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NEWSLETTER

August-2016

MVDCO ADVISORY SERVICES

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INCOME TAX & INTERNATIONAL TAX

Foreign Tax Credit

Computation of Foreign Tax Credit ('FTC') in case of assessee's deriving income outside India and paid tax in such country on source based taxation has been a complex issue. The Central Board of Direct Taxes ('CBDT') have inserted Rule 128 to the Income-tax Rules, 1962 ('Rules') providing the rules for grant of credit of such Tax paid in foreign country. The said rules which are applicable from 1st April 2017, will help provide much needed clarity in an area which was until now marked by diverse interpretations. This will help reduce the hassle in claiming credit on tax paid in foreign countries and strive towards achieving the Government's vision for non-adversarial tax regime.

Eligibility to claim FTC:

A resident assessee will be eligible to claim FTC if any tax has been paid by him in a country or specified territory ("country") outside India. Grant of FTC shall be allowed only in the year in which the income corresponding to such tax has been offered or assessed to tax in India.

Where income on which foreign tax has been paid, is offered to tax in more than one year, credit of foreign tax shall be allowed across those years in the same proportion in which the income is offered to tax in India.

Eligible Foreign Taxes on which relief is allowed:

Where a Double Taxation Avoidance Agreement ('DTAA') has been entered between India and the foreign country, eligible foreign tax shall be the taxes covered under the respective DTAA.

However, where no DTAA has been entered between India and the foreign country, eligible foreign tax shall mean the tax payable under the law in force in that country in the nature of income-tax referred to in section 91 of the Income Tax Act.

Grant of FTC:

An assessee would be allowed to claim FTC against the amount of tax, surcharge and cess payable by such assessee in India under the Act. However, it has been clarified that claim of FTC will not be allowed in respect of any sum payable by way of interest or penalty.

No credit shall be available in respect of any amount of foreign tax or part thereof which is disputed in any manner by the assessee.

However, the credit of such disputed tax shall be allowed for the year in which such income is offered to tax in India if the assessee within six months from the end of the month in which the dispute is finally settled, furnishes the following:

a) evidence of settlement of dispute,
b) evidence of discharge of such disputed foreign tax, and
c) an undertaking that no refund in respect of such amount has directly or indirectly been claimed or shall be claimed.

Further, the rules notified provide that credit of disputed tax shall be allowed for the year in which such income is offered to tax in India on settlement of such dispute. However, ambiguity still exists on how the assessee would claim credit of such foreign taxes on settlement of dispute.

Manner of calculating FTC

Credit of foreign tax shall be the aggregate of the amounts of credit computed separately for each source of income arising from a particular country. Further, the credit allowable shall be the lower of the tax payable under the Act on such income and the foreign tax paid on such income.

Where foreign tax paid exceeds tax payable in accordance with DTAA, such excess shall be ignored.

In other words, a separate calculation would be required to be made on each and every stream of income arising from each and every foreign country individually. The aggregate of such different FTCs computed from each and every stream of income from different foreign countries shall be the credit of foreign tax paid allowable from the tax payable in India.

Further, the credit shall be determined by conversion of the currency of payment of foreign tax at the telegraphic transfer buying rate on the last day of the month immediately preceding the month in which such tax has been paid or deducted.

FTC where MAT/AMT is payable:

One of the most welcome proposals in the rules notified is regarding grant of FTC where tax is payable under the provisions of section 115JB or 115JC of the Act. The Rules provide that the credit of foreign tax shall be allowed against MAT/AMT in the same manner as is allowable against tax payable under the normal provisions of the Act.

It is also clarified that where the amount of FTC available against the tax payable under the provisions of section 115JB or 115JC exceeds the amount of tax credit available against the normal provisions, then such excess shall be ignored. The said rule is clarificatory and will obviate taking claim of excess FTC twice, first, directly upon payment of taxes when being paid under MAT and second, indirectly by means of MAT credit against future tax liabilities.

Documents required to be furnished:

For claiming FTC, assessee shall be required to furnish following documents:-

1) a statement in Form No.67

2) certificate or statement specifying the nature of income and the amount of tax deducted there from or paid by the assessee,-

   - from the tax authority of foreign country; or
   - from the person responsible for deduction of such tax; or
   - a statement signed by the assessee if it is accompanied by :

     - an acknowledgment of online payment or bank counter foil or challan for payment of tax where the payment has been made by the assessee;
     - proof of deduction where the tax has been deducted.

Such documents shall be furnished on or before the due date return of income under section 139(1) of the Act.

Form No.67 shall also be furnished in a case where the carry backward of loss of the current year results in refund of foreign tax for which credit has been claimed in any earlier previous year or years.

Conclusion:

The rules notified are a welcome step towards providing clarity on various issues related to grant of credit of taxes paid outside India. Various issues requiring clarification or creating unnecessary hardships on assessee in the draft rules have been well addressed in the rules notified. However, litigation on various other aspects cannot be completely ruled out.

TAX ON PRESUMPTIVE BASIS IN CASE OF INCOME FROM PROFESSION

The presumptive taxation scheme of **section 44ADA** has been designed to give relief to small taxpayers engaged in specified profession.

To give relief to small professionals from the tedious job of maintenance of books of account and from getting the accounts audited, the Income-tax Act has framed the presumptive taxation scheme under sections 44ADA of Income Tax Act.

- This provision is applicable from the financial year 2016-17
- The Professionals involved in the profession of legal, medical, engineering, architectural, accountancy, technical consultancy, interior decoration or other notified professions are eligible to take the benefit of this provision.
- The provision is applicable to the professionals having professional receipts not exceeding Rs. 50 lacs.
- The person adopting the provisions of section 44ADA, income will be computed on presumptive basis, i.e. @ 50% of the total gross receipts of the professional receipts assuming to have been claimed all the required expenditures including depreciation.
- However such person can declare income higher than 50% of his professional receipts.
- Whoever wishes to declare income less than 50% of turnover has to maintain books of accounts as required u/s. 44AA and have to get audited u/s. 44AB of I.T Act, if his returned income is taxable.
- Turnover limit for audit u/s. 44AB has been increased for professionals from Rs. 25 lacs to Rs. 50 lacs for the above professionals from the financial year 2016-17.
- Turnover limit for audit u/s. 44AB has not been increased for other than professionals however; turnover limit for adoption of benefit as available under section 44AD has been increased from Rs.1 crore to Rs. 2 crores from the financial year 2016-17.
- Other than professionals can declare his income at 8% having turnover not exceeding Rs. 2 Crores without getting his books of accounts audited.

INCOME TAX & INTERNATIONAL TAX*(cont.)*

- Five years' lock in period for availing benefit of presumptive tax is not applicable for professionals as is applicable in the case of other than professionals.

INDIRECT TAX (MVAT)

Sales Tax Amnesty Scheme

In our Newsletter of April, 2016, we have given highlights of "The Maharashtra Settlement of Arrears in Disputes Act, 2016" (The settlement Act)

The scheme will be in force up to 30th September, 2016.

After the publication of the said Newsletter of April, 2016, the Hon. Commissioner of Sales-tax (Maharashtra State) has issued Trade Circulars, clarifying some issues of practical importance. The relevant major clarifications are as under:

1. Settlement can be made only in respect of disputed demand i.e. the issue should have been raised in appeal memo. In other words, it is mandatory to file appeal against the statutory order and obtain stay which should be effective till the date of withdrawal of appeal.
2. An appeal against the order levying interest u/s 30(2) or 30(4) of the VAT Act, can be filed only in respect of period ending on or before 31st March, 2010 and not beyond.
3. It is necessary to attach with the settlement application, appellate authority's order as regards withdrawal of appeal by the applicant.

4. In respect of proceedings where penalty is deferred, it is necessary that penalty order is passed, appeal is filed, stay is obtained & appeal is withdrawn before submitting Settlement Application.
5. Once settlement is made as per the scheme, immunity will be available vis-a-vis offences that may have been committed under the relevant act(s).
6. In order to opt for settlement, appeal can be filed after the limitation period; the appellate authority will decide issue of condonation of delay as per law.
7. The payment made after the assessment order but before filing of appeal will be appropriated in following order:

    i. Towards interest
    ii. Then towards penalty, sum forfeited & fine
    iii. Balance if any, against tax payable

    The balance dues if any will only qualify for the scheme.

    In light of above provisions, the payment made after filing appeal, shall be considered as payment under the scheme.

8. Settlement can be made also for some of the issues raised in appeal. For the purpose of scheme, a transaction may be considered as an issue.

    As a corollary, settlement can be made inter alia for:

    i. Some of the declarations such as C/F/H etc., in case of CST Appeal
    ii. Disallowance of set off in case of some of the suppliers, in case of VAT appeal.

    The last date (viz 30th September, 2016) of the scheme is approaching fast. The dealers in appeal should check the strength of their issues in appeal and accordingly decide whether or not to opt for the scheme.

    We will keep you informed of further development, if any, in this regard.

INDIRECT TAX (MVAT) *(cont.)*

Profession Tax Amnesty Scheme

The Maharashtra Government (Sales Tax Department) has announced Profession tax Amnesty Scheme which is inforce up to 30th September, 2016. The Scheme is as under:

Any person (say a company, partner, trader, professional etc.) who was liable to be enrolled under the profession tax laws and who has not yet enrolled, can get enrolled now (on or before 30th September, 2016) and will be liable to pay profession tax and interest only w.e.f. 1st April, 2013. The profession tax and interest for the period prior to 1st April, 2013 will be fully waived. There will not be any penalty.

CORPORATE LAW, ACCOUNTING STANDARD & Ind AS

Recent important amendments in Corporate law, Accounting Standard and Indian Accounting Standard (Ind AS)

A. Exemption from preparation of Consolidated Financial Statements:

The Ministry of Corporate Affairs (MCA) amended the Companies (Accounts) Rules, 2014 vide notification dated 27th July, 2016 by the Companies (Accounts) Rules, 2016. The summary of same is as under:

In the Companies (Accounts) Rules, 2014, (hereinafter referred to as principal rules), in rule 6, for the second proviso, the following proviso shall be substituted namely:-
"Provided further that nothing in this rule shall apply in respect of preparation of consolidated financial statements by a company if it meets the following conditions:-

i. it is a **wholly-owned subsidiary, or is a partially-owned subsidiary of another company** and all its other members, including those not otherwise entitled to vote, having been intimated in writing and for which the proof of delivery of such intimation is available with the company, do not object to the company not presenting consolidated financial statements;

ii. it is a company whose securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India; and

iii. its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which are in compliance with the applicable Accounting Standards."

The said notification can be downloaded from the following link:

http://www.mca.gov.in/Ministry/pdf/CompaniesAccountsAmendmentRules_28072016.pdf

Our opinion:

This notification is long awaited for exemption to be given to intermediary holding companies from preparation of Consolidated Financial Statements (CFS) on satisfaction of all the criteria's as referred above.

But still there is mandatory requirement to prepare CFS by a private limited company or closely held public limited company other than intermediary holding company to prepare CFS in case of having subsidiary company or Associate Company or Joint venture.

B. FAQs on Consolidated Financial Statements issued by the Accounting Standards Board (ASB) of the Institute of Chartered Accountants of India (ICAI):

i. **Whether a company H ltd is required to consolidate its subsidiary which is a Limited Liability Partnership (LLP) or a partnership firm?**

As per rule 6 of Companies (Accounts) Rules, 2014, under the heading 'Manner of consolidation of accounts' it is provided that consolidation of financial statements of a company shall be done in accordance with the provisions of schedule III to the Companies Act, 2013 and the applicable Accounting standards.

It is noted that relevant Indian Accounting Standard i.e., Ind AS 110, *Consolidated Financial Statements* provides that where an entity has control on one or more other entities, the controlling entity is required to consolidate all the controlled entities. Since, the word 'entity' includes a company as well as any other form of entity, therefore, LLPs and partnership firms are required to be consolidated. Similarly, under Accounting Standard (AS) 21, as per the definition of subsidiary, an enterprise controlled by the parent is required to be consolidated. The term 'enterprise' includes a company and any enterprise other than a company. Therefore, under AS also, LLPs and partnership firms are required to be consolidated.

Accordingly, in the given case, H ltd is required to consolidate its subsidiary which is an LLP or a partnership firm.

ii. **Would the answer be different if LLP is an associate or joint venture of H Ltd?**

If LLP or a partnership firm is an associate or joint venture of H ltd, even then the LLP and the partnership firm need to be consolidated in accordance with the requirements of applicable Accounting Standards.

C. Rotation of Auditor:

Ministry of Corporate Affairs (MCA) vide Removal of Difficulty order dated 30th June, 2016 has substituted third proviso of section 139(2).

Earlier, Auditor Rotation was required to be complied within 3 years from the Commencement of this Act i.e., 1st April, 2014. Now, vide Removal of Difficulty order dated 30th June, 2016, the same can be done till the Annual General Meeting(AGM) to be held after the completion of 3 years from 1st April, 2014

For eg: If the financial year of the Company ends on 31st Mar and Audit rotation is applicable to the Company, new auditor is to be appointed in the AGM to be held in 2017

To download notifications please follow the link:

http://www.mca.gov.in/Ministry/pdf/ROD_Third_Order_2016.pdf

D. Acceptance of Deposits:

Ministry of Corporate affairs vide notification dated 29th June, 2016 has amended Companies (Acceptance of Deposits) Rules, 2014:

Highlights of same is as follows:

1. Following are excluded from the definition of Deposit:

    a. Compulsory Convertible Debentures can be issued for 10 years;
    b. Unsecured Non-Convertible Debentures listed on stock exchange;
    c. Any non-interest bearing amount received and held in trust;
    d. Amount received in advance for future service agreement;
    e. Amount received by any sectoral regulator or by directions of government;
    f. Advance for subscription towards publication;
    g. Chit amount received in accordance with Chit Fund Act;
    h. Amount received from Alternate investment Funds, Domestic Venture Capital funds and Mutual Funds;
    i. Amount received under collective investment scheme;
    j. Amount of twenty five lakhs or more received by a start-up company by way of convertible note

2. Terms and conditions of acceptance of deposits by companies

    a. Limits enhanced for acceptance/renewal of deposit upto 35 % paid up+ free reserves + Securities Premium
    b. Private company can loan from members = paid up + free reserves +Securities Premium

3. Minimum credit rating specified

4. Disclosure in financials

    a. Private Companies - loan taken from directors/relatives of directors
    b. Others - loan from directors

5. Disclaimer – in DPT -1 i.e., Circular in the Form of Advertisement inviting deposits

    To download notifications please follow the link:
    http://www.mca.gov.in/Ministry/pdf/Rules_30062016.pdf

E. Securities and Exchange Board of India (SEBI) has issued Circular No. CIR/CFD/FAC/62/2016 dated July 05, 2016 regarding the Revised Formats for Financial Results and Implementation of Ind-AS by Listed Entities.

1. SEBI, in consultation with the market participants viz. Listed Entities, Stock Exchanges and Members of the Institute of Chartered Accountants of India ('ICAI'), has now decided the following:

- The existing formats prescribed in SEBI Circular No. CIR/CFD/CMD/15/2015 dated November 30, 2015 for Unaudited/Audited quarterly/half-yearly financial results to be submitted by the listed entities, with the stock exchanges, shall continue till the period ending December 31, 2016.

- The formats for Unaudited/Audited/quarterly/half-yearly financial results to be submitted by the listed entities, with the stock exchanges for the period ending March 31, 2017 shall be as per the prescribed format in schedule III to the Companies Act, 2013 (excluding notes and detailed classification). The Banking and Insurance Companies shall follow their own formats issued by their regulators.

- Until Companies (Indian Accounting Standards) Rules, 2015 ('Ind-AS Rules') become applicable, the listed entities shall adopt Companies (Accounting Standards) Rules, 2006 ('AS Rules') as prescribed by the Ministry of Corporate Affairs

- Accounting Standard ('AS') 17/ Indian Accounting Standard ('Ind AS') 108 of the AS Rules/ Ind-AS Rules shall contain these minimum information i.e. Segment Revenue (including inter-segment revenue), Segment Results, Segment Assets (Aggregate inter-segment revenue shall be shown as a deduction from the segment revenue), Segment Liabilities. Unallocated items shall be shown separately in respect of the above information.

- The financial results published in the newspapers, in terms of Regulation 47 (1) (b) of the SEBI (LODR) Regulations, 2015 ('Listing Regulations'),shall be in the format as prescribed below, which has now been slightly modified.

- Format for Newspaper Publishing Purpose (Standalone / Consolidated)
  [See Regulation 47(1) (b) of the SEBI (LODR) Regulations, 2015]

  To download notifications please follow the link:
  http://www.sebi.gov.in/cms/sebi_data/attachdocs/1467712561526.pdf

2. **IND-AS IMPLEMENTATION DURING THE FIRST YEAR:**

Relaxations are being given to the listed entities to which Ind-AS Rules are applicable from the accounting period beginning on or after April, 1, 2016:

For the quarter ending June 30, 2016 and September 30, 2016:

- This circular gives **extension of one month** regarding submission of financial results i.e. the results for the quarter June 30, 2016 and September 30, 2016 may be submitted by **September 14, 2016 and December 14, 2016 respectively.**

- For the quarter ending **June 30, 2016**, Ind-AS compliant financial results for the **correspondingquarter ended June 30, 2015 shall be provided**. Whereas submission of Ind-AS compliant financial results for **the preceding quarter and previous year ended March 31, 2016 is notmandatory**.

- For the quarter ending **September 30, 2016**, Ind-AS compliant financial results for the **corresponding year to date / quarter ended September 30, 2015 shall be provided**. Whereas submission of Ind-AS compliant financial results and Balance Sheet for the **previous year ended March 31, 2016 is not mandatory.**

Note- However, in such cases, limited review or audit of the same is not mandatory.

The management has exercised necessary due diligence to ensure that the financial results provide a true and fair view of its affairs and hence have not been subject to limited review or audit.

For the quarter ending December 31, 2016:

- The submission of Ind-AS compliant financial results for **the previous year ended March 31, 2016 is not mandatory.**In case a listed entity **chooses to provide Ind-AS** comparatives for this period, the same shall be **subjected to limited review or audit.**

For all the aforementioned three quarters, disclosure of the line item – Reserves(excluding Revaluation Reserves), as per Balance sheet of the previous accounting year ended March 31, 2016, as prescribed in the existing formats for quarterly financial results **is not mandatory.**

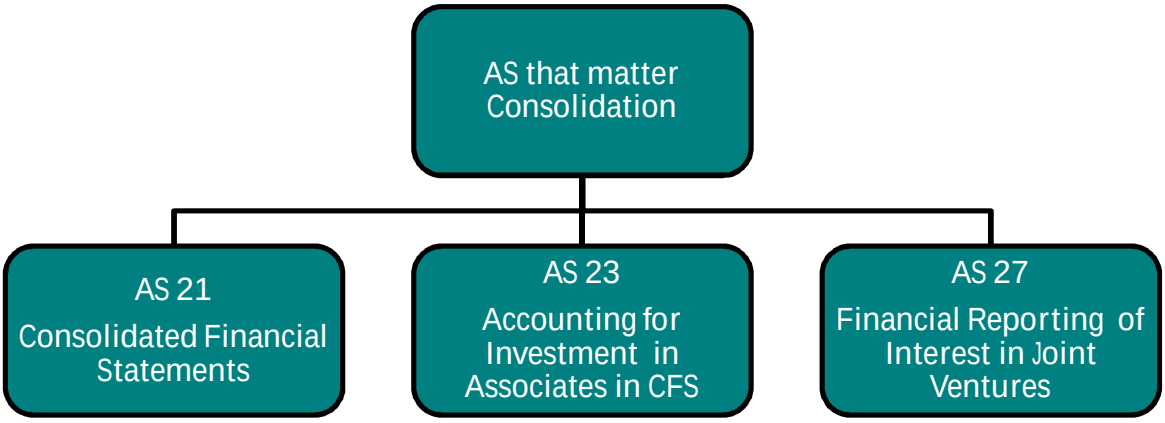
In case the listed entity has subsidiaries / Joint Ventures / Associates, the entity may exercise the option under Regulation 33(3)(b)(i) of the Listing Regulations to submit quarterly/year-to-date consolidated financial results **in the second quarter instead of the first quarter of thefinancial year** and this option shall not be changed during the remaining part of the financial year.

This Circular shall come into force with immediate effect and the contents of the circular dated November 30, 2015, shall stand modified to the extent stated under this circular.

Consolidation – A Paradigm Shift in the scenario of Indian Accounting Standards (Ind AS)

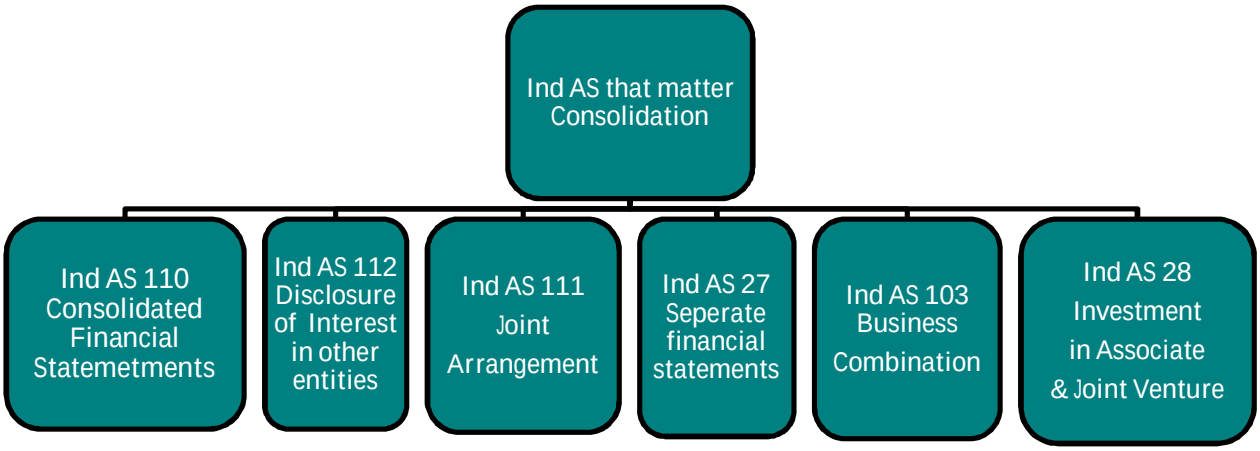
Consolidated financial statements are those where a parent company presents its financial statements as those of entities controlled by it as single economic entity. With the application of the Companies Act, 2013 from the financial years beginning 1 April 2014, most Indian companies having one or more subsidiaries are required to prepare and present consolidated financial statements (CFS). As per the explanation to section 129 (3) of the Companies Act 2013, the word "Subsidiary "shall include associate company and joint venture.

- **Accounting Standard (AS) that matter Consolidation are:**



Ind-AS, which takes effect for listed and non-listed companies having a net worth of Rs.500 crore and above (phase I) from 1 April 2016, contains significantly different requirements concerning preparation of CFS. Though Ind-AS 110 Consolidated Financial Statements contain a few exemptions from preparation of CFS, they are not in sync with the Companies Act, 2013. Consequently, the stricter of two requirements will apply and most Indian companies having subsidiaries/ associates/ joint ventures will need to prepare CFS. Also, Ind-AS 110 contains significantly different requirements to assess existence of control / joint control, thereby will potentially affect a group's consolidated financial statements.

- **India Accounting Standards (Ind AS) that matters Consolidation are:**



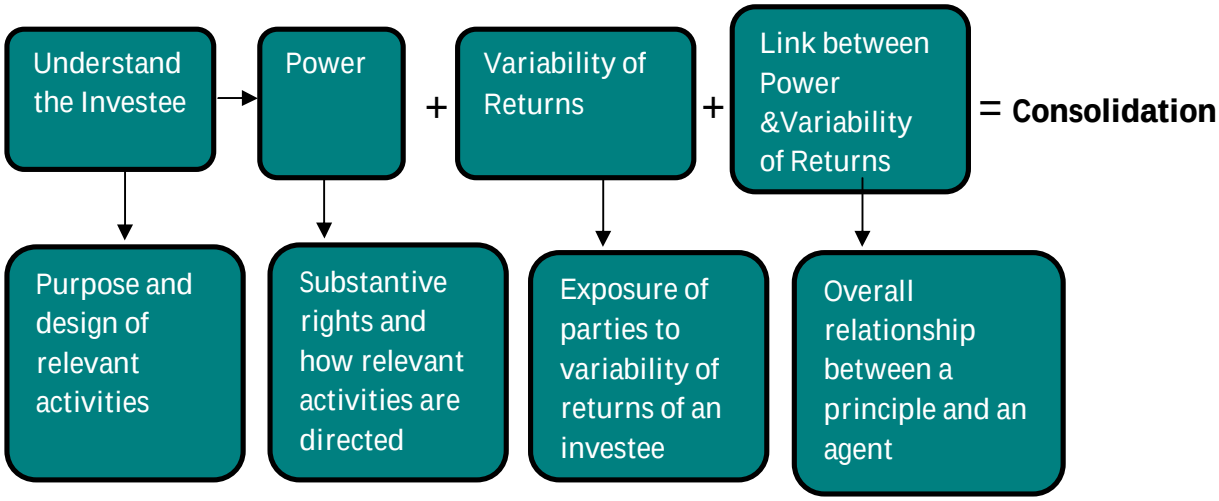
- **In both the scenarios, deciding factor for consolidation shall be the definition of the Control:**

Under existing Indian GAAP, AS 21 defines control as:

- ✓ the ownership, directly or indirectly through subsidiaries, of more than one half of the voting rights of enterprise, or
- ✓ control of the composition of the board of directors in case of a company or of the composition of the corresponding governing body in case of any other enterprise so as to obtain economic benefits from its activities.

- Ind-AS 110 Consolidated Financial Statements contains much broader and substance-based on definition of control.

The new control Model:



- **Continuous Assessment of all these factors are must with respect to facts and circumstances.**

In accordance with Ind-AS 110, an investor controls an investee if and only if the investor has all of the following elements:

✓ Power over the investee, i.e. the investor has existing rights that give it the ability to direct the relevant activities.

✓ Exposure, or rights, to variable returns from its involvement with the investee. Such returns must have the potential to vary as a result of the investee's performance and can be positive, negative, or both.

✓ The ability to use its power over the investee to affect the amount of the investor's returns.

- **Voting Power vs. Board Control:**

Consider a scenario, wherein the 61% equity shares an entity C is held by entity A and 39% is held by entity B. Entity A has a right to appoint 2 directors on the board of entity C while entity B has a right to appoint 3 directors. Under Indian GAAP, both A and B would be consolidating C, based on majority voting rights and right to appoint majority directors, respectively.

Upon transition to Ind-AS, entities shall be required to identify the entity that, in substance, controls C. Based on definition given, only one entity may be identified as controlling entity C. If the substance of the arrangement is that both A and B have joint control over C, none of the two willbe able to use full consolidation for C.

- **De-facto Control:**

Ind-AS 110 states an investor might have control over an investee even when it has less than a majority of the voting rights of that investee. The control exists if the investor has the practical ability to direct the relevant activities of the investee unilaterally (a concept known as 'de facto control'). When assessing whether an investor's voting rights are sufficient to give it power, an investor considers all facts and circumstances, including:

a) The size of the investor's holding of voting rights relative to the size and dispersion of holdings of the other vote holders

b) Potential voting rights held by the investor, other vote holders or other parties;

c) Rights arising from other contractual arrangements; and

d) Any additional facts and circumstances that indicate the investor has, or does not have, the current ability to direct the relevant activities at the time that decisions need to be made, including voting patterns at previous shareholders' meetings.

Consider an example:

Entity A holds 48% of the voting rights of entity B; the remaining 52% of B is widely held by thousands of shareholders (none of whom holds more than 1% of the voting rights). A has power over B, because A has a dominant voting interest (based on the absolute size of its holding, and relative to other shareholders), and a large number of shareholders would have to agree to outvote A.

The concept of de-facto control does not exist under Indian GAAP.

- **Options And Convertible Instruments*:***

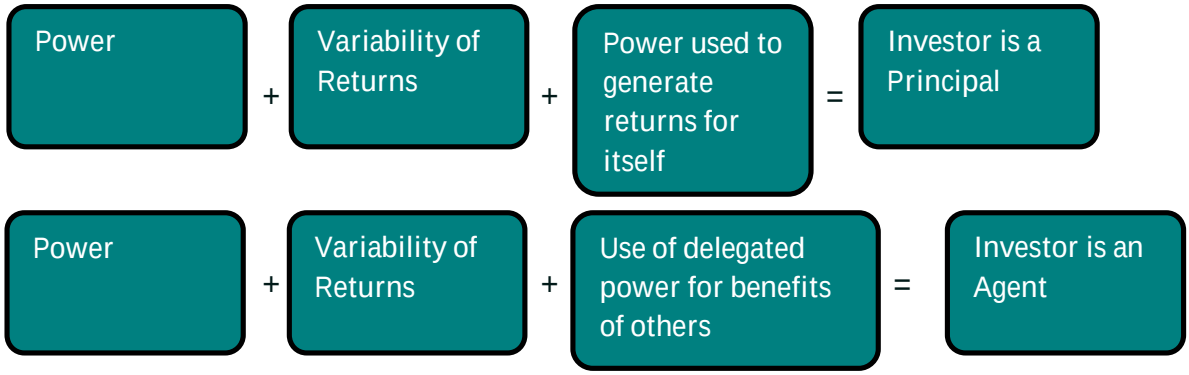
Under Indian GAAP, option and warrants are generally not considered in determination of control. Ind-AS 110 requires that a reporting entity should assess whether its power to obtain voting rights achieved from holding options or convertible instruments gives it the power to direct the activities of another entity. For example, an option or conversion agreement may give the reporting entity particular rights relating to the strategic operating and financing policies. If these rights enable the reporting entity to have the power to direct the activities of the entity, it will need to consolidate another entity. On the other hand, if convertible instruments are held by some other investor, the entity will need de-consolidate the entity which it had consolidated under Indian GAAP.

- **Delegated Power – Principal Or Agent*:***

Ind-AS 110 introduces a new concept of delegated power. An investor may delegate decision-making authority to an agent on some specific issues or on all relevant activities, but, ultimately, the investor as principal retains the power. An agent is a party engaged to act on behalf of another party (principal), but which does not have control over the investee. Accordingly, a decision maker that is not an agent is a principal. It is necessary to assess whether the decision maker is acting as a principal or an agent, to determine whether the decision maker is deemed to have control.

Ind-AS 110 provides guidance for analysing control, by asking whether the decision maker, is acting as a principal, or as an agent that is acting primarily on behalf of other investors. An agent cannot have control over the investee and therefore will not consolidate the investee.

In contrast,an entity that is a principal controls the investee and so will consolidate the investee. For example, in some cases, the fund manager may be regarded as acting as a principal, thus it will consolidate additional funds and consequently increase the size and complexity of its balance sheet. This may have a direct impact on systems, processes and controls, key metrics and ratios, as well as how the fund manager communicates with investors. In addition, consolidation of additional funds may place extra demands on already stressed financial reporting time-lines.



- **Structured Entities:**

Ind-AS 110 introduces a new term 'structured entities' (SE) which an entity whose activities are restricted to the extent that they are not directed by a governing body. An entity needs to consider all facts and circumstances to determine whether it has the power to direct the activities that cause the returns of the SE to vary.

Following are various aspects laid down to assist in decision making:

- Purpose and design of the SE?
- What returns does the reporting entity earn from its involvement with the SE
- To what extent are the activities of the SE predetermined?
- Does the reporting entity have the ability to change the restrictions or predetermined strategic policies of the SE?
- What is the effect of any related arrangements?
- Whether the entity is acting as an agent in its relationship with the SE?

Entities in sectors such as, real estate and construction, infrastructure, e-commerce and financial services, where the use of structured entities are prominent need to assess whether such entities need to be controlled under Ind-AS 110. Also special purpose entities structured and designed for tax planning, financing, strategic operational efficiency may need to be assessed. Under Ind-AS, these LACs may have to be consolidated as subsidiaries, due to which the potential implications under the Urban Land Ceiling Act may have to be assessed.

- **Key Impact On Indian Entities:**

Application of Ind-AS 110 may significantly amend the existing group structures as entities may need to consolidate new entities based on criteria such as de facto control, structured entities and potential voting rights. Also, some of the existing entities may get deconsolidated. Entities will need to update their existing group structures and start coordinating with new group entities so that they get timely information for all entities to prepare consolidated financial statements.

Changes in group structure as mentioned above along with other Ind-AS changes may significantly impact financial performance and financial position. It is necessary that entities start communicating such impacts to their stakeholders in advance so as to avoid sudden impact. Also, entities may need to renegotiate loan covenants based on their financial performance and financial position.

Ind-AS 110 requires control to be assessed on a continuous basis. This is particularly relevant in marginal cases and may have “in, out and in” situation from one period to the next. For example, in case of de facto control, a relatively small change in the shareholding pattern of an investee company may fail the control test. In subsequent periods, entity may be able to achieve de facto control again.

Appointment of KMP

- **Who is a KMP?**

As per section 203 of The Companies Act, 2013 the following people are included in the definition of KMP:

a. Managing director, or Chief Executive Officer or manager and in their absence, a whole-time director;
b. Company secretary; and
c. Chief Financial Officer

- **Which companies are required to appoint a KMP?**

As per Rule 8 of Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2014:

a. Every listed company, and

b. Every other public company having a paid-up share capital of ten crore rupees or more shall have whole-time key managerial personnel.

As per Rule 8A of Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2014:

A company other than a company covered under rule 8 which has a paid up share capital of five crore rupees or more shall have a whole-time company secretary.

- **Whether the CEO or CFO should be the director of the company?**

No, it is not mandatory that the CEO or CFO should be the director of the company.

- **Can a same person be both CFO and Managing Director of a company?**

Yes, there is no restriction under The Companies Act, 2013 which bars a same person to be both CFO and Managing Director of a same company.

- **What is the process for Appointment of KMP?**

Following is the process for Appointment of KMP:

1. Hold a board meeting and pass a board resolution for appointment of KMP

2. File form MGT-14 within 30 days of passing the resolution.

3. File form DIR-15 within 30 days of passing the resolution.

4. File form MR-1 within 30 days of passing the resolution.

- **Whether provisions related to the Managerial Remuneration are applicable on all KMPs?**

Section 197 prescribes certain caps and compliance only in regard to the remunerations of Directors including MD, WTD and Manager.

Therefore, the provisions related to the managerial remuneration are not applicable on all KMPs but they are applicable only on such managerial personnel as mentioned in Section 197 and Schedule V to The Companies Act, 2013.

Therefore, CS and CFO not being managerial personnel as mentioned in Section 197, the provisions of Section 197 will not apply on them.

- **Tenure of a KMP?**

Appointment of Managing Director, Whole – Time Director or Manager shall not for a term exceeding five years at a time.

However no tenure has been prescribed for appointment of CEO, CFO and CS. Hence is assumed that there is no restriction of the tenure of CEO, CFO or CS.

- **What is the penalty of Contravention of these provisions?**

A contravention of these provisions would result in a penalty as mentioned below:

On Company	Fine which shall not be less than Rs. 1,00,000/- but which may extend to Rs. 5,00,000/-
On every director and key managerial personnel of the company who is in default	Fine which may extend to Rs. 50,000/- and where the contravention is a continuing one, with a further fine which may extend to Rs. 1,000/- for every day after the first during which the contravention continues.

TRANSFER PRICING

Country by Country Reporting – Indian Perspective

The Finance Act, 2016 has introduced the norms prescribed by OECD regarding "country by country reporting (CbC)" by making relevant changes in Section 92D and by introducing a new section 286 in the Income Tax Act, 1961 which are applicable from A.Y. 2017-18.

Following are the highlights of the reporting norms under the Indian Income Tax Act, 1961 under difference scenarios. In this article we have covered those entities which are the most common form of entities / holdings in the business world. There could be other form of entities (not so popular ones) which might also get covered by the CbC reporting norms.

Scenario I: An Indian subsidiary company resident in India having a parent company resident outside India:

Such Indian subsidiary company shall notify the prescribed income-tax authority on or before such date in the form and manner to be prescribed, the following information:

i. Whether the Indian subsidiary company is the alternate reporting entity of the international group; or

ii. If the Indian subsidiary company is not the alternate reporting entity of the international group then it has to provide the details of the parent entity or the alternate reporting entity, if any, of the international group and the country or territory of which the parent entity or the alternate reporting entity are resident.

Note:

In the following cases even if the Indian subsidiary company resident in India has a parent company resident outside India, the Indian subsidiary company will have to comply with the requirements of Scenario II if:

- ✓ The Indian subsidiary company is the alternate reporting entity of the international group as mentioned in point no. I above.

- ✓ The Indian subsidiary company has a parent company –
  - o which is resident in a country with which India does not have an agreement providing for exchange of the report of the nature referred to in Scenario II below or
  - o the country of residence of the parent company has suspended automatic exchange of information or the country has persistently failed to automatically provide to India the report in its possession and the prescribed authority has informed the Indian subsidiary of such systematic failure.

However if there are more than 1 Indian subsidiary companies resident in India then the above report shall be submitted by any 1 Indian subsidiary company and this fact should have been conveyed to the prescribed authority on behalf of the group

TRANSFER PRICING *(cont.)*

Scenario II: A parent company resident in India having consolidated revenues in the preceding year exceeding E 750 million or an Indian subsidiary company resident in India if it is the alternate reporting entity:

Such parent company or the Indian subsidiary company resident in India if it is the alternate reporting entity shall furnish a report on/or before the due date of filing return of income the following information to the prescribed authority in the form and manner to be prescribed:

Name of the entity	Country of operation	Revenue	PBT	Income Tax Paid	Income Tax Accrued	Stated Capital	Accumulated Earnings

No. of Employees	Tangible Assets *	Country of Incorporation	Country of Residence	Main Business Activity	Any other information as may be prescribed

*Excluding cash and cash equivalents.

LABOUR LAW

Maternity Benefit (Amendment) Bill 2016 introduced in Rajya Sabha as on 12th August, 2016

The salient features of the Bill are:

a) increase the maximum period of maternity benefit from the existing 12 weeks to 26 weeks in case of women who have less than two surviving children and in other cases, the existing period of 12 weeks maternity benefit shall continue;

b) to extend the maternity benefit to a "commissioning mother" and "adopting mother" and they shall be entitled to 12 weeks maternity benefit from the date the child is handed over;

c) to facilitate "work from home" to a mother by inserting an enabling provision;

d) to make it mandatory in respect of establishment having 50 or more employees, to have the facility of creches either individually or as a shared common facility within such distance as may be prescribed by rules and also to allow four visits to the creche by the woman daily, including the interval for rest allowed to her;

e) every establishment shall intimate in writing and electronically to every woman at the time of her initial appointment about the benefits available under the Act.