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PDR

# Eyes on taxation as depository receipts prepare to take off

## Global investment firm BNY Mellon confirms several filings

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The tax authorities' attitude on the new depository receipt (DR) regime, about to take flight, is likely to be watched closely. Various programmes are on the anvil regarding shares from a number of companies through the unsponsored DR route. This marks a turnaround in the Indian access to foreign capital, which in 2014 hit its lowest point since the early 1990s.

A spokesperson for BNY Mellon, a global investment entity, said it had filed for multiple unsponsored DRs. "This decision was made following the recent notification by India's ministry of finance of the new Depository Receipts Scheme, which became effective in mid-December. The new scheme permits, for the first time, unsponsored DRs with respect to securities of Indian companies," went the emailed response.

Tata Consultancy Services, Bajaj Finance, Apollo Tyres, NTPC, Power Grid and Voltas are some of the companies on which unsponsored American depository receipts (ADRs) are being reportedly planned.

The MS Sahoo committee report, on the basis of which the new DR regime was brought in, pointed to a couple of possible problems if the tax department took an aggressive view on such securities. "A deeper problem lies in the problem of source-based taxation... Until Indian tax policy is made compatible with global-

### TIME FOR A COMEBACK

	No. of DRs	Amount (\$ mn)
2004	11	272.70
2005	41	3,181.03
2006	36	2,035.93
2007	33	7,552.09
2008	16	489.76
2009	25	3,720.33
2010	38	1,174.03
2011	19	553.50
2012	4	161.88
2013	2	40.00
2014	1	45.22

DRs: Depository receipts  
Source: PRIME Database

isation, on-shore financial intermediation will be at a disadvantage," it had said. "Under the present law... capital gains tax exemption is not available for an off-market transaction. The differential tax treatment results in limited appetite for transferring shares to a foreign depository for issue of DRs."

In an unsponsored DR, the company or issuer of the underlying shares or securities is not involved in the former's creation. The DRs are created by a third party. This latter entity deposits the shares or securities in its possession with a domestic custodian in India. DRs are then issued abroad, on the parked securities. Investors abroad can broadly be said to buy these securities in the same way as any other company shares.

However, unlike an Initial Public Offer, the money raised through such an exercise does not go to the company. It goes to the entity which deposited the securities on which the DRs were issued. Since there is no formal agreement between the depository and the company involved, it is called an unsponsored DR.

"DRs do not need any favourable tax treatment. What is required is a clear and neutral taxation regime... Regulators need to be more vigilant to ensure only clean money comes in," said M S Sahoo, in response to a query from *Business Standard* on the tax and regulatory implications.

The DR issuance would come after the lowest number of equity issuances in a year since 1991. There was only one, with Videocon industries raising \$45.2 million (₹270 crore) in December. The only other year there were so few issues was in 1998, according to PRIME Database.

In absolute amount raised, 2014 was the third lowest year. The year 1998 saw \$13.5 million. Two issuances in 2013 raised a total of \$40 million. Indian companies in total have mopped ₹1.16 lakh crore since 1992 through 324 issuances. "The challenge will be to ensure liquidity. The volumes in unsponsored DRs will be less than a sponsored DR, where the issuer is directly the company. Investors will only be attracted if there is sufficient depth and liquidity," said Harish H V, partner, Grant Thornton India.