NEWSLETTER

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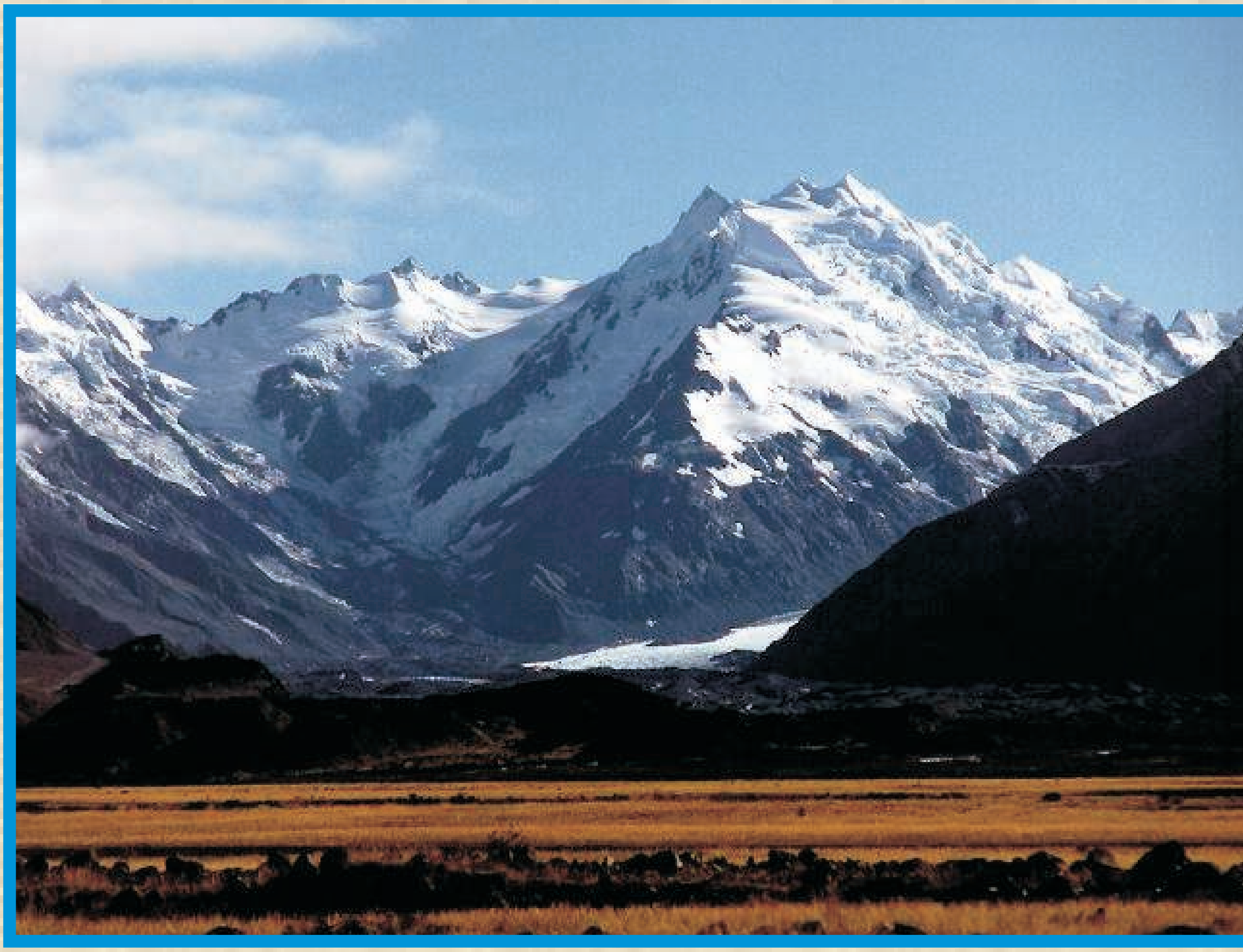
M. V. DAMANIA & Co.



FEMA

India's New Foreign Direct Investment (FDI) Policy

As a usual practice, The Department of Industrial Policy and Promotion has issued a consolidated FDI Policy effective from 1st October 2011 till 31st March 2012. This in effect will super cede all the earlier Press Notes/ Press Releases/ Circulars/ Clarifications etc.

Some of the key changes that are brought about in this Policy are as follows:

1. **Construction-Development activity in Education sector and old-age homes:**
   The conditions for FDI in construction-development activity in education sector and old-age homes have been relaxed as compared to the conditions in construction-development sector in general. The relaxation is on:
   - Minimum area requirement
   - Built-up area requirement
   - Minimum capitalization requirement and
   - Lock-in period

2. **FDI in Agriculture sector:**
   FDI has been allowed up to 100% under "Automatic Route" in apiculture sector under controlled conditions.

3. **Industrial Park sector:**
   The definition of industrial Park has been enlarged to include "Basic and applied R & D on bio-technology pharmaceutical sciences/life sciences" as an "industrial activity". Therefore, FDI will be allowed up to 100% under automatic route for the above sector as well.

4. **Terrestrial Broadcasting/FM Radio:**

   The limit of foreign investment in FM radio has been enhanced from 20% to 26%.

5. **Capitalisation of Imported capital goods/machinery and pre-operative/pre-incorporation expenses:**
   The erstwhile FDI Policy provided for capitalisation of imported capital goods/machinery and pre-operative/pre-incorporation expenses subject to prior approval of FIPB and subject to certain conditions, more particularly capitalization to be done within 180 days from the date of shipment of machinery or receipt of retention of advance against equity.

   The circular now clarifies that the application to obtain FIPB permission for capitalisation of capital goods/machinery and pre-operative/pre-incorporation expenses have to be made within 180 days from the date of shipment of

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machinery or receipt of retention of advance against equity, instead of actual conversion into equity.

The circular further clarifies that payment for pre-operative expenses or pre-incorporation expenses can now be made by the foreign investor to the Company directly or through the bank account opened by the foreign investor in accordance with FEMA regulations.

6. **Pledging of shares and Escrow bank account:**
   The Policy now provides for pledge of shares of an Indian Company which has raised External Commercial Borrowing (ECB), or that of its associate resident Companies for the purpose of securing ECB raised by the borrowing Company, subject to certain conditions.

   The Policy further provides without RBI approval, to open and maintain non-interest bearing escrow bank account in Indian Rupees in India, on behalf of non-residents, towards payment of share consideration and/or for keeping securities to facilitate FDI transactions, subject to certain conditions.

7. **Single Brand Retail Trading:**
   The circular has provided for an additional condition with respect to the single brand retail trading business. The additional condition provides that the foreign investor should be the owner of the brand.

8. **Minimum capitalisation to include Share Premium:**
   The circular has clarifies that wherever there is requirement of minimum capitalisation in FDI Policy, it shall include share premium received along with the face value of the shares, only when it is received by the Company upon issue of the shares to the non-resident investor. However, the amount paid by the transferee during post issue transfer of shares beyond the issue price of the share, cannot be taken into account while calculating minimum capitalisation requirement.

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External Commercial Borrowing (ECB) – Liberalisation

The RBI has issued a circular for liberalisation of ECB on the following aspects:

Permissible end use – repayment of existing rupee loan:

Indian Companies engaged in the infrastructure sector are permitted to utilized 25% of the fresh ECB raised for repayment of existing rupee loan/s availed from domestic bank, under automatic route, subject to following conditions:

- At least 75% of the fresh ECB should be utilized for new infrastructure projects.
- Balance 25% can be utilized for repayment of existing rupee loan/s which was availed for 'capital expenditure' of the earlier completed infrastructure project/s.

Import of Capital Goods through Bridge Finance:

Indian Companies engaged in infrastructure sector are now permitted to import capital goods by availing of short term credit (buyers' / suppliers' credit) in the nature of bridge finance, under automatic route, subject to following conditions:

- The bridge finance will be replaced by a long term ECB.
- The long term ECB will comply with all the existing ECB norms
- Prior approval shall be sought from RBI for replacing bridge finance with long term ECB.

Enhancement of ECB limits under automatic route:

The existing ECB limit for eligible borrowers under automatic route has been enhanced as follows:

- The ECB limit for Indian Companies engaged in Real/Industrial sector and infrastructure sector has been enhanced from USD 500 million to USD 750 million per financial year.
- Indian Companies engaged in specific service sector ie. Hotel, Hospital and Software services can now avail of the ECB of USD 200 million per financial year as against previous USD 100 million. This is subject to the condition that the ECB cannot be utilized for acquisition of land.

ECB designated in Indian Rupees

All the eligible borrowers will now be eligible to avail ECB designated in Indian Rupees from foreign equity holders.

ECB for interest during construction

Indian Companies engaged in infrastructure sector can now avail of ECB for interest during construction period subject to the condition that the interest is capitalized and is part of the project cost.

ECB from foreign Equity holder

According to the erstwhile ECB guidelines, the foreign equity holders are recognized as eligible lender if they hold a minimum of 25% equity shares in the Indian Company and in the event the ECB exceeds USD 5 million then the debt-equity ratio of 4:1 should be maintained ie. The proposed ECB should not exceed 4 times the investment in equity share capital in the Company.

Henceforth, the term "debt" in the debt-equity ratio should be replaced by "ECB liability" and the ratio will be known as "ECB liability- equity ratio".

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External Commercial Borrowing (ECB) – Liberalisation

Further, for the purpose of calculating equity of the foreign equity holder, paid up capital and free reserves (including share premium received in foreign currency) as per the last audited balance sheet will be considered. Similarly for the purpose of calculating ECB, the outstanding ECB from the same foreign equity holder lender will be considered.

Eligible borrowers and Lenders:

The RBI has decided to consider the ECB proposals from foreign equity holders (direct and indirect) and group Companies under the Approval route as follows:

- Service sector units, in addition to hotels, hospitals and software, would be considered as eligible units if the proposed ECB is from foreign equity holders.
- ECB from indirect equity holders may be considered provided that the indirect equity holding by the lender in the Indian Company is at least 51%.
- ECB from group Company may also be considered provided the Foreign lender and the Indian borrower both are subsidiary of the same parent Company.

However, the total outstanding ECB along with the proposed ECB from the foreign equity lender should not exceed 7 times the equity holding of the lender, directly as well as indirectly.

ECB in Renminbi:

Indian Companies engaged in infrastructure sector can avail ECB in Renminbi (RMB) under approval route subject to annual cap of USD 1 billion.

Compiled by Mr. Malay Damania

MVAT AUDIT

NOTES ON MVAT AUDIT U/S 61 MVAT ACT 2002

The Maharashtra Value added Tax Act, 2002 is in force from 1/4/2005. One of the features of this Act is that specified dealers are required to submit Audit Report in Form-704 signed and verified by the auditor i.e. either Chartered Accountant or Cost Accountant. This requirement is as per section 61 of the MVAT act, 2002. The non filing or late filing of the Audit Report, penalty @ 0.1% of the turnover of sales is leviable. The Audit report has to be submitted within 10 months from the end of the year i.e. on or before 31st January of the following year.

Dealers liable for VAT audit under section 61(1):

The following dealers are liable for VAT Audit

a. The turnover of sales or, as the case may be, of purchases exceeds rupees sixty lakh in any year, or

b. a dealer who holds license in:-

   i. Form P.L.L. under the Maharashtra Distillation of Spirit and Manufacture of Potable Liquor Rules 1966, or
   ii. Form B-RL under the Maharashtra Manufacture of Beer and Wine Rules 1966, or
   iii. Form E under the Special Permits and Licence Rules, 1952, or
   iv. Forms FL-I, FL-II, FL-III, FL-IV under Bombay Foreign Liquor Rules, 1953, or
   v. Forms CL-I, CL-II, CL-III, CL/FL/TOD-III under Maharashtra Country Liquor Rules, 1973

c. Dealer, who holds an Entitlement Certificate in respect of any Package Scheme of incentives, granted under this Act

Determination of Turnover of Sales and Purchases:

For the purpose of section 61, the turnover of sales or purchases will have to be determined in respect of all places of business of the dealer within the State of Maharashtra and will include turnover of trading goods, manufactured goods, raw materials, consumables, fuel, capital assets (excluding immovable property), tax free goods, waste, scrap, any sales and purchase of goods debited or credited to profit & loss account.

It is possible in case of certain dealers that they may not be covered by Tax Audit u/s 44AB of the Income Tax Act but VAT audit provision can be applied in such cases on the basis of turnover of sales and purchases defined under MVAT Act, 2002.

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Important Aspects of VAT Audit Report Form - 704

This Audit Report Form is to be filed electronically, this report is to be submitted by all the dealers to whom the provisions of Section 61 of the MVAT Act, 2002 apply. All the parts of this report are mandatory for all the dealers. The respective schedules and annexures applicable to the dealer should be filled up. Auditor has to provide certificate/opinion/report on the requirements prescribed in Form-70.

Note:- As per Trade Circular No. 7T of 2011 Dt. 4/5/2011, Section 61(1) is amended providing for filing of 'Complete Audit Report'. An explanation is added to define the term "Complete Audit Report" only if all the items, certificates, tables, schedules and annexures are filled appropriately and are arithmetically self consistent.

This report is divided in three parts, which are as under:-

PART-1:
This Part requires the vat auditor to compute the tax liability as per provisions of MVAT and CST law from the books of accounts and report the differences as compared with the amounts shown in the returns, the vat auditor is required to give his opinion on certain issues e.g. maintenance of records, claim of deductions and exemptions, computation of set-off, place and places of business from where the business is conducted etc. the vat auditor is also required to give his remarks and observations for differential dues or refund as well as qualifications or remarks having impact on the tax liability and advise the dealer about further action to be taken for the period.

PART-2:
This Part gives the General and Business Information of the dealer such as details of nature of business and activities, places of business, accounting software used, changes during the year, details of registrations under other laws and activity code number pertaining to the business activities of the dealer.

PART-3:
This Part comprises of the Schedules and Annexures to be annexed to the vat audit report. The Schedules Nos. I to VI are drafted on the lines of the returns in Form 231 to 235 under MVAT law and Form III(E) under CST law. The Schedules require compilation of figures from the returns filed by the dealer and determination of turnover and liability of tax under MVAT law and CST law from the books of account. The vat auditor is required to select a Schedule applicable to the class of dealer whose accounts are being audited. This part contains six Schedules. Schedule VI is applicable in respect of sale of goods under the provisions of Central Sales Tax Act, 1956. Out of remaining five Schedules, normally only one Schedule will be applicable to a dealer and auditor required to furnish information in that particular Schedule only.

As per Rule 17 of MVAT Rules, various classes of dealers are required to file their periodic returns in one of the following forms as may be applicable according to the business activities.

Form 231: Applicable to all VAT dealers (other than the dealers to whom From 232 to 235 are applicable)

Form 232: Applicable to all Composition dealers (Retailers, Hoteliers, Caterers, Bankers and second hand motor vehicle dealers)

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Form 233: Applicable to the dealers, who are in the business of executing Works Contract, Leasing etc.

Form 234: Applicable to PSI units holding Entitlement Certificate

Form 235: Applicable to Notified Oil Companies and all dealers dealing in motor spirit.

Depending upon the type of return form to be used by the dealer as stated above, auditor shall select appropriate Schedule as indicated hereunder:-

Sr. No.	Types of return	Relevant Schedule
1	From 231	Schedule - I
2	From 232	Schedule - II
3	From 233	Schedule - III
4	From 234	Schedule - IV
5	From 235	Schedule - V
6	Form IIIE (CST)	Schedule - VI

ANNEXURES TO AUDIT REPORT FORM-704

In addition to the Schedules as discussed above, there are also annexures from 'A' to 'K'. In the Electronic Format the Schedules from I to VI are linked with these Annexures. The Auditor has to first fill up these annexures, so that some of the fields in the Schedules and Tables will be auto calculated.

The different types of Annexures attached to the Audit Report are as under:-

a. **Annexure-A:-** This annexure is about the details of returns filed and amount of tax paid as per returns or paid by separate challan under MVAT Act and interest calculation thereon. It also provides details of Refund Adjustment Order issued and amount adjusted against the tax payable for the period under Audit.

b. **Annexure-B:-** This annexure is about the details of returns filed and amount of tax paid as per returns or paid by separate challan under CST Act corresponding to Schedule - VI. It also provides details of Refund Adjustment Order issued and amount adjusted against the tax payable for the period under Audit.

c. **Annexure-C:-** This annexure is about the details of tax deducted at source from the dealer by an employer and where the TDS certificates received.

d. **Annexure-D:-** This annexure is about the details of tax deducted at source by the dealer and where the TDS certificates issued.

e. **Annexure-E:-** This annexure is about the details of local purchases on which the set-off is claimed by the dealer. It further provides for determination of reduction of set-off according to various rules.

f. **Annexure-F:-** This annexure is for the financial ratios for the period under audit and other information. If the dealer has multi-state activities, then the ratios related to gross and net profit may be given for entire business of entity and other ratios should be given at state level.

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g. **Annexure-G:-** This annexure is about the details of declarations or certificates received for the period under Audit.

h. **Annexure-H:-** This annexure is about the details of declarations or certificates in Form-H for local transactions not received for the period under Audit.

i. **Annexure-I:-** This annexure is about the details of declarations or certificates other than in From-H for local transactions not received for the period under Audit.

j. **Annexure-J (Section-1):-** This annexure is about the dealer wise information of local sales

k. **Annexure-J (Section-2):-** This annexure is about the dealer wise information of local purchases

l. **Annexure-J (Section-3):-** This annexure is about the dealer wise information of debit note/credit note in case of local sales

m. **Annexure-J (Section-4):-** This annexure is about the dealer wise information of debit note/credit note in case of local purchases

n. **Annexure-J (Section-5):-** This annexure is about the customer wise information of export and high seas sales under CST Act

o. **Annexure-J (Section-6):-** This annexure is about the supplier wise information under CST Act

p. **Annexure-K:-** This annexure is about determination of Gross Turnover of Sales and Purchases along with reconciliation with Profit and Loss Account, Trial Balance/Sales and Purchases register

Compiled by: Mr. Devesh Dubey

ACCOUNTS

12 Things You Need To Know About Financial Statements

Knowing how to work with the numbers in a company's financial statements is an essential skill for stock investors. The meaningful interpretation and analysis of balance sheets, income statements and cash flow statements to discern a company's investment qualities is the basis for smart investment choices. However, the diversity of financial reporting requires that we first become familiar with certain general financial statement characteristics before focusing on individual corporate financials. In this article, we'll show you what the financial statements have to offer and how to use them to your advantage.

1. Financial Statements Are Scorecards

There are millions of individual investors worldwide, and while a large percentage of these investors have chosen mutual funds as the vehicle of choice for their investing activities, a very large percentage of individual investors are also investing directly in stocks. Prudent investing practices dictate that we seek out quality companies with strong balance sheets, solid earnings and positive cash flows.

Whether you're a do-it-yourself or rely on guidance from an investment professional, learning certain fundamental financial statement analysis skills can be very useful - it's certainly not just for the experts. Over 30 years ago, businessman Robert Follet wrote a book entitled "How To Keep Score In Business" (1987). His principal point was that in business you keep score with dollars, and the scorecard is a financial statement. He recognized that "a lot of people don't understand keeping score in business. They get mixed up about profits, assets, cash flow and return on investment.”

The same thing could be said today about a large portion of the investing public, especially when it comes to identifying investment values in financial statements. But don't let this intimidate you; it can be done. As Michael C. Thomsett says in "Mastering Fundamental Analysis" (1998):

"That there is no secret is the biggest secret of Wall Street - and of any specialized industry. Very little in the financial world is so complex that you cannot grasp it. The fundamentals - as their name implies - are basic and relatively uncomplicated. The only factor complicating financial information is jargon, overly complex statistical

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analysis and complex formulas that don't convey information any better than straight talk."
What follows is a brief discussion of 12 common financial statement characteristics to keep in mind before you start your analytical journey.

2. What Financial Statements to Use

For investment analysis purposes, the financial statements that are used are the balance sheet, the income statement and the cash flow statement. The statements of shareholders' equity and retained earnings, which are seldom presented, contain nice-to-know, but not critical, information, and are not used by financial analysts. A word of caution: there are those in the general investing public who tend to focus on just the income statement and the balance sheet, thereby relegating cash flow considerations to somewhat of a secondary status. That's a mistake; for now, simply make a permanent mental note that the cash flow statement contains critically important analytical data.

3. Knowing What's Behind the Numbers

The numbers in a company's financials reflect real world events. These numbers and the financial ratios/indicators that are derived from them for investment analysis are easier to understand if you can visualize the underlying realities of this essentially quantitative information. For example, before you start crunching numbers, have an understanding of what the company does, its products and/or services, and the industry in which it operates.

4. The Diversity of Financial Reporting

Don't expect financial statements to fit into a single mold. Many articles and books on financial statement analysis take a one-size-fits-all approach. The less-experienced investor is going to get lost when he or she encounters a presentation of accounts that falls outside the mainstream or so-called "typical" company. Simply remember that the diverse nature of business activities results in a diversity of financial statement presentations. This is particularly true of the balance sheet; the income and cash flow statements are less susceptible to this phenomenon.

5. The Challenge of Understanding Financial Jargon

The lack of any appreciable standardization of financial reporting terminology complicates the understanding of many financial statement account entries. This circumstance can be confusing for the beginning investor. There's little hope that things will change on this issue in the foreseeable future, but a good financial dictionary can help considerably.

6. Accounting Is an Art, Not a Science

The presentation of a company's financial position, as portrayed in its financial statements, is influenced by management estimates and judgments. In the best of circumstances, management is scrupulously honest and candid, while the outside auditors are demanding, strict and uncompromising. Whatever the case, the imprecision that can be inherently found in the accounting process means that the prudent investor should take an inquiring and skeptical approach toward financial statement analysis.

7. Two Key Accounting Conventions

Generally accepted accounting principles (GAAP) are used to prepare financial statements. The sum total of these accounting concepts and assumptions is huge. For investors, a basic understanding of at least two of these conventions - historical cost and accrual accounting - is particularly important. According to GAAP, assets are valued at their purchase price (historical cost), which may be significantly different than their current market value. Revenues are recorded when goods or services are delivered and expenses recorded when incurred.

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Generally, this flow does not coincide with the actual receipt and disbursement of cash, which is why the cash flow becomes so important.

8. Non-Financial Statement Information

Information on the state of the economy, industry and competitive considerations, market forces, technological change, and the quality of management and the workforce are not directly reflected in a company's financial statements. Investors need to recognize that financial statement insights are but one piece, albeit an important one, of the larger investment information puzzle.

9. Financial Ratios and Indicators

The absolute numbers in financial statements are of little value for investment analysis, which must transform these numbers into meaningful relationships to judge a company's financial performance and condition. The resulting ratios and indicators must be viewed over extended periods to reflect trends. Here again, beware of the one-size-fits-all syndrome. Evaluative financial metrics can differ significantly by industry, company size and stage of development.

10. Notes to the Financial Statements

It is difficult for financial statement numbers to provide the disclosure required by regulatory authorities. Professional analysts universally agree that a thorough understanding of the notes to financial statements is essential in order to properly evaluate a company's financial condition and performance. As noted by auditors on financial statements "the accompanying notes are an integral part of these financial statements." Take these noted comments seriously.

11. The Auditor's Report

Prudent investors should only consider investing in companies with audited financial statements, which are a requirement for all publicly traded companies. Before digging into a company's financials, the first thing to do is read the auditor's report. A "clean opinion" provides you with a green light to proceed. Qualifying remarks may be benign or serious; in the case of the latter, you may not want to proceed.

12. Consolidated Financial Statements

Generally, the word "consolidated" appears in the title of a financial statement, as in a consolidated balance sheet. Consolidation of a parent company and its majority-owned (more that 50% ownership or "effective control") subsidiaries means that the combined activities of separate legal entities are expressed as one economic unit. The presumption is that a consolidation as one entity is more meaningful than separate statements for different entities.

Conclusion

The financial statement perspectives provided in this overview are meant to give readers the big picture. With these considerations in mind, beginning investors should be better prepared to cope with learning the analytical details of discerning the investment qualities reflected in a company's financials.

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Inspiration from: www. Investopedia.com