JIGnyasa

Vol. III | No. 3 | March 2022

Your Quarterly Companion on Tax & Allied Topics

Learning Today Leading Tomorrow...

HEAVEN BE OUR GUIDE

Estd. 1926

ज्ञानं परमं बलम्

The Chamber of Tax Consultants

Mumbai | Delhi

www.ctconline.org

THE CHAMBER OF TAX CONSULTANTS
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READER'S SUGGESTIONS AND VIEWS

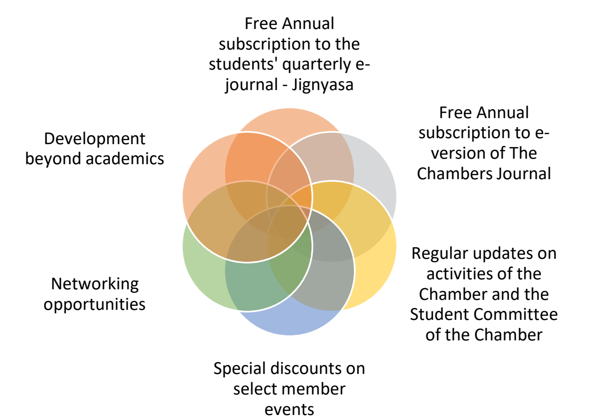
We invite the suggestions and views from readers for improvement of ***Jignyasa***.
Kindly send your suggestions to office@ctconline.org

Become a Student Member of The Chamber of Tax Consultants

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

- Webinar on technical topics of practical importance
- CA Student Orientation Programme
- Udaan – A Motivational Chat Show with stalwarts
- National level Tax Moot Court Competition
- Legal Practice Orientation Course
- Dastur Debate Competition
- The Dastur Essay Competition
- Jignyasa - A journal by the student for the students
- Entertainment programs for rising talent including Musical Night
- Industrial visits
- Inter-firm Football and Cricket tournaments

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 gives me immense pleasure to connect with you all through this issue of "Jignyasa" once again. As I start penning down my thoughts for this communication, the Indian Economy, in fact the world economy, is passing through a very unpredictable situation. While the GST collections and also the Direct Tax collections are rising on a regular basis and making new highs, the RBI is certainly worried, and rightfully so, to address the issue of inflation. The recent increase in the repo rate after almost two years is probably just one step in the direction and many more steps need to be taken. It is going to be a serious challenge for the RBI to address inflation and at the same time ensure that sufficient demand continues in the markets so as to ensure the growth. Infrastructural spending is the need of the hour and all of us look forward to the government to put this on even faster mode. The much awaited and much talked about IPO of LIC of India has just ended and it has received not so great response as was expected. This is for obvious reasons – the world equity markets are on a downward journey followed by the Ukraine war, which does not seem to be ending very soon.

On the front of taxation, the Hon. Supreme Court has recently given a judgement validating the notices for reassessment issued between 1st April 2021 to 30th June 2021 by exercising the special power available under Article 142 of the Constitution. But for this, and the Supreme Court also agreed, that these notices were invalid. The purpose clearly seems to not permit evasion of tax on technical flaws. However, the judgment has created more complications then solving them. As a student, we are all learning new lessons from the judgment as we keep on analyzing the implications.

Some of you must be facing the natural anxiety as the May attempt of the ICAI examinations are fast approaching. My suggestion to all the students appearing for the examinations is to focus on the concepts rather than having an examination oriented approach while studying. If your fundamental concepts are clear, you are bound to succeed in the examination *de hors* the tough or the lengthy question paper, which has become the signature of the ICAI examinations in recent times. Please avoid any sort of short cuts and do not shy away from putting your genuine efforts. The ICAI examinations are much different than the graduation examinations. The Institute wants to check your ability to adapt to challenges as a student. If you as a student can stand up to this, the belief that you will equally be capable to approach real life problem with similar pragmatism. I wish you all the very best for your examinations. Do remember : *"when the going gets tough, the tough gets going."*

The Student's Committee of the Chamber continues to provide interesting and exciting programs to the students. The Dastur Essay Competition and the National Tax Moot Court

Competition have already been announced and I am sure many of you must be looking forward to participate in these events with great level of zeal. I suggest all the students to join for these events. You may also consider joining the Moot Court Competition as an audience, if not as a participant. Observation is the greatest teacher and one can learn many vital lessons by observations. Do join and I am sure, you will find yourself as enriched in true sense, not only on the technical subject matter but also on the skill that the Courts and Tribunals expect from the future lawyers and chartered accountants.

The educational activities of the Chamber as a whole continue to provide all of us the opportunity to relearn the variety of subjects that we may be interested in. Programs are lined up on the subject of TDS and TCS and Charitable Institutions in the near future. You are requested to consider joining these programmes. We also request you to give your suggestions about the topics for the programme that you as a student will like to attend and also the most optimum time for the same. We will make all the possible efforts to cater to your needs.

The present issue of the Journal covers variety of topics. The topics are wide spread and the purpose is to have a rounded approach for the readers. The range is so wide that we are covering FDI and the MSME in the same issue. I am sure each one of you will be able to relate yourself with one or the other subject and will find this useful. The authors are the students and have really been able to put forward admirable efforts with the due guidance from the mentors as may be required. I express my sincere gratitude and appreciation to the authors and also express my sincere heartfelt thanks to the authors for hand-holding the upcoming stars of the profession.

I would like to rest this communication with one of the most relevant quotes of Late Shri APJ Abdul Kalam as under:

"Learning gives Creativity, Creativity leads to thinking,
Thinking provides knowledge, Knowledge makes you great"

I wish all of you a great learning, excellent creativity, enormous knowledge gaining and ultimate grate achievements in life that you are surely craving for.

Stay Safe, Stay Motivated and Take Care

Yours sincerely,

CA Ketan Vajani
President

Chairman's Message

Dear Students,

I am excited to connect with you'll through 'Jignyasa' once again.

The Union Budget 2022 showcased the blueprint for the next 25 years growth for India and the budget has been widely recognized as a growth and infrastructure - focused budget that tries to put the country on the right trajectory. Better tax revenue collection, tight spending and a right blueprint for growth, the government is taking steps towards long-term fiscal stability. The budget was also in line with the government's policy of 'Atmanirbhar Bharat' which promotes Make in India and reducing dependence on imports, especially in defence sector. The Finance Minister estimates the Indian economy to grow at 9.27% (11.1% in nominal terms), which is the highest amongst large economies. However, the challenge which the government faces is the high fiscal deficit estimate of 6.4% in 2022-23. The budget will have positive impact on education, infrastructure, auto, agriculture and banking. The extension by 1 year for 15% income tax rate for manufacturing entities was also welcomed. I am sure, with the talent and growth prospect India possesses, Indian economy is poised to be in a long-term high growth phase.

Come March, the scorching summer coupled with the solar storm this year has made us realise the utter need of a much greener planet. Once you dwelve into the issue, we find many related important problems we currently face, say, health problems; impact on work efficiencies; etc. With countries round the globe not being able to agree, commit and resolve to reduce the carbon emissions, we as inhabitants of this planet need to do our bit to make this world a better place to live. Our actions like planting of trees coupled with restricting de-forestation, efficient use of electricity, generation of renewable energy, reducing carbon generating emissions, etc. Corporates should also support by using recycled, eco-friendly materials; appropriate treatment of industrial wastes, etc. These steps collectively with government regulations and active participation of people will help us achieve the goal of a green planet.

'Jignyasa', an e-journal 'By the Students – For the Students' 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. 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.

Let us also hope that the recent Russian invasion of Ukraine comes to an end very soon through dialogue and diplomacy. Till then, we have the victims of this misfortunate adventure in our prayers. Let us also hope that the covid-19 pandemic comes to an end very soon.

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

5TH THE CHAMBER OF TAX CONSULTANTS NATIONAL MOOT COURT COMPETITION, 2022 DATED 5TH & 18TH JUNE, 2022

The Chamber of Tax Consultants in association with the Government Law College, Mumbai is pleased to announce the Fifth Edition of The Chamber of Tax Consultants' National Moot Court Competition, 2022.

OBJECTIVES

The objective of the Tax Moot Court Competition is to provide students from all over India with an opportunity to get an exposure to a tax moot problem, improve their oratory and intellectual skills, provide them with an opportunity to appear before the Hon'ble Members of the Hon'ble Income Tax Appellate Tribunal (ITAT) and the Hon'ble Judges of the Hon'ble Bombay High Court and to motivate students to specialise in taxation.

FORMAT AND SCHEDULE OF THE MOOT

Number of teams	• Maximum of 16 teams shall participate • Each Team shall comprise Three Students – Two Speakers and One Researcher • Teams from outside Mumbai shall be provided accommodation on 17th & 18th June, 2022 (2 Nights)
Sessions/Oral Rounds	**5th June, 2022** – Preliminary Rounds & Quarter Final Round (On-Line)
	18th June, 2022 – Semi-Final Round & the Final Round (Off-Line)
Details of Moot Problem	This year, the Moot Proposition shall be based on Income-tax Act, 1961, particularly, section 56.
Opening of Registration	**4th June, 2022** (Registrations shall be accepted on first-come-first served basis)

Registration Fees	₹ **2,000/-** per team (inclusive of GST)
NEFT Details for Payment	**NAME OF ACCOUNT : THE CHAMBER OF TAX CONSULTANTS** **NAME OF BANK : IDBI BANK** **BRANCH NAME : NANA CHOWK, MUMBAI – 400 007** **ACCOUNT TYPE : SAVING** **ACCOUNT NUMBER : 0166104000060738** **IFS CODE : IBKL0000166**
***Note*: Once the payment process is done, share the transaction UTR number to our member@ctconline.org for invoice generating purposes**	
Last date for	Registration – **20th April, 2022** and must be done through an e-mail to taxmootglc@gmail.com Submission of soft copies of Memorials – 15th May, 2022 Submission of hard copies of Memorials – 12th June, 202

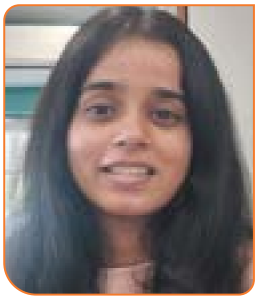
Trophies and/or prizes shall be awarded to the Winning Team, 1st Runner up Team, Best Speaker and 1st Runner up Speaker and Best Memorial.

Winning Team	1st Runner up Team	Best Speaker	1st Runner up Speaker	Best Memorial
₹ 12,000/-	₹ 8,000/-	₹ 5,000/-	₹ 2,500/-	₹ 5,000/-

Rules & Regulation:- Click Here

Registration Schedule:- Click Here

Foreign Direct Investment (FDI) in the Insurance Sector



Hasi Nemavat

Ananya Gupta,
Advocate

Introduction

To Understand the Concept of FDI First we must Know, What does Foreign Direct Investment Mean?

Foreign direct investment (FDI) is a kind of cross-border investment in which an investor resident in one economy establishes a financial interest in and a significant degree of control over an enterprise resident in another economy. In a lucid language we can say a foreign direct investment (FDI) is an investment in the form of controlling a business in one country by an entity based in another country[1]. With FDI, foreign companies are directly involved with the day-to-day operations of the other country. FDI provides financing to the recipient country, thus, creating scope for business, and infrastructure and increasing employment. It also expands the options for consumers. It is also beneficial for the investing country as they expand their business, thus, the means for profit. It also contributes to the GDP and thus, the economy of a country.

When Did the Indian Economy Open Up for FDI?

Economic liberalization in 1991 by the then Narasimha Rao-led government was a game-changing decision for the growth of the Indian economy. It proved a breakthrough for the Indian economy, which transformed the economy of the country forever. This courageous decision was like breathing a new life into the Indian economy, in which a new script has been written for the development of the nation. This economic reform not only worked as a medium for the growth of the Indian economy. In the matter of Foreign Direct Investment, India adopted a meticulous, concrete, and steady approach. The Government opened the economy to foreign investors gradually. It was the period 1999–2004 when India received the first US$ 19.52 billion of foreign investment. Later foreign investment in the country touched US$ 114.55 billion (2004–09) and US$ 172.82 billion (2009-13).

One of the major and growing sources of FDI in India has been *inter-alia* the Insurance Sector which remained untouched despite flow of funds from foreign investors.

Brief History of Evolution of The Insurance Sector In India

The first insurance company in India was started by the British in the year 1818, in Calcutta. It was called the Oriental Life Insurance Company. However it only

1. https://en.wikipedia.org/wiki/Foreign_direct_investment_in_India#:~:text=From%20Wikipedia%2C%20the%20free%20encyclopedia,a%20notion%20of%20direct%20control.

catered to the needs of the Europeans. But after the efforts of people like Babu Muttylal Seal, the first Indian insurance company; Bombay Mutual Life Assurance Society was started in the year 1870[2].

At the beginning of the twentieth century, many insurance companies were founded. In the year 1912, the Life Insurance Companies Act and the Provident Fund Act were passed to regulate the insurance business. The Life Insurance Companies Act, 1912 made it necessary that the premium rate tables and periodical valuations of companies should be certified by an actuary. However, the disparity still existed as discrimination between Indian and foreign companies. The oldest existing insurance company in India is the National Insurance Company, which was founded in 1906, and is still in business.

After the British left, India nationalized the insurance sector on 19th June, 1956, through the Life Insurance Corporation Act. Soon after which Life Insurance Corporation of India was created on 1st September, 1956 with the objective of spreading life insurance more widely and to reach all insurable persons in the country, providing them adequate financial cover at a reasonable cost. The Life Insurance Corporation (LIC) absorbed 154 Indian, 16 non-Indian insurers and also 75 provident societies—245 Indian and foreign insurers in all. LIC had 5 zonal offices, 33 divisional offices and 212 branch offices, apart from its corporate office in the year 1956[3].

In 1972 with the General Insurance Business (Nationalization) Act was passed by the Indian Parliament, and consequently, General Insurance business was nationalized with effect from 1 January 1973. 107 insurers were amalgamated and grouped into four companies, namely National Insurance Company Ltd., the New India Assurance Company Ltd., the Oriental Insurance Company Ltd. and the United India Insurance Company Ltd. The General Insurance Corporation of India was incorporated as a company in 22 November 1972 as a private company under Companies Act, 1956 in Bombay and received its Certificate for Commencement of Business on 1 January 1973. This resulted in stagnancy in the insurance sector. After which, in 1999 when the landmark Insurance Development Authority and the Regulatory Act came into place. After IRDA opened the insurance market for the private sector in 2000, General Insurance Corporation (GIC) was notified as the Indian Insurer. The ownership of its subsidiaries was transferred to the Government of India.

In 1993, a committee was formed under the chairmanship of former RBI Governor R. N. Malhotra. The objective of the committee was to complement the reforms initiated in the financial sector. The committee submitted its report in 1994 wherein, among other things, it recommended that the private sector be permitted to enter the insurance industry. They stated that foreign companies be allowed to enter by floating Indian companies, preferably a joint venture with an Indian partner[4].

Following the recommendations of the Malhotra Committee, in 1999 the Insurance Regulatory and Development Authority (IRDA) was constituted to regulate and develop the insurance industry and was incorporated in April 2000. Objectives of

2. https://licindia.in/Top-Links/about-us/History
3. https://economictimes.indiatimes.com/industry/banking/finance/insure/the-success-story-of-lic-from-1957-to-2017/branch-offices/slideshow/58822450.cms
4. http://www.bharattestguru.com/general_knowledge?id=465&title=malhotra-committee#:~:text=In%201993%2C%20the%20Government%20set,initiated%20in%20the%20financial%20sector.

the IRDA include promoting competition to enhance customer satisfaction with increased consumer choice and lower premiums while ensuring the financial security of the insurance market.

Changes in FDI in Insurance Sector

The insurance sector was finally opened for foreign investors by 26%. However the cap was still less for the growing economy. In 2004, Congress minister; P. Chidambaram proposed to increase the cap to 49%, which was rejected. A bill to increase foreign investment in the Insurance Sector was introduced in Rajya Sabha in December, 2008. Six years later in February, 2015, the long battle came to an end with Insurance Laws (Amendment) Act, 2015. The amendment Act removed archaic and redundant provisions in the legislations and incorporated certain provisions to provide Insurance Regulatory and Development Authority of India (IRDAI) with the flexibility to discharge its functions more effectively and efficiently. It also provided for enhancement of the foreign investment cap in an Indian Insurance Company from 26% to an explicitly composite limit of 49% with the safeguard of Indian ownership and control[5]. This amendment led to foreign capital inflows of more than ₹ 26,000 crore into the sector. About 28 insurance firms were able to tap the increased FDI limit and assets under management of the sector jumped to 76% in preceding 5 years. However, insurance penetration was still low at 3.7% of the gross domestic product (GDP) compared to the world average of 6.31%. Seeing the low rate of insurance penetration and also the benefits and development made due to increased cap the Government decided to increase the FDI further.

The government further increased FDI in the Insurance Sector to 74% by its General Insurance Business Amendment Bill, which was passed in the Rajya Sabha on 11th August, 2021. The Act aimed to nationalize all private companies undertaking general insurance business in India and also increase private sector participation in public sector insurance companies. The major amendment brought by this Act was to increase the FDI. The Act removed the provision on the 51% government holding requirement, amending the General Insurance Business (Nationalization) Act, 1972 by omitting Section 10B[6]. This is expected to ease the conditions for foreign investors thinking of investing in the Indian insurance market. Section 24B, was added, which says the Center can relinquish control of a public insurer from a given date. Section 31A was introduced, saying that a director who is not a whole-time director will be held responsible for acts of omission and commission by the insurer. This was introduced to ensure the security of the policyholders from defaulting and insolvent firms. Many other regulations and restrictions were introduced in the interest of the policyholders.

The Press Note 1 of 2022 released on 14th March, 2022 provided for a number of changes to the FDI Policy for investment in LIC, ahead of its IPO whereby the government seeks to dilute its stake in the corporation. A major change introduced herein was, bifurcation of Para 5.2.22.3 into 5.2.22.3.1 and 5.2.22.3.2 applicable on Indian insurance/intermediaries or insurance intermediaries and LIC respectively[7]. As

5. https://financialservices.gov.in/insurance-divisions/Major-initiatives#:~:text=The%20Insurance%20Laws%20(Amendment)%20Bill,the%20Insurance%20Regulatory%20and%20Development
6. https://economictimes.indiatimes.com/news/et-explains/general-insurance-amendment-bill-what-it-is-all-about-and-why-the-uproar-over-it/articleshow/85268132.cms
7. https://dpiit.gov.in/whats-new/press-note-1-2022

per this foreign investment under this sector shall be in compliance with the Insurance Act, 1938 with the condition that companies would obtain necessary approval from IRDA. However foreign investment for LIC shall be subject to compliance with the provision of LIC Act, 1956. Foreign portfolio investment and any increase in foreign investment shall be subject to the same rules for all insurance companies including LIC. These amendments were required in the light of the proposed LIC IPO. Being the country's biggest IPO it is expected to bring favorable changes in the economy and attract huge numbers of foreign investors.

Why and How is the Insurance Sector so Regulated?

A question that arose in many minds after the 2021 amendment was-why limit FDI to 74% instead of permitting 100% ownership?

Though the FDI cap has been largely increased to 74%, the regulations for investment in the said sector are very strict and rigid. As per the Indian Insurance Companies (Foreign Investment Rule) the principal rules, for rule 4, the following rules are stated, namely:—

"4. (1) In an Indian Insurance Company having foreign investment,— (a) a majority of its directors, (b) a majority of its Key Management Persons, and (c) at least one among the chairperson of its Board, its managing director and its Chief Executive Officer, shall be Resident Indian Citizens[8]. Firstly this rule states that the key management cannot be held by non-residents of India, non residents also cannot hold majority seats in the board of directors. Secondly, at least 50% of the directors must be independent. Firms are required to keep a specific percentage of profit as general reserve. Thirdly an 'Indian management control' system has been put in place under which the Indian promoters in a joint venture in the insurance sector have been given the right to accept or reject any board decision taken on company related matters. As per the Act, IRDA made it mandatory for firms to have a solvency ratio of more than 150%. It also prescribes that 50% of net profit in a financial year needs to be retained in the general reserve provided the solvency margin is lower than 1.2 times of the control level of solvency[9].

In order to answer the raised question, it is necessary to consider the state of the current insurance market. In its annual report for 2019-20 IRDA observed that of the 23 private sector life insurance companies, 20 were joint ventures between foreign and Indian promoters, of which only in eight companies was the foreign promoter's shareholding 49%[10]. Of these eight companies according to newspaper reports, at least two are in the process of selling out and exiting the country. In one prominent life joint venture (JV), the foreign promoter is keen to reduce its stake to around 9%. The situation was noted to be quite similar even in the non-life sector. The health insurance sector, however, differed.

The insurance business aims to protect the interests of holders of Insurance policies. In order to maintain insurer solvency, it is necessary to regulate the sector heavily. It is important to maintain solvency for

8. https://www.irdai.gov.in/
9. https://www.thehindubusinessline.com/money-and-banking/government-notifies-final-rules-for-74-foreign-investment-in-insurance-sector/article34604690.ece
10. https://www.moneylife.in/article/insurance-fdi-why-not-100-percentage/63270.html

several reasons. First, premiums are paid in advance, but the period of protection extends into the future. If an insurer goes bankrupt and a future claim is not paid, the insurance protection paid for in advance is worthless. Therefore, to ensure that claims will be paid, regulations regarding insurers financial strength and solvency should be laid down clear and carefully.

Market regulations seek to ensure the fair treatment of policyholders, to prevent discrimination and dubious claim practices, and to regulate advertising and other marketing, underwriting, claims payment, rates charged, and insurance policies. It is also necessary to protect policyholders from false claims and deceptive policies.

Thus, the main purpose of regulating FDI in Insurance Sector is:

1. maintain insurer solvency;
2. protect consumers;
3. make insurance available to people who, because they are poor risks, might otherwise be unable to get it;
4. Regulate premium rates.

Conclusion

Though the insurance sector has proved to contribute considerably to the economy, increasing its scope without laying down adequate and necessary rules and regulations can be quite dangerous. The change in FDI cap in 2015 from 26% to 49% led to considerable growth in liquidity infusion in the Insurance sector. The 2021 amendment is expected to solve the severe liquidity pressures, capital constraints and solvency issues. The increase in FDI is hoped to fulfill huge capital requirements of this sector, the firms of which have to withstand a long gestation period (7 to 10 years). Additionally, the luring of global firms is also expected to increase competition thereby improving the standard and quality of services provided. The change has been thus deemed to have favorable prospects for policyholders as well[11]. It is also expected to raise the level of insurance penetration and social security. It is also expected to contribute to the faster growth of the economy.

The FEMA rules 2019, which governs the foreign investment in our country, still have certain holes that need to be plugged for the insurers to capitalize on the increase in FDI cap to the fullest. The life insurance sector in India is growing at 11 percent to 12 percent. General insurance is growing at 18 percent per annum. For standalone health insurance, the average growth rate is 35 percent per annum[12]. According to Swiss Re's Sigma report on World Insurance, insurance contribution to GDP has risen to 4.2% in FY21 from 3.76% in FY20[13]. The government's move in liberalizing FDI limits further in the Insurance sector has to be done with necessary regulatory framework laid down as the industry deals with a rather large and sensitive part of the public's money. Thus, if regulated carefully it can be a major factor for not just improving the economy, but also, for bettering the living standards and social protection.

11. https://www.latestlaws.com/articles/insurance-amendment-act-2021-177447#:~:text=The%20Insurance%20Amendment%20Act%202021,incentivize%20competition%20and%20thereby%20growth.
12. https://www.firstpost.com/budget-2020/insurance-sector#:~:text=Currently%2C%20the%20insurance%20penetration%20in,at%2018%20percent%20per%20annum.
13. https://timesofindia.indiatimes.com/business/india-business/insurance-as-of-gdp-spikes/articleshow/85523015.cms

Benefits of MSMEs


Nishita Kukreja CA Charmi A. Shah

Introduction

Micro, small and medium enterprises (MSMEs) are the entities that deal with the production of goods and services. MSMEs are considered the pillars of Indian economy due to their significant contribution to exports, GDP and employment generation. It started with the establishment and growth of India's khadi and coir industry, along with various industries situated in rural areas. Most micro and small businesses belong to the agricultural and the foodservice industry. Medium-sized firms are primarily within automotive, pharmaceutical, textile and chemical industries. The MSME sector has coordinated and worked with relevant ministries, state governments and stakeholders to develop India’s rural economy. India has an estimated 633.88 lakh MSMEs, of which 324.88 lakh MSMEs are based in rural areas and 309 lakh are from urban areas.

What are MSMEs

MSMEs are mainly engaged in the development, manufacturing, processing or storage of goods and commodities. They are classified based on investment and turnover, as per the following criteria.

Classification	Micro	Small	Medium
Manufacturing Enterprise & Enterprise rendering Services	Investment in Plant and machinery or equipment not more than ₹ 1 Cr & Turnover not more than ₹ 5 crore	Investment in Plant and machinery or equipment not more than ₹ 10 crore & Annual Turnover not more than ₹ 50 crore	Investment in Plant and machinery or equipment not more than ₹ 50 crore (US$ 6.8 million) & Annual Turnover not more than ₹ 250 crore (US$ 34 million)
Source: Ministry of Micro, Small and Medium Enterprises (Annual Report) Revised Classification applicable w.e.f 1st July 2020 wide notification 01.06.2020.			

Benefits to MSME Sector

1. *Collateral Free Bank Loans*

The Government of India has recently notified that collateral-free credit shall be available to all companies in all small and micro business sectors. This initiative ensures funds for MSMEs/ SSIs. Under this initiative, existing as well as the new enterprises can claim the benefits enshrined herein. A trust by the name of the Credit Guarantee Trust Fund Scheme was introduced by the Government of India, Small Industries Development Bank of

India ('SIDBI') and the Ministry of Micro, Small and Medium Enterprise Development to ensure this scheme is implemented for all MSMEs/SSIs.

2. *Patent Registration*

A significant subsidy of 50% is given to registered MSMEs/SSIs. This subsidy can be availed for patent registration only by furnishing a copy of the application to the respective ministry.

3. *Exemption of Interest Rates on Overdrafts*

Registered MSMEs/SSIs are eligible to avail a benefit of 1% on overdrafts however the implementation of this scheme differs from bank to bank and clarity needs to be sought from the bank extending the overdraft facility.

4. *Eligibility for Industrial Promotion Subsidy*

The Government of India also ensures that registered MSMEs/SSIs are eligible for subsidies on amounts spent towards Industrial Promotion. The Micro, Small and Medium Enterprises Ministry regulates the quantum of the subsidy and the same is a regular feature in the budget as well.

5. *Protection against delayed payments*

Very often buyers of services or products from MSMEs/SSIs usually tend to delay/default on the payments to be made to them. The Ministry of Micro, Small and Medium Enterprise, Government of India with the intention of providing support to these enterprises enshrined upon them the right to charge interest on the payments that are delayed from their buyers/customers. For the quick and easy settlement of such disputes, the government has issued guidelines advising such settlement must be done in minimum time through conciliation and arbitration and other such measures. In case, if any MSME/SSI registered enterprise supplies/provides any goods/services to a buyer/customer then the buyer/customer is required to make the complete payment on or before the agreed date of payment as per the arrangement between the parties or within 15 days from the day they had accepted the goods and services from MSME/SSI registered business in cases where the date of payment is not mentioned. If the buyer/customer causes a delay in the payment for more than 45 days after accepting/consuming the products or services then the buyer/customer is liable to be charged compound interest on the amount that was agreed to be paid for the products/services provided/rendered. The interest rate is usually three times the rate that is notified by the Reserve Bank of India ('RBI').

6. *Concession on electricity bills*

This fixed rate of concession is available to all registered MSMEs/SSIs by simply furnishing an application to the Electricity Department or their respective DISCOM, such application shall be accompanied with a copy of the MSME/SSI registration obtained under the MSMED Act.

7. *Reimbursement of ISO Certification charges*

Any amount spent towards obtaining an ISO certification by registered MSMEs/SSIs is eligible for reimbursement from the Government of India on filing of an application to that effect along with the requisite set of documentation.

8. Attractive Interest Rates

Businesses can avail MSME loans that offer attractive interest rates. Thus, enterprises can spend a minimum amount of money on loan repayment and use the rest for business purposes.

9. Technology Upgradation

The Credit Linked Capital Subsidy Scheme (CLCSS) for technology upgradation provides capital subsidy to eligible MSMEs for upgrading their technology

10. Others

Loans are issued below the concern zone lending scheme. Also, Promoters of MSME are allowed to bid for the burdened property below the insolvency Law (in contrast to the huge companies). Various authorities, schemes and funds are accessible for a MSME like PMEGP, CGTMSE.

Various Central and State Government policies offer multiple advantages to MSMEs for public procurement, e.g. the defence Procurement Policy and the Uttar Pradesh Procurement Policy which gives 25% preference to MSME's.

Conclusion

MSMEs are indeed the backbone of our economy and it is important for more and more small businesses to obtain the registration under the MSMED Act in order to be the beneficiaries of the aforementioned benefits. The Government of India is indeed taking the term 'ease of business' very seriously especially for MSMEs/SSIs and this is clearly visible from the benefits being offered to registered MSMEs/SSIs and even the recently announced economic stimulus package which has several policies that are designed specifically with MSMEs in mind.

The MSME industry is growing significantly due to the constant support from the Indian Government. This has further inspired everyone, especially the youth, to explore their entrepreneurial side and start their own venture. However, in such cases, knowledge regarding MSME and MSME registration benefits are important.

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The Swift Process of Voluntary Liquidation for a Corporate Entity under The Insolvency and Bankruptcy Code


Sneh Dilip Gada

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Introduction

The Indian legislative regime has undergone several remarkable enactments, not only by eradicating some ambiguous acts but by giving birth to various new laws that have improved and provided for rich and fruitful results. This paradigm shift in the legislative business of the Indian Government has resulted in development of various commercial laws upfront on a global level and has evolved for the business sector needs. The Insolvency and Bankruptcy Code of 2016[1] **"The Code"** is one of such laws that has been enacted to set out a streamlined jurisprudence on issues relating to insolvency and bankruptcy and its allies by developing guidelines to strengthen the regime of insolvency proceedings of a corporate entity, etc.

Before the inception and recognition of the Code, all the proceedings right from the incorporation of a corporate body to its winding up and insolvency were governed by the Companies Act of 1956 and 2013, the Commercial Court Act of 2015. Prior to the abovementioned there were several other conjoining laws such as the Sick Industrial Companies (Special Provisions) Act of 1985, Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002, Recovery of Debts Due to Banks and Financial Institutions Act, 1993, etc. which dealt with the regulation of financial problems, insolvency proceedings, etc. These pre-existing laws were very vast and time-consuming in themselves, resulting in increased costs and delayed results. The Government of India felt the need to bring in more reformative law for improvising the existing hardened business relation across India. Therefore, in order to bring in a comprehensive law that could provide an effective mechanism to regulate the insolvency proceedings of a corporate person, partnership firms and individuals, the Insolvency and Bankruptcy Code, 2016 was passed by the Parliament on 11 May 2016 and obtained the Presidential assent along with getting notified in the *Official Gazette* of India on 28 May 2016.

Businesses were never predictable, and they will remain unpredictable in the future. Increased demands, growing globalization, escalated competition, and the skyrocketed business transactions make it difficult for businesses and companies to survive in this vicious circle of ambiguity. Hence, here comes the dark horse i.e., the Code. It provides for bankruptcy and liquidation guidelines with effective mechanisms to overcome the difficulties which were arising with

1. The Insolvency and Bankruptcy Code of 2016, No. 31, Act of Parliament, 2016 (India).

the older laws. Generally, the liquidation process, also known as the winding up of a corporate person, partnership firms and individuals, is carried out as a last resort due to distressed financial conditions leading to bankruptcy. However, there are provisions by which, when a corporate entity wishes to dissolve due to mutual understanding, voluntary liquidation can also be undertaken by fulfilling the pre-requirements as listed under the Code. The Insolvency and Bankruptcy Board of India (**"IBBI"**) has made several efforts by entirely setting up a new regulation that states the entire know-how of the voluntary liquidation of corporate entities in India. In this article, the author intends to explain the regime of voluntary liquidation process under the Code, and how it is different from compulsory liquidation, and share some light on the recent amendments relating to it.

❖ Liquidation under the Code

The Code was introduced with its main aim to facilitate a corporate person who delayed in honouring its debt obligations and to protect the interests of all the stakeholders with equity. It is very quintessential to understand the exact meaning of winding up of a corporate entity. The term "Winding up" is not defined under the Code, nor was it defined under the companies' act as well. "Liquidation" or "Winding up" is the closure of a business or business segment. The business herein sells its assets to pay off creditors and other liabilities. After settlement of all the claims, the remaining funds get distributed among the owners, shareholders, and investors. However, in general terminology, it is the process of disbursing the assets and dissolving the company with due process of law. Now, dissolution of a company means that a corporate debtor will cease all of its assets to repay its creditor, and after successful payments of all the unpaid dues and a proper resolution process in case of insolvency the company is then undergoes the process of Corporate Insolvency Resolution Process (**"CIRP"**) to finally close down a company. Initially, the process of winding up of a company was stipulated under Section 255 of the Companies Act 2013[2], but since the genesis of the Code, the introduction of the CIRP has been initiated by the Financial and Operational Creditors in case of financial defaults ranging from non-payment of debts to several other consequences. This has made it even more time-efficient, unlike the proceedings governed by the old Companies' act. The entire procedure of passing a creditors resolution, the appointment of a liquidator, the making of accounts statements, distribution of assets, disbursement, final call for adjudicating authority, etc are some of the processes which are generally needed in order to initiate the winding up of a corporate entity.

Apart from the general winding up of a corporate entity because of insolvency, there are also provisions for voluntary liquidation of a solvent company under the Code, which makes it even more convenient for the entities who aren't willing to continue their business as a result of a mutual decision.

❖ Types of Liquidation Process of a Corporate Person

There are 3 types of Liquidation processes that can be undergone in order to wind up a corporate person:

1. ***Compulsory Liquidation***: It is the type of liquidation where the company doesn't have a choice of not getting liquidated. In compulsory liquidation,

2. Companies Act of 2013, § 255 (India).

in most cases, it is the creditors who forced the company to initiate the process of liquidation. The reasons for such conduct may be the deteriorated financial conditions, inefficient management by the directors, due to which the creditors lose their faith in further carrying out the business. Hence, by a vote of no confidence the entire procedure for compulsory liquidation begins with all the process to be followed as mentioned under the Code and thereby gets completed on the hearing by the adjudicating authority.

2. ***Member Voluntary Liquidation***: It is the type of liquidation, wherein the board members call for a resolution of formally dissolving a solvent company, which is conducted by mutual discussion amongst the members of the company. The possible reasons for the same may include that the directors wish to step down or retire, the company wants to cease the trade, getting dissolved in order to get reorganized, etc. Once, the creditor's vote for the resolution and the required number of votes are in favour of the voluntary liquidation, the process then starts by appointing a liquidator to get the final authorization from National Company Law Tribunal (**"NCLT"**), which is the adjudicating authority that governs the voluntary liquidation process.

3. CREDITOR VOLUNTARY LIQUIDATION: In this type of voluntary liquidation, the creditors are the ones who chose to dissolve a solvent company and not the directors. The same process of calling for a vote is carried out, and based on the outcome, if it meets the requirements prescribed by the law, the liquidation process is carried forward. Once all the processes are over, the claims of the creditors are settled, assets are realized, and other requirements are fulfilled the company then after the final verification by the adjudicating authority gets liquidated.

It is pertinent to note that this distinction of member voluntary liquidation and creditor voluntary liquidation existed while the liquidation was governed by the companies' act, but these distinctions have been eliminated by bringing on board a single governing Section 59 of the Code read with the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations 2017 ("Regulations, 2017").

❖ Understanding Voluntary Liquidation

Voluntary Liquidation is the process wherein a company, limited liability partnership, or any corporate body willingly decides to liquidate the company by mutual business decision between the managing authority and the stakeholders of the company. Sometimes, liquidation is not only a consequence of financial imbalance, but it can also be done when the corporate person wishes to not continue the business or may wish to close the same to move overseas or opt for some other field of work. There are certain guidelines and due process of law, which needs to be adopted for successful voluntary liquidation under the IBC Code.

Section 59 of the Code[3] which came into force on 1 April 2017 deals with the provisions of voluntary liquidation. Thereafter, the Insolvency and Bankruptcy Board of India (**"IBBI"**) *vide* notification dated 31st March 2017 notified the

3. Insolvency and Bankruptcy Code of 2016, § 59 (India).

Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 which also came into force on 1st April 2017. This Regulation primarily sets forth the rules that a solvent corporate entity needs to follow in order to voluntarily dissolve its business. The IBBI *vide* its various notifications have time and again made efforts to fasten the process of voluntary liquidation, making it a win-win situation for everyone. These notifications will be covered in the Recent Change and Developments part later in the article. Prior to the Code, Voluntary Liquidation was regulated by provisions laid down under Chapter XX - Part – II which consisted of Sections 304 to 323 of the Companies Act, 2013 which are about 20 sections governing the process of voluntary winding up. The IBBI expert committee in collaboration with the Ministry of Corporate Affairs[4], in its discussion realised how difficult it was to handle the voluntary liquidation proceedings with the help of the existing laws, and thus the expert committee came up with a new regulation on voluntary liquidation making it more time-efficient and at the same time beneficial to all the parties involved. Whilst enacting these Regulations, the IBBI's main aim was to provide for a mechanism that can regulate the proceedings of voluntary liquidation of solvent persons. The IBBI has constantly been making efforts to bring in more effective amendments, thereby wrapping up the entire voluntary liquidation proceeding into a single consolidated Section 59 of the Code.

❖ The Process of Voluntary Liquidation under the Code

As per the Section 59 of the Code, read with Reg. 4 of the Regulations 2017, all the fresh voluntary winding up proceedings will be instituted before the NCLT from 1st April 2017 as per the Code and the Regulation. Before the inception of the Code, the proceedings could be instituted before the NCLT as well as before the High Court. But, now NCLT is the only single Adjudicating authority to govern the proceedings of voluntary winding up.

The entire process of Voluntary Liquidation is very streamlined with the help of the separate Regulation by IBBI alongside the new Code, which has made it simpler for everyone to undergo the voluntary winding up. The entire procedure is divided into various steps as follows:

1. *Eligibility and Pre-Essentials*

As aforementioned, any corporate person which may include any company, partnership, limited liability partnership, etc who wilfully desires to dissolve itself, may initiate the liquidation proceedings according to the provisions as mentioned under the Code and the regulation thereof. The first prerequisite for making an application under Section 59 of the Code is that those corporate persons who wish to liquidate, should not have committed any default in terms of repaying debts, or should be in a position wherein the corporate person is able to repay the legitimate debts. Section 3(12) of the Code has clearly defined the meaning of default and has termed it to be non-payment of debts when the due date of such payment has lapsed, and when such payment is not settled by the debtor it is said to have committed default. Thus, accepting these requirements

4. Ministry of Corporate Affairs, Report of 'Expert Committee on Company Law on Restructuring and Liquidation' (India).

and making a true declaration statement in an application is the first step in moving forward with the proceedings.

2. *Declaration of Solvency*

The declaration that solvency is the most important aspect because without getting verified as a solvent entity, the corporate person cannot initiate the process of voluntary liquidation. Section 59(3)(a) and (b) of the Code r.w. Reg. 3 of the Regulations, 2017 states that any corporate person who wishes to opt for voluntary winding up must make a declaration passed by majority of directors of the company or majority of designated partner in case of LLP or majority of individuals constituting governing body in case of other corporate persons and the said declaration must be verified by an Affidavit stating that the company officials have made full inquiry into the company's affairs and they have formed an opinion that either the company has no debt or it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation. The Affidavit should also contain a statement that the company is not being liquidated to defraud any person. According to Section 59(3)(b) of the Code r.w. with Rule 3(1)(b) of the Regulation, the said declaration affidavit should be accompanied with the list of audited financial statements and record of business operations of the corporate person for the previous two years or for the period since its incorporation, whichever is later along with a report of the valuation of the assets of the corporate person, if any, prepared by a registered valuer. This forms a very important base to carry forward the proceedings ahead.

3. *Passing of Resolution and Appointment of Liquidator*

Once the declaration affidavit is submitted, the board meeting is convened for getting the decision of voluntary liquidation approved by members of the board and its directors. They may deliberate upon the appointment of an insolvency professional to act as the liquidator of the company. The liquidator can be a private individual, who may not be a government serving liquidator. It is very pertinent to note that, since the Code is in action, only insolvency professionals accredited by the IBBI board can be appointed as a liquidator of the company. As per the Reg. 3(4) of the Regulations, 2017 a resolution must be passed under section 59(3)(c) of the Code, as the case may be, shall contain the terms and conditions of the appointment of the insolvency professional, including the remuneration due to him. The other criteria as to the past work of the liquidator, the dos and don'ts the liquidator needs to follow are explicitly mentioned in Reg. 6 of the Regulation. The remuneration to be provided to the liquidator shall form part of the liquidation cost. Once the meeting is carried out successfully, the resolution for convening a general meeting is being passed and the date and time are fixed within four weeks from the date of the board meeting. In the general meeting, if the corporate persons hold any debt, then a meeting for resolution by the creditor is also convened to get the approval of the creditor's, followed by approval of the liquidator appointment. The criteria for the passing of the resolution (if the case may be where the corporate person owes debt to any creditor) are 2/3rd of the creditors to vote in favour of liquidation within

7 days of passing such a resolution. All of these resolutions are to comply with Reg. 3(3) and Rule 4 of the Regulations, 2017. Reg 4 provides that a corporate person shall from the liquidation commencement date cease to carry on its business except as far as required for the beneficial winding up of its business and that the corporate person shall continue to exist until it is dissolved under section 59(8).

4. *Notice to ROC and IBBI, Commencement of Liquidation and Public Announcement*

After successful approval of the resolution by members and creditors (as the case may be), it is the duty of the corporate person to intimate the Registrar or Registrar of Creditors (**"ROC"**) and IBBI within seven working days of such resolution. Once, the intimation to ROC and IBBI is done, the voluntary liquidation shall be deemed to have commenced from the date the resolution gets approved by the creditors. The first step after the commencement of the liquidation is that the official liquidator should make a public announcement (in Form A of Schedule I of the Regulations, 2017) within 5 days of his appointment, calling for creditors and stakeholders to submit their claims within thirty days of the commencement of the liquidation process. According to Reg. 14(3) of the Regulations, 2017 the announcement should be published in the official gazette, in one English and one regional language newspaper, or any other location where in the opinion of the Liquidator, the Corporate Person conducts material business operations, and on the website, if any of the corporate person.

5. *Submission of Claims, Verification of Claims by Liquidator and Preparation of List of Stakeholders (Dealt by Chapter V of The Regulations, 2017)*

The next step in the process of voluntary liquidation is the submission of claims. All the person who claims to be the creditors or the stakeholders of a corporate person which is to be liquidated must prove their claims for their respective debts and dues including interest to be paid within the specified time limit. The claims are mainly divided into 4 types: (1) Claims by Operational Creditors; (2) Claims by Financial Creditors; (3) Claims by Workman and Employees; and (4) Claims by other Stakeholders. All of these creditors and stakeholders have to compulsorily submit the legitimate proof of their claims by virtue of Form B, Form C, Form D and Form F of Schedule I of the Regulations, 2017 respectively. The liquidator may call for the requisite evidence or clarifications as he/she deems fit from a Claimant to substantiate the whole or part of their claims.

Once, all these issues are resolved, the liquidator then takes a time period of thirty days from the last date for receipt of claims for verifying the claims received. The cost of proving their claims is levied on the claimant. On the other hand, the cost of verification of the claims made by the claimant is to be incurred by the liquidator which in turn is to be compensated from the part of the liquidation cost. The liquidator possesses the liberty to ask the claimant for additional documents and proofs. After final scrutiny, the liquidator may reject or accept the claims with the proper statement as to why the particular claims are being rejected or accepted.

The liquidator must prepare a complete list of stakeholders based on the results after the verification of the claims of the stakeholders and the creditors, on the basis of what all claims and dues are bound to be settled. As per Reg. 30 of the Regulations, 2017 the liquidator is provided with a time period of forty-five days to submit the final list of stakeholders. Once the final list is being prepared it is thereon sent for inspection to the partners, board of directors, guarantors, to persons who submitted their claims, and it is also to be published on the website of the corporate person. It is also been specified by Proviso to Regulation 30(2)[5] of the Regulations, 2017 that where no claim from creditors has been received till the last date for receipt of claims, the liquidator shall prepare the list of stakeholders within fifteen days from the last date for receipt of claims.

6. *Realisation of the Assets of the Corporate Person*

Once, the list of stakeholders gets the final approval of the parties having an interest in the company to be liquidated, the liquidator starts with the process of realising the assets of the company, as per the manner and mode approved by the corporate person and as per the applicable statute. In some cases, the liquidator might take help from a registered valuer to calculate the real value of assets and thereon initiate with making further sales of assets in order to settle the claims and dues of the corporate person. The liquidator may also initiate a recovery process when there are possibilities of recovering of assets in the near future. All the due process to be followed by the liquidator is stated in Chapter VI of the Voluntary Liquidation Regulation.

7. *Opening of Separate Bank Account*

A separate bank account in the 'name of the corporate person- for Voluntary Liquidation' is to be opened for the sole purpose of making all the transactions related to the voluntary liquidation of a company. All the transactions related to the settlements of the company are done through the bank account. All cheques and demand drafts shall be deposited in the bank account by the liquidator. It is also pertinent to note that transactions worth more than five thousand rupees shall be made only by cheque or by way of online banking.

8. *Distribution of Claims and Settlement*

According to Reg. 35 of the Regulations, 2017 the distribution process begins once all the assets of the corporate person are realised by the liquidator. The liquidator may take a time period of 30 days to distribute the settlement amount from the date of realisation. The cost incurred by the liquidator shall be added to the total cost of liquidation.

9. *Completion of Liquidation*

As per the provisions of Reg. 38 of the Regulations 2017 r.w. the said notification dated 5th April 2022, the liquidator of the company must

5. Inserted vide IBBI (Voluntary Liquidation Process) (Amendment) Regulation of 2017 w.e.f. 5th April 2022 (India).

endeavour to complete the liquidation process within two hundred and seventy days from the liquidation commencement date where the creditors have approved the resolution under clause (c) of sub-section (3) of section 59 or clause (c) of sub-regulation (1) of regulation 3, and within ninety days from the liquidation commencement date in all other cases.

10. Submission of Final Report

After the completion of the liquidation process, the liquidator must submit the final report of liquidation to the ROC and to the IBBI. The final report must consist of the duly audited accounts of the company, a statement demonstrating that all the assets of the company are disposed of, no pending debts or dues are yet to be paid, and that there are no pending litigation proceedings against the company.

11. Role of NCLT and Final Order

The liquidator must make an application seeking the dissolution of the corporate person to the adjudicating authority i.e., the NCLT. The NCLT after hearing the party and after proper scrutiny shall then pass an order that the company shall stand dissolved from the date of the order. The liquidator then is ought to forward the copy of the order to the ROC and the IBBI. The liquidator must also preserve the records and documents of the company getting voluntarily dissolved for at least eight years from the date of passing of orders by NCLT.

❖ Recent Developments in the Process of Voluntary Liquidation

The IBBI in order to solicit the public comments on the issues related to the regulations that govern the voluntary liquidation process, released a Discussion Paper on Amendments in IBBI (Voluntary Liquidation) Regulation, 2017 dated 1st February 2022. In order to incorporate the changes and the suggestions put forth in the discussion paper, the IBBI brought into force the (Voluntary Liquidation Process) (Amendment) Regulations, 2022 w.e.f. 5th April 2022. The following are some of the significant amendments brought by the said Amendment Regulation, 2022:

- The timeline for preparation of the list of stakeholders by the liquidator where there are no claims submitted by the creditors is reduced to fifteen days, by substituting the existing time limit of forty-five days.
- The time limit for the distribution of proceeds to the creditors and stakeholders after the realization of assets has also been amended to thirty days from the earlier limit of 6 months.
- The IBBI has also proposed that the liquidator should submit the final report of the liquidation along with the application to NCLT, within Two Hundred and Seventy Days, when claims are submitted, and within Ninety days when there are no claims received from creditors and stakeholders.
- As previously mentioned, the liquidator should endeavour to complete the liquidation within a period of twelve months, owing to the pendency of the company opting for voluntary liquidation.
- Earlier, if a corporate person wishes to voluntarily liquidate, it should seek a 'No Objection Certificate' (**"NOC"**) or 'No Dues Certificate' (**"NDC"**) from the Income Tax Department by liquidators during the process, also it was not mandated in the Code. Hence, to resolve this issue and make it hassle free for the corporate person

opting for liquidation, the IBBI in the discussion paper dated 1st February 2022, had clarified that when a corporate person voluntarily intends to liquidate itself NOC and NDC are not required as a mandate.

❖ Case Laws

The following are some of the judgements passed by the NCLT (Adjudicating Authority) under Section 59 of the IBC Code:

- ***Jurong Engineering (India) Pvt. Ltd. and Anr, In Re:***[6], the NCLT was of the view that since there were no significant business operations in the Company for last many years and since no revival plan could be worked out for the Company, it passed an order declaring the official winding of a company under Section 59 of the Code.
- ***Daily Bread Gourmet Foods (India) Pvt Ltd, In Re***:[7], in the present case, NCLT was of the opinion that since the assets of the corporate person had been disposed of, the debt of the corporate person had been discharged to the satisfaction the creditors, and no litigation was pending against the corporate person, it deemed fit and just to pass an order allowing the appeal and declaring the company as officially liquidated by the provisions of Section 59 of the Code.

❖ Conclusion

The Insolvency and Bankruptcy Code of 2016 is one of the significant achievements of the Indian Legislation. The Code aims at reforming the process of insolvency and bankruptcy by bringing in various constructive amendments that have changed the dimensions of the Indian legal system. The enactment of the new Code brings about a statutory framework for the debt recovery system in India and channelising the process of liquidation and restructuring of corporate persons, etc. The setting up of the Insolvency and Bankruptcy Board of India (IBBI) is considered as a path way to achieve the goals of the Code.

The process of voluntary liquidation is not a new phenomenon, it existed during the companies' act as well. The inception of the Code, and the provisions governing the process of voluntary liquidation has made it a walk through for companies who feel the need to wind up their company for various reasons which including but are not limited to retirement of partners, satisfaction, different plans for work, etc. Thus, any solvent company that wishes to be liquidated finds it feasible to undergo the process of voluntary liquidation.

Section 59 of the Code, read with the IBBI (Voluntary Liquidation) Regulation 2017, provides a consolidated framework for initiating the process of voluntary winding up of a company. The recent amendments in order to achieve the goal of making the process more streamlined and time efficient serves as icing on the cake. All in all, in the opinion of the writer, the new Code is the skin in the game, and the best is yet to come. The reformative amendments that will come forth will definitely change the dimensions of insolvency and bankruptcy regime in India.

6. Jurong Engineering (India) Pvt. Ltd. and Anr, In Re: [2021 SCC OnLine NCLT 229] India.
7. Daily Bread Gourmet Foods (India) Pvt Ltd, In Re: [2020 SCC OnLine NCLT 1383] India.

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Taxation on REITs


Aanchal Shah CA Nehal Shah

"The best investment on earth in Earth"

\- Louis Glickman

Meet the REITs – What they are

REITs are pooled investment vehicles that own, manage and finance in a range of property sectors through direct or indirect holding in Special purpose Vehicles (SPV). It was also called "Cigar Excise Tax Extension". REITs are a liquid assets.

REITs is a three-tier structure being registered under the SEBI (REITs) Regulations, 2014. It is mandatory for all the units of REITs to be listed on a recognised stock exchange having nation-wide trading terminals, whether publicly issued or privately placed. Globally, REITs are available in as many as 37 countries and have surpassed $1.7 trillion in market capitalization.

History - Origin

Structure/Value Chain Stakeholders

- Unit holders or Sponsors to set up REIT and appoint trustee.
- Trustee to hold assets on behalf of and for the benefit of Investors.
- Managers to assume operational responsibility of REIT.
- Valuer to ensure fair and transparent valuation
    - In respect of financial valuation
    - In respect of technical valuation
- REIT to hold specific assets:
    - Directly or through SPV holding real estate assets; or
    - Invest in SPV which has investments in other SPVs which subsequently hold real estate assets (Holding Co. structure)

What are the Tax Implications?

The Government started putting in place a framework for taxation of business trusts even before the regulations governing Real Estate Investment Trusts (REITs) were notified by SEBI. This was not without reason – progressive regulations and tax reforms have influenced the progress of REITs globally, with REITs market witnessing sudden growth spurts in countries such as Singapore and Hong Kong almost immediately following tax amendments. Now let’s discuss the tax implications at each stage:

A. For Sponsors

- At the pre-listing stage,
    - In case of transfer of shares of SPV in exchange of units of REITs, it shall not be considered as “transfer” and hence no tax liability at the time of exchange as well as for MAT.
    - In case of transfer of assets to REIT, it shall be taxable in the hands of sponsor on regular as well as MAT basis.
- In case of sale of units of REIT, the STCG would be taxed at 15% and LTCG exceeding ₹ 1,00,000/- would be taxed at 10% without applying indexation. In case of non-resident sponsors, rates would be applicable as per DTAA. In such a case, the cost of acquisition and the period of holding shall be of the shares of SPV.

B. For Unit Holders

Particulars	Tax Rates applicable	Tax Deducted at source
Interest Income	• Taxed at normal rates to resident unit holders • Taxed at 5% for non-resident unitholders	Under section 194LBA, • For other than non-resident unit holders- 10% • For non-resident unit holders- 5%
Rental Income	Taxable at normal rates	Under section 194LBA, • For other than non-resident unit holders- 10% • For non-resident unit holders- At the rate in force
Any other income (other than dividend income)	Exempt u/s 10(23FD)	—

On the contrary, as per Amendment in Finance Act, 2020, the "Rationalisation of the Dividend Tax" pulled the trigger at the unit holder level. Now the dividend would also be subject to taxation in the hands of unit holders with effect from 1 April, 2020. It is subject to TDS @10%. However, some concessions are summarized below:

- If the SPV has exercised option to pay corporate tax @22% as per the section 115BBA, then 10% withholding tax applies on income in the nature of dividend distributed by the trust to unit holders and such dividend shall be taxable.
- If the SPV has not exercised option to pay tax under the new regime, then no withholding tax applies in the nature of dividend distributed and such dividend shall be exempt under section 10(23FD).

The foundation of the abolishment of the DDT regime is based on the awaiting demand of the foreign investors based on the non-availability of the credit of the DDT in their home country. This switch shall help as various tax treaties shall grant the benefit of lower withholding tax resulting in plummeting the cost of doing business.

C. For Business Trusts

- The interest income referred to in section 10(23FC) and rental income on own property referred in section 10(23FCA) shall be exempt in the hands of REIT as it is having a pass-through status through which tax liability is transferred to unit holders.
- Income from directly held assets shall also be exempt in the hands of REIT.
- While distributing the interest and income held as assets among the unitholders, it shall deduct tax at source u/s 194LBA @10% in case of resident unit holder and @5% in case of non-resident unit holders.
- In case of Dividend income received from SPVs, it shall be exempt u/s 10(34) in the hands of REIT.
- Capital gain on sale of assets/shares of SPVs shall be taxed at applicable rates and any other income shall be taxed at Maximum marginal rate.

D. For SPV/Holding Co.

Particulars	Taxability
Income derived from assets	Taxed as Business/HP Income
Gain on sale of assets	Taxable as Capital Gain
Interest paid on loans availed from REIT	Deduction granted as per the provisions of Income Tax Act applicable
Distribution on dividends	Deduction granted as per the provisions of applicable rates (DDT abolished)

Some Extracts:

- All the above rates are excluding the applicable surcharge and cess.
- No relief on stamp duty shall be allowed in case of transfer of assets.
- As per section 115UA(1), any income distributed by the business trust to the unit holders shall be deemed to be of same nature and proportion in the hands of unit holders as it had been received by, or accrued to the business trust.
- It shall be mandatory for the Business Trust to file return under section 139(4E) of the Income Tax Act, 1961 irrespective of whether the total income has exceeded the basic exemption limit.
- It shall be mandatory to provide information of all type of business that REIT is conducting to the Income Tax Officer and the unit holders by 30th June of the relevant Assessment year.
- The business trust is required to issue a nil withholding tax certificate to SPV for the purpose of ensuring that while distributing dividend income, no tax is withheld by the SPV to the trust.

Conclusion

REITs are easy to buy and sell, as most are traded on public exchanges. Performance-wise, REITs offer attractive risk-adjusted returns and stable cash flows. Also, a real estate presence can be good for a portfolio because it broadly diversifies the risk. Diversification in real estate area will lead to lower correlation and thus, smooth increase in portfolio values over time, with much less volatility from year to year or even quarter to quarter.

On the taxation front, any distributed income, received by a unit holder from a business trust, other than interest, dividend and rental income (i.e rental income earned directly by a REIT) would be exempt from the total income of unit holder (as it would be taxed in the hands of the REIT itself).

Furthermore, In India, though the number of tax payers has increased significantly in the past decade, our tax to GDP ratio continues to be range bound. As was recognised by the Kelkar Task force, economies have increased their tax revenue-to-GDP ratio not by increasing tax rates but by simplifying tax structures, widening the tax base and improving tax administration. Thus, the Union Budget 2022-23 may reduce the holding period for investors in real estate investment trusts (REITs) to enjoy the lower capital gain tax.

More contributors getting enticed and encouraged by lower tax rates lead to higher collection!

REITs concur with the traditional approach of investment in real estate which offers a steady cash flow and value appreciation and at the same time, at an affordable sum especially for small retail investors. Consequently, broader participation of people in REIT will increase the flow of money in the market.

■■■

Taxation on Start-Ups

Deepika Kothari

India's leading field "Start-ups"

A startup, as generally understood, is a venture floated by entrepreneurs, often young and relatively inexperienced, with innovative ideas which could be transformed into a significant business opportunity.

The prime minister announced the "Startup Indian Campaign" in 2016 to provide a nurturing ecosystem for innovation, technology and entrepreneurship. The department for promotion of industry and internal Trade (DPIIT) formulated the startup scheme.

What is a Start-Up

Background

In order to accelerate the spreading of the startup movement in India, the Government had announced an action plan known as the Startup India initiative that addresses all the aspects of startup ecosystems. The key features of this action plan were:

(i) Easy registration with lesser compliances.

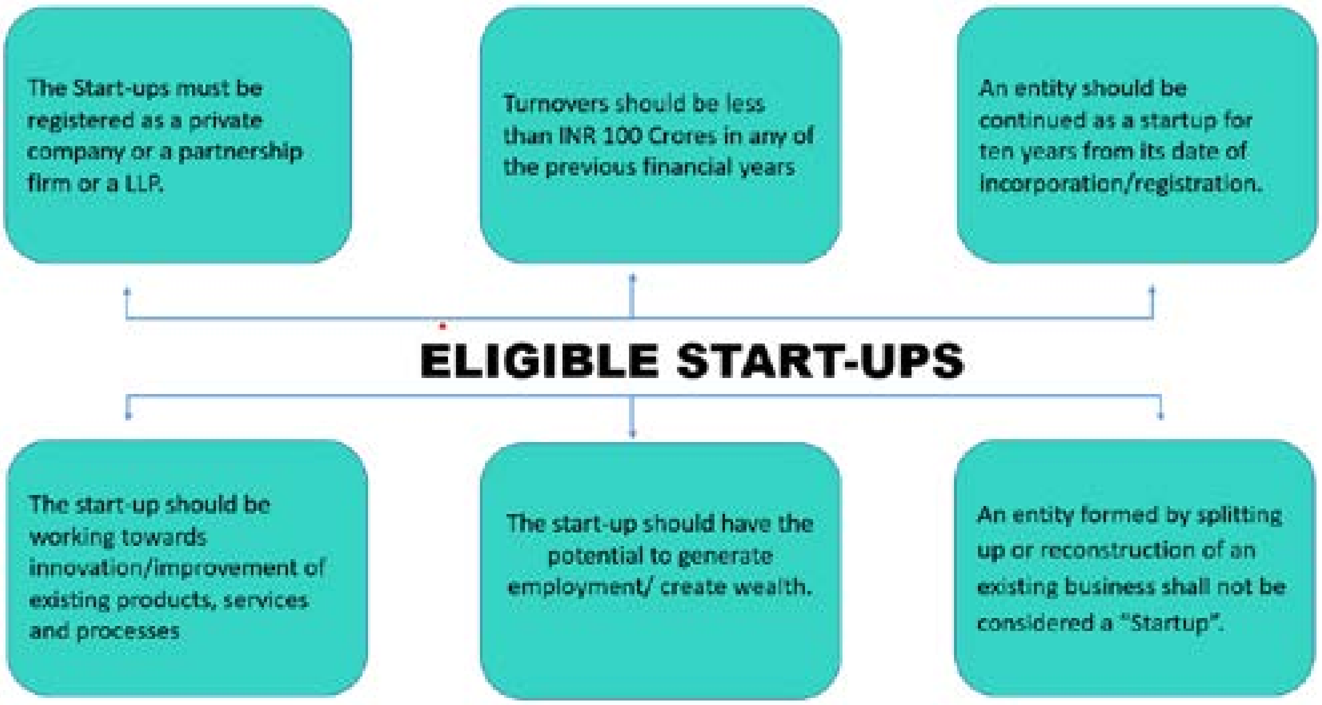
(ii) Tax Holidays for a period of 3 consecutive years out of the block 10 initial years.

(iii) Exempted from previous experience/ turnover in getting government tenders.

(iv) GOI has set up ₹ 10000 crores to provide funds to startup as venture capital.

Preferred Form of Entity

A startup may be established in the form of a sole proprietorship, partnership firm, Limited Liability Partnership (LLP) or a company. However, for qualifying to be an "Eligible Startup" it needs to be incorporated as a private limited company (under Companies Act, 2013), an LLP (under LLP Act, 2008) or a partnership firm. Let's elaborate what eligible startup means:



Several incentives have been announced by the Govt for startups and these benefits are being enhanced every year. All these incentives and all other relevant points regarding taxation on Startups in India have been mentioned in this article.

The following things about Income Tax on Start-ups have been discussed in this article:-

1. Income Tax on Start-ups

2. Tax Incentives

Income Tax on Start-Ups

Once the Income is computed, the next step is to compute the Tax liability. Income Tax is levied on the Income as per the below mentioned schedule of Taxes

Schedule of Income Tax Rates

Type of Business Entity	Income Tax applicable
Proprietorship/ Individual	As per Income Tax Slab Rates
Partnership/LLP Firm	30% of Income
Indian Company	25% of Income

Tax Incentives for Start-Ups

The Govt has announced 100% Tax Deduction under Section 80-IAC for eligible Start-ups from payment of Income Tax. Eligible start-ups formed on or after 1st April 2016 and before 1st April 2019 can claim 100% Tax Exemption from payment of any Income Tax for any 3 consecutive years.

These 3 consecutive years for which 100% tax exemption is allowed can be chosen by the start-up at its own discretion from any of the first 10 years. (Amendment introduced *vide* Finance Act, 2020). This deduction would be available to the eligible start-up if the total turnover of its business does not exceed ₹ 100 Crores in any of the years beginning from the year of its incorporation.

All eligible start-ups who intent to claim the benefits of such tax incentives would be required to:-

1. Maintain Separate Books of Accounts for Eligible Business
2. Get their Accounts audited by a Chartered Accountant
3. Furnish Audit Report in Form 10CCB along with ITR.

Income tax benefits for eligible start-ups

Provision of law	Benefits/incentives available
Waiver from income tax at initial stage **Section 80IAC**	An eligible start-up (incorporated between 1st April, 2016 to 1st April, 2021 can avail deduction of 100% of profits for a block of 3 years in the first seven years of its incorporation. Such deduction would be available upon filing an application with DPIIT and satisfying certain condition.
Waiver from Angel tax **Section 56**	Domestic companies are required to issue their shares at fair market value (FMV) determined on net assets values basis or discounted cash flow basis determined by merchant banker. Any amount received by the company from the residents in India in excess of FMV is liable to tax in the hands of the company (popularly known as angel tax). Upon filing the requisite declaration with DPIIT and subject to certain conditions, eligible startups are exempted from angel tax.
Relaxations for set-off and carry forward of loses. **Section 79**	The income tax law provides for carry forward and set-off business losses. However, set off is denied for a private company if there is 50% or more change in the shareholding pattern of such company from that of the year of loss. An eligible startup is not hit by this condition for the losses incurred in first 7 years, provided the shareholders holding shares in the year of loss continue to hold shares in the year of set off.
Exemption from long term capital gains tax to investors of startups. **Section 54GB**	Long term capital gain from transfer of a residential property arising to an individual/ HUF is exempted from tax where the net consideration is invested in the equity shares of Eligible Startups, subject to the provisions of section 54GB of the Income Tax Act, 1961.
Relaxation in taxation of employee stock options (ESOP) for startups employees. **Section 192**	Where an eligible startup issues ESOPs to its employees (on or after the 1st April 2020), such startup is given certain relaxations on deducting tax on such ESOPs.

ESOP'S are one of the popular concept in the start-up industry, emphasizing on the same let's elaborate the topic:

TDS on ESOPs

ESOPs give employees the right to buy shares of their company at a future date at a pre-decided price. Companies grant ESOPs to their employees as part of their compensation package. While ESOPs have traditionally been granted to senior employees, many firms, particularly start-ups, are now extending them beyond the top echelons.

Taxation of ESOPS

When a start-up is issuing ESOPs, the discount (i.e., the difference between the market price of the shares as at the date of grant of the options and the allotment price) is allowed as deductible business expense for the start-up. While the start-up is allowed to take deduction of the ESOP expense, the same is taxable in the hands of the employees at 2 instances –

1. **At the time of exercise – as a perquisite.**
2. **At the time of sale by an employee – as a capital gain**

Deferment of Tax

As discussed above, ESOP exercised by the employee is treated as perquisite and included in the salary for tax purposes. In order to ease the burden of payment of taxes by the employees of the eligible start-ups (under Section 80-IAC) or TDS by the start-up employer, Government amended section 192 of the Income Tax Act, 1961 deferring the payment of income tax on ESOPs, from the time of exercise of ESOPs.

Now, the tax liability arises within 14 days from any of the following events, whichever is the earliest:

1. after the expiry of 48 months from the end of the relevant assessment year; or
2. from the date of the sale of such ESOP shares by the assessee; or

3. from the date of the taxpayer ceases to be an employee of the ESOP allotting employer.

Liability for deducting tax at source (TDS) on the start-up also stands deferred.

However, it is to be noted that only the eligible startups (under Section 80-IAC) which satisfy the below mentioned criteria cumulatively will be eligible for the deferred ESOP tax payment benefit.

1. It is incorporated on or after the April 1st, 2016 but before April 1st, 2021;
2. The total turnover of its business does not exceed twenty-five crore rupees in any of the previous years beginning on or after the April 1st, 2016 and ending on the March 31st, 2021.
3. It holds a certificate of eligible business from the Inter-Ministerial Board of certification as notified in the *Official Gazette* by the Central Government.

THIS WELCOME MOVE BY THE GOVERNMENT WILL BOOST MORE ENTREPRENEURS TO OPT FOR START-UPS.

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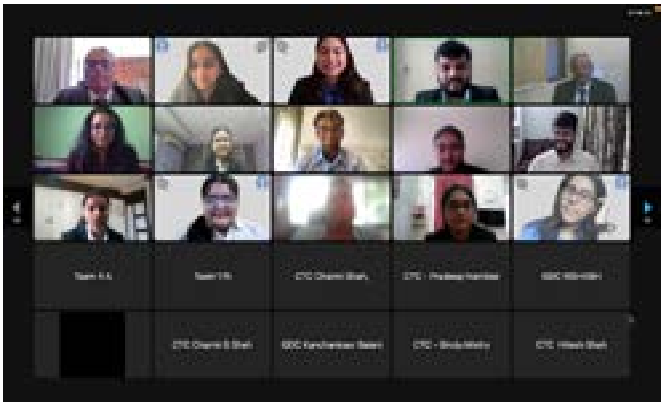
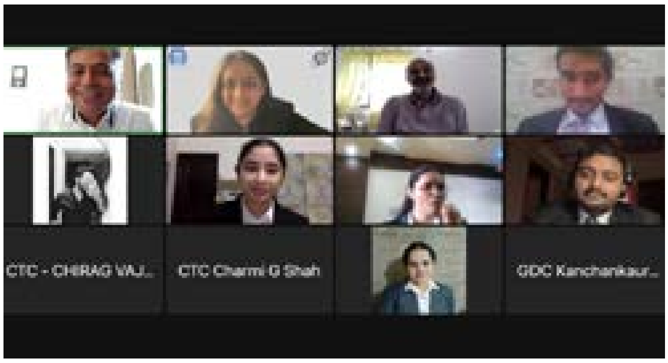
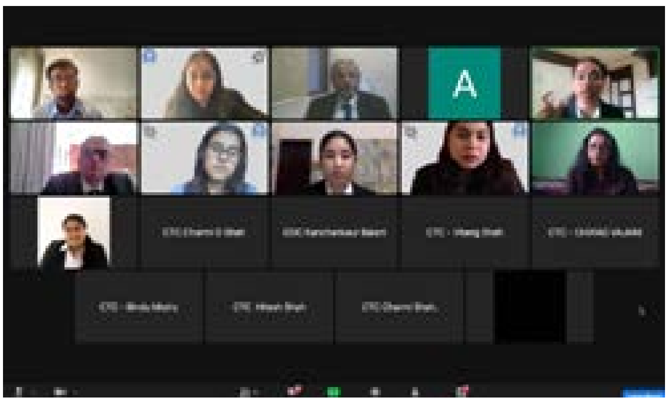
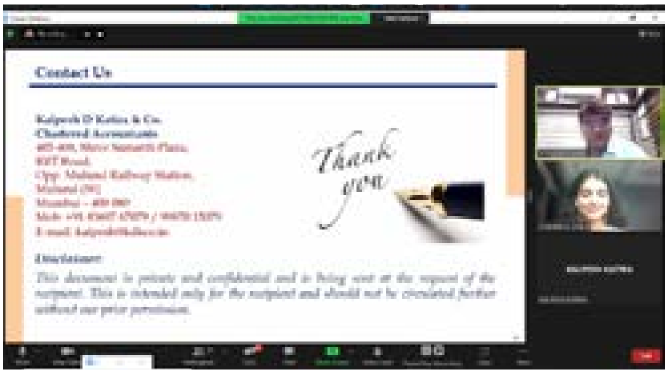
The 5th Dastur Debate Competition 2022 held on 27th January and 29th January, 2022

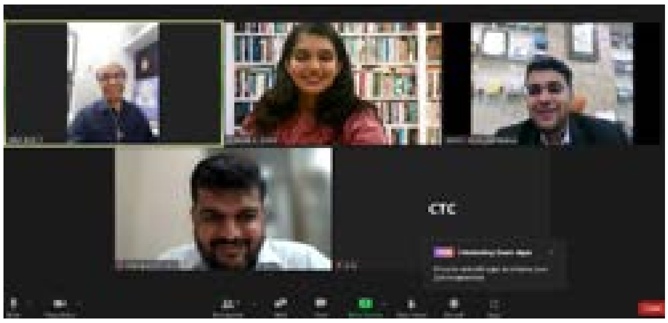


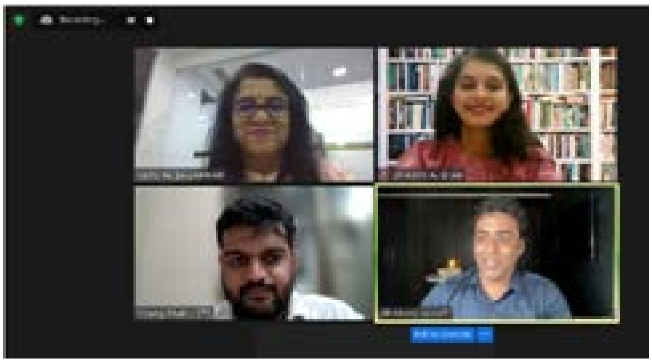


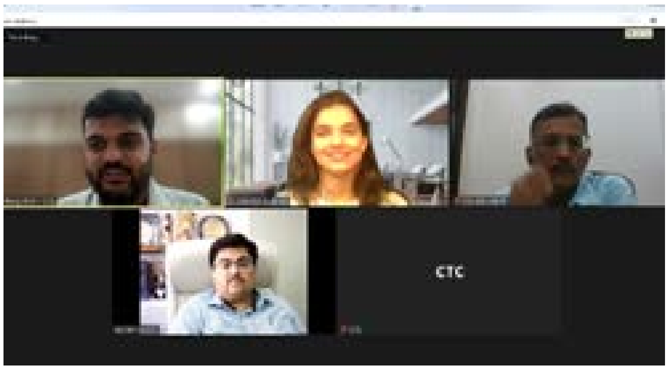


CA Student Orientation Course held on 21st to 25th March, 2022









The Chamber of Tax Consultants

Estd. 1926

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.

Estd. 1926
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