestic non-exemption claiming unit. Methods specified under income tax are also used under the Companies Act to determine the arms-length price as per the Companies Act.

Related Party under Goods & Service Tax (GST)

Who is a related party?

A related person is defined under Section 15 of CGST Act, 2017

- (a) persons shall be deemed to be "related persons" if-
 - (i) such persons are officers or directors of one another's businesses;
 - (ii) such persons are legally recognised partners in business;
 - (iii) such persons are employer and employee;
 - (iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) both of them are directly or indirectly controlled by a third person;
 - (vii) together they directly or indirectly control a third person; or
 - (viii) they are members of the same family;
- (b) the term "person" also includes legal persons;
- (c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever



described, of the other, shall be deemed to be related.

For this section, Family has been defined under section 2(49) of CGST Act, 2017 that includes –

- 1) Spouse
- 2) Children
- 3) Dependent Parents, Grandparents and Siblings

Impact of Related Party Transaction under GST

Under the provisions of the GST Act, transactions between related parties, even if without consideration, would be deemed to be a supply and reference would have to be made to the valuation provisions to determine the Value of Supply. However, it is pertinent to note that the transactions without consideration are deemed to be a supply only if it is the course of furtherance business.

Related party under the Companies Act, 2013

Who is a related party?

Section 2(76) read with Rule 3 of Companies (Specification of definitions details) Rules, 2014 of the Act defines related parties.

As per this section, the following are considered to be a related party concerning a company –

1. A director, key managerial person or his relative
2. A firm in which the company's director, manager or relative of such person is a partner
3. A private company in which a director or manager, or relative of such person is a member or director
4. A public company in which a director or manager is a director and holds

along with his relatives, more than two per cent. of its paid-up share capital

5. Anybody corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager
6. Any person on whose advice, directions or instructions a director or manager is accustomed to act

(Point no. 5 and 6 does not include advice, directions or instructions given in a professional capacity)

Example: Mr. X, a Financial Advisor, advises the director of "XYZ Private Limited" and based on his advice the director is accustomed to acting for all financial matters. In this case, even though the director acts on the advice and instructions of Mr. X, he will still not become a related party to the company, since he is advising in a professional capacity.

7. A holding, subsidiary or associate of such company
8. A subsidiary to a holding company is a related party to the other subsidiaries of such holding company
9. Investing company or the venturer of the company. This includes only those body corporates whose investment in a company would result in the company being an associate of such body corporate.
10. Any other person as may be prescribed.

Further, a director other than an individual director or Key Managerial Personnel of holding company or his relative shall also be deemed to be a related party



Section 2(77) of the Companies Act, 2013 defines the term "Relative"

Relative with reference to any person, means any one who is related to another, if –

- They are members of a Hindu Undivided Family
- They are husband and wife
- One person is related to the other in such manner as may be prescribed

Further as Rule 4 of the Companies (Specification of definitions details) Rules, 2014, one person is considered to be a relative of one other in the following manner, namely –

- Father, Mother, Son, Brother and Sister include the step-counterparts
- Daughter, Daughter's husband
- Son's wife

As per this Rule, there could be a situation where for a transaction one person will be said to be the relative of another, however, for the reverse of the same transaction, the person may not be categorised as a relative.

For example: Mrs. A has a stepdaughter, Ms. S. For Ms. S her stepmother i.e Mrs. A is a relative but for Mrs. A, her stepdaughter is not a relative.

The list was very wide under the Companies Act, 1956 that in addition to the above included – stepdaughter, grandparents, grandchildren, spouse of the grandchildren, spouse of the brother and sister.

Impact of Related party transactions covered under Section 188 of Companies Act, 2013

As per this section, the company shall not enter into any contract or arrangement with a related party in respect of the following transaction **without obtaining the consent of the Board of Directors**

given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed

- 1 Sale, purchase, supply of goods or material
- 2 Selling, disposing or buying property
- 3 Leasing of property
- 4 Availing or rendering of any services
- 5 Appointment of agent for purchase or sale of goods, material, property or services
- 6 Appointment of a related party to office or place of profit
- 7 Underwriting the subscription of any securities of the company
- 8 Underwriting the subscription of any derivatives of the company

The above mentioned transactions also require a prior approval of the company only in cases where the prescribed limit of turnover, net worth or remuneration is exceeded by such amount as prescribed. (Refer Rule 15)

Disclosures are required in the following

- **Board's report**
- **Form AOC 2:** Disclosures of contracts/agreements with related parties. It requires disclosure of transactions with related parties that are not on an arm's length basis and material transactions on an arm's length basis.

Punishment for contravention

If there are any violations subject to the above-mentioned contracts or arrangements, any director or employee of the company involved in such an offence shall be punishable as under -

1. In a listed company, imprisonment upto 1 year or fine ranging from



₹ 25,000 to ₹ 5,00,000, or with

both

2. Any other company, fine ranging from ₹ 25,000 to ₹ 5,00,000

Further Section 164 states that a person shall not be eligible for appointment as a director of a company if he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years.

Accounting Standard – 18 – Related Party Disclosures

Accounting Standard 18 deals with disclosure of related parties and transactions entered into between the reporting entity and its related entities aims at ensuring transparency in the financial statements of the reporting entity. Related party transactions are a common phenomenon in any business and are entered into by the reporting entity for trade and/or investment purposes. Generally, a transaction entered into with a non- relative is presumed to be at arm's length price. However, when it comes to related parties, the transactions entered into may be at a price apart from the arm's length price or may even be without any consideration or may have special terms of arrangement. To ensure and promote transparency in reporting, AS-18 required the reporting entities to report the related parties of the entity as well as the transactions entered into with the related party irrespective of the fact that the same is at arm's length price or not.

According to AS-18, "*parties are considered to be related if at any time during the reporting period one party has the ability to control the other party or exercise significant influence over the other party in making financial and/or operating decisions.*"

Control means

- Ownership, direct or indirect, of more than 50% of the voting power of an enterprise.
- In case of a company – control of the composition of the board of directors,
In case of any other entity – control of the composition of the corresponding governing body.
- Substantial interest in the voting power and the power to direct the financial and/or operating policies of the enterprise.

Significant influence includes

Participation in the financial and/or operating policy decisions of an enterprise but not control of those policies. Significant influence may be gained by share ownership, statute or agreement.

Who is a Related party?

- Holding companies, subsidiaries and fellow subsidiaries
- Associates and joint ventures of the reporting enterprise
- Investors in respect of which reporting enterprise is an associate or joint venture
- Individuals owning, directly or indirectly, an interest in the voting power of the reporting enterprise that gives them control or significant influence over the enterprise, and relatives of any such individual;
- Key management personnel and his relatives
- Enterprises over which any person who is key managerial personnel has a direct and indirect interest in voting power can exercise significant influence.



Who is not a related party under Accounting standard - 18?

- Providers of finance
- Trade unions
- Public utilities
- Government departments and government agencies including government-sponsored bodies.

Related Party Disclosures

The following details are to be disclosed in the financial statements:

- The name of the transacting related party
- Description of the relationship between the parties
- Description of the nature of transactions
- Volume of the transactions
- Any other information for better understanding
- Outstanding amounts of related parties

Cases where disclosure is not required

- In consolidated financial statements if there are intragroup transactions
- Enterprises that have statutory requirements of confidentiality
- Related party relationships of state-controlled enterprises with other state-controlled enterprises.

Regulation 23 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

Regulation 23 of SEBI (Listing obligations and disclosure requirements) regulations mentions that the listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions including clear threshold limits duly approved by the board of directors and such policy shall

be reviewed by the board of directors at least once every three years and updated accordingly. However, if the transaction exceeds the threshold limit, approval of shareholders shall be required.

A transaction with a related party shall be considered "material" if it crosses the following specified monetary threshold:

- **Related Party transactions** involving payments in respect of brand usage or royalty - 5% of the annual consolidated turnover as per the last audited financial statements.
- **All other Related Party transactions:** ₹ 1,000 crores or 10% of the annual consolidated turnover as per the last audited financial statements of the listed entity whichever is lower.

The Securities and Exchange Board of India (SEBI) has, vide its notification dated 09th November, 2021 has made amendments to the SEBI (Listing Obligations and Disclosure Requirements) with effect respect to the meaning of the term "related party" and "related party transactions".

A related party is defined to include the following:

- Any person or entity that
 - forms a part of the promoter or promoter group of the listed entity (irrespective of its shareholding); or
 - holds equity shares of 20% or more (w.e.f. 01st April, 2023 of 10% or more)

either direct holding in or on a beneficial interest basis, as provided under section 89 of the Companies Act, 2013, at any time during the immediately preceding financial year, in the listed entity will be considered. Given the fact that for determining the holding, even indirect holding is also required to be considered, careful evaluation is required to be made



concerning the declaration filed under section 89.

SEBI has expanded the definition of related party transactions. The revised provisions also consider transactions that are undertaken at the subsidiary level. Earlier such transacts were escaping regulatory scrutiny. Further w.e.f. from 1st April 2023 a transaction between a listed company or any of its subsidiaries on one hand and any other person or entity on the other hand—the purpose and effect of which is to benefit a related party of the listed entity or any of its subsidiaries—will also be a related party transaction. However, SEBI has not provided a test for evaluating the purpose and effect of the transactions. Such test is provided under UK Premium Listing Rules. Since there is time applicability of this provision, in due time SEBI may provide rules. Several companies have already given a shout that new regulations are policy overkill and would create a serious impediment in the

execution of day-to-day contracts, execution of orders, etc.

Related Party Disclosures

(a) Disclosure in the annual report

- disclosure on materially significant related party transactions
- disclosures of transactions of the listed entity with any person or entity belonging to the promoter/promoter group which hold(s) 10% or more shareholding in the listed entity
- Disclosure in annual report shall not be applicable to related party

(b) Disclosures to the stock exchange(s)

- details of all material transactions with related parties are required to be disclosed quarterly in the compliance report on corporate governance.

Comparison between the term “Related Party/Relative” under various Acts/ Statutes

Particulars	Accounting Standard	Income Tax Act, 1961	GST Law	Companies Act, 2013	SEBI LODR
Related party is defined under	Accounting Standard 18	Section 2(41) and Explanation in Section 56 of the Income Tax Act, 1961.	Section 15 of CGST Act, 2017.	Section 2(76) read with Rule 3 of Companies (Specification of definitions details) Rules, 2014	Regulation 23 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015
Disclosures required	The name of the transacting related party Description of the relationship between the parties	Particulars of payments to related parties to be disclosed under clause 23 of Form 3CD (Tax audit report)	-	Disclosure required in Form AOC-2	Disclosure of materially significant transactions with related party Disclosures of transactions of the listed



Particulars	Accounting Standard	Income Tax Act, 1961	GST Law	Companies Act, 2013	SEBI LODR
	Description of the relationship between the parties Description of the nature of transactions Volume of the transactions Any other information for better understanding Outstanding amounts of related parties				entity with any person or entity belonging to the promoter/ promoter group which hold(s) 10% or more shareholding in the listed entity

Examples of transactions which are considered as related party transactions under different statutes/laws:

Particulars	Accounting Standard-18	Income Tax Act, 1961	GST Law	Companies Act, 2013	SEBI LODR
Mr. Anil is a non-executive director in A Ltd. He sells goods to A Ltd.	Yes	Yes	Yes	Yes	No
X Ltd. is a subsidiary of Y Ltd. Y Ltd. rendered services to X Ltd.	Yes	Yes	Yes	Yes	Yes



Particulars	Accounting Standard-18	Income Tax Act, 1961	GST Law	Companies Act, 2013	SEBI LODR
Mr. Mehta is a partner in M & K Associates. He is also director of Gems and Jewellery Ltd. M & K Associates provides consultancy services to Gems and Jewellery Ltd.	Yes	Yes	No	Yes	No
The board of directors of B Ltd. are accustomed to act as per the directions of Mrs. Komal, since she is the wife of promoter Mr. Kamal. She receives a remuneration of Rs. 25,00,000/- p.a. from B Ltd.	Yes	Yes	No	Yes	No

Conclusion

Dealings with related parties have been and would continue to be a significant part of the business. Related party transactions are categorically entered into as a part of strategic business plans, which are valid and correct. However, transparency and accountability of such dealings in respect of various stakeholders is a major concern. Various statutes have tightened the disclosure requirements of transactions with related parties not with an intention to discourage healthy strategic business objectives but to promote transparency

and fair dealing. The existing provisions of various statutes enumerated above are in existence and force but as it is said, people do seem to find a loophole and take advantage of the same. Various instances have been seen where the interest of the stakeholders has been put at stake by exploiting the vulnerabilities in the provisions. However, to conclude, the lawmaker's intention to safeguard stakeholder interest has been carved out in the provisions related to related party disclosures.





Vaibhav Bansal

Taxation of E-commerce Business

Introduction

The new improvements in India concerning International Taxation should have been visible as a hindrance for the non-resident online business players. With an increase in compliance burden and likely expansion in cost, a large number of the online business players consider unilateral measures taken by India as a hindrance to a powerful plan of action. Equally as aggrieved as the e-commerce players, and countries where these e-commerce operators reside, as they are now being asked to share the taxing right over these e-commerce players as a part of global solution formulated by OECD.

The Peculiarity of web based business organizations are in procuring a huge number of incomes without having any actual presence has absolutely involved worries for nations with huge client or client base. BEPS Action Plan 1 in 2015, discussed regarding the effective ways of introducing tax measures for digital businesses and gave three solutions:

- a) *Introduction of Digital services tax,*
- b) *Introducing a concept of nexus as Significant Economic Presence and*
- c) *Withholding tax on e-commerce operators, yet didn't suggest anything.*

But as an active measure India has introduced all three of them in their legislature to tax those e-commerce operators who earn revenues from the state but does not become liable to pay the taxes because of Non-Permanent

Establishment based on Income Tax provisions.

Concept of Equalisation Levy

As a measure to curb non taxation of e-commerce business having No-PE in India, India introduced "Equalisation Levy (EL)" through Section 165 of the Finance Act, 2016 **at 6% on gross basis** to tax considerations paid/payable for online sale of advertisement and related services from non-residents. Further, 4 years down the line, India has also introduced EL 2.0 from 1st April 2020 **@2% on gross basis** to be levied on the amount of consideration received or receivable by an e-commerce operator from e-commerce supply or services made or provided or facilitated by it to the following persons:

1. A person who is resident in India
2. A non-resident in the following "specified" circumstances:
 - a. Sale of advertisement, which targets a customer, who is resident in India or a customer who accesses the advertisement through internet protocol address located in India.
 - b. Sale of data, collected from a person who is a resident in India or from a person who uses internet protocol address located in India.
3. A person who buys such goods or services or both using Internet Protocol address located in India.



E-Commerce operator means a non-resident who owns, operates or manages digital or electronic facility or platform for online sale of goods or online provision of services or both.

E-Commerce supply or services means:

1. *Online sale of goods owned by the e-commerce operators, or*
2. *Online provision of services provided by the e-commerce operator, or*
3. *Online sale of goods or provision of services or both, facilitated by the e-commerce operator, or*
4. *Any combination of activities listed in clause (i), (ii), or clause (iii).*

Every e-commerce operator will be required to make Equalisation levy payments quarterly as mentioned below*:

Quarter Ending	Due Date
30th June	07th July
30th September	07th October
31st December	07th January
31st March	31st March

* These dates are legislative dates and, due dates have been changed temporarily because of Covid-19 outbreak.

Why Equalisation Levy not introduced in Income Tax Act, 1961?

According to the committee of Equalisation levy in India, report suggest that, it is actually not a levy on Income, therefore it is not introduced under the Income Tax Act, 1961. It is actually a levy on gross receipt by e-commerce operators to tax those who are not liable to tax in India because of Non- Permanent Establishment Status.

Practical challenges in Equalisation levy

1. E-commerce Business operators mostly based on commission services to

provide the facility/platform. For those who provide commission services, sometimes The EL on Gross sale value can be higher than the actually commission received by E-commerce operators.

2. Some services provided by e-commerce operators may qualify as FTS under section 9(1)(vii) of the Act, but may not be regarded as FTS/Fees for included services as per DTAA because of Make Available clause, but now according to EL provisions of any services provided by e-commerce operators shall be liable to EL. Therefore, India may tax the same without giving the benefits of DTAA.

Significant Economic Presence (SEP)

Section 9 of the Income-tax Act, 1961 (a deeming provision) deems certain income though not necessarily received/arise in India, to be deemed to accrue or arise in India. Section 9(1) of The Income Tax Act 1961 provides that, the following incomes shall be deemed to accrue or arise in India.

- (i) *all income accruing or arising, whether directly or indirectly, through or from any **business connection in India**, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situated in India.*

The scope of existing provisions of clause (i) of sub-section (1) of section 9, as interpreted and explained by various judicial authorities, was restrictive as they essentially emphasised the requirement of having some sort of physical presence in India for taxation of business income of the non-resident in India. *Explanation 2* to the said section which defines 'business connection' was also narrower in its scope since it limits the taxability of certain activities or transactions of non-



resident to those carried out through a dependent agent. Therefore, emerging business models, which do not require physical presence of itself or any agent in India, was not covered within the scope of clause (i) of sub-section (1) of section 9 of the Act. In view of the above and in order to widen the scope of existing provisions dealing with the 'business connection', for the very first time the concept of Significant Economic Presence (SEP) was brought in by **Finance Act, 2018** through Explanation 2A of the clause (i) of sub section 1 to the section 9. Further, *Explanation 2A* was amended in **Finance Act, 2020**.

"Explanation 2A.—For the removal of doubts, it is hereby declared that the significant economic presence of a non-resident in India shall constitute "business connection" in India and "significant economic presence" for this purpose, shall mean—

- (a) *transaction in respect of any goods, services or property carried out by a non-resident with any person in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed; [Revenue Linked Condition]or*
- (b) *systematic and continuous soliciting of business activities or engaging in interaction with such number of users in India, as may be prescribed: [User Linked Condition]*

Provided that the transactions or activities shall constitute significant economic presence in India, whether or not—

- (i) *the agreement for such transactions or activities is entered in India; or*
- (ii) *the non-resident has a residence or place of business in India; or*

(iii) the non-resident renders services in India:

Provided further that only so much of income as is attributable to the transactions or activities referred to in clause (a) or clause (b) shall be deemed to accrue or arise in India."

But due to OECD/G-20 BEPS Project, the CBDT has deferred the applicability of SEP till 01-04-2022 i.e., **AY 2022-23**. On 3rd May, 2021 CBDT vide **Notification No. 41/2021/F. No. 370142/11/2018-TPL** notifies Income-tax (13th Amendment Rules) Rules, 2021 on thresholds for Significant Economic Presence through inserting new Rule 11UD in the Income Tax Act, 1961 which shall be effective from 01.04.2022.

"11UD. Thresholds for the purposes of significant economic presence. —

- (1) *For the purposes of clause (a) of Explanation 2A to clause (i) of sub-section (1) of section 9, the amount of aggregate of payments arising from transaction or transactions in respect of any goods, services or property carried out by a non-resident with any person in India, including provision of download of data or software in India during the previous year, shall be **two crore rupees; [Revenue Linked Condition]***
- (2) *For the purposes of clause (b) of Explanation 2A to clause (i) of sub-section (1) of section 9, the number of users with whom systematic and continuous business activities are solicited or who are engaged in interaction shall be **three lakhs."** [User Linked Condition]*

There may also be an overlap between applicability of provisions governing SEP and Equalisation Levy (EL) on the same transaction. For instance, download of software subject to meeting the abovementioned thresholds, may constitute a SEP, but may also be covered by the



equalisation levy provisions. In the light of section 10(50) of the Income-tax Act, one could contend that if EL is levied on the transaction, the income attributable to the SEP should not be taxed.

Section 194-O of The Income Tax Act, 1961

TDS shall be deducted at the time of credit of amount of sale of goods or services or both in e-commerce operator account or at the time of making of payment to an e-commerce operator, whichever is earlier @1% of Gross Sale value of goods/services or both.

Any payment made by purchaser of goods or recipient of services directly to e-commerce participant for sale of goods or provision of services or both facilitated by e-commerce operator shall be deemed to be paid by e-commerce operator and TDS shall be required to be deducted on the same.

Is TDS to be deducted in all cases?

No, TDS shall not be deducted if both the following conditions are satisfied:

- Gross amount of sale of goods or provision of services or both during the year does not exceed ₹ 5,00,000; and
- E-commerce operator has furnished his PAN or Aadhar Number to the E-commerce operator.

Concluding Remarks

Taxation of e-commerce business operators is a complex and tricky process, various changes and developments are taking place in the space of taxation of e-commerce, with the introduction of OECD- two pillars solution in October, 2021 the taxation of various in-scope MNEs (including some e-commerce operators) will change drastically. There are also various challenges in the practical world w.r.t taxation of e-commerce, however, the government is working hard to resolve all the challenges and to provide a smooth taxation process to the taxpayers.

The coming times are very exciting to witness these radical changes in the space of taxation with the emerging needs of the society.





Jay Kosarekar

Taxation of Firm Tax Implication of Partnership Firm

A partnership is a common vehicle in India for carrying on business activities on a small or medium scale. Partnership is the relationship between persons who have agreed to share

the profits of a business carried on by all or any of them. Persons who have entered into partnership with one another are called partners individually and a firm collectively. Hence, for Income tax purpose we have a separate status as "firm".

Definition of firm [Section 2(23)]



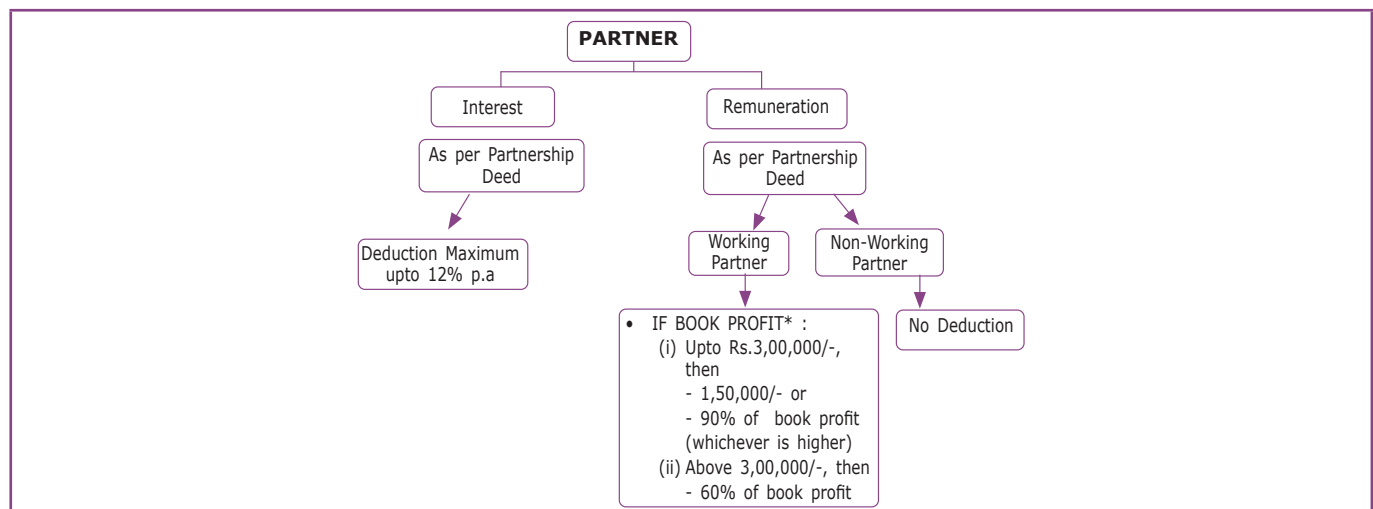
Section 2(23) of the Act states that firm, partner and partnership have the meanings, respectively assigned to them in the Indian Partnership Act, 1932 and shall include a

limited liability partnership (LLP), as a person but the expression 'partner' shall also include any person who being a minor, has been admitted to the benefits of partnership.

Computation of total income of the firm

The total income of the partnership firm will be determined as a separate entity and it will be computed under various heads of income. However, while computing taxable profits under the head 'Profits and gains of business or profession', a deduction is allowable to the firm on account of interest and remuneration payable to the partners subject to provisions of section 40b. Deduction of interest to a partner is allowable under section 36 and remuneration to a working partner will be allowed under section 37.

Condition of interest and Remuneration payable to partner is explained as under:





***Book profit'** means the net profit computed under the head 'Business or Profession' as increased by the aggregate amount of the remuneration paid or payable to all the partners of the firm if such amount has been deducted while computing the net profit

Payment of remuneration/interest, although authorised by the partnership deed but which relates to a period prior to the date of such partnership deed, shall not be allowed.

Provisions regarding set off and carry forward of losses of firms

There are no special provisions for set off and carry forward of losses of firms. These are the same as applicable in case of other assesseees.

CARRY FORWARD AND SET OFF OF LOSSES IN CASE OF CHANGE IN CONSTITUTION OF FIRM [SECTION 78]

Where a change has occurred in the constitution of a firm, due to retirement of a partner or death of a partner, the firm shall not be entitled to carry forward and set off so much of the loss proportionate to the share of a retired or deceased partner as exceeds his share of profits, if any, in the firm in respect of the previous year. [Section 78(1)]

Treatment of share of profit, interest and remuneration received by a partner from a firm

- Share of profit in the hands of the partner shall be fully exempt under section 10(2A).
- Interest received/receivable by a partner shall be included in the total income of the partner under the head 'Profits and gains of business or profession' to the extent deduction of interest was allowed to the firm as per section 40(b), which cannot exceed 12 per cent per annum.
- Remuneration to a working partner shall also be included in the total income of the partner under the head 'Profits and gains of business or profession' to the extent deduction of remuneration was allowed to the firm as per section 40(b).

Section 115JC of the Act

- Partnership firm is liable to pay Alternate Minimum Tax (AMT) if the tax payable under the normal provisions of income tax is lower than AMT.
- **Rate of AMT : 18.5% of Adjusted total income*** (as increased by surcharge, if applicable and Cess)

• ADJUSTED TOTAL INCOME

Total income as computed under the normal provisions of Income Tax act	XXX
ADD :- Deduction under chapter VI-A (Heading C except deduction u/s 80P)	XXX
ADD:- Deduction claimed under section 35AD as reduced by the amount of depreciation allowable in accordance with the provisions of section 32 as if no deduction under Section 35AD was allowed in respect of the assets on which the deduction under that section is claimed (inserted by the Finance (No 2) Act 2014 w e f A Y 2015-16.	XXX
ADD:- Deduction under section 10AA (Deduction in case of profits of SEZ units)	XXX
Adjusted Total Income	



TAX CREDIT

- If **AMT > Income tax** as per normal provisions of income tax act, then the excess amount shall be available as credit against future tax liability.
- The AMT Credit will be allowed to be **carried forward and set off for a period of 10 years** succeeding the year in which that credit is available.
- However, The MAT Credit of company is not allowed to carry forward in hands of LLP in case of conversion of company in LLP.

Amendment by the Finance Act, 2021 (Applicable from AY 2021-22)

Tax on transfer of money or asset by Firm/AOP/BOI to its Partners/Members

Section 9B, 45(4), 48(iii)

- o Asset introduced by Partner to a Firm [Section 45(3)- no change]

- o Transfer of Capital Assets/Stock in Trade by Firm to Partner (in case of dissolution or reconstitution) [New Section 9B]
- o Receipt of capital asset by Partner from Firm (in case of dissolution or otherwise) [Old Section 45(4) which is substituted]
- o Receipt of money or capital asset by Partner from Firm (in case of reconstitution) [New Section 45(4)]

Section 9B, Section 45(4) are simplified in the below table:

Situation	Taxable in hands of	Computation
In case of Reconstitution		
Receipt of Money or Capital Asset by Partner from Firm [New Section 45(4)]	Firm <i>(Though the income arises to a partner but it is deemed as income of the firm)</i>	Value of Money + FMV of Capital Asset Less: Balance in Capital account at the time of reconstitution = Capital Gain <i>(if gain is negative then it will be considered as NIL)</i>
Stock in Trade transferred by Firm to Partner Section 9B (money is not covered)	Firm	FMV of Stock is taxable under the head Business or Profession

Situation	Taxable in hands of	Computation
Capital Asset transferred by Firm to Partner Section 9B (money is not covered)	Firm	FMV of asset is considered as Full Value of Consideration under the head Capital Gain, and while calculating Capital gain, amount taxable u/s 45(4) will be reduced proportionately [Ref Section 48(iii)-]
In case of Dissolution		
Capital asset/stock in trade transferred by Firm to Partner Section 9B (money is not covered)	Firm	FMV of stock/asset is taxable under the head Business / Capital Gain respectively

Balance in Capital account of partner to be calculated without considering the increase due to revaluation of assets or due to self-generated goodwill/assets. Please note that reduction if any in the capital account due to revaluation is not to be add back. [Section 45(4)]

Section 9B covers both situation of 'reconstitution' and 'dissolution'. However, section 45(4) covers only 'reconstitution'.

'Reconstitution' means:

- One or more of its partners or members ceases to be partners or members;
- One or more new partners or members are admitted. However, at least one existing partner or member should continue to be partner or member of the specified entity after admission of the new partner(s) or member(s); or
- All the partners or members continue with change in their respective share or in share of some of them.

- Erstwhile section 45(4) was covering situation of transfer of capital asset during Dissolution or Otherwise. However, in the new section 45(4), it is applicable only in case of reconstitution. Further, term 'otherwise' is being deleted. Accordingly, new provision will not cover any other situation where the capital asset is being transferred by Firm to a Partner. It will be interesting to analyse the implication of section 56 on such situations if any.
- Fair Market Value is being used for the purpose of taxability. Accordingly, if the Net Realisable Value is very less as compared to Fair Value, then it will result in higher taxability. We are awaiting the guidelines about the calculation of FMV. On a safer side, if the NRV is lesser than, its beneficial to first liquidate the asset and then transfer the amount to a partner.
- CBDT has issued guidelines u/s 9B and 45(4) vide circular no. 14 of 2021



clarifying certain issues by way of giving example

- Asset introduced by Partner to a Firm [Section 45(3)]:
 - o When a Partner introduces capital asset in the Firm, it is regarded as a taxable transaction in the hands of Partner in the year

of such transfer. The amount recorded in the books of accounts of the Firm is considered as Full value of consideration.

This does not deal with any specific situation of 'Reconstitution' or otherwise under which the asset is introduced by a Partner.



21st Century Business Models for an ace Startup



Sanna Golecha

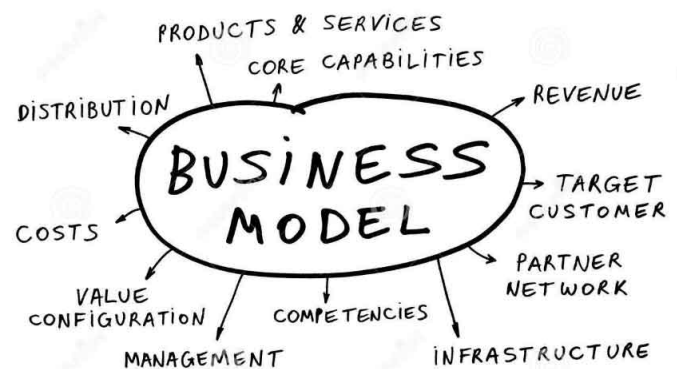


CA Nehal Shah

Airbnb is the biggest accommodation provider worldwide without owning a single room, Uber is the biggest cab company without owning a single cab and Alibaba is the biggest retailer with no stock at all. This makes me wonder how their Balance Sheets would look like?

I am pretty sure of all of us at-least once in our lives till now would have cursed our daily 9-5 jobs and had have built all rosy ideas of setting up our own startup venture and also why not, they seem to be the quickest way to mint money thus setting us free from the clutches of having to meet unlimited human wants with the limited salary that our jobs have got to offer but of course it goes without saying that all of this does come at the cost of excellent innovation, brilliant execution and at the core a sound, profitable business model because this is what actually determines where does all that money we've all been fantasizing comes from and how does it sneakily leave from our pockets.

In this article I'll be throwing light on the most streamlined 21st century business models that you can implement if you're planning to start your business afresh along with the secret sauce of the startup kings in the industry which enabled them to rule the empire and lastly, some amazing book

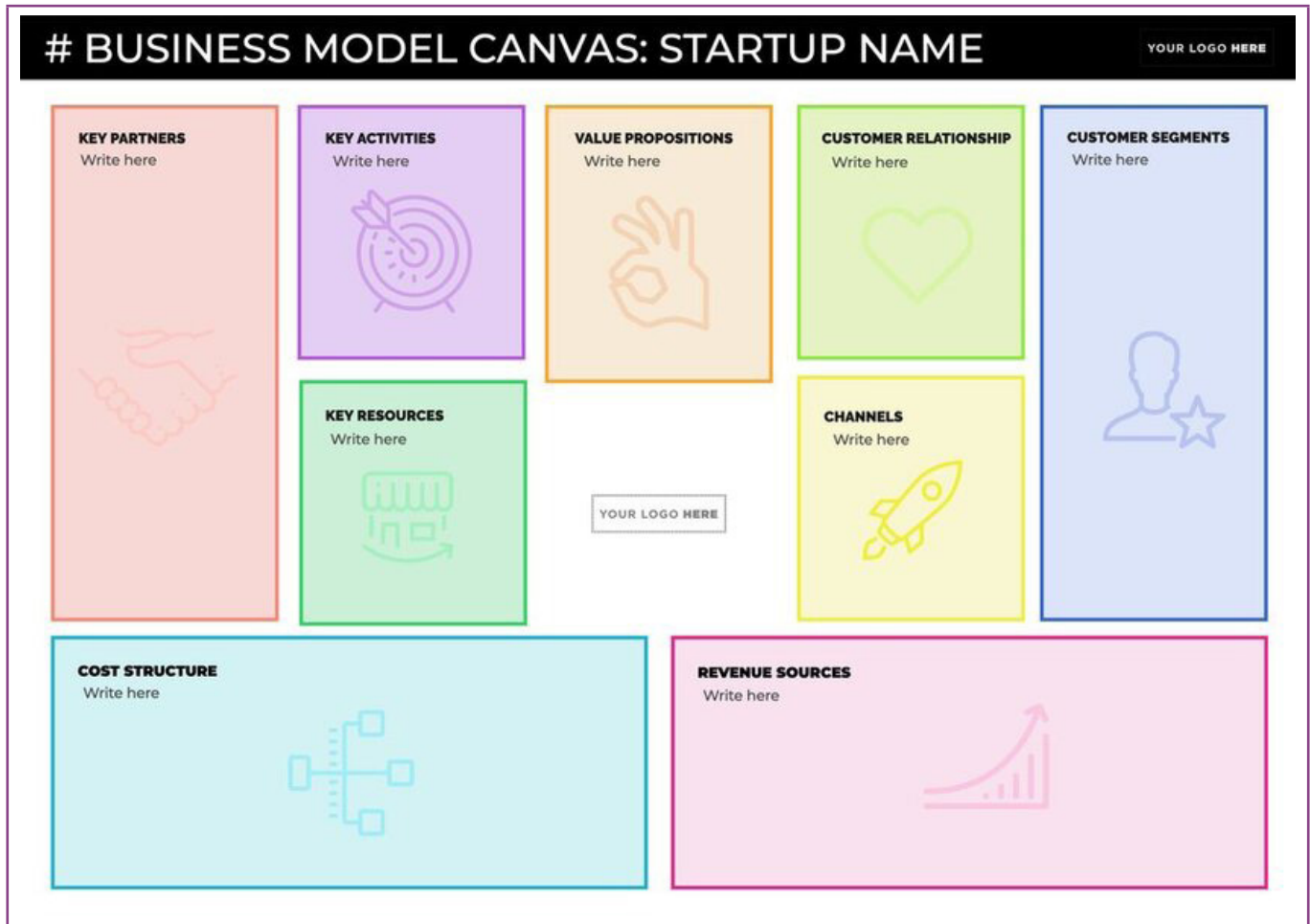


recommendations to actually bring your idea to the world.

So let me first briefly hint to what a business model exactly is,

A business model is the **plan** your business has for making money. It's an explanation of how you deliver value to your customers at an appropriate cost. This includes descriptions of the products or services you plan to sell, who your target market is, and any required expenses. It lets a startup experiment, test, and model different ways to structure costs and revenue streams.

Having said that an extremely useful tool you can leverage when choosing your business model is the **Business Model Canvas**. The concept was first developed in the book "**Business Model Generation**", by Alexander Osterwalder and Yves Pigneur.



Together these elements provide a pretty coherent view of a business' key drivers–

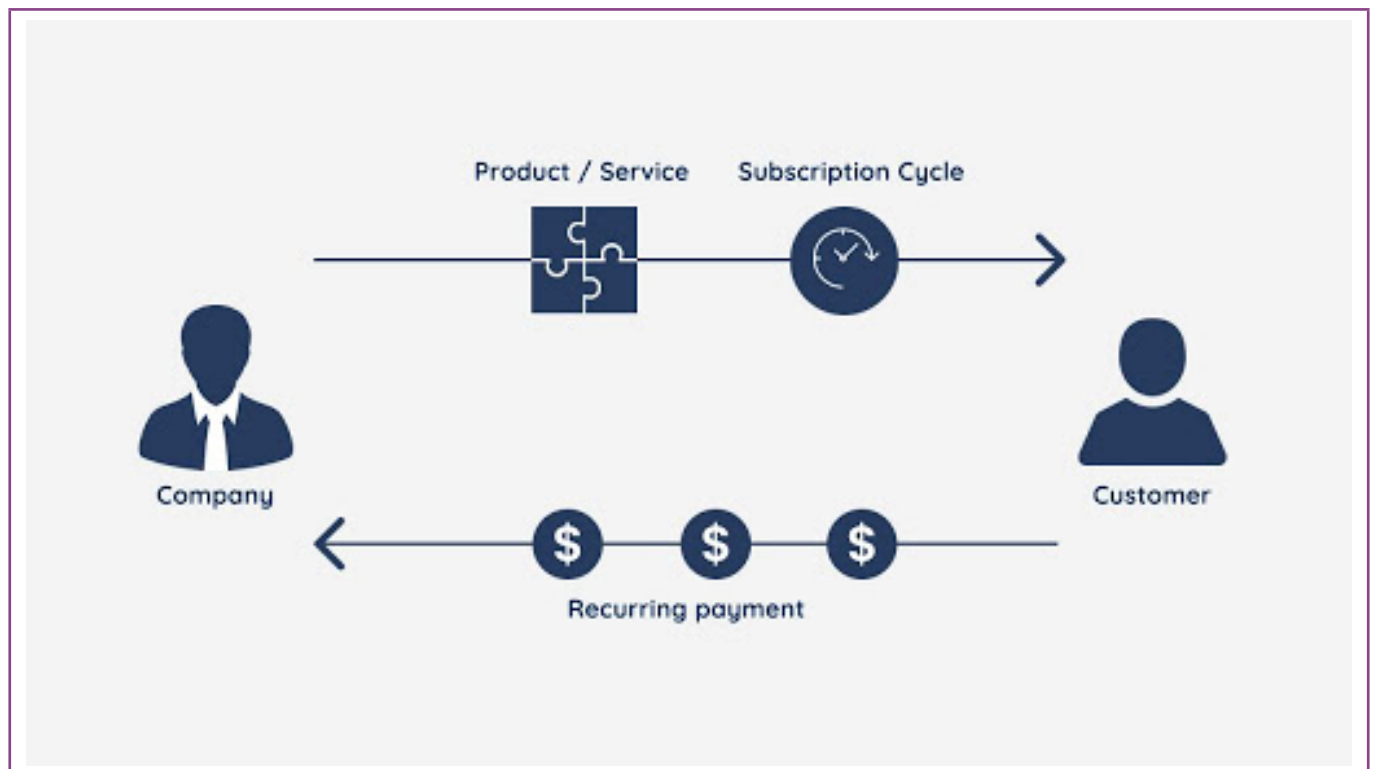
1. **Customer Segments:** Who are the customers? What do they think? See? Feel? Do?
2. **Value Propositions:** What's compelling about the proposition? Why do customers buy, use?
3. **Channels:** How are these propositions promoted, sold and delivered? Why? Is it working?
4. **Customer Relationships:** How do you interact with the customer through their 'journey'?
5. **Revenue Streams:** How does the business earn revenue from the value propositions?
6. **Key Activities:** What uniquely strategic things does the business do to deliver its proposition?
7. **Key Resources:** What unique strategic assets must the business have to compete?
8. **Key Partnerships:** What can the company not do so it can focus on its Key Activities?
9. **Cost Structure:** What are the business' major cost drivers? How are they linked to revenue?

Now that you are aware of what a business model is, let's quickly hop onto the different business models the tomorrow has to offer:

Subscription based business model

The subscription-based business model is not a new concept but in the last couple of decades, many tech companies have pivoted from selling or licensing products via a single transaction to offering their products for repeated monthly or annual payments. In the 2000s, technology took leaps forward and that the move from 2G to 3G allowed many software companies to pivot from the single license model to cloud-based products. This advance, in conjunction with the financial crisis in the latter half of the 2000s, was instrumental in changing customer priorities. Instead of wanting more products and services, people began to want fewer but better options. **"People in general don't want to own things anymore, they want to have access."** Subscription-based businesses fit well with this demand because they can deliver a lot of functionality for a small repeated fee rather than one large, potentially intimidating sum. Instead of selling a product or a service as a one-

off, servitisation companies operate on a subscription or ongoing service model by selling a product or service in return for a recurring fee, thus building long-term relationships with customers. These businesses rely less on one-time sales that don't always inspire brand loyalty, as people can often change brands to find good deals. Instead, subscription companies focus on finding their super users; people they can create and grow the 'forever' transaction with which lets them create a more predictable cash flow, a direct customer feedback loop, and greater customer loyalty. For example, if you have a piece of content, you can monetize it for as long as it's relevant! Put simply, would you rather earn \$10 once and have to keep trying to convince new people to buy from you? Or get \$10 every month from a trusted group of people for years? So, while your \$8.99 monthly fee for Netflix might feel small, those of us who have been subscribed for 5+ years have each added over \$500 to Netflix's coffers.





It's no wonder more and more companies are shifting to a subscription business model and considering that the average repeat customer spends 67% more than a new customer, it's a bandwagon you should jump on as well. That brings me to the 6 ways a subscription business model can help improvise your business:

1. *Accurately predict your revenue*, which is incredibly advantageous for a company's valuation since it enhances the sellability of the company, thus increasing the attractiveness to potential VCs leading to valuations up to 8 times that of similar businesses with little recurring revenue.
2. *Increase the lifetime value of your clients* since you can safely presume that they will pay you every month so as long as your product gives them value.
3. *Build strong bonds* with customers through your community.
4. *Increase customer retention*.
5. *Improve your user insight*.

6. *Subscriptions decrease Customer acquisition costs.*

Based on the number of subscribers you have, you can calculate your **Monthly Recurring Revenue (MRR)**, which is the amount of predictable revenue you can get per month from subscribers.

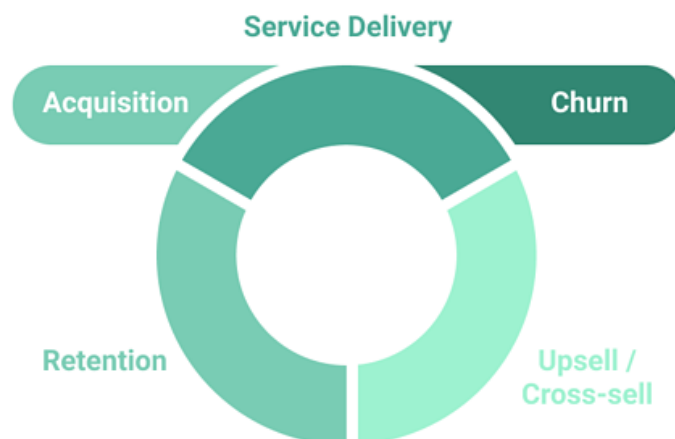
To calculate your MRR you just need to multiply the number of active subscribers you have with the price of the subscription.

$$\text{MRR} = \text{Number of Active Subscribers} * \text{Price of Subscription}$$

From the moment a new customer subscribes, every subscription company begins the same five-step revenue cycle:

1. Acquire customers.
2. Deliver consistent, high-quality service.
3. Look for opportunities to upsell or cross-sell.
4. Work to retain users and reduce churn.
5. Rinse and repeat.

The subscription revenue cycle



What makes subscription revenue so powerful is how **growth compounds** over time because when new customers are added revenue accumulates with each new subscriber and it will compound with what you earned last month because the previous subscribers are paying again so as long as companies acquire new subscribers faster than they lose them, revenue grows exponentially.

An extremely useful tool to help you with the calculations is **Uscreen** which automatically calculates your MRR taking into account different subscription plans.

Subscription-based models are perfectly suited for two types of businesses:

1. Businesses that offer **access** to a product, like video streaming content, written content, or software. It'll give your clients access to your exclusive products so long as they pay you a recurring subscription fee.
2. Businesses that offer a **repeat** service and deal with physical products. Subscription products tend to be split into two categories: convenience and curation. Any product that frequently needs replenishing is a good candidate for convenience subscriptions. Curated subscription boxes are generally based on a theme or target market. These

subscription services deliver a curated selection of products on a monthly or quarterly basis.

Here are some popular subscription businesses models:

SaaS

Software as a service is a software licensing and delivery minimal upfront cost.

If you have used a web-based email service such as Outlook, Hotmail or Yahoo! Mail, then you have already used a form of SaaS. With these services, you log into your account over the Internet, often from a web browser. The email software is located on the service provider's network and your messages are stored there as well. You can access your email and stored messages from a web browser on any computer or Internet-connected device.

The previous examples are free services for personal use. For organisational use, you can rent productivity apps, such as email, collaboration and calendaring; and sophisticated business applications such as customer relationship management (CRM), enterprise resource planning (ERP) and document management. You pay for the use of these apps by subscription or according to the level of use.





Now assume have received the much-needed funding for your startup, it's time to take the product to newer markets, signup more customers, hire for key positions, and scale operations. The money you just landed will provide some immediate boost, but money alone won't be enough to make it as big as you have dreamt of, you need solid backing from your investors, who can help you with new introductions, promotion, and advice on various aspects of running a successful business. For this, you need to engage them, build trust, and strengthen relationships.

One of the often neglected but critically important pieces of investor relations is committing to send out regular investor updates. Investors love to be in the know. They want to know about the progress you are making. They want to know what's happening with their investment. This is where tracking and reporting on right metrics comes in play. You'll need data at your fingertips that can help you make strategic, informed decisions. Decisions that evolve your growth strategy, lead to customer acquisition, and drive revenue growth.

This makes it crucial that you track and measure startup key performance indicators, or KPIs. KPI is short for Key Performance Indicator, and it's a term for the metrics that are the most critical to track for a company's performance against its targets, objectives, or industry peers. KPIs can be financial, including net profit (or the bottom line, gross profit margin), revenues minus certain expenses, or the current ratio (liquidity and cash availability) or they can be customer-focused KPIs which generally center on per-customer efficiency, customer satisfaction, and customer retention or process-focused KPIs which aim to measure and monitor operational performance across the organization. The challenge with KPI's is that there are dozens of metrics that can be measured. you might think that

you should be tracking all the available KPIs but that won't be a good idea since monitoring them all is neither productive nor efficient. Furthermore, without an excellent program to combine and visualize your KPIs, it will be an impossible task to keep track of all your data.

Let's get into a few KPIs that every SaaS entrepreneur and every team should be monitoring and analyzing to perform better

Churn Rate

$$\frac{\text{Users who left}}{\text{Users at start of month}} \times 100 \text{ to get \%}$$

For a SaaS distributor and any other companies that work with subscribers, customer churn rate is essential, since it shows the percentage of your customers or subscribers you lost. Too many SaaS businesses choose to overlook this number in favor of more detailed or derivative metrics and that's a huge mistake. The most important thing for every SaaS company is to keep existing customers while also getting new ones. If your typical customer does not stick around long enough for you to earn back what you spend to acquire them (CAC), then you're in trouble. The logic here is pretty straightforward: if you want to create revenue growth, then it is equally important to maintain your existing customers and to acquire new ones.

Monthly Recurring Revenue (MRR)

$$\text{MRR} = \text{SUM (Paying customers monthly fee)}$$

MRR allows you to not worry about counting the number of hours you spend



working for a client, once you have acquired the customer. Growing SaaS companies tend to lose sight of their secured monthly revenue flow, and instead focusing on bookings and revenue numbers. Building your SaaS company after your MRR growth is an excellent way to get things started. For SaaS companies, MRR helps to keep the focus on the present and allows them to track how the business is growing. Tracking MRR can also help companies from being obsessing over long-term contractually booked sales instead of the short ones.

Customer Acquisition Cost (CAC)

Sales & Marketing Cost

Number of new
customers

CAC measures the cash that a business spends to gain new customers and indicates how long it will take a company to get the initial investment used on the customers back, also known as the CSC Payback Time. This includes the amount you spend on sales, marketing, and other associated costs. Thus, this metric can help SaaS companies assess whether they can afford to increase marketing spending and boost sales, or whether they should be cutting back. To calculate CAC, you have to divide all the costs spent on acquiring customers (marketing expenses, personal salary, etc.) by the number of customers acquired in the period the money was spent. Ultimately, CAC speaks to a company's economic viability and efficiency.

Customer Lifetime Value (CLV)

(Total yearly / Total yearly)
revenue / orders

x

(Total yearly / Unique)
orders / customers

At no time should a SaaS company's CAC be higher than its average customer lifetime value (CLV). If so, the business is in real trouble. Essentially, this means that the company is selling a product for less than what it costs to make it. Calculating CLV can be difficult. CLV is a more advanced way to look at a SaaS company's economics, and it depends on other KPI before you can calculate it. To calculate CLV, you need to calculate the average purchase value, and then multiply that number by the average purchase frequency rate to determine customer value. Then, once you calculate your average customer lifespan, you can multiply that by customer value to determine customer lifetime value. Yeah, it's complicated. However, remember, if your CLV is higher than CAC, then you're good to go and should keep up the excellent work. A good rule of thumb is that your CLV should be 4x more extensive than your CAC. SaaS companies should follow a model, in which the cash they bring in from customers is favorable to the money they spend on acquire and manage them.

Subscription Box

Subscription boxes have become a very popular type of business model. Every month, customers receive a box filled with various products that are sometimes related to each other and sometimes not. Some companies let the customer choose what's in the box, while with others, customers get the element of surprise while experiencing new products they may not have sought out on their own. This is a great way for a brand to familiarize its customer base with all of its products. Example Butcher Box is a subscription box service that sends customers boxes of meat each month. Each box includes different cuts of meat as well as a few recipes for you to cook them with. This is a great way for carnivores and BBQ enthusiasts alike to try out different types of meat they may not have tasted or cooked before.



Health and Wellness Subscription Model

Tired of going to the gym for your daily workout? With a health and wellness subscription, you can get access to classes, trainers, and workout equipment all for a monthly fee.

Food Service Subscription Model

If you're looking to mix up your dining routine, then you may want to consider a food service subscription. These companies not only deliver food to your doorstep, but they also provide you with recipes to cook with. That way, you're getting both the ingredients and direction needed to make a home-cooked meal — even if you don't have any cooking experience.

Let's discuss the pricing models adopted by companies using subscription based business model:

Flat-Rate

Flat-rate, also known as fixed pricing, offers users a single price for all features of the offering. Customers are charged the same amount each billing cycle. Simply put, Flat-rate is a single product and a fixed set of features at a fixed price per month. Companies with a product that has limited features and a single buyer persona can opt for such pricing. Flat-rate does not work well for companies in which resource costs might vary significantly from user to user, which is why flat-rate pricing does not generally work well for B2B (software-as-a-service) SaaS companies.

Tiered

Packages with various features and product combinations are available at various price points. This allows sellers to segment the prices of their products and services based on specified target markets. Tiers are generally designated as basic, standard and premium. Companies that may have many product features and a diverse customer base with varying needs, budgets and

usage norms. Tiered pricing is very popular amongst SaaS companies, in particular.

Usage-Based

The usage-based model, also referred to as a consumption model and pay-as-you-go, deviates from the previously-discussed models, as its pricing becomes much more variable. It directly relates the cost of a product to its level of consumption, typically involving a base rate with an additional usage rate. Think of your cell phone plan and what happens if you blow past your monthly data allowance. Your bill will quickly make clear that you aren't being charged a fixed, base rate — there's a usage component. The usage-based subscription pricing model is considered the most flexible for customers, and it tends to be the most complicated for businesses. This strategy is best suitable for products or services of which customers' usage is likely to vary widely.

Per-Added-Module

In this model, you'll price the product based on the functionality offered to your customers. There is a "base product" and the option to add modules for more functionality — at a higher cost. This strategy is best suitable for companies with modular functionality that is easily added to their core product — and a customer base that values the ability to choose the functionality it needs.

Per-User

A per-user or per-seat pricing model charges customer companies for every user of your product. Pricing scales evenly along with the number of users, the more users, the more you'll charge. A common variant of this model is per-active-user, in which you'll only charge for the number of folks at the customer company who are actually using the tool. This can ease the concerns of a customer who's evaluating your product for a large number of employees.



This strategy is best suitable for companies with frequently-used or heavily-relied-upon products, particularly those that facilitate teamwork or collaboration. For example, if team members at a customer company rely on accessing your product independently, as with a virtual collaboration platform, then they each need their own account and cannot share login information. Per-user pricing inhibits your growth if only a few folks within each customer company use your product or if it's easy for individuals to share logins and avoid buying access for more users.

Over the last few decades, industries everywhere have begun to adopt subscription business models. Netflix subscriptions have replaced DVD collections, and Spotify has taken the place of CD shelves. Meanwhile, companies like Blue Apron, Dollar Shave Club, and Stitch Fix deliver everything from dinner to dresses straight to customers' doors on a **"set and forget"** recurring schedule. There are several factors driving this growth, including advances in the tech infrastructure that supports it. Perhaps more importantly, the subscription model aligns incentives on both sides of the equation, offering stability for businesses and affordability and convenience for consumers. Increasingly, subscription models have grown to include companies where the **"product" being offered isn't a product at all — it's a service, and the value being provided isn't ownership, but access.** For example, car subscription companies are letting drivers rent cars for occasional trips rather than owning one, while fitness brands are turning customers' basements and living rooms into membership gyms.

Given the benefits, it isn't surprising that many industries, even traditional ones, are exploring subscriptions as a significant revenue stream. The subscription economy is growing, and the opportunities it presents aren't just limited to SaaS products and subscription boxes. As the

logic of the subscription economy continues to expand into new industries, it's likely we'll see even more unexpected verticals adopting service subscription models in the years to come. Some likely candidates include Skincare & nutrition, Fashion & apparel, Elder care

With a low churn rate, predictable income stream and decreased customer acquisition cost, it's time to see how subscriptions can change your business, for the better.

Freemium Model



This combination of "free" and "premium" has become a widely used approach amongst startups over the last decade. Broken down, users get basic features at no cost and can access richer functionality for a subscription fee. If you've networked on LinkedIn or shared files through Dropbox, you've experienced the model firsthand.

One of the greatest advantages to a freemium strategy is that it helps early stage startups scale by attracting a user base without costly ad campaigns. Freemium models tend to be more successful than 30-day free trials and other offers alike because customers have become wary of cumbersome cancellation processes and find indefinite free access more compelling. The goal of the freemium model is to lower customer acquisition costs (CAC). By providing a free version of your product, you eliminate any barriers to entry.

The freemium business model works by having a small number of customers



subsidize a product for the entire user base. This model almost exclusively applies to easy-to-use products with large markets, network effects, and self-service. B2C and SMB-B2B companies are more likely to develop products that meet those characteristics. B2B companies (especially upmarket and enterprise) struggle with freemium because they operate in highly competitive and narrow markets and require some initial upfront investment.

Because of the nature of the model, most freemium providers end up with a lot of “trial” customers (on Spotify for example, more than half of their users are on a free plan), so the challenge is converting trial users into paying customers.

To make this acquisition model work for you, you need to focus on your “freemium-to-premium-customer” conversion rate and to be sustainable in the long term, freemium services need to be at low cost to run and have potential to scale up with larger customer base.

So,

What should be free?

Recall that one of the chief purposes of freemium is to attract new users. If you’re not succeeding with that goal, it probably means that your free offerings are not compelling enough and you need to provide more or better features free. If you’re generating lots of traffic but few people are paying to upgrade, you may have the opposite problem: Your free offerings are too rich, and it’s time to cut back. Start-ups should expect to do similar tweaking to find the optimal balance between traffic and paying customers. The balancing act can be tricky: Users may revolt when asked to pay for things they are accustomed to getting free.

How many product options in your freemium business model?

While a lot has been written on different forums about the ideal number of options

for humans to make an ideal decision under various scenarios, when it comes to product pricing options for your SaaS or subscription based products and if the product works on a freemium model then free counts as one offering, so ideally give options of just two more paid versions for the customer to choose from while building your initial financial model. For a B2C model, keep the proportion of free users close to 95% for the first two years while making business projections and the rest 5% can be broken down in whatever proportion you deem fit in the two paid versions. Base price model could be ~3% and premium could be 2% or less.

What should be your target conversion rate?

Imagine that you’re the CEO of a freemium start-up and you’re handed a report showing your conversion rate (the percentage of free users who have upgraded to a premium plan) for the most recent quarter. What figure do you hope to see?

A rate of 1% is probably too low, especially if you rely on subscription revenue alone. It signals either that too much of what you’re providing is free—giving users little reason to upgrade—or that consumers don’t understand or value your premium features.

But, a very high conversion rate isn’t necessarily good. Remember that one of the benefits of a freemium model is the ability to generate traffic. Suppose that 50% of the users of your free product upgrade to premium. You might think that your model is working well; but perhaps your free product is not very compelling, which will limit your potential acquisitions. All other things being equal, you would do better to convert 5% of 2 million monthly visitors, for example, than to convert 50% of 100,000 visitors. The best long-term strategy is generally to aim for a moderate conversion rate ranging from 2% to 5% coupled with a high volume of traffic. If

you're targeting a small market, you should aim for a higher rate.

But having all of that said please keep in mind, paid users need to generate enough revenue to support the cost of acquiring and serving all of your users - paid and free.

With a premium or fully paid pricing model, business will become profitable if the costs of acquiring and serving a new customer are lower than the revenue they generate over their lifetime. In contrast, with a freemium model (where user base is split between free and paid-for packages), business will become profitable only if the revenue generated by your paid users is more than the costs of acquiring and serving both your paid and free users.

How to Convert a Free User to A Paying User?

You need to know the right strategies for nudging free users toward premium products.

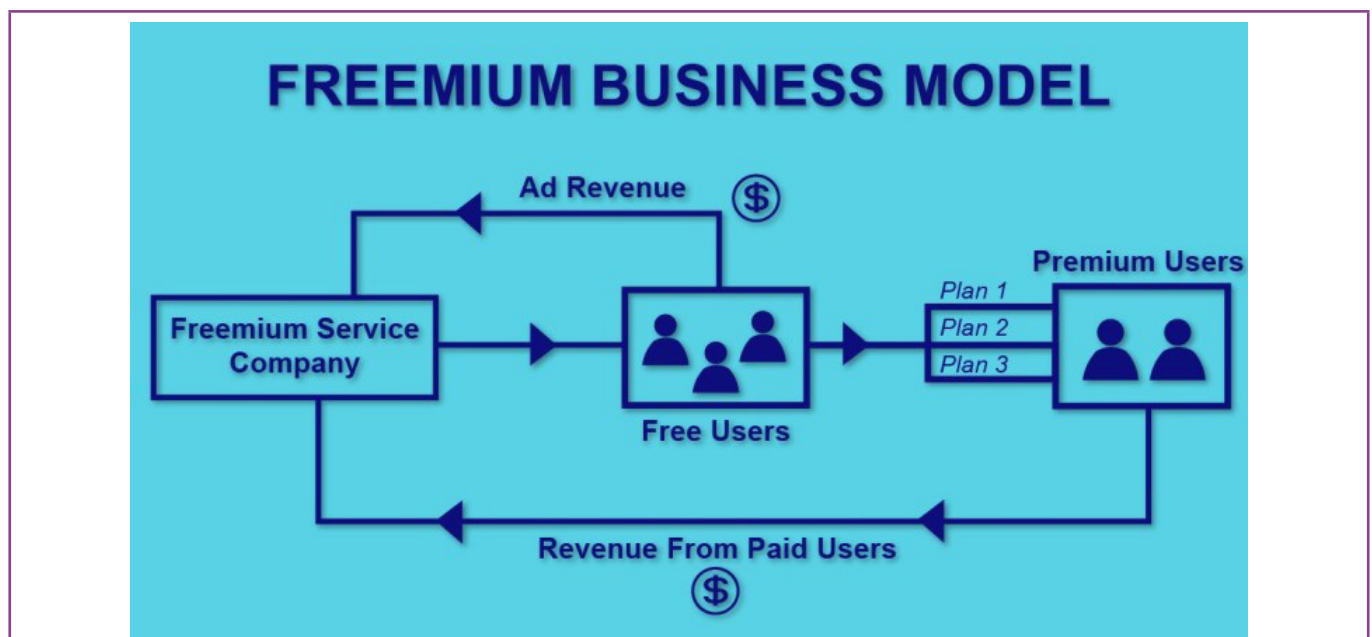
To start, make it abundantly clear how users can benefit from premium by spotlighting key features with in-app prompts, notifications or emails. If customers don't know what they miss out

on by only using the free product, then they will never convert.

Next, carefully select the right limitations to put on your free product, you can also assess where your customers find the most value in your product and advance from there. Remember these limitations should cause just enough frustration among users that they want to pay for upgrades, but not enough that they abandon your services altogether since you want them to experience the value of your product and understand the potential they could discover with premium.

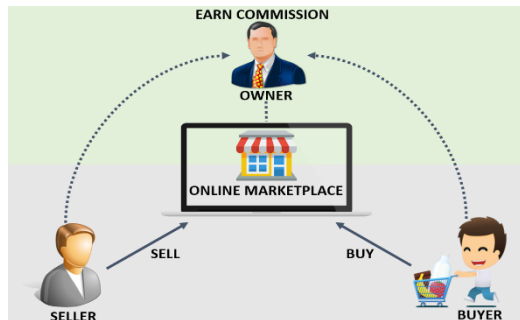
Conversion rates for freemium should usually fall between 2% to 5%. This, coupled with lots of traffic, is the balance you want.

In today's digital era, when the marginal costs of many products are dropping, businesses will increasingly turn to the freemium model. Across industries ranging from media (where companies are forced to rely less on advertising revenue and more on subscriber revenue) to education (where players may eventually seek to monetize mostly free online courses), the model is destined to grow more attractive to cover all industries pretty soon.





Marketplace Model



The marketplace model allows you only act as the online marketplace that takes care of the transactions between buyers and sellers. From a business perspective, traditional business ventures can be capital-

intensive because there is an inherent cost of building up a stock of inventory that you will inevitably offer for sale which will take away a significant amount of the frustration and expenses that typically come with running such a business including also a number of ancillary costs, like inventory forecasting tools, inventory management, shipping, logistics warehousing, etc. but, marketplaces circumvent all this quite well by putting the burden of product offerings on the various sellers who are participating on the platform. Since you don't manufacture a product, you won't need to worry about selling it.

Marketplace	Inventory-led
Pros	
Highly scalable	Speedier delivery
Wide product portfolio & large number of sellers	Better quality control - seller & product, both
Investor friendly model	Best customer experience and trust
Cons	
Difficult to conduct quality check	Difficult to scale
Shipping costs are higher	High fixed costs
Difficult to build customer's trust and loyalty	Restricted cash flow

Marketplaces will facilitate a transaction, taking a small slice of the pie from each transaction but you can't simply do this opening a current account, you may have to open a Nodal account for holding money of vendors and customers. It ensures that money does not legally belong to the intermediary, and is only held on behalf of others. Businesses that facilitate delivery of services immediately i.e. businesses that operate on "On demand model" eg Uber, need not comply with these guidelines. Keep in mind, there are specific conditions that apply to such accounts by RBI.

Various ways by which a startup opting for the marketplace model can monetize include transaction commission, membership fees, listing fees, registration fee, advertising fee, etc.

Learning how to sell your products profitably is one of the exciting parts of being a business owner. This requires knowing where your target customers spend time and putting together a plan to reach them. Often, this can be achieved by understanding different types of marketplaces. Each marketplace uses a marketplace business model, which is the framework showing why a business exists and how it accomplishes its goals.

If you've decided online marketplace business models are your thing, you then need to decide on the right marketplace to sell in. There are three basic types of online marketplace business models:

- Consumer to consumer (C2C)



- E-Commerce and retail sites (B2B and B2C)
- Wholesale marketplaces (B2B)

An offline marketplace business model is the marketing, sales, and operational framework used for running an offline business. Your business model may include fixed and variable costs, labor costs, expected revenue, marketing channels, unique selling proposition (USP), and other critical business information. Any offline marketplace business model should include attracting as many relevant, in-person buyers as possible. While every business is different, shipping is bound to be required at times, it's important to have this part of your business running smoothly.

Cost cutting is the core tenet of this operating model, which cross-functionally applies to product and service-focused marketplaces alike. The team behind Skype, created a whole philosophy around this principle, which they coined "innovating in zeroes." This simply means finding ways to reduce onerous costs to get competitive advantages and make your business more viable. Skype did this in two ways: The first was to use a user's existing internet connection to place the calls, which significantly lowered server costs. Another was to eliminate customer service completely, as he found users were often just as angry or unsatisfied after speaking with customer service. So why not get rid of it altogether? Within the context of marketplaces, Airbnb has innovated in zeros. They have no hotel maintenance costs, and they pay nothing to clean one of their listed apartments.

But with that as a luxury, marketplace does come with many challenges as well. For starters, depending on the complexity of the marketplace, they can require a great deal of capital to build in order to support a wide range of functionality. Consider, for example, a marketplace that operates globally: It would need to be able to translate all content and product data into

a user's native language. It would need to support multiple currency conversions, and it would need a constant awareness of regulatory considerations, depending on the market the user resides in. Moreover, if the platform allows users to upload product data, it would need a central mechanism to standardize all this data that would be coming from a wide range of different sources, in different formats, etc. Quality assurance would become a real challenge. But the challenges aren't just technological, the concept of "network effects" is more than likely come up. It describes the phenomenon of scale achieved when enough people have joined a network to make it beneficial for others to also join. Achieving this singular moment is every marketplace's end game. But establishing this can be devilishly difficult, especially in two-sided marketplaces — with, say, buyers and sellers — because acquiring enough users in tandem to create some semblance of equilibrium is beyond tricky. If the dynamics become lopsided — more sellers than buyers, or vice versa — it can cause attrition, which is the complete opposite of network effects.

One of the many decisions that sellers have to make while signing up on an online marketplace is, should they choose — marketplace fulfilment services or fulfill an order themselves.

Let's weigh in the pros and cons and find out which of the two is better for an online seller.

What is marketplace fulfilment?

It's a service provided by ecommerce players to their sellers. Those who sign up for this service, get assistance in storing inventory, packaging, shipping and delivering orders. This is done in exchange of a set of fees such as courier charges depending on the product category and size.

Snapdeal Plus (SD+), Fulfilment by Amazon (FBA), Flipkart Advantage and Fulfilment



by Shopclues are fulfilment services by ecommerce leaders Snapdeal, Amazon, Flipkart and Shopclues, respectively.

What is Self-fulfilment?

It's when a seller decides to take care of order fulfilment on his or her own.

This means taking entire responsibility of holding inventory and picking up a reliable logistics partner for packing orders, shipping and timely delivery.

Marketplace fulfilment	
Pros	Cons
Customers trust products that has fulfilled by marketplace sign	Restrictions on the maximum weight and size of a parcel
Visibility on marketplaces is very high	Sometimes sellers end up paying more than the actual value of the package as courier charges are calculated based on the actual weight or volumetric weight, whichever is higher.
Less logistics cost (see table below)	Few sellers have raised dispute over late/no pickup, which leads to late delivery
Less hassle	Lack of control

Self-fulfilment	
Pros	Cons
More control over how product is stored and packaged	Visibility on marketplaces is very low
Cost effective if your scale of business is small or you are just starting out	You need to have a warehouse and cost of overstocking is high
You can outsource to startups who can provide tailor-made and reasonable logistic solutions	Some courier partners do not offer reverse pickup service (e.g. India Post)
	It is difficult to find a trust-worthy and cost-efficient courier partner

For an online seller it would be relevant to go for marketplace fulfilment out of the two options since not only the logistics cost gets reduced but also delivery is faster without the grueling responsibility ensuring fast shipment which in turn helps sellers to earn high ratings.

In all fairness, the advantages of marketplace fulfilment overshadow the cons and also pros of self-fulfilment. An

ecommerce portal is a crowded place and if a 'Flipkart Advantage' or 'SD+' tag gets you listed on top and noticed then everything else pales in comparison. Not to forget the added advantage of COD, reverse pickup, and customer support. A seller can opt for self-fulfilment if it's a small business, established brand or niche products such as rare imported items, memorabilia and collectibles. Processing orders is a time-consuming activity and if



not done well, it will affect your ratings and future sales. If the accountability can be passed on to the ecommerce site, then a seller should seriously consider it. After all, ecommerce companies wouldn't like to dilute its brand value by delivering shoddy service.

Whether your view of marketplaces is positive or negative overall, the ability to construct an environment and observe how two parties interact with one another is fascinating on both a technological and behavioral level. As leading marketplaces mature, there is a growing sentiment calling for the central operators to take a more active approach in order to improve the overall user experience. This may take the form of implementing additional measures to reduce fraud, partnering with a logistics operator to standardize shipping operations or making future membership more selective. As the sheer number of niche marketplaces continues to increase, it will be interesting to observe their ability to compete with larger, more generalist platforms like Amazon or Alibaba, whether they use a hands-on or a hands-off operating approach and which other industries they can continue to disrupt through centralization.

If your business makes use of this model, you will need to provide customers with a reason to use your marketplace. To be successful, you likely shouldn't create a marketplace that's similar to Amazon. You could instead focus on a market that would be receptive to a smaller marketplace. For instance, a startup might want to create an art marketplace where customers can request artwork for logos, branding, and book covers. The artists on the other end could then fulfill these requests. The key is to reach out to a customer base that will be receptive to your idea.

Providing a service is out, and becoming the marketplace is in for various emerging sectors specially the e-commerce sector.

B2B2C Business Model

A B2B2C which translates a business to business to consumer model is a particular kind of business model startups usually adopt where, rather than accessing the consumer market directly, does that via another business, partners with them and sells to their consumers which helps to reduce their customer acquisition cost. Yet the final consumers will recognize the brand or the service provided by the B2B2C. The company offering the service might gain direct access to consumers over time. The logic behind such business model is that If a business can't have direct access to consumers, it will gain it via a second business. That second business will allow the first business to gain access to its consumers, have its brand recognized, and over time expands the overall consumer base.

One of the deals that made Google the tech giant it is today was the deal with AOL. Google was already a consumer product. However, it needed to pass first through a set of bottlenecks to gain access to consumers. In addition, the more data Google gained over time, the more it got better. And the more consumers knew about it; the more Google would be less reliant on distribution channels like AOL. This is not to say that Google took advantage of AOL, quite the opposite, Google offered to AOL a minimum guaranteed of revenues, and it bought a stake into the company. So, indeed, a B2B2C business model relies on a closely tied relationship which makes the intermediary business (which connects to end consumers) position quite good.

Why not go directly to consumers?

One of the first questions that come to mind in designing this kind of business model might be about why not going directly after the consumers?

In reality, going after the consumers is the dream of many, but a few make it. The



consumer market seems to be biased more than any other toward the winner-take-all effect. Starting from a B2B, an enterprise business allows at least three advantages:

- risk reduction
- a more predictable growth path
- easier financing as more investors can liquidate their position via an exit i.e

a strategy where the venture capitalist or investor liquidates its funds in a previously invested startup, and it usually measures the ROI for the investor.

One drawback here of course is the lack of scalability wherein a B2B2C business model comes into picture.

How does a B2B2C relationship look like?

A partnership between B1 and B2 as I argue has three main features:

It is not a white label: It is not selling under the brand of the other business but using their platform or presence to market your own products in your own brand. If it was a white label, final consumers would not recognize the product and brand over time

It has direct access to consumers' data: The more data SaaS have about the people using it the better those tools will get for each new user. If the business entering the consumer market via another business didn't have access to their data, it wouldn't be possible to benefit from network effects and scale up over time.

It gains brand recognition: Not only the B2B2C business will have access to consumer's data, but its brand will be pretty visible to them. Thinking back to the Google deal with AOL where it got powered by Google searches, more and more people could recognize Google over time, at the point that it became a verb.

In the coming times I am expecting the B2B2C model take up the wholesale, retail and the e-comm space very soon.

D2C Business Model

The direct-to-consumer(D2C) model allows the marketers to sell products directly to the consumer Instead of using wholesalers or retailers in the middle. D2C retail model market, ship, and sell their products directly to the consumer. In the direct consumer model, customers get the products directly from the brands that manufacture them. The D2C model is gaining popularity in countries such as the US, China, Japan, and India. Initially, D2C brands distribute their products via their own channels like e-commerce platforms, retail stores, or social media. Physical outlets by D2C brands are purposely designed to enhance brand awareness and customer engagement, encouraging more online sales.

Difference Between D2C And B2C

In the D2C business model, brands or manufacturers sell directly to the consumer or clients without keeping a third party in between. But in the B2C (Business to Consumer) model, a company sources a product from a manufacturer and then sells it to the customer.

Benefits Of D2C Model

- By eliminating the gatekeepers, brands can reduce distribution costs and can increase their profit in this way.
- Before D2C, brands used to market their products through traditional channels like Tv, Radio, and Print ads. But, after the arrival of the eCommerce model, now brands can use various mediums like advertisements, SEO, affiliate marketing, social media marketing, etc.



The Chamber of Tax Consultants

- D2C brands allow marketers to understand customer behavior, identify patterns, trends, and know the requirements of the customers so that they can deliver customized products and offerings.
- The most valuable asset direct-to-consumer brands have is the ability to obtain immediate feedback.

So, I'm pretty sure by having got to know these models by now, you'd want to dive deep into finding that one business model

that would perfectly suit your startup and so here are a few amazing books that I would recommend having helped a lot of startups navigate from just having an idea, to actually bringing it to practice:

Blitzscaling by Chris Yeh and Reid Hoffman

Reinvent your business model by Mark Johnson

Platform Scale by Sangeet Paul Choudary.

Eagerly waiting to be your loyal customer.





Overview on Pre-packaged Insolvency Resolution Process



Priyanshi Bainwala CA Mallika Devendra

1. Introduction

The Insolvency and Bankruptcy Code, 2016 ('Code') was enacted to provide a consolidated insolvency framework having certainty of process, time and outcome to creditors, debtors and other stakeholders. The Code aims to provide a speedy solution to the ever-growing problem of stressed assets in India. The Code stipulates strict compliance of prescribed timelines for completion of corporate insolvency resolution process ('CIRP') of the Corporate Debtor; if the Corporate Debtor is not revived or the insolvency of the Corporate Debtor is not resolved within the prescribed time frame, then the ultimate consequence is liquidation of the Corporate Debtor. However, there have been certain instances wherein departure from the prescribed time frame under the Code has been permitted by way of judicial interpretation, excluding the time taken during legal proceedings before other forums, force-majeure situations, etc.

The advent of COVID-19 in the wake of 2020 (herein after referred to as 'Pandemic'), posed lot of financial/difficulties for the Micro, Small and Medium Enterprises (hereinafter referred to as 'MSME'). To solve these issues/difficulties, the Insolvency and Bankruptcy Board of India ('IBBI') proposed to introduce Pre-

Packaged Insolvency Resolution Process ('PPIRP') in respect of a corporate debtor classified as a MSME under section 7 (1) of the MSME Act, 2006. The Central Government promulgated an ordinance on 4 July 2021 making further amendments in the Code allowing the use of pre-packs as an insolvency resolution mechanism for MSMEs. This Ordinance was converted into Insolvency and Bankruptcy Code (Amendment) Act, 2021 w. r. e. f. April 4, 2021.

The provisions relating to the Pre-Packaged Insolvency Resolution Process for corporate persons classified as MSME have been incorporated under Chapter III-A [sections 54A to 54P] in Part II of Code w.e.f. 4 April 2021.

The Author in this article shall provide an overview on the PPIRP.

2. Pre-packed insolvency process

Pre-packed insolvency process is an innovative way of having both formal and informal procedure for resolution of financially stressed corporate debtors¹. It is a very cost-effective method and is considered as a fast method for the resolution process before value deteriorates, with least business disruptions and without attracting repercussions of formal

1. <https://www.ibbi.gov.in/uploads/whatsnew/a650764a464bc60fe330bce464d5607d.pdf>



insolvency. It has brought a major relief to the MSMEs which plays a major role in the Indian economy as they contribute significantly to the gross domestic product and help in generating employment to sizeable population.

The sub-committee of Insolvency Law Committee has delineated the three-guide design for the pre- packed framework for insolvency resolution of MSMEs,

- (a) Firstly, the basic structure of the Code should not be violated,
- (b) Secondly, the parties should be not in compromising position with their rights, and
- (c) Thirdly, there should be checks and balances in the framework of the Code to prevent abuse of the process.

PPIRP is a hybrid model that is both informal and formal and provides for a debtor-in-possession with creditor-in-control driven process. It allows the debtors and its creditors to mutually decide the terms of an insolvency resolution prior to the commencement of formal insolvency process as prescribed under Chapter II in Part II of the Code. It safeguards the rights of stakeholders as much as in CIRP and has adequate check

The implementation of the pre-packed system in India has taken a step forward in the objective of the Code. The implementation of the PPIRP is the need of the hour especially during the pandemic as there was lot of financial stress on the company due to which many MSMEs would have ended up in insolvency proceedings and thus, more liquidation. Further, it is well known that high amount of liquidation is not good for any economy as it results in loss of jobs, credit and business.

3. Governing Framework

The provisions governing PPIRP are available in:

- (i) the Insolvency and Bankruptcy Code, 2016, as amended by the Insolvency and Bankruptcy (Amendment) Act, 2021;
- (ii) the Insolvency and Bankruptcy (Pre-packaged Insolvency Resolution Process) Rules, 2021; and
- (iii) the Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021.

4. Eligibility for PPIRP

Corporate Debtor ('CD'), which is an MSME under section 7(1) of the Micro, Small and Medium Enterprises Development Act, 2006, is eligible to apply for initiation of PPIRP, if it-

- (iv) has committed a default of at least Rs.10 lakh;
- (v) is eligible to submit a resolution plan under section 29A of the Code;
- (vi) has not undergone a PPIRP/CIRP during the three years preceding the initiation date;
- (vii) is not undergoing a CIRP; and
- (viii) is not required to be liquidated by an order under section 33 of the Code.

As per Notification No. 2119(E) dated June 26, 2020 of the Ministry of MSMEs, to evidence that the CD is an MSME, the Applicant shall furnish either

- (i) a copy of the latest and updated Udyam Registration Certificate or
- (ii) proof of investment in plant and machinery or equipment and

turnover.

It is pertinent to note that the PPIRP framework is not applicable to all the types of MSMEs. It has been made applicable only to Corporate Debtors classified as Micro, Small and Medium Enterprises under section 7(1) of Micro, Small and Medium



Enterprises Development Act, 2006 but excludes other form of MSMEs such as partnership firm, sole proprietors, and HUF's.

5. Pre-initiation Phase

PPIRP contemplates a hybrid process, where pre-initiation phase is largely informal and post-initiation stage is formal. The informality at pre-initiation stage offers flexibility for the CD and its creditors to swiftly explore and negotiate the best way to resolve stress in the business, while the post-initiation stage drives value maximisation and bestows the resolution plan with the statutory protection.

In pre-initiation stage, the following activities need to be undertaken:

- (i) Applicant shall seek approval of creditors under section 54A(2)(e) and (3) by convening meetings of the unrelated financial creditors (UFCs), that is, financial creditors who are not related parties of the CD. Where the CD has no financial debt or where all financial creditors are related parties, the applicant shall convene meetings of unrelated operational creditors (UOCs) and the UOCs shall perform the same duties and functions as the UFCs.
- (ii) Applicant shall convene a meeting of UFCs by serving notice of the meeting to UFCs at least five days before the date of the meeting (s) unless a shorter time is agreed to by all of them. The notice of the meeting shall indicate the date, time, and venue of the meeting and specific agenda items for discussion.
- (iii) The applicant shall enclose a list of creditors along with the amount due to each of them in Form P2, along with the notice convening the meeting seeking approval for appointment of an Insolvency Professional as Resolution Professional ('RP').

- (iv) In the meeting of UFCs, creditors having at least 10% of the value of debt shall propose the name of an Insolvency Professional eligible under the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, for appointment as RP.
- (v) The UFCs representing not less than 66% in value of debt due to such creditors shall approve the appointment as RP and the terms of appointment in Form P3. The terms of appointment shall include:
 - (a) fee payable to him for performing duties in relation to pre-initiation phase under section 54B,
 - (b) fee payable to him and expenses to be incurred by him for conducting the PPIRP, and
 - (c) fee payable to him and expenses to be incurred by him in case management of the CD is vested with him under section 54J.
- (vi) Majority of director/partners of the CD shall make a declaration in Form P6 stating
 - (a) that the CD shall file an application for initiation within a definite time not exceeding 90 days,
 - (b) that the PPIRP is not being initiated to defraud any person, and
 - (c) the name of the IP approved by creditors to be appointed as the RP.
- (vii) The members of the CD shall pass a special resolution, or at least 3/4th of the total number of partners of the CD shall pass a resolution, approving the filing of an application for initiating PPIRP as required in section 54A(2)(g).



- (viii) CD shall prepare a Base Resolution Plan ('BRP') in conformity with the requirements under section 54K.
- (ix) Along with the notice for convening the meeting(s) seeking approval for filing of an application for initiating PPIRP, the applicant shall enclose
 - (a) a list of creditors and the amount due to each of them in Form P2,
 - (b) declaration in Form 6,
 - (c) the resolution of members or partners referred to in section 54A(2)(g), and
 - (d) the BRP.
- (x) In the meeting of UFCs, creditors representing not less than 66% in value of debt due to such creditors shall approve filing of application for initiation of PPIRP of the CD under section 54A(3), in Form P4.
- (xi) The IP (proposed to be appointed as the RP) shall ascertain creditors in class(es), if any, from the list of creditors in Form P2 and shall identify three IPs to act as authorised representative (AR) and obtain their consent in Form P5. The proposed RP will seek choice of creditors in the class, and select the IP who is the choice of the highest number of creditors in the class to act as the AR. The proposed RP shall inform the name of the IP, along with his consent in Form P5, to the corporate applicant, in accordance with Regulation 15.
- (xii) The IP (proposed to be appointed as the RP) shall prepare report in Form P8 confirming if the CD is eligible for PPIRP and that the BRP confirms the requirements as prescribed under the Code and Regulations thereunder.

6. Application for Initiation of PPIRP

- (i) A corporate applicant which fulfils the requirement of section 54C can only

file an application for initiation of PPIRP.

- (ii) The applicant shall file the application in electronic form - Form 1, before the Adjudicating Authority ('AA') for initiating PPIRP.
- (iii) The application shall be accompanied by the following documents:
 - (a) Record of default;
 - (b) Consent of the IP proposed to be appointed as RP, in Form P1;
 - (c) Approval of UFCs for initiating PPIRP of CD, in Form P4;
 - (d) Consent of the IP proposed to act as AR, if any, in Form P5;
 - (e) Declaration by Directors/Partners, in Form P6;
 - (f) Members' Resolution or Partners' Resolution;
 - (g) Declaration by CD regarding avoidance transaction(s), in Form P7;
 - (h) Report of the RP, in Form P8;
 - (i) Audited financial statements of the last two financial years;
 - (j) Provisional financial statements for current financial year made up to the date of declaration under section 54A(2)(f);
 - (k) Latest and updated Udyam Registration Certificate, or proof that the CD is an MSME;

7. Post-initiation Phase

- (i) The process is required to be completed within a time frame of 120 days from the PPIRP commencement date. Commencement Date means the date of admission of an application for initiating the PPIRP by the AA under section 54C(4)(a);



- (ii) During the PPIRP, as provided under section 54H,
 - (a) the management of the affairs of the CD shall continue to vest in the Board of Directors ('BOD')/the partners of the CD;
 - (b) the BOD/the partners of the CD shall make every endeavour to protect and preserve the value of the property of the CD, and manage its operations as a going concern; and
 - (c) the promoters, members, personnel and partners of the CD shall exercise and discharge their contractual or statutory rights and obligations in relation to the CD.
- (iii) The CD shall, within two days of the PPIRP commencement date, submit to the RP, updated as on that date,
 - (a) a list of claims, along with details of the respective creditors, their security interests and guarantees, in Form P10, and
 - (b) a preliminary information memorandum (PIM) containing information relevant for formulating a resolution plan. If any person sustains any loss or damage as a consequence of the omission of any material information or inclusion of any misleading information in the list of claims or the PIM, every person who
 - is a promoter or director or partner of the CD at the time of submission of the list of claims or the PIM, or
 - has authorised the submission of the list of claims or the PIM, shall be liable to pay compensation.
- (iv) The CD shall submit the BRP to the RP within two days of the PPIRP

commencement date. It may revise the BRP if permitted by the CoC.

- (v) The RP shall make a public announcement, in Form P9, within two days of the commencement of the process in the manner specified in regulation 19.
- (vi) The RP shall exercise powers and carry out duties as required under section 54F.

8. Approval of Resolution Plan

- (i) If BRP does not impair claims owed to operational creditors (OCs), the CoC may approve it for submission to the AA.
- (ii) If the CoC does not approve the BRP or the BRP impairs the claims of OCs, the RP shall invite prospective resolution applicants to submit resolution plans to compete with the BRP. He shall publish brief particulars of the invitation for resolution plans in Form P11, not later than 21 days from the PPIRP commencement date, in accordance with regulation 43.
- (iii) The invitation for resolution plans shall detail each step in the process, and the manner and purposes of interaction between the RP and the resolution applicant, along with corresponding timelines. It shall include
 - (a) basis for evaluation;
 - (b) basis for considering a resolution plan significantly better than another resolution plan;
 - (c) tick size (i.e. minimum improvement over another resolution plan in terms of score, as approved by the committee and disclosed in the invitation for resolution plans); and
 - (d) manner of improving a resolution plan. It shall not require any non-

refundable deposit for submission of or along with resolution plan.

- (iv) The resolution plans received in response to invitation and complying with the requirements of the Code and the Regulations shall be evaluated on the basis for evaluation. The resolution plan which gets the highest score shall be selected as Best Alternate Plan (BAP) for competition with the BRP.
- (v) The CoC may consider BRP for approval if no resolution plan is received.
- (vi) The CoC may consider the BAP for approval if it is significantly better than the BRP. If it does not approve a significantly better BAP, the process terminates.
- (vii) If the BAP is not significantly better than the BRP, the RP shall disclose the scores of the BAP and BRP to submitters of these plans and invite them to improve their plans in accordance with Regulation 48.
- (viii) The process of improvement shall continue till either of the submitters fails to use the option within the specified time. The resolution plan having higher score on completion of process of improvement shall be considered by the CoC for approval. If the CoC does not approve it, the process terminates.

9. Closure of PPIRP

The PPIRP closes in the following circumstances:

- (i) On approval of either the BRP or the BAP by the AA.
- (ii) On expiry of 90 days if no resolution plan is submitted to the AA for approval.
- (iii) On rejection of resolution plan by the AA.

- (iv) On approval by the AA of application filed by the RP for termination of PPIRP, where the CoC approves termination with 66% of voting share.
- (v) On conversion into CIRP based on an application filed by the RP, where the CoC approves so with 66% of voting share, and the CD is eligible for CIRP. The RP of the PPIRP is appointed as the IRP of the CIRP.
- (vi) On an order of termination in case either no resolution plan is approved by CoC or the resolution plan approved by the CoC does not result in change in management, where the AA has vested the management of the CD with the RP under section 54J.

10. Advantages of PPIRP over the CIRP process

- (i) The process specified for the CIRP is comparatively cumbersome, hence a simple procedure has been prescribed in chapter III -A of the code.
- (ii) PPIRP is a comparatively speedy process and less time consuming than that of CIRP.
- (iii) PPIRP must be completed in 120 days however CIRP takes over 180 days and further can be extended to a period of 330 days.
- (iv) The minimum threshold while applying for PPIRP is 10 lakhs whereas for CIRP a minimum default of ₹ 1 crore is prescribed.
- (v) The fee for filling the initiation of PPIRP is ₹ 15,000/- whereas for CIRP is ₹ 25,000/-
- (vi) The RP has to submit the resolution plan approved by the CoC to the AA within 90 days of the commencement of PPIRP, however, there is no such time limit for the submission of resolution plan under CIRP.



11. Issues to be addressed under the PPIRP regime

PPIRP has acted like an economic vaccine during the pandemic to MSMEs. However, there are few issues which needs to be addressed for successful implementation of PPIRP:

- a) **PPIRP framework:** PPIRP framework is not applicable to all the types of MSMEs as it excludes other form of MSMEs such as partnership firm, sole proprietors, and HUF's.
- b) **Errant Promoters can regain entry in the corporate debtor** - CD while applying for PPIRP is required to comply with all the conditions set out under section 29A of the Code. However, section 240-A of the Code has carved out an exception for MSMEs wherein they are exempted from complying with the requirements of section 29A(c)² and 29A(h)³ of the Code. This is a glaring disparity as the stand taken by the Sub-committee of Insolvency Law Committee ("**ILC**") on PPIRP had recommended that that exemption under Section 29A to promoters with NPAs should not be provided. **Allowing this exception will allow the promoters having accounts classified as NPAs to submit plans under the PPIRP (i.e., permitting back door entry), which would in turn defeat the purpose of revival of the CD as envisaged under the Code.**
- c) **Misconception about Debtor in control & possession ("DCIP")**

approach: Under the regulation 50(2) of PPIRP, BOD can manage its affairs subject to the scrutiny by the RP, whereas the CoC has the full right to decide the actions of CD during the course of PPIRP of CD. Therefore, the so-called debtor in control and possession, is always subject to the control of the CoC.

- d) **Less transparency under PPIRP compared to CIRP:** Lack of transparency is one of the major issues in PPIRP as financial creditors will reach an agreement with the potential resolution applicants, through private closed door and not through open bidding process which may seriously affect/prejudice interest of the stakeholders involved in the process.
- e) **Moratorium:** Unless admitted under section 55C of the Code, the safeguard provided to the CD in the form of moratorium will not be in effect during negotiation, which will create impediments during the negotiation period between the CD and FC, as there will always be an imminent risk to the CD of being dragged to other forum, court and/or tribunal by any of the stakeholders and/or class of creditors pending the admission of the PPIRP application, thereby stalling and/or hampering the pre-pack process.

12. Road Ahead

The PPIRP module has provided relief to the MSME sector during the pandemic as

2. Section 29A (c) - prohibits a person from submitting a resolution plan who has an account declared as a NPA by the RBI for 1 year preceding the submission of the plan or is a promoter of, or in the management or control of, a CD whose account has been classified as an NPA for 1 year before submission of the resolution plan.
3. Section 29A(h) - prohibits a person from submitting a plan if they have executed an enforceable guarantee in favour of a creditor of a CD against which the application for insolvency resolution made by such creditor has been admitted under the Code.



it leads to faster resolution and is certainly a cost-effective process. However, there are lacunas that needs to be addressed for better implementation.

The issues raised above should be carefully assessed. The Author suggests few recommendations as under:

- The control of the CoC in PPIRP can be reduced so that the framework can achieve its full objectives in terms of

alternate mechanism to CIRP under the Code.

- To ensure transparency, the group of classes should also be included in the negotiation discussion with CD's under PPIRP

Unless the abovementioned issues raised are addressed, there will be need for more judicial pronouncement, amendments to realize the complete potential of the PPIRP.





All you need to know about probate, letters of administration, succession certificate and heirship certificate



Ragma Ramesan



Jas Sanghavi,
Advocate

All you need to know about probate, letters of administration, succession certificate and heirship certificate.

There are two manners in which the succession of the deceased's property is determined. (i) Intestate Succession if the deceased does not have a will in place and (ii) Testamentary Succession when the deceased makes a will during his lifetime.

When an individual dies intestate, it is the right and duty of the heirs to approach the competent authority, to determine their share in the deceased's assets and property. The Hon'ble Court looks into all the matters and even notifies the general public to avoid any kind of fraud. A detailed information relating to Probate, LOA (Letter of Administration), Succession Certificate and Heirship Certificate is given below.

Will plays an important role in the succession of one's property. Will is a written declaration by the deceased about the distribution of his property. Section 2(h) of the Indian Succession Act, 1925 ("**Act, 1925**") defines Will as "the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death." When a will is made, the testator assigns an executor who executes the will after his demise. Instances where the testator/deceased does not assign an executor or the executor refrains from executing the Will, the Hon'ble Court assigns a competent individual for smooth execution of the deceased's Will.

Probate

Probate is defined in Section 2(f) of the Act, 1925, "the copy of a will certified under the seal of a Hon'ble Court of competent jurisdiction with a grant of administration to the estate of the testator."

As per Section 213 read with Section 57 of the Act, 1925, Probate of the Will is mandatory in three circumstances:

1. If the property is an immovable property,
2. If the Will is made in Maharashtra, Chennai and Kolkata,
3. If the Will is made by a Hindu, Jain, Sikh or Buddhist.

However, probate is not mandatory in other circumstances. But it is always advisable that a party obtains the probate, which will reduce the risk of any future litigation.

Probate helps in determining the validity of the will and enforce the final will of the deceased. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such (Section 227 of the Act, 1925).

As per Section 222 of the Act, 1925 it can only be granted to the executor appointed by the will. Such an appointment may be expressed or by necessary implication.

Further, according to Section 223 of the Act, 1925, Probate cannot be granted to any person who is a minor or is of unsound mind. Neither it can be granted to an association of individuals unless it is



a company which satisfies the conditions prescribed by rules to be made by notification in the Official Gazette by the State Government in this behalf. If the executor is not available to administer the estate, an application must be made for appointing the same by the Hon'ble Court before applying for probate. The executor files a petition in the Hon'ble Court for a grant of the probate. The executor who becomes the Petitioner in this scenario, also issues notice to the legal heirs of the deceased. The Hon'ble Court issues notice calling for objection to the heirs and also notifies the general public. If no objection is raised, then the probate is granted. In the case, where an objection is raised, the Petition will be converted to a suit and the judgement will only be passed considering the evidences placed by the parties before the Hon'ble Court and after hearing the arguments of the said parties.

In the case of ***Rupali Mehta v. Tina Narinder Sain Mehta (AIR 2007 BOM 62)***, the Hon'ble Bombay High Court stated that, according to Section 269 of the Act, 1925, the Hon'ble Court has the authority to intervene in order to preserve property right and defend the property. Sections 192 and 193 of the Act, 1925, provides summary procedure to protect deceased properties. However, the said provisions can only be initiated when an individual, who has no legal right, forcefully takes possession of the property. The Hon'ble Court further concluded that a testamentary Court cannot provide interim relief, because, it is outside the jurisdiction and subject matter of the court.

Court fees while filing probate application

The court fees for obtaining a probate is different in various states.

In Maharashtra, the minimum is 2% and the maximum is 7.5% and the ceiling of ₹ 75,000/- depending upon the value of the estate.

The list of documents needed to obtain an LOA and Probate are as follows:

1. Death certificate of the Testator
2. Original Will of the Testator
3. List of Legal Heirs
4. Proof of all the properties mentioned in the will
5. No Objection Certificate
6. Identity proofs of the legal Heirs

Letter of Administration (LOA)

LOA is often confused with Probate and Succession Certificate.

Probate checks the authenticity of the will, and can only be granted to the executor of the will.

An LOA grants permission to administer of the property of the deceased person.

LOA is an order granted by the Hon'ble Court that gives permission to administer the will of the deceased. When the deceased dies intestate or does not nominate an executor or the executor declines his position, then the beneficiary shall file for an application for LOA. LOA gives same power to the beneficiary that of an executor. It grants the beneficiary all the administrative powers as though granted from the death of the deceased. An administrator can be the spouse of the deceased or any family. Multiple individuals can also be appointed as administrators, at Hon'ble Court's discretion. LOA may also be granted to the creditor of the deceased. However, LOA cannot be granted to a minor or an unsound person.

If no beneficiary volunteers, then an administrator is appointed by the Hon'ble Court. The Hon'ble Court issues notice for a call for objection to the heirs and also notifies the general public. If no objection is raised, then the LOA is granted.



The Hon'ble Court fees for LOA is 5% of the value of the will, with maximum of ₹ 75,000/-.

The list of documents needed to obtain an LOA and Probate are as follows:

1. Death certificate of the Testator
2. List of Legal Heirs
3. Proof of all the properties mentioned in the will
4. No Objection Certificate
5. Identity proofs of the legal Heirs

Succession Certificate

As per the Act, 1925, a succession certificate is a document issued by the competent Hon'ble Court verifying the person to be the legal successor of the deceased, if the deceased dies interstate. It can only be issued in case of movable property, securities and debts but not immovable property.

If there are both immovable and movable property, then they'll have to get a probate and succession certificate respectively.

A succession certificate is issued by the District Judge of the deceased's residence. To obtain a Succession Certificate, the legal heir needs to file a petition in the Hon'ble Court. If the residence of the deceased is unable to be determined, then the jurisdiction will be transferred to the place where the deceased's assets are maintained. The Hon'ble Court issues notice for a call for objection to the heirs and also notifies the general public. If no objection is raised, then the Succession Certificate is granted.

To obtain a Succession Certificate, the documents needed for inspection are as follows:

1. Death Certificate of the deceased.
2. Address of the deceased.

3. List of properties of the deceased.
4. List of Securities and debts of the deceased.
5. List of legal Heirs of the deceased.
6. No Objection Certificate from the deceased.

Heirship certificate

When the deceased dies interstate, a legal heir certificate is mandatory to transfer the deceased assets to the legal heir. Legal Heir Certificate helps in establishing the relation between the applicant (i.e. legal heir) and the deceased. It helps in acquiring claim over the assets, securities, insurance of the deceased. It can only be applied by legitimate parents, spouse or the children of the deceased. The legal heir must approach the competent authority to receive an heirship certificate. The Legal Heir must submit documents such as death certificate, list of assets and securities, list of names and addresses of legal heirs.

Difference between Succession Certificate and Heirship Certificate

Heirship Certificate is used to identify the legal heirs of the deceased, whereas Succession Certificate helps in determining the legality of legal heirs. Heirship Certificate can only be obtained by legitimate parents, spouse and/or children, whereas Succession Certificate can be obtained by any legal heirs not limiting to them. Heirship Certificate can be obtained in 15-30 days whereas the procedure to obtain Succession Certificate may take more than few months.

Heirship Certificate is granted by the Revenue Officer or the Tahsildar and now by the Hon'ble Court in certain cases. The Succession Certificate is only granted by Hon'ble Court.



Section 213 of Act, 1925 not applicable to wills made by Mohammedans and Christians.

The provisions of Section 213(1) which necessitate the grant of probate of the will or letters of administration with the will or with a copy of the authenticated copy of the will annexed by a court of competent jurisdiction in order to establish the right as executor or legatee is not applicable to wills made by Mohammedans and Christians.

Section 213 of the Act, 1925, lays down that *"no right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in India has granted probate of the will under which the right is claimed, or has granted letters of administration with the will or with a copy of an authenticated copy of the will annexed."*

Further, the section "shall not apply in the case of wills made by [a] Muhammadan or [an] Indian Christian".

It shall only apply in the case of wills made by a Hindu, Buddhist, Sikh or Jaina where wills are of the classes specified in Section 57; and by a Parsi dying, after the commencement of the Indian Succession

(Amendment) Act, 1962, "where such wills are made within the local limits of the ordinary original civil jurisdiction of the High Courts at Calcutta, Madras and Bombay and where such wills are made outside those limits, insofar as they relate to immovable property situate within those limits."

Conclusion

According to our understanding, these legal documents help in determining the rights related to the assets of the deceased person, and avoids any fraudulent activities. A Probate give validity to the Will, that the contested Will is real and final wish of the deceased, if there are more than one Will, a Probate is used to give authenticity to the latest Will of the deceased. An LOA helps in administering a smooth transaction of the deceased's Will. Both the documents play an important role, when the asset of the deceased is an immovable property especially in Mumbai, Kolkata and Chennai. A Succession Certificate and Heirship Certificate has limited scope than the other documents. They help in determining the legal heirs and successors of the deceased.





The Chamber of Tax Consultants



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Vision Statement

The Chamber of Tax Consultants (The Chamber) shall be a powerhouse of knowledge in the field of fiscal laws in the global economy.

The Chamber shall contribute to the development of law and the profession through research, analysis and dissemination of knowledge.

The Chamber shall be a voice which is heard and recognised by all Government and Regulatory agencies through effective representations.

The Chamber shall be pre-eminent in laying down and upholding, among the professionals, the tradition of excellence in service, principled conduct and social responsibility.

Unveiled by **Shri S. E. Dastur**, Senior Advocate on 30th January, 2008.



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