

- *By Vishwas Panjiar*

The world at large is grappling with the ongoing Covid -19 pandemic. While it may not be possible to gauge the human toll and economic fallout at this point, it is amply clear that China is fast losing its stronghold as the global factory owing to the trust deficit that exists today between China and the rest of the world. In such a scenario, India is poised to be the next best destination for entities which are looking at decoupling from China, they would be well served to look towards India. India could pave the road through a regime of incentives to sweeten the deal for such entrants.

However, at the same time the country would want to safeguard its own interests as well. In pursuit of such interest protection, the DPIIT released the press note amending the FDI policy to make investment from countries which share land borders with India under Government approval route. Further, another change was brought about in the Foreign Exchange Management Act, 1999 (FEMA) and its regulations with respect to the pricing guidelines for the right issue, if renounced in favour of the non-resident.

Now pursuant to the change, even non-resident looking to acquire securities of an Indian company through a renounced right, can do so only in compliance with the existing pricing guidelines as are applicable on fresh (preferential) issue case.

On the other hand, the aspects around the taxation of renouncement of rights were clearly spelt out in the Indian tax statute: renunciation of right will entail the capital gain tax in the hands of the transferor and would have tax consequences for the transferee if such renunciation is done for nil/inadequate consideration. The cost paid by the transferee towards the rights would also go to enhance the cost of shares.

However, the imposition of tax on the shareholders in case of subscription (including through rights issues) below the prescribed intrinsic net asset value based Fair Market Value has been a vexed issue. The Central Board of Direct Taxes (CBDT) released a series of clarificatory circulars on the aspect which were immediately rolled back. At the same time, judicial pronouncements have provided some respite as they have acknowledged rights issue involves only re-distribution of existing net worth and there is no further wealth creation by means of an un-skewed rights issue.

The COVID 19 which is an unprecedented pandemic, will mark the timeline of the world into Pre-Covid and Post-Covid era. However, what is to be seen is if India can emerge as the Global hub in the new world order by bridging the trust deficit through a regime of changes to lure the global investors and at the same time protect its base from unjust exploitation.

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